



Solicitors  
Disciplinary Tribunal

# CHAIRMAN'S REPORT 2008



## CONSTITUTION AND POWERS OF THE SOLICITORS DISCIPLINARY TRIBUNAL

The Solicitors Disciplinary Tribunal is a statutory body, constituted under the *Solicitors (Amendment) Act 1960*, as substituted by the *Solicitors (Amendment) Act 1994*, amended by the *Solicitors (Amendment) Act 2002*, and amended by the *Solicitors (Amendment) Act 2008* as cited in the *Civil Law (Miscellaneous Provisions) Act 2008*. The Tribunal is wholly independent of the Law Society of Ireland.

It is composed of 20 solicitor members and ten lay members, the latter being drawn from a wide variety of backgrounds, and whose remit is to represent the interests of

the general public. All Tribunal members are appointed by the President of the High Court – solicitor members from among practising solicitors of not less than ten years' standing and lay members who are not solicitors or barristers.

Procedures of the Tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation on 1 March 2003. Under the *Solicitors Acts 1954 to 2008*, the Tribunal's powers are mainly confined to receiving and hearing complaints of professional misconduct against members of the solicitors'

profession. Applications to the Tribunal are made by the Law Society of Ireland and, subject to a few instances under the *Solicitors Acts* where applications are limited to the Law Society, it is also open to members of the public to make a direct application to the Tribunal without resorting to the Law Society.

Section 19 of the *Solicitors (Amendment) Act 2002* has extended the powers of the Tribunal, giving it jurisdiction over trainee solicitors. In such cases, the Law Society may apply to the Tribunal to hold an inquiry into alleged misconduct by trainee solicitors.

SOLICITOR MEMBERS	SOLICITOR MEMBERS	LAY MEMBERS
Francis D Daly (Chairman) Ernest Cantillon Mary Cantrell Michael Carrigan Niall Casey Helen Jeanne Cullen Joseph Deane Caroline Devlin Paula Duffy Anthony Ensor	Carol M Fawsitt Isabel Foley Berchmans Gannon Maeve Hayes Edward McEllin Brian M McMahon Caroline O'Connor Michael V O'Mahony Hugh O'Neill Ian Scott	Seamus Byrne Colette Carter Una Claffey Brenda Clifford Ted Conlon Padraic Ingoldsby Mary King Ken O'Neill Fergus O'Tuama Kristin Quinn
TRIBUNAL REGISTRAR	SECRETARY TO REGISTRAR	ADMINISTRATION ASSISTANT
Mary Lynch	Monica Murray	Barry Lennon

## INTRODUCTION

This is my fifth *Chairman's Report*, and it covers the period 1 January to 31 December 2008, which has proven to be both a challenging and positive time for the Tribunal. In my report for 2007, I welcomed a 10% decrease in the number of new applications made to the Tribunal. However, this year I must record a 28% increase in new applications. As a consequence, the Tribunal held a record number of sittings during the year in order to deal with the increased workload and also the mounting backlog. Table 1 (right) shows the increasing trend in relation to sittings of the Tribunal over the years. The Tribunal maintains a diary in respect of forthcoming inquiries on its website at: [www.solicitorsdisciplinarytribunal.ie](http://www.solicitorsdisciplinarytribunal.ie).

However, it is not just the increase in the number of new applications that is disquieting, but rather the nature of the complaints being made and the challenging impact they are having on the integrity of the solicitors' profession and the confidence of the public in regard to the regulation of the profession. The attitude of the Tribunal to the gravity of the matters that have come before it is reflected both in the increase in the number of cases where misconduct has been found, and the increase in the number of referrals of such matters to the High Court. This is illustrated in Chart 1. While the Tribunal made findings of misconduct in respect of 80 separate applications, the actual number of respondent solicitors involved in such cases was 53.

On a more positive note, in my preceding report, I indicated that a review was being conducted in respect of the cases on the waiting list for hearing. I am pleased to report that the Tribunal, during the period

under review, focused on reducing the backlog of cases and, indeed, succeeded in clearing off its books 99 applications received prior to 2008. The Tribunal has also succeeded in reducing the period between the filing of an application and the ultimate determination of the case.

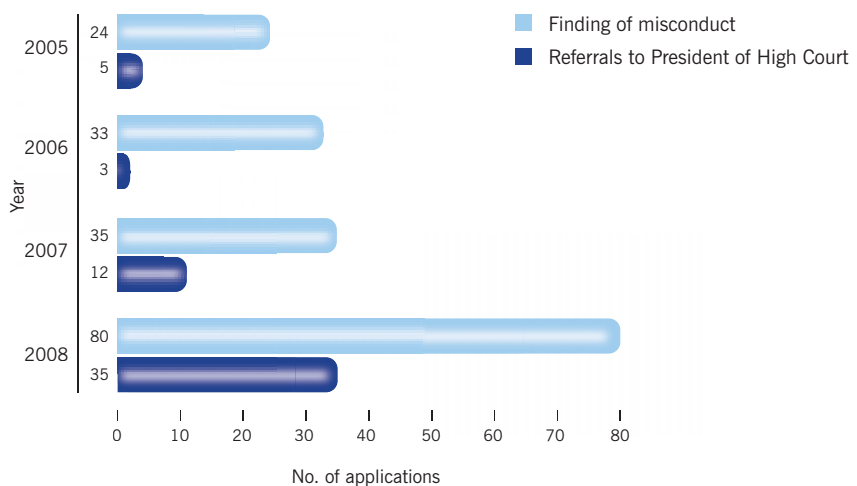
In addition to my functions as a member of the Tribunal, under the Tribunal's rules I am responsible for:

- Coordinating, in conjunction with the Tribunal Registrar, the administrative function of the Tribunal,
- Liaising with the President of the High Court in relation to the efficient administration of the Tribunal, and
- Convening and presiding at general meetings of members of the Tribunal, held from time to time.

**TABLE 1**

YEAR ENDING 31 DECEMBER	NO. OF SITTINGS OF TRIBUNAL
2003	38
2004	57
2005	55
2006	59
2007	84
2008	110

**CHART 1: FINDINGS OF MISCONDUCT  
AND REFERRALS TO THE HIGH COURT, BY YEAR**



## APPLICATIONS

The role of the Tribunal is largely confined to receiving applications for an inquiry to be held into the conduct of a solicitor(s), or trainee solicitor(s), on the ground of alleged misconduct and, where a *prima facie* case of misconduct for inquiry is found by a division of the Tribunal, proceeding to hold an inquiry in respect of the complaints of alleged professional misconduct.

### Lay applicants

The Tribunal recognises that, at times, there is a significant gap between the expectations of members of the public who wish to make an application to the Tribunal, and the powers of the Tribunal. For instance, lay applicants may not appreciate that the Tribunal, under the *Solicitors Acts*, is charged with deciding whether the alleged conduct amounts to professional misconduct, as distinct from some other conduct, where the remedy may lie in another forum. Lay applicants often do not appreciate that the Tribunal has no function in relation to reviewing the events of an applicant's litigation in court. In this regard, in a case where a lay applicant was appealing against a finding of the Tribunal that there was no *prima facie* case disclosed, the High Court's following decision, which was upheld and approved on appeal to the Supreme Court, illustrates the Tribunal's position:

*"All the matters raised [in the applicant's application to the Tribunal] are matters which could and ought properly to be canvassed in a forum other than the Solicitors Disciplinary Tribunal. It is a matter for the trial judge to determine most of the matters raised by way of complaint in the course of the hearing and this appears to have been done. If dissatisfied with the*

*manner in which a trial is conducted a party may appeal the same. Matters such as inadequate notice or inadequate service or documents are dealt with by the trial judge. The adequacy or otherwise of discovery is a matter for the trial judge. If applications are unnecessary or otherwise oppressive, this is something which the trial judge can deal with by way of orders for costs. It is inappropriate to ask the Solicitors Disciplinary Tribunal to second-guess the trial judge in relation to such matters. Insofar as fees are concerned the amount of the same should [the responding party] consider them excessive is a matter for the Taxing Master. In the circumstances I am satisfied that it is inappropriate to ask the Solicitors Disciplinary Tribunal to embark on an inquiry in relation to the many matters raised on this complaint"* (**Brendan O'Reilly v Rosario Lee**, unreported, 23 April 2008, Supreme Court).

Further, for regulation of the profession to be effective, members of the public have to be confident that it works well and fairly. Consequently, the Tribunal works continuously to ensure that members of the public understand its procedures and are fully aware that decisions of the Tribunal are subject to scrutiny by the High Court by way of appeal.

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However, for many lay applicants, the actual writing out of an application and identifying the particular allegations of misconduct presents a great problem. This has been recognised by the Tribunal's staff as a matter that constantly requires attention. Applicants may have regard to *A Guide to the Professional Conduct of Solicitors in Ireland* (2nd edition), which is available from the Law Society or, alternatively, can be downloaded from their website, [www.lawsociety.ie](http://www.lawsociety.ie).

Application forms have already been updated and lay applicants are given as much assistance as is appropriate when completing the forms. The Tribunal has noticed a large improvement in the presentation of applications by members of the public and, indeed, welcomes the fact that a number of lay applicants are now being legally represented.

During the year under review, the Tribunal held oral hearings in respect of 24 applications emanating from members of the public. While the Tribunal found that

there was no misconduct on the part of respondents in 16 applications, it found misconduct in eight such applications, having regard to the serious nature of the proven complaints made by lay applicants. The Tribunal recommended in three such applications, involving the same respondent, that his name be struck off the Roll of Solicitors. In a further lay application, the Tribunal censured the respondent, directed that he pay a sum of €10,000 to the compensation fund, directed that he pay a sum of €3,630 as restitution to the complainants without prejudice to any legal right of such party, and that he pay the applicants' expenses of attending the inquiry held by the Tribunal.

### Standard of proof

The proceedings before the Tribunal are formal in nature and, as the outcome may affect the livelihood of the solicitor, the Tribunal requires a high standard of proof. In this regard, the issue of the standard of proof when deciding whether or not there was a *prima facie* case of

misconduct on the part of a respondent for inquiry was considered in a case (determined by the Tribunal in 2008) where the Law Society appealed against a decision of the Tribunal, where it had found that there was no *prima facie* case of misconduct on the part of the respondent. In that particular case, it was held, *inter alia*, by the High Court in allowing the appeal and directing the Tribunal to hold an inquiry, that:

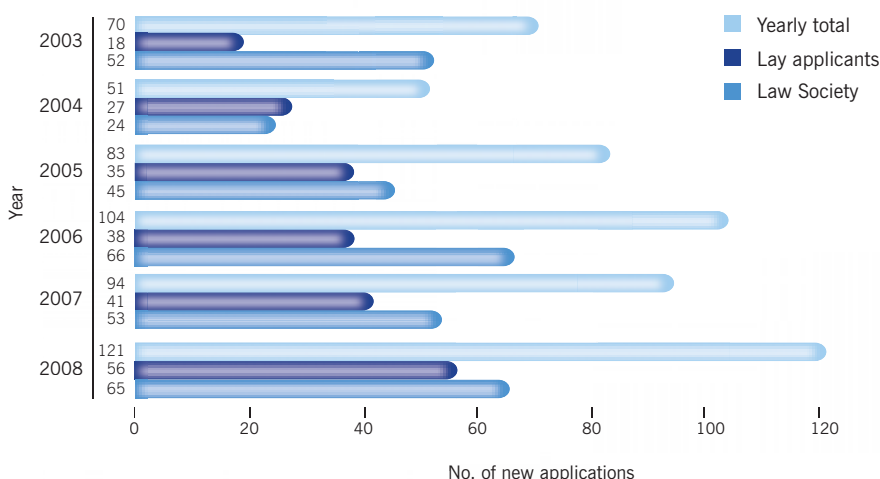
*"While at this stage of the procedures the Tribunal is not the fact-finding body it may for the purposes of deciding on whether a prima facie case is disclosed make findings of fact where the facts are clear for example where the complaint is based on a clear misapprehension as to the facts or the law. Subject to this the Tribunal should consider all the material before it and determine whether the application has any real prospect of being established at an inquiry any doubt being resolved in favour of an inquiry being held."*

*"The purpose of this stage of the regulatory process is to enable complaints which are frivolous, vexatious, misconceived or lacking in substance to be summarily disposed of."*

*"As to standard of proof at an inquiry... the standard is the criminal standard of proof beyond reasonable doubt... this is a factor to which regard may be had in determining whether a prima facie case is disclosed."*  
**(Law Society of Ireland v Andrew Walker, unreported, 21 July 2006, High Court).**

The standard of proof when determining whether or not a solicitor is guilty of professional misconduct was also specifically addressed in a case at hearing

CHART 2: NUMBER OF APPLICATIONS RECEIVED, BY YEAR





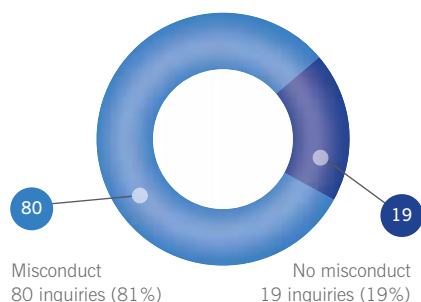
by the Tribunal. The Tribunal, as part of its decision, determined that the onus is on an applicant to establish beyond all reasonable doubt (that is, the criminal standard) that the respondent is guilty of professional misconduct. In so doing, an applicant must establish all of the relevant facts (which have not been admitted by the respondent) and all of the consequences that are said to flow from those facts in order to prove misconduct. This also means that an applicant must establish to the Tribunal that any reasonable defence put forward by a respondent has been negated to that standard.

The Tribunal considers that, once words such as 'deliberate', 'false' or 'fictitious'

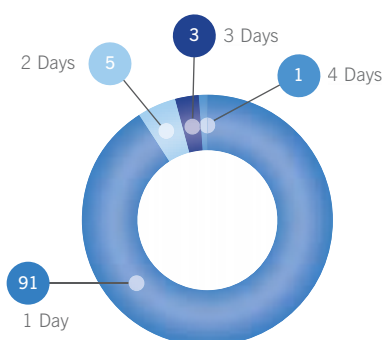
are used in the formulation of an allegation by an applicant, the onus of proof imposed on the applicant is one of beyond all reasonable doubt because of the serious connotations that are implied by such words. That was the view of the Tribunal in a case where it was decided that the respondent was naïve in the extreme in failing to supervise her bookkeeper or the keeping of the practice accounts, which were clearly the responsibility of the respondent. However, the Tribunal found that the respondent was not dishonest or engaged in '*mala fides*' in what she did or failed to do. Consequently, the Tribunal found the respondent was not guilty in respect of the allegations of professional misconduct as formulated in the application.

members when proceeding to hold an inquiry. Members are aware of their duty to hear both sides, albeit that the respondent has an entitlement to decline to give evidence, before determining the complaints of misconduct alleged against the respondent. It has been contended, at times, that in order to establish the complete picture – and in the interest of the public – the respondent concerned should be required to give evidence. However, the Tribunal cannot compel a respondent to take part in an inquiry or to assist in establishing the facts. However, where a respondent fails to attend an inquiry, having been properly served with the appropriate notification, the Tribunal may proceed to hold an inquiry in his/her absence.

**CHART 3: OUTCOME OF INQUIRIES HELD DURING 2008 (%)**



**CHART 4: LENGTH OF INQUIRIES (%)**



### Inquiries

Where the Tribunal finds that there is a *prima facie* case of professional misconduct on the part of the respondent, case law has established that the Tribunal must proceed to hold an inquiry and determine whether or not the facts, as alleged by the applicant in respect of each of the allegations before the Tribunal, are proved to the requisite standard.

As can be seen from Chart 3 (left), of the 99 inquiries completed by the Tribunal during the year, misconduct was found in 80 applications. As has already been observed, the number of individual respondents involved in such cases is 53.

The majority of inquiries before the Tribunal in which misconduct was found during the year under review were completed in one day.

The Tribunal is conscious of its role and of the onerous responsibility placed on the

The rules of the Tribunal seek to ensure that the respondent's constitutional rights to fair procedures and natural justice are preserved, in that:

- All documents relating to the disciplinary proceedings are duly served on the respondent,
- The respondent is made fully aware of the nature of the complaints,
- The respondent may be represented by a solicitor and/or counsel,
- The evidence against the respondent is given orally,
- The respondent is allowed to give rebutting evidence, and
- The respondent has the opportunity to cross-examine witnesses and to address the Tribunal in his/her defence.

In 45 of the applications in which misconduct was found, the respondent admitted the allegations. Further, the allegations were partially admitted in 13 applications, while the respondent denied all the allegations in 22 applications in which misconduct was found during the course of the year.

### Sanctions

The Tribunal has substantial latitude in respect of the sanctions it may impose, or recommend be imposed, on a respondent where a finding of misconduct has been made. Not only may the Tribunal express its opinion to the High Court that the respondent is unfit to practise and that the name of the respondent be struck off the Roll of Solicitors, it may also recommend that the High Court impose a significant fine and/or order restitution and the payment of the applicant's costs. On making a finding of misconduct in three applications during the year under review, involving two separate respondents, the Tribunal recommended, *inter alia*, to the High Court that each respondent pay €1 million to the Law Society's Compensation Fund in respect of each application. Details in respect of these applications are outlined below.

Without recourse to the High Court, the Tribunal may censure a respondent, impose a fine not exceeding €15,000, order restitution up to €15,000, and award the applicant's costs.

When deciding on the sanction to impose on a respondent, the Tribunal must have regard to the previous disciplinary history, if any, of the respondent. Chart 5 (right) is an indicator of the disciplinary history of

the respondents who appeared before the Tribunal, and in respect of whom misconduct was found.

### Awarding costs

In regard to the question of awarding costs during the year under review, the Tribunal has had to consider applications for costs made by or on behalf of respondents. This situation arose where a finding of no misconduct had been made, or in circumstances where the application was withdrawn by the applicant after an inquiry had been directed. While the Tribunal appreciates that respondents may have incurred significant legal fees and outlays in responding to allegations, nevertheless, the Tribunal must refuse such applications, as it has no power to award costs in such circumstances.

### Appeals

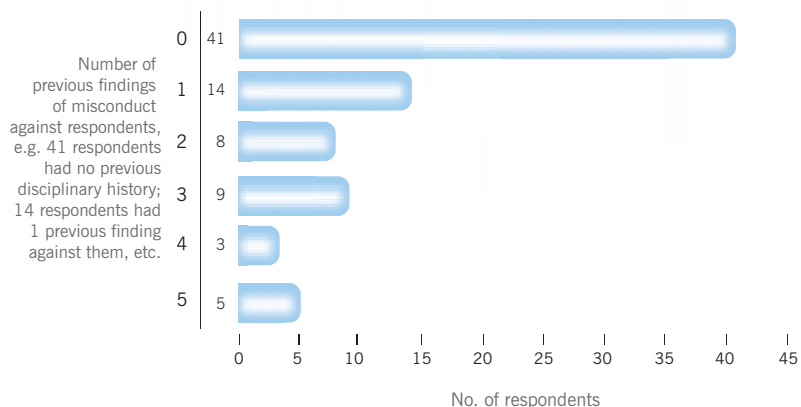
Where the Tribunal determines that there has been no *prima facie* case of misconduct disclosed, an applicant may appeal that decision to the High Court. Of the 34

applications where the Tribunal found that there was no *prima facie* case for inquiry during the year 2008, there were seven appeals by such applicants to the High Court. Two of these cases are awaiting determination by the High Court, while one was returned to the Tribunal for hearing. In the remaining four applications, the court upheld the decision of the Tribunal.

In my previous report, I indicated that decisions of the High Court were awaited in respect of five appeals where the Tribunal had found that there was no *prima facie* case. I am pleased to say that the decisions of the Tribunal were affirmed by the court in three of those cases, while two are still awaiting determination. Where the High Court has upheld the decisions of the Tribunal, two applicants are now appealing against those orders to the Supreme Court.

The Supreme Court has also dismissed two appeals and affirmed the orders of the High Court, which in turn had affirmed the decisions of the Tribunal that there was no *prima facie* case of misconduct on the part of the respondents for inquiry.

**CHART 5: PREVIOUS DISCIPLINARY HISTORY OF RESPONDENTS**





## OBSERVATIONS ON COMPLAINTS BEFORE THE TRIBUNAL

### Undertakings

Fraudulent and dishonest behaviour were the predominant features of a number of cases that came before the Tribunal during the period under review. The gravity of such matters was of particular concern, not only to the Tribunal, but also to the profession and the public at large.

In two applications, concerning the same respondent, the charges ranged from deliberate fraud to the giving of double, if not treble, undertakings on the same properties, breaches of the *Solicitors Accounts Regulations*, the bringing of the solicitors' profession into disrepute, and various other matters. None of the charges had been rebutted, and the Tribunal was satisfied that the respondent was guilty of professional misconduct and recommended that the respondent was not a fit person to be a member of the solicitors' profession, that his name be struck off the Roll of Solicitors, and that he pay a monetary penalty of €1 million in respect of each case. The Tribunal also urged the President of the High Court, if he had not already done so, to forward the papers in respect of the disciplinary proceedings to the Director of Public Prosecutions. Subsequently, the President of the High Court made orders in the terms recommended by the Tribunal.

Over the past number of years, the Tribunal has, in its findings and the penalties imposed, given due weight to the importance of solicitors honouring undertakings. It has always recognised that conveyancing can be a complex matter and that a system of solicitors' undertakings has developed to facilitate and expedite the completion of sales, the redemption of mortgages and the perfection of security

over property. Undertakings, when given, are a solemn promise by a solicitor to attend to certain matters. There has been a substantial increase in the number of applications before the Tribunal where the alleged breach of a solicitor's undertaking is in issue. However, the fact that the system of undertakings has been abused so gravely by a small number of solicitors should not be taken as an indication of proof that the system of undertakings as a whole is defective. It is not. The vast majority of solicitors honour undertakings, and recognise that an undertaking is one of the core foundation stones of the profession.

In another application before the Tribunal, the respondent concerned was charged with 64 complaints, ranging from deliberate mortgage fraud to the giving of multiple undertakings in respect of the same properties, given on his own behalf and on behalf of a third party, to forgery and breaches of the *Solicitors Accounts Regulations*. None of the allegations were refuted in any way.

The system of undertakings that has developed is widely accepted, recognised and works well. However, where a solicitor unscrupulously misuses the system to perpetrate serious acts of misconduct, the



The Tribunal again took the opportunity to assert its view that solicitors are in a privileged position and are held in high regard by lending institutions and clients. Consequently, if they give their word, they are expected to keep their word.

full rigours of the law will be applied to deal with the offender. In this particular case before the Tribunal, where the respondent had caused serious loss, hardship and inconvenience to many individuals and financial institutions, where there was clearly no regard for the fundamental obligations of being a solicitor, and where the respondent was evidently someone who should not be a member of the legal profession, the Tribunal had no hesitation in recommending to the High Court that the name of the respondent be struck off the Roll of Solicitors. The Tribunal also recommended that the High Court impose a monetary penalty in the sum of €1 million. Further, since the matter was already in the hands of An Garda Síochána, the Tribunal did not feel it necessary to also recommend that the High Court refer the matter to the Director of Public Prosecutions; otherwise it would have done so. An order in the terms recommended by the Tribunal was subsequently made by the President of the High Court.

### ***Solicitors Accounts Regulations***

Financial irregularity and breaches of the *Solicitors Accounts Regulations* were another principal cause of misconduct in approximately 31% of the applications heard by the Tribunal. I take this

opportunity to again emphasise that solicitors are expected to discharge their professional duties with integrity and honesty. The *Solicitors Accounts Regulations* exist to give maximum protection to the profession, and the public, against improper and unauthorised use of clients' money. Accordingly, solicitors are required to deal with money they hold for and on behalf of clients in a way that complies with the regulations.

Professional misconduct may not necessarily require the conclusion that a solicitor is unfit to practise and that the ultimate sanction should be imposed. The Tribunal has to weigh the gravity of the professional conduct, the previous disciplinary record of the respondent, and the attitude and the personal circumstances of the respondent concerned. In the year under review, there were applications where the respondents' offences were serious, but not considered sufficiently serious to justify recommending that the name of the respondent be struck off the Roll of Solicitors.

In one such case, the respondent allowed a deficit to arise on his client account totalling €24,499; allowed this deficit to occur by taking excess fees from the client account; used his client account to pay personal and

office expenditure, in breach of the *Solicitors Accounts Regulations*; and failed to keep an office ledger in accordance with the said regulations. These complaints were admitted by the respondent, who had expressed regret for what took place but did not seek to offer anything in mitigation in respect of his conduct. The respondent also acknowledged that there were serious breaches of the *Solicitors Accounts Regulations* and had not tried to make any excuse for them. The Tribunal took into account that frank acknowledgement on the part of the respondent as a matter of some mitigation. The Tribunal also took into account the fact that the respondent, in his replying affidavit to the complaints, had indicated that he had no intention of ever practising again in his own right. In the circumstances, the Tribunal recommended, *inter alia*, to the High Court that the respondent should not be permitted to practise as a sole practitioner or in partnership, and that he be permitted only to practise under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society.

### ***Conveyancing***

In another application, the respondent was found guilty of professional misconduct in respect of eight complaints where, in the course of acting for a client in a purchase of property, the interest and penalty on the stamp duty were avoided because he 'updated' the deed to a date close to when the deed was submitted to the Revenue Commissioners. The respondent accepted that the deeds were updated and that the consequence was the evasion of stamp duty. The Tribunal took into account the fact that the activity complained of, within

The *Solicitors Accounts Regulations* exist to give maximum protection to the profession, and the public, against improper and unauthorised use of clients' money.

the respondent's practice, appeared to have been the exception rather than the rule in view of the number of incidents in comparison to the firm's turnover; the respondent had a 20-year unblemished record; he had cooperated with the investigation and had taken appropriate and prompt steps to address and rectify matters with the Revenue Commissioners to their satisfaction; he had also submitted the documents in question for stamping or did so shortly after being put in funds by the clients. The Tribunal, in view of the foregoing, was of the view that it was appropriate for it to make an order censuring the respondent, ordering that he pay a sum of €15,000 to the compensation fund, and that he pay the Law Society's costs.

In another application, the Tribunal expressed grave concerns that a respondent furnished a deed of transfer and sought to pass it off as having being stamped by the Revenue Commissioners in December 2004, when it had not. The respondent maintained, from early 2005 to late 2007, that the deed had been stamped and that he had furnished a copy of the deed to the complainant's solicitor with the stamp duty showing as paid. The Tribunal noted from the Law Society's affidavit, which had not been disputed by the respondent, that the evidence of stamping on the deed clearly related to a different transaction altogether and, although it related to the solicitor's firm, it had clearly been photocopied from a different deed.

It was noted that the Revenue Commissioners confirmed in October 2007 to the complainant's solicitor that the information held under the particular reference number was not consistent with

## Where a solicitor unscrupulously misuses the system to perpetrate serious acts of misconduct, the full rigours of the law will be applied to deal with the offender.

the documentation presented by the complainant's solicitor. This matter only came to light following the investigations of the complainant's solicitor and not by any admission of the respondent. The Tribunal also noted that the date of the deed of transfer was altered from 22 May 2002 to 2 August 2002 and that no satisfactory explanation had been given for this alteration in the respondent's replying affidavit. The Tribunal had regard to the fact that there had been no previous findings of misconduct made against the respondent, but in view of the seriousness of the issues raised and the concerns for the profession as a whole and for the public, the Tribunal was referring the matter to the President of the High Court with a recommendation that the respondent should not be permitted to practise as a sole practitioner or in partnership.

### Personal injury action

A respondent's experience and seniority was taken into account when the Tribunal found that professional misconduct had occurred in circumstances where the respondent had failed to disclose relevant and pertinent information in personal injury proceedings, which he recognised the plaintiff should have had, but which he failed to disclose on reliance on the advice of senior counsel.

The matter came before the Tribunal on the application of the Law Society. The

facts of the matter were not substantially in issue. The respondent was a member of a firm of solicitors on record for the defendant in High Court personal injury proceedings. The case concerned a claim for damages by the plaintiff for negligence. In the course of the proceedings, the defendant delivered to the plaintiff an affidavit of discovery that made reference to, *inter alia*, a handwritten patient's clinical record relating to a consultation between the plaintiff and the defendant. The record was presented as a contemporaneous record of the consultation.

Shortly prior to the commencement of the action, the respondent was advised by the defendant that a portion of the handwritten note had been made contemporaneously with the consultation, but that a portion of same was probably added by him to the record 18 months later. The respondent advised the defendant that they were going to have to inform the other side and that he would speak to senior counsel. The respondent discussed the matter with senior counsel and it was agreed that the fact that the notes had been added to would have to be disclosed and a form of letter of disclosure was discussed, agreed, engrossed and sent for approval to the defendant.

The consents of the defendant and the indemnifying insurers were obtained to the disclosure. The letter of disclosure, dated



24 October 2003, a Friday, was not in fact furnished or delivered to the solicitors for the plaintiff either by fax, post, DX or electronically, and the reason given for same was that the case was scheduled to proceed to hearing on the following Tuesday, and the intervening three days were non-working days, it being a long weekend. The disclosure letter was carried by the respondent to court for manual delivery to the solicitors for the plaintiff on the following Tuesday, but the letter was not delivered to the plaintiff or his advisers, on the specific advice of senior counsel.

It was argued that the altered record itself was not misleading, in that it merely detailed what the defendant had maintained occurred at the consultation and was in accordance with his sworn evidence subsequently given at hearing. However, production during the proceedings of the record in its altered state as being a contemporaneous record of what occurred at the consultation was misleading, in that it tended to support and corroborate a claim and position consistently and persistently maintained by the defence and similarly denied by the plaintiff. Having opened to the opposition the document, which subsequently came to his notice as having been altered, it was the duty of the respondent to disclose the alteration to his opponent and fellow officer of the court. The obligation to disclose should have been discharged immediately or at the earliest opportunity. The respondent failed to avail of the opportunity to effect disclosure by post, fax, DX or electronically on the Friday, or by manual delivery on the following Tuesday. The respondent accepted and acknowledged his duty to disclose, and acknowledged that he had not furnished

any, or any adequate, justification for his failure to do so, beyond referring to advice received from senior counsel, which, in the particular circumstances of this case and in view of the experience and seniority of the respondent, was unacceptable. The Tribunal, after considering the submissions made by the parties, the particular circumstances of the case and the excellent prior record of the respondent, made an order, *inter alia*, admonishing and advising the respondent and directing that he pay a sum of €5,000 to the compensation fund.

**Section 68 of the Solicitors  
(Amendment) Act 1960  
(as amended)**

In a case where the allegations of misconduct were factually admitted by the respondent and also admitted by him to be misconduct, the Tribunal found the respondent to have breached section 68(6) of the *Solicitors (Amendment) Act 1994* by failing to provide his client with a bill of costs as prescribed by the section; procuring his client to sign a document whereby his client agreed that the solicitor-and-own-client fees would be 25% of the damages (that is €5,000 before he had settled the party-and-party costs recoverable from the defendant); procuring his client to sign the foregoing document, in which his client effectively waived his right to be appraised of the party-and-party costs offered on his behalf to his solicitor and his right to seek taxation of same; charging his client fees, notwithstanding that he was entitled to recover those fees from the defendant or, in the alternative, failing to demonstrate the services provided to his client, the fees for which were not recoverable from the defendant. The Tribunal noted the submissions made

on behalf of the respondent in regard to his health and personal circumstances. The respondent's previous disciplinary history was also outlined by the Society and, in respect of which, the Tribunal was of the view that this showed a sad and sorry state of affairs in terms of the interest of the public, his failure to communicate with clients and the Law Society, and a failure to hand over files to his clients' new solicitors. It was clear from the respondent's history, dating back well before 2003, that he was not able to efficiently run his practice. It was also clear that he was causing great hardship to a number of his clients in failing to carry out his instructions, and then by his subsequent failure to communicate with the Law Society when they became involved.

Notwithstanding the respondent's undertaking, through his solicitor, that he would never practise again, the Tribunal understood the Law Society's view that voluntary undertakings by solicitors in difficulties, such as those the respondent found himself in, were not appropriate nor binding and could subsequently give rise to further problems. It was clear that, as the matter was being referred to the High Court, the respondent could repeat his undertaking before the High Court, and if the undertaking was accepted, in lieu of any more drastic action, at least it would be recorded in an order of the High Court. The Tribunal was unanimously of the view that the respondent was not fit to practise in his own right and the opinion of the majority was that the respondent should not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be

approved in advance by the Law Society of Ireland. The minority opinion was that the name of the respondent be struck off the Roll of Solicitors.

### No misconduct

There are occasions when the Tribunal may find that, while the respondent may have made an honest mistake, the conduct complained of was not and could not amount to misconduct. This was demonstrated in an application where the respondent, in effect, faced two charges of professional misconduct that were similar in nature. The charges were the failure of the respondent to hand over files of a company he acted for prior to its liquidation to the applicant (the liquidator). The respondent withheld the files in the belief that he was entitled to exercise a lien. It is common case that he was not entitled to do so, because of the provisions of section 244 of the *Companies Act 1963* (as amended).

The applicant sought the files in 1995 through his then solicitors and subsequently the applicant sought the files directly himself. The respondent responded by indicating that he was exercising his lien on the files. The applicant's solicitors did

not challenge the entitlement. Indeed, the respondent said, in unchallenged evidence, that in a telephone call he had with the applicant's solicitor, she responded "fair enough" to his claim to the lien. The applicant was asked in a letter for his authority to challenge the lien. He did not respond, or if he did, he could not locate the letter.

The first and only time that section 244 was considered by the courts, so far as the Tribunal was aware, was in *Macks Bakeries Ltd (in voluntary liquidation) and James Luby v Patrick O'Connor (practising as P O'Connor & Son Solicitors)* [2003] 2 ILRM 75, but the respondent was unaware of that decision.

It was not until 2008 that the respondent became aware of section 244 and, at that point, he then released some of the files and indicated that he was carrying out a search to locate the rest of the files.

The Tribunal determined that an honest, but mistaken, view of the right to exercise a lien did not amount to misconduct. If the respondent was aware of the position in relation to section 244, the situation would be otherwise, but it was not, and

There are occasions when the Tribunal may find that, while the respondent may have made an honest mistake, the conduct complained of was not and could not amount to misconduct.



in those circumstances the Tribunal found the respondent was not guilty of professional misconduct.

In another case, the Tribunal reasoned that, as the *Solicitors Accounts Regulations* (SI No 421/2001) were silent in relation to the specific alleged requirement to retain a copy of a stamped deed, and lacked clarity as to whether such a document is to be considered a 'book of account', it could not make a finding of misconduct against the respondent. Allegations of misconduct had been made against the respondent that he was in breach of regulation 20(1)(h), which required him to maintain and keep all documents generated in the course of each client matter, when he failed to keep copies of five stamped deeds. It was also alleged he was in breach of regulation 12(1), which required him to maintain supporting documents as would enable the bookkeeping entries, relevant to clients' moneys dealt with by him, to be appropriately vouched, when he failed to keep copies of five stamped deeds. The Tribunal noted the investigating accountant's view and agreed with his suggestion of best practice and indicated that the regulations should be revisited by the Society or, at least, a practice direction issued.

In another application, the matter to be determined was whether or not the respondent, or his firm, was entitled to exercise a lien over the moneys that he received from a second accident to secure payment for the costs that were due, or outlay due, in respect of a first accident. The respondent gave evidence to the Tribunal, and it was undoubtedly the

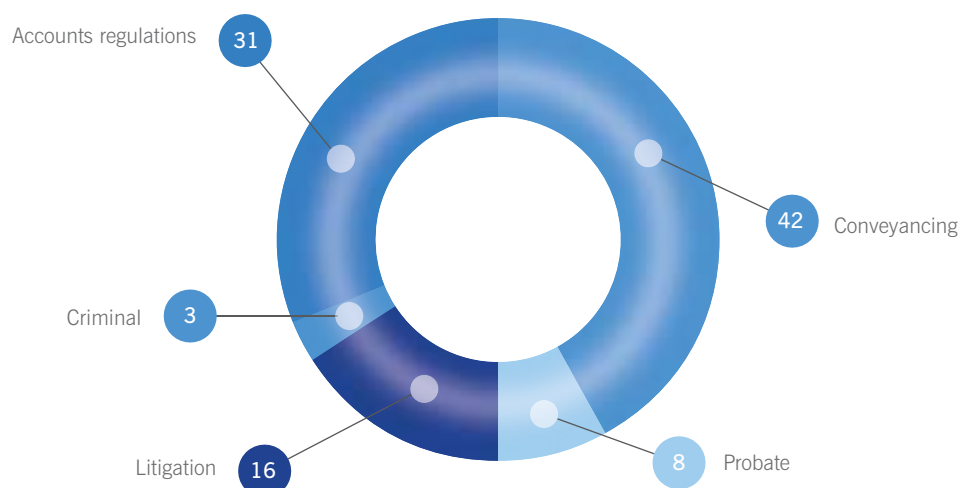
position that, rightly or wrongly, he firmly believed that he did have that entitlement. Submissions in respect of the law were made to the Tribunal. Case law and textbooks on the matter were also opened to the Tribunal. However, what was not opened to the Tribunal was section 68(3) of the *Solicitors (Amendment) Act 1960* (as amended), which prohibits the exercising of a lien in contentious business such as outlined in the present case. The Tribunal was of the view that the respondent firmly believed he was entitled to do what he did. Having regard to the ambiguity and uncertainty about the matter, the Tribunal took the view that they did not wish to make a decision as to whether the respondent was right or wrong but, as there was a doubt and uncertainty as to whether or not he was entitled to do what he did, the respondent must be entitled to that doubt.



## SUBJECT MATTER OF COMPLAINTS

Chart 6 shows a detailed analysis of the subject matter of complaints, where the Tribunal found that professional misconduct had taken place.

**CHART 6: CATEGORY OF COMPLAINT OUT OF WHICH A FINDING OF MISCONDUCT AROSE (%)**



## SOME GROUNDS ON WHICH PROFESSIONAL MISCONDUCT WAS FOUND



### Administration of estates

- Causing a solicitor for the administrator to have to make an application to have a grant revoked,
- Failing to furnish the following documentation relating to the administration of the estate and requested by the Society:
  - i) Section 68 letter,
  - ii) Copy bill of costs,
  - iii) Copy statement of account,
  - iv) Copy receipt for payment of capital acquisitions tax for, and on behalf of, a client,
- Failing to account for interest on moneys held by the respondent, which moneys were due for payment to a client, pursuant to the provisions of Statutory Instrument No 372/2004, *Solicitors (Interest on Clients' Moneys) Regulations 2004*,
- Failing to deal with the administration of an estate in a timely manner,
- Failing to respond to numerous letters from a solicitor acting for the person entitled to administer an estate,
- Through the respondent's obstructive conduct, preventing the complainant

from having the capital acquisitions tax finalised in a timely manner.

### Civil claims

- Delaying in progressing a personal injuries claim of a complainant,
- Delaying in forwarding a complainant's file to their new solicitors,
- Failing to furnish to a complainant's new solicitors information required by them to progress the complainant's case,
- Failing to take steps to enter into settlement negotiations when invited to do so by letter from a solicitor for one of the defendants,
- Failing to enter into settlement negotiations, despite repeated assurances given to the Society that the respondent would do so,
- Failing to inform solicitors for defendants that an offer made in October 2001 was not acceptable until February 2004,
- Failing to pay over a settlement cheque to a complainant in a timely manner.

### Communication with clients/colleagues

- Failing to respond to 20 reminders sent by the complainant to the solicitor's firm.

### Conveyancing

- Acting for a building company in relation to the sale of new houses and, in six cases, also acting for the purchasers of the houses, in breach of Statutory Instrument No 85/1997, *Solicitors*

(*Professional Practice, Conduct and Discipline*) Regulations 1997,

- Failing to stamp a document on time or updating a document for the purposes of evading stamp duty,
- Causing or allowing the signature of a solicitor on a particulars delivered form to be forged,
- Delaying in complying with an undertaking given to a building society in respect of a property by failing to complete and register the mortgage in favour of the building society in a timely manner,
- Failing to comply with an undertaking in relation to a property,
- Failing to resubmit a deed for stamping in a timely manner,
- Failing to lodge a client's transfer in the Land Registry in a timely manner,
- Failing to comply with an undertaking to a bank to stamp and register the deed of charge and deed of transfer and, as soon as practicable, to lodge the deeds, together with the certificate of title, with the bank in respect of a property on behalf of his client,
- Failing to hold purchase moneys that were sent to the respondent in trust until all outstanding documentation was handed over to a complainant's solicitor,
- Misleading a client by stating in a letter that the respondent should have a folio and file plan showing the client registered as full owner within a matter

of weeks, when in fact the respondent still held the deed of transfer and had not re-lodged same for stamping and registration at that time, and

- Giving unsatisfactory explanations to a bank as to the whereabouts of the proceeds of shares. This led to a bank terminating a client's development finance for a project, as the bank assumed that the respondent had given the client the proceeds in breach of the respondent's undertaking.

#### Regulatory body – Law Society of Ireland

- Failing to reply to correspondence from the Law Society,
- Failing to comply with a direction of the Complaints and Client Relations Committee,
- Failing to attend a meeting of the Compensation Fund Committee, now the Regulation of Practice Committee, when required to do so,
- Failing to attend at the Complaints and Client Relations Committee meeting, despite being requested to attend,
- Failing to comply with a notice pursuant to section 10 of the *Solicitors (Amendment) Act 1994*, causing the necessity for the Society to make an application to the High Court pursuant to section 11(3) of the *Solicitors (Amendment) Act 1994*,
- Failing to discharge a levy of €250 imposed at the Complaints and Client Relations Committee meeting,

- Failing to cooperate in the investigation of the complaint by the Society by persistently failing to deal with correspondence and failing to attend meetings and failing to provide any information, and
- Through the respondent's conduct, obstructing the Society both in its investigation of the complaint and resolving the matter.

#### Section 68 of the Solicitors (Amendment) Act 1960 (as amended)

- Breaching or causing to be breached section 68(1) of the *Solicitors (Amendment) Act 1994* by failing to provide, or to ensure there was provided, to a client the particulars in writing of charges as provided for in the said section,
- Breaching or causing to be breached section 68(6) of the *Solicitors (Amendment) Act 1994* by failing to furnish, or cause to be furnished, to a client a bill of costs as prescribed by the provisions of the said section,
- Breaching section 68(8) of the *Solicitors (Amendment) Act 1994*, when a client disputed the respondent's 'bill', by not taking all appropriate steps to resolve the matter by agreement with the client and informing the client in writing of:
  - i) "The client's right to require the solicitor to submit the bill of costs or any part thereof to a taxing master of the High Court for taxation on a solicitor-and-own-client basis, and

ii) The client's right to make a complaint to the Society, under section 9 of this act, that he had been issued with a bill of costs that he claims to be excessive",

- Charging or causing to be charged a 'solicitor-and-client' fee when there was no evidence of work done to justify such a fee, and
- Failing to issue a client with a section 68 letter.

#### Solicitors Accounts Regulations

- Allowing a deficit in the client account, which deficit was causing debit balances in the clients' ledger,
- Allowing office ledger credit balances by failing to post invoices to the relevant office ledger accounts,
- Breaching regulation 21(1) of the *Solicitors Accounts Regulations* (SI No 421/2001) in failing to ensure that there was furnished to the Society an accountant's report in a timely manner or at all, and
- Through the respondent's conduct, showing a disregard for statutory obligations to comply with the *Solicitors Accounts Regulations*, and showing disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

## OTHER ORDERS MADE BY THE TRIBUNAL

The Tribunal made two orders removing the names of solicitors, at their own request, from the Roll of Solicitors.

## PUBLICATION OF ORDERS OF THE TRIBUNAL

Reports on the outcome of Solicitors Disciplinary Tribunal inquiries are published by the Law Society, as provided for in section 23 (as amended by section 17 of the *Solicitors (Amendment) Act 2002*) of the *Solicitors (Amendment) Act 1994*.

## CONCLUSION

It is an unfortunate and recognisable fact that a downturn in the economy brings its own problems in relation to solicitors' practices. However, it is still a solicitor's duty to provide a quality service to clients and to ensure that short cuts are not taken that would compromise the high standards that solicitors are required to maintain.

Solicitors may also encounter personal troubles, such as marital breakdown, psychological or addiction problems, and these in turn may have an adverse effect on the efficient running of a practice. The Tribunal is sadly aware that solicitors, in such situations, may only seek help when circumstances deteriorate to such an extent that they are forced to do so. It is not only in the interest of the solicitor concerned, but also in the interest of clients, the public and the solicitors' profession, that where a solicitor is encountering such difficulties, immediate help is sought at an early stage, either from the Law Society's various support mechanisms or from colleagues, before a situation escalates to such an extent that disciplinary action is instigated.

In conclusion, I take this opportunity to record my thanks and appreciation to the members of the Tribunal for their time and solid hard work during the year. Many members travel considerable distances to attend sittings of the Tribunal, effectively taking a day out of their offices so that they can contribute to the Tribunal's work.

I would also like to express my particular appreciation to Caroline Caslin, Seán McClafferty and Margaret O'Shea, lay members of the Tribunal who retired this year, for their noteworthy interest and contributions during the past five years. I would further like to welcome the

appointment of four new lay members, Brenda Clifford, Seamus Byrne, Mary King and Úna Claffey, and look forward to continuing working with Padraic Ingoldsby, who has been reappointed to the Tribunal for a further five years.

Finally, I want to thank the Registrar, Mary Lynch, and her staff, Monica Murray and Barry Lennon, for their hard work, unfailing good humour, courtesy and patience to me and all the Tribunal members; they are a pleasure to work with. This year we brought the work of the Tribunal virtually up to date, and it could not have happened without the help and efforts of the Registrar and her staff.

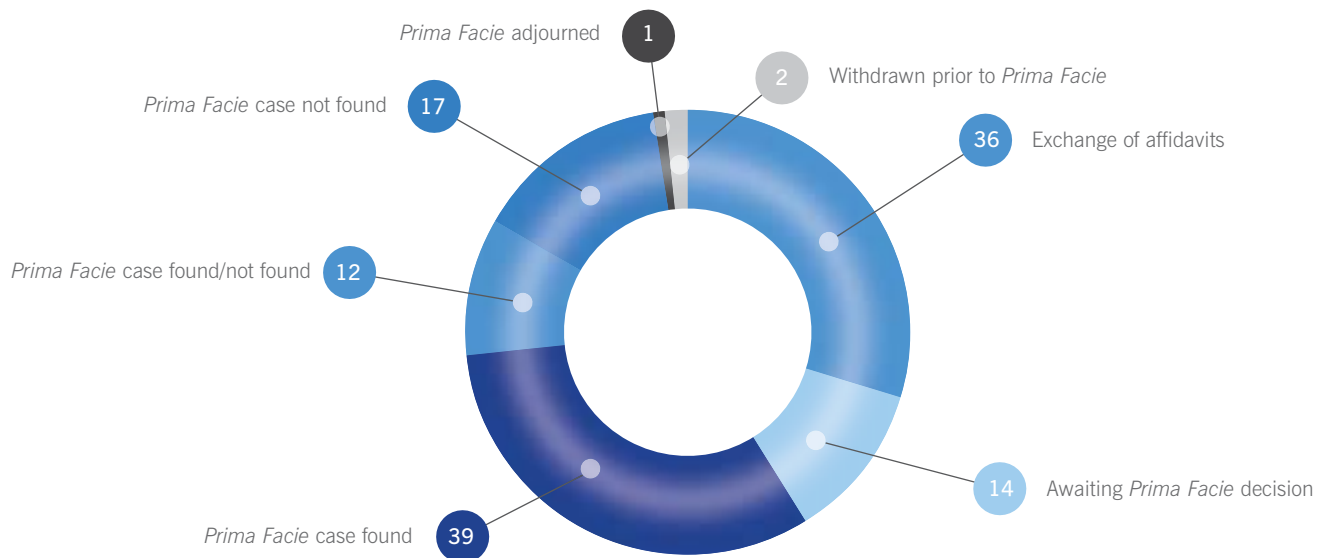
Francis D Daly  
Chairman



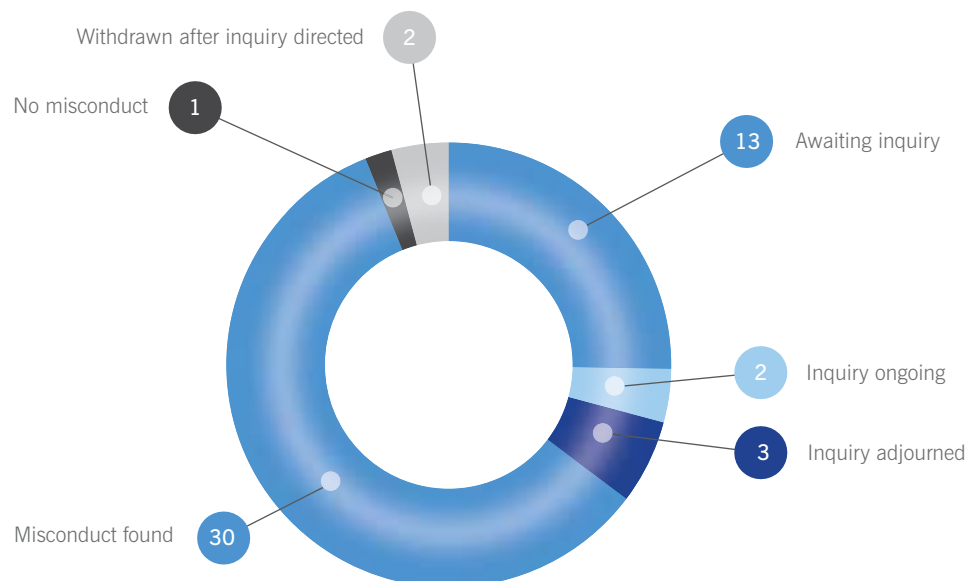
It is still a solicitor's duty to provide a quality service to clients and to ensure that short cuts are not taken that would compromise the high standards that solicitors are required to maintain.

## Appendix 1: Status of all applications as received at 31 December 2008

### STATUS OF ALL APPLICATIONS RECEIVED IN 2008: PRIOR TO INQUIRY



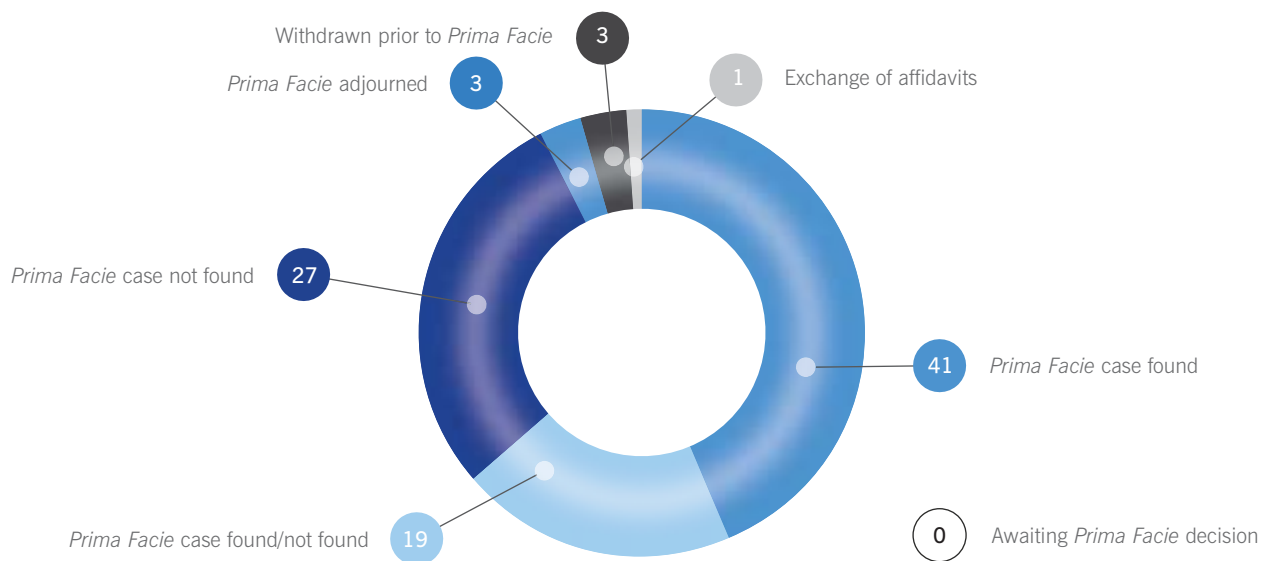
### STATUS OF ALL APPLICATIONS RECEIVED IN 2008: INQUIRY STAGE



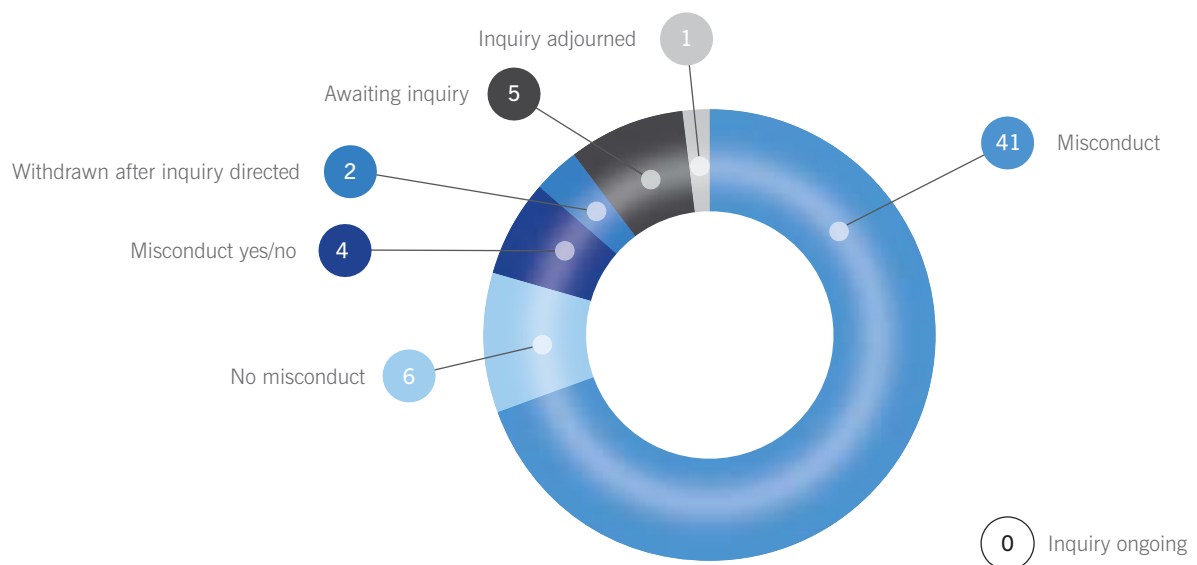


## Appendix 1 [contd.]

### STATUS OF ALL APPLICATIONS RECEIVED IN 2007: PRIOR TO INQUIRY

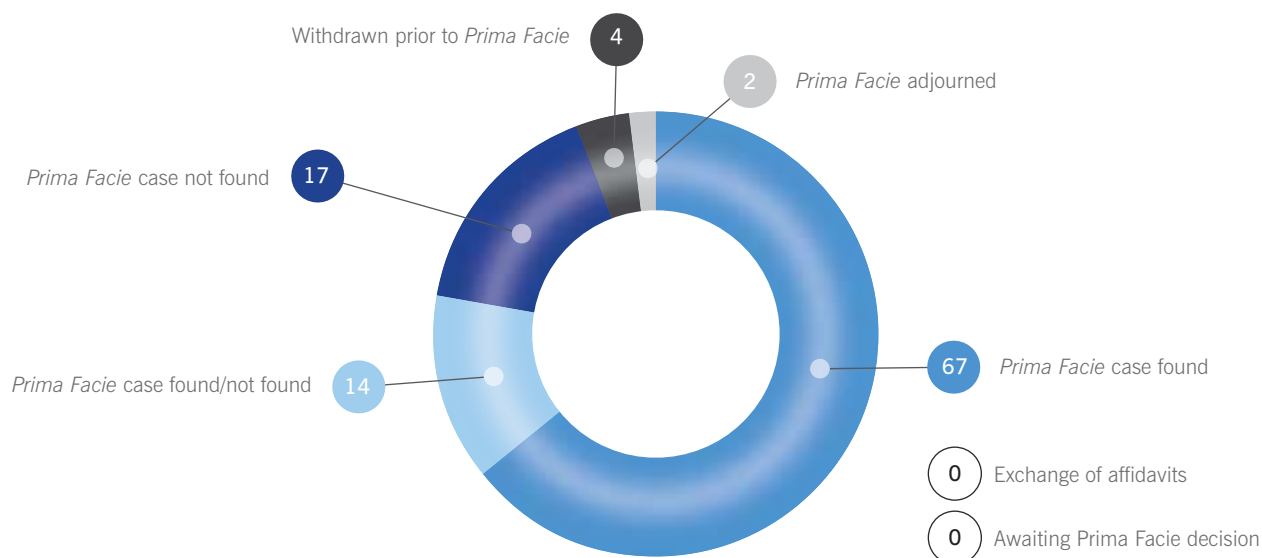


### STATUS OF ALL APPLICATIONS RECEIVED IN 2007: INQUIRY STAGE

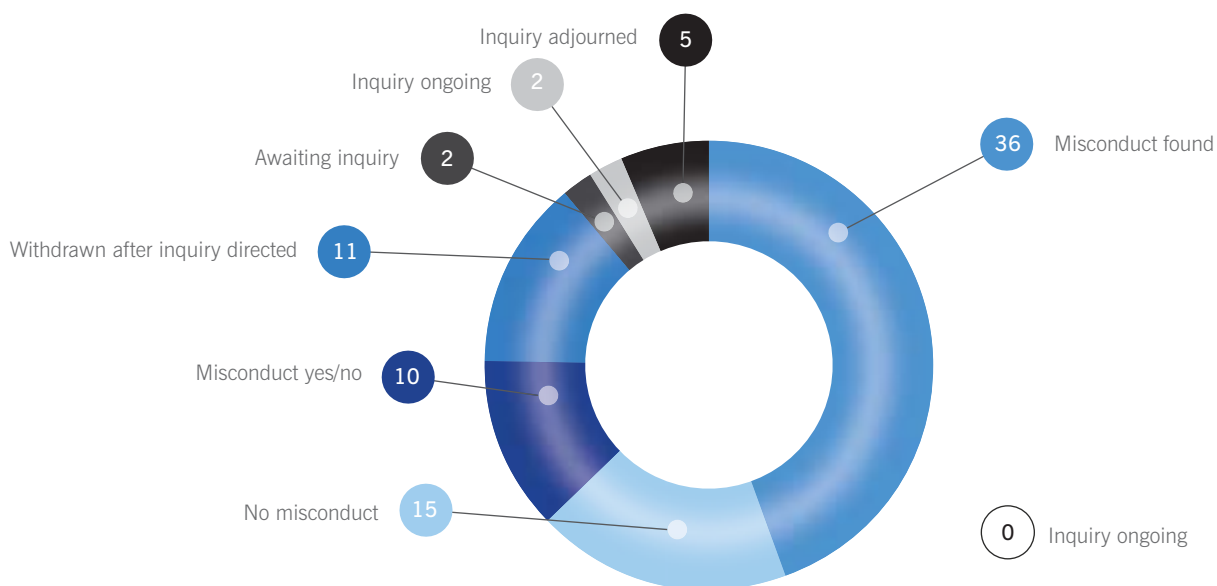


## Appendix 1 [contd.]

## STATUS OF ALL APPLICATIONS RECEIVED IN 2006: PRIOR TO INQUIRY



## STATUS OF ALL APPLICATIONS RECEIVED IN 2006: INQUIRY STAGE



## Appendix 2

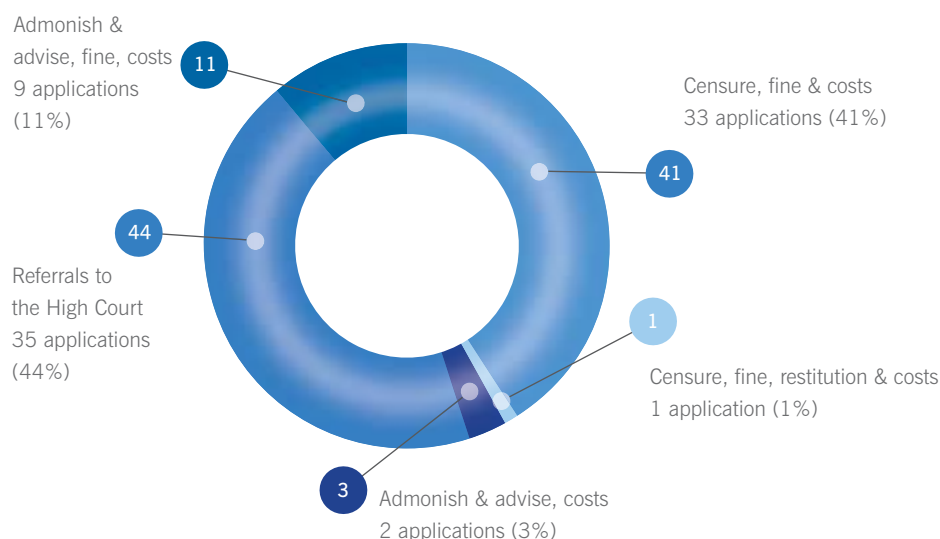
### ANALYSIS OF APPLICATIONS AND DECISIONS

APPLICATIONS AS AT: 31 DECEMBER 2008	2008	2007	2006	APPLICATIONS RECEIVED PRIOR TO 2006 DEALT WITH IN 2008	2008
Law Society of Ireland:	65	53	64		
Others:	56	41	40		
Total	121	94	104		
<b>PRIMA FACIE CONSIDERATION</b>				<b>PRIOR TO PRIMA FACIE CONSIDERATION</b>	
Exchanging affidavits	36	01	00	Exchanging affidavits	01
<i>Prima facie</i> cases rejected	17	27	17	<i>Prima facie</i> cases rejected	02
Awaiting <i>prima facie</i> decision	14	00	00	Awaiting <i>prima facie</i> decision	00
<i>Prima facie</i> application withdrawn	02	03	04	<i>Prima facie</i> application withdrawn	00
<i>Prima facie</i> decision adjourned	01	03	02	<i>Prima facie</i> decision adjourned	00
<i>Prima facie</i> cases found	39	41	67	<i>Prima facie</i> cases found	00
<i>Prima facie</i> cases found/rejected	12	19	14	<i>Prima facie</i> cases found/rejected	00
<b>HEARINGS</b>				<b>HEARINGS</b>	
Misconduct found	30	41	36	Misconduct found	01
Misconduct not found	01	06	15	Misconduct not found	01
Misconduct found/rejected	-	04	10	Adjourned	07
Part heard	05	01	07	Part heard	02
Withdrawn	02	02	11	Withdrawn	08
Cases scheduled for inquiry	13	05	02	Cases scheduled for inquiry	00

## Appendix 3

Orders made by the Tribunal Pursuant to Section 7(9) of the *Solicitors (Amendment) Act 1960* as substituted by Section 17 of the *Solicitors (Amendment) Act 1994* and amended by section 9 of the *Solicitors (Amendment) Act 2002*.

### PENALTIES OF THE TRIBUNAL DURING 2008 (%)



## Appendix 4

### REPORTS OF THE TRIBUNAL UNDER SECTION 7(3)(B)(II) OF THE *SOLICITORS (AMENDMENT) ACT 1960 (AS AMENDED)*

Referrals by the Tribunal to the High Court in respect of the applications set out in Appendix 3.

#### ANALYSIS OF APPLICATIONS AND DECISIONS

RECOMMENDATIONS OF THE TRIBUNAL	NO. OF APPLICATIONS
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors; that he pay €1 million to the Compensation Fund and costs. The Tribunal also recommend that the president forward the papers in respect of this matter to the Director of Public Prosecutions, if he had not done so already.	2*
The name of the respondent be struck off the Roll of Solicitors; that he pay a monetary penalty of €1 million and costs.	1
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors; that he pay €800,000 as restitution to the Law Society and costs.	1
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors and costs.	12**
The respondent be suspended from practice for a period of two years, on such terms as the High Court thinks fit; after the expiration of the said two-year period, that the respondent should not be permitted to practise as a sole practitioner or in a partnership, that she be permitted only to practise as an assistant solicitor.	1
The respondent should not be permitted to practise as a sole practitioner, that he be permitted to practise only as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland, and that he pay the Law Society's costs.	13†
The respondent be censured; that he be suspended from practice until such time as he furnishes an accountant's report to the Law Society for the period 1 September 2005 up to the closing of his practice on 31 December 2006; that he pay a sum of €2,000 to the Compensation Fund and costs.	1
The respondent be prohibited from practising on his own account as a sole practitioner, save on such conditions as the High Court thinks fit and may determine; censure the respondent; that he pay a monetary penalty of €5,000 and costs.	1
The first-named respondent be censured; pay a sum of €30,000 to the Compensation Fund; that the second named respondent be censured; that he pay a sum of €35,000 to the Compensation Fund and that both respondents pay costs.	1
The respondents be censured; that they each pay a monetary penalty of €25,000 and costs.	1
The first-named respondent be censured; that he be suspended for six months; that he pay 50% of the Law Society's costs.	1

\* TWO APPLICATIONS RELATE TO ONE RESPONDENT

\*\* SIX APPLICATIONS RELATE TO ONE RESPONDENT; TWO APPLICATIONS RELATE TO ONE RESPONDENT

† TWO APPLICATIONS RELATE TO ONE RESPONDENT

## Appendix 5

ORDERS OF THE HIGH COURT MADE PURSUANT TO SECTION 8 OF THE *SOLICITORS (AMENDMENT) ACT 1960* (AS AMENDED)

ORDERS OF THE HIGH COURT MADE ON FOOT OF RECOMMENDATIONS OF THE TRIBUNAL	NO. OF APPLICATIONS
The name of the respondent be struck off the Roll of Solicitors and costs were awarded.	4
The name of the respondent be struck off the Roll of Solicitors; that he pay a monetary penalty in the sum of €1,000,000 to the Law Society; that the files in the matter and the said report of this court be referred to the Director of Public Prosecutions and the Fraud Squad to investigate the matters therein and costs were awarded.	2*
The name of the respondent be struck off the Roll of Solicitors; that the respondent do pay a monetary penalty in the sum of €1,000,000 to the Law Society and costs were awarded.	1**
The name of the respondent be struck off the Roll of Solicitors; that the respondent do pay the sum of €800,000 as restitution to the Law Society and costs were awarded.	1
The respondent be suspended from practising as a solicitor; costs were awarded; liberty to apply to the respondent under the Law Society rules for readmission.	1
The respondent be suspended from practice until further order.	1
The respondent be censured; that he be suspended from practice until such time as he furnishes an accountant's report to the Law Society for the period 1 September 2005 up to the closing of his practice on 31 December 2006 that is found satisfactory to the Law Society; that he pay a sum of €3,000 as restitution to the Law Society; costs were awarded.	1
The respondent not be permitted to practise as a sole practitioner or in partnership, that she be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society, costs were awarded.	2
The respondent not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland; that the respondent do deliver to a named solicitor all or any documents, files and papers in his possession or within his procurement arising from his practice as a solicitor, including all ledger cards and funds held for, or on behalf of, client files. Costs were awarded.	2
The respondents not be permitted to practise as sole practitioners or in partnership, that they be permitted only to practise as assistant solicitors under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland, same to continue for two years, that each of the respondents do pay the sum of €100,000 as a penalty to the Law Society. Costs were awarded.	1
The respondent not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society; that the respondent do stand censured; that the respondent do pay €1,000 to the compensation fund. Costs were awarded.	1
The first-named respondent do stand admonished and do pay the sum of €30,000 as restitution to the Law Society; that the second named respondent do stand censured and do pay the sum of €35,000 as restitution to the Law Society and costs were awarded.	1

## Appendix 5 (contd.)

The respondent stand censured; pay a sum of €5,000 to the Law Society and costs were awarded.	1
The respondents be and hereby are suspended from practice for one year from the date hereof; the respondents are not to be permitted to practise as sole practitioners or partners in a solicitor's practice but that they be permitted only to practise as assistant solicitors under the direct control and supervision of another solicitor, to be approved in advance by the Law Society; each respondent do pay to the compensation fund the sum of €50,000 and costs were awarded.	1†
Awaiting High Court Orders in respect of applications.	24

\* THESE 2 ORDERS WERE MADE IN RESPECT OF 1 RESPONDENT.

\*\* THIS ONE ORDER WAS IN RESPECT OF 2 APPLICATIONS TO THE TRIBUNAL RELATING TO ONE RESPONDENT.

† THIS ORDER IS CURRENTLY THE SUBJECT OF AN APPEAL, BY THE APPLICANT, TO THE SUPREME COURT.

## Appendix 6

IN REGARD TO THE RECOMMENDATIONS MADE BY THE TRIBUNAL TO THE HIGH COURT, IT IS NOTED THAT THE COURT, IN THREE APPLICATIONS, EXERCISED ITS OWN DISCRETION AND BOTH THE TRIBUNAL'S RECOMMENDATIONS AND THE ORDERS OF THE HIGH COURT ARE SET OUT BELOW:

RECOMMENDATION OF TRIBUNAL	ORDER OF HIGH COURT
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors and costs.	The respondent be suspended from practice until further order.
The respondent be prohibited from practising on his own account as a sole practitioner, save on such conditions as the High Court thinks fit and may determine; censure the respondent; that he pay a monetary penalty of €5,000 and costs.	The respondent stand censured; pay a sum of €5,000 to the Law Society and costs were awarded.
The respondents be censured; that they each pay a monetary penalty of €25,000 and costs.	The respondents not be permitted to practise as sole practitioners or in partnership, that they be permitted only to practise as assistant solicitors under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland, same to continue for two years, that each of the respondents do pay the sum of €100,000 as a penalty to the Law Society. Costs were awarded.





**Solicitors Disciplinary Tribunal**

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