



Solicitors
Disciplinary Tribunal

2010

Chairman's Report

Solicitors Disciplinary Tribunal

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* and amended by the *Solicitors (Amendment) Act 2002* and 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 1954-2008*, the tribunal’s powers are mainly confined to receiving and hearing complaints of misconduct against members of the solicitors’ profession.

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

Francis D Daly, Chairman Mary Cantrell Michael Carrigan Niall Casey Geraldine Clarke Justin Condon Jeanne Cullen	Joseph Deane Caroline Devlin Paula Duffy Anthony H Ensor Isabel Foley Berchmans Gannon Patricia Harney	Michael Lanigan Edward McEllin Brian McMahon Caroline O’Connor Hugh O’Neill Boyce Shubotham
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Lay Members

Seamus Byrne Colette Carter Úna Claffey Brenda Clifford	Dermot Eagney Padraic Ingoldsby Vera Kelly Mary King	Joseph McPeake Siobhan Toale
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Tribunal Registrar

Mary Lynch

Secretary to Registrar

Mary McLoughlin

Administration Assistant

Fiona Hughes

Administrator/Receptionist

Ashling McGing

INTRODUCTION

This is my seventh *Chairman's Report*, and it covers the period 1 January to 31 December 2010, which has seen a substantial increase in the number of new applications coming before the tribunal. Since 2008, the incremental increase in the number of new applications has been approximately 50%. During this three-year period, there have been a number of high-profile cases before the tribunal, and these have led to a weakening in the bond of trust, not only between solicitors and their clients, but also with the public in general.

To restore this bond, it is important that solicitors who have engaged in unacceptable behaviour are made accountable, not only for their professional misconduct, but also for any possible unlawful acts they may have committed. However, the tribunal is conscious that its responsibility in this regard is being undermined because of the apparent delay in deciding whether or not to bring certain former solicitors before the criminal courts.

In last year's report, I expressed the tribunal's disappointment that no action appeared to have been taken in three cases that had been referred to the Director of Public Prosecutions. I am aware that limited progress has been made in some of these cases, but clearly not enough. Two of these cases have now passed the third anniversary of the solicitors' strike off. I do not know if the delays are with the office of the DPP or with An Garda Síochána.

White-collar crime needs to be prosecuted with energy and efficiency, and I would have thought that a decision should take a maximum period of 12 months. If the DPP's office or the Garda Bureau of Fraud Investigation are unable to deal with white-collar crime because of a lack of trained personnel, there are many solicitors, barristers and accountants out in the marketplace seeking jobs who would adequately fill these positions. The Minister for Justice should ensure

that there is a sufficient number of proper professional teams within the office and the bureau to deal with such cases.

As I stated last year, justice delayed is justice denied. Unfortunately, I have no reason to alter my view that procrastination is the norm. Something is clearly wrong, and it is up to our new minister, who has expressed concern on white-collar crime, to take the initiative. The *Criminal Justice Act 2011* will help, but without the enforcement offices being adequately staffed by competent and qualified personnel, little will change. At the moment, miscreant solicitors appear only to have this tribunal to fear, rather than the full rigours of the law. This is unacceptable.

In my report for the year 2009, I also referred to the significant judgment¹ delivered by the President of the High Court in respect of the issue as to whether the High Court had jurisdiction to make orders affecting a solicitor whose name has been struck off the Roll of Solicitors, pursuant to section 8 of the *Solicitors (Amendment) Act 1960* (as amended).

The tribunal welcomed this judgment, as it sent out a very clear message to former solicitors who had engaged in misconduct that they are still answerable to the tribunal, and ultimately to the High Court, notwithstanding that their names have been struck off the Roll of Solicitors. During the year under review, the tribunal held hearings in respect of two respondents whose names had been struck off the Roll of Solicitors.

Where a respondent has been found guilty of serious misconduct, the tribunal has had no hesitation in imposing the severest penalties. This year, the tribunal recommended to the High Court that eight individuals should have their names struck off the Roll of Solicitors, that two be suspended from practice, and that seven have their practising certificates limited. In addition to the recommendation that the respondent be struck off, the tribunal has, in certain circumstances, recommended to the High Court that the papers be referred onwards to the Director of Public Prosecutions.

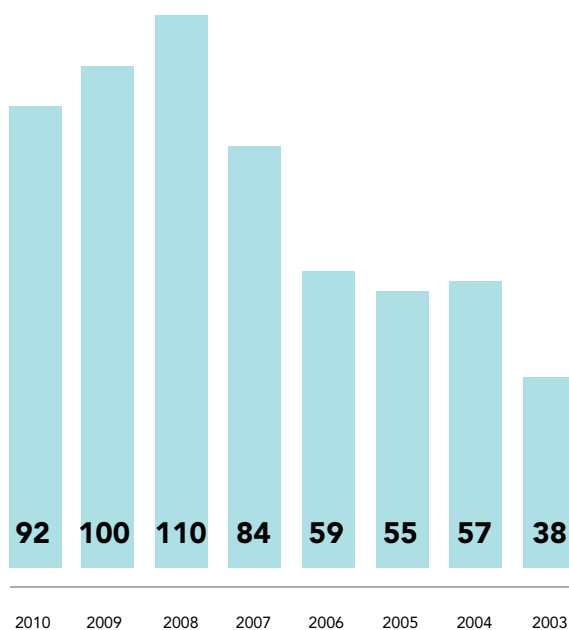
The High Court has made two such orders. The tribunal made findings of misconduct in respect of 63 separate applications; however, as multiple applications were made to the tribunal in respect of some respondents, the actual number of individual respondents involved in such cases was 48, of which 17 individual respondents were referred to the President of the High Court.

While the tribunal sat on 92 occasions throughout the year, considerable additional time was spent reading large volumes of papers when preparing for inquiries, and preparing and finalising reasons for decisions and reports. Table 1 shows a decrease in the number of sittings compared with the previous year. In all, seven hearing days were cancelled due to unforeseen circumstances.

The tribunal maintains a diary in respect of forthcoming inquiries on its website at www.solicitorsdisciplinarytribunal.ie.

TABLE 1

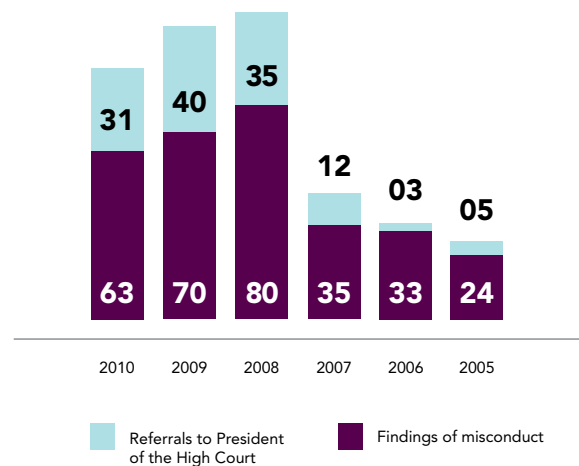
Number of sittings of Tribunal, by year



(Year ended 31 December)

CHART 1

Findings of misconduct and referrals to the High Court, by year



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

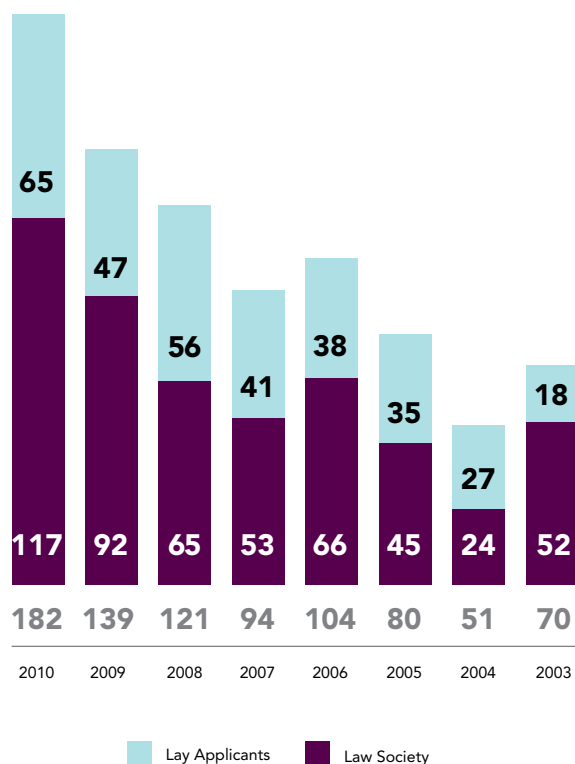
- Coordinating, in conjunction with the Tribunal Registrar, the administrative function of the tribunal,
- Liaising with the President of the High Court in relation to the efficient administration of the tribunal, and
- Convening and presiding at general meetings of members of the tribunal, held from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

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.

CHART 2

Number of new applications received, by year



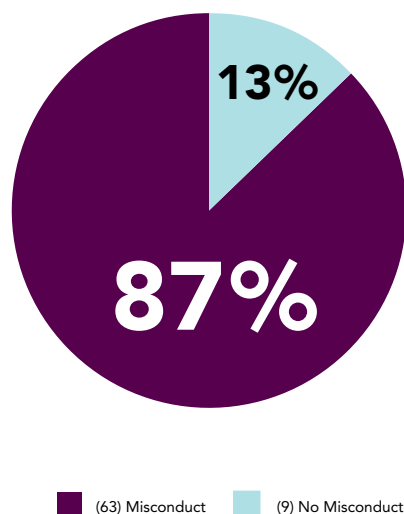
Applications to the tribunal are made by the Law Society of Ireland and, subject to a few instances under the *Solicitors Acts* where applications are limited to the Law Society, it is also open to members of the public to make a direct application to the tribunal without resorting to the Law Society. At times, respondents express their incredulity that they are the subject of a complaint where a solicitor/client relationship does not exist. However, such a relationship does not have to exist for a member of the public to form a view that a

solicitor, other than their own, has engaged in misconduct.

During the year under review, 159 people applied for, and received, information on making a direct application to the tribunal. Of the 159 people, 29 of them made applications to the tribunal for an inquiry into the conduct of a solicitor.

CHART 3

Outcome of inquiries held during 2010



The *Solicitors Acts* give the tribunal the power and duty to conduct fact-finding inquiries in relation to complaints against solicitors. Section 17 of the *Solicitors Act 1994* (as amended) and the *Solicitors Disciplinary Tribunal Rules 2003* set out the appropriate procedures to follow, which are similar to, but not strictly related to, court procedures. The tribunal in all cases makes a tremendous effort to ensure that solicitors' constitutional rights to fair procedures and natural justice are honoured.

CHART 4

Full length of inquiries that finished in 2010

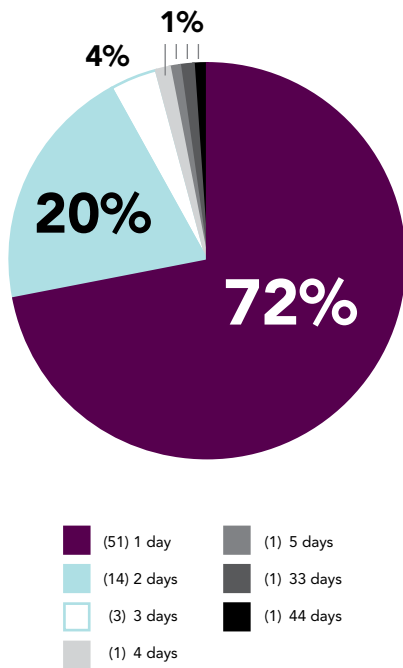
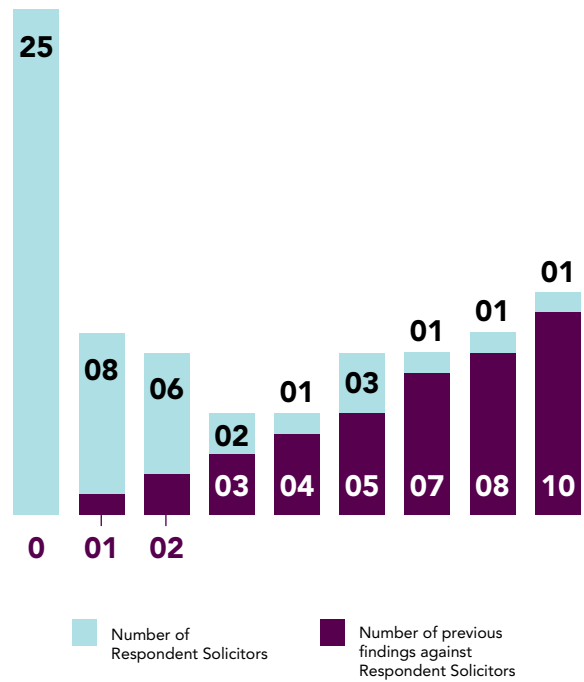


CHART 5

Disciplinary history of the 48 respondents



Sanctions

In determining what penalty should be imposed upon a finding of misconduct, the tribunal, among other things, takes into account the action required to protect the public, the type of conduct, the severity of the conduct, aggravating circumstances, prior disciplinary history and mitigating circumstances.

Adjournments

In general, a party seeking an adjournment of an inquiry must make a formal application to that effect to any sitting division of the tribunal, with prior written notice to the other party. Good cause shall be shown to the tribunal for any such adjournment. Where an application by one party for an adjournment is made prior to, or on the date fixed for, the inquiry, and where the other party is not present or represented at the application, the consent of the other party to the making of the adjournment application must previously have been sought by the applying party before that application can be considered by the tribunal. Only in the gravest circumstances will the foregoing procedure be departed from, and then only at the discretion of the tribunal.

The tribunal continues to express its considerable concern in regard to applications to adjourn inquiries. It is, without doubt, not only frustrating to the opposite party, but also to the members of the tribunal and to the secretariat, who have spent many hours preparing for an inquiry, to discover that, at the last minute, a party to the proceedings is seeking to have their case adjourned, usually citing either ill health or the inability of witnesses/counsel to attend.

While it is appreciated that unforeseen circumstances can arise that oblige a party to seek an adjournment, nevertheless, at times, it is apparent that an application could have been made at an earlier date, thus preventing loss of time and financial cost to all concerned. Further, adjournments inevitably lead to a slow-down in the list, thus driving cases further down the list.

Appeals

The procedure in respect of appeals to the High Court against decisions of the tribunal is set out in the *Rules of the Superior Courts (Solicitors Acts 1954 to 2002) 2004* (SI no 701 of 2004).

During the year, the High Court made orders in respect of seven appeals, initiated prior to 2010, in respect of decisions by the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry, or that there was no misconduct on the part of the respondent. In all cases, the appeals were dismissed and the decisions of the tribunal affirmed.

In one such case, the High Court found that the proceedings were vexatious and an abuse of process, and restrained the appellant from bringing any further complaints against the respondent arising out of the family law proceedings, without the prior leave of the court.

In another case, where the High Court had awarded costs against the appellant in respect of the appeal to the High Court and the costs of the application before the tribunal, it was also ordered that the appellant would take no proceedings of whatever nature or kind (including leave to seek judicial review) arising out of the facts contained in the proceedings without first obtaining the prior leave of a judge of the High Court.

In a further matter, the High Court was satisfied that the finding by the tribunal that there was no *prima facie* case of misconduct on the part of the respondent was entirely appropriate and that the appeal was completely unfounded and unsustainable. It was also held that the period of delay from the time of the events complained of, to the date of the bringing of the application before the tribunal, was, on any interpretation, both inordinate and inexcusable. The court awarded costs in favour of the respondent.

The High Court also made orders in respect of three appeals, initiated in 2010, in respect of decisions by the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry, or that there was no misconduct on the part of the respondent. In all cases, the appeals were dismissed and the decisions of the tribunal affirmed.

In one case, it was – among other things – contended by the appellant that the respondent engaged in misconduct in applying for, and gaining a false registration on disputed land by sending a false affidavit to the Land Registry. The tribunal had held that there was no evidence given to the tribunal at the hearing that the alleged false information was either reckless in its nature or intended specifically to deceive. The evidence that had been adduced by the parties, both from the affidavits filed and the evidence given, was that the issues underpinning the errors in the affidavit were discussed and considered in the Circuit Court and the High Court, and that there was no further or additional evidence given to the tribunal. The High Court upheld the decision of the tribunal and held, among other things:

“The tribunal was able to satisfy itself that nothing in the affidavit submitted on 18 April 2005 was submitted either recklessly or with specific intent to deceive. It is important in this context to bear in mind that errors can occur in the course of legal business and that such errors can occur without either negligence or fraud being involved.”

Eleven decisions in respect of appeals to the High Court are awaited. Nine decisions in respect of appeals to the Supreme Court are awaited.



OBSERVATIONS ON COMPLAINTS BEFORE THE TRIBUNAL

Conveyancing

It has been recognised and said on many occasions that undertakings are the currency of the profession. They represent a solemn promise that solicitors are expected to honour. Failure to comply with an undertaking has been found on a number of occasions by the tribunal to amount to misconduct.

There is no doubt that solicitors owe those in receipt of undertakings a duty of trust and candour. To do otherwise is to show a total disregard for the recognition and confidence afforded by financial institutions, building societies and other bodies to the solicitors' profession, without which solicitors would find it impossible to operate efficiently.

In a nutshell, an undertaking is the oil that lubricates a lot of business. It is this recognition that predicates the findings of misconduct where such a failure occurs. Where an undertaking is given, it must be complied with, and the onus is on the solicitor to ensure that he/she is in a position to comply with its terms.

In one case, the tribunal found that the respondent had acted in breach of an undertaking given to a lending institution, in that he failed to furnish the bank with their mortgage and other documents duly executed, together with the stamped purchase deed and all other necessary title documentation immediately after completion of the purchase; and he further failed to reply to the bank's/complainant's correspondence and to letters from the Law Society. The tribunal, in its report to the President of the High Court, recommended that the name of the respondent be struck off the Roll of Solicitors and awarded the Law Society its costs. In reaching its recommendation, the tribunal took into account four previous orders made by the tribunal and two High Court orders.

On another occasion, the tribunal dealt with three applications in respect of the same respondent. The tribunal found that there was insufficient evidence to prove the allegation that the respondent had failed to comply with an undertaking given to a lending institution, including the absence of a copy of the written undertaking from the respondent. A finding of no misconduct was also made in relation to the allegation that the respondent had failed to comply with her undertaking given to a committee of the Law Society, on the basis that the allegation did not reflect the undertaking given by the respondent. However, the tribunal found that the respondent had failed to reply to correspondence from the Law Society and recommended to the President of the High Court that the respondent's name be struck off the Roll of Solicitors. A similar recommendation was made by the tribunal in respect of the other two cases, where the respondent had failed to comply with numerous undertakings given to lending institutions.

Solicitors must ensure that they are not departing from acceptable professional standards in their dealings with colleagues. The tribunal, when deliberating on such matters, must consider whether such departures are significant enough to attract appropriate sanctions to protect the public. This was demonstrated in a case where it was stated that the breach of an undertaking by a solicitor was a serious matter and, whatever its financial consequences, reflected adversely on the solicitor concerned, as well as having the potential of adversely affecting public confidence in the solicitors' profession as a whole. In that case, the tribunal found the respondent guilty of misconduct, in that he had communicated directly with another solicitor's client instead of through that client's solicitor; paid the proceeds of a sale of property directly to the vendor instead of to the vendor's solicitor, notwithstanding written instructions from the vendor's solicitor on closing that all documentation furnished was to be held in trust pending the receipt by the vendor's solicitor of the balance of the purchase money. Further, as a result of his conduct, he precluded the vendor's solicitor from complying with his undertaking to a

lending institution. The tribunal censured the solicitor and ordered him to pay a sum of €12,000 to the Compensation Fund, and the Law Society's costs.

In another case, the tribunal made a recommendation to the President of the High Court that the respondent concerned was not a fit and proper person to be a member of the solicitors' profession and that his name be struck off the Roll of Solicitors. The tribunal found that the respondent had, among other things, misled the complainants when acting for a vendor, he certified that a judgment showing up on a search did not affect the property to be purchased when this was not true and when he did not have sufficient monies on closing to discharge the judgment and other charges. He also misled the complainants by indicating to them that his client would deal with the matter and discharge the entire outstanding balance at a time when his client's company was in liquidation. The President of the High Court subsequently made an order in the terms recommended by the tribunal and, in addition, ordered that the Law Society forward the papers in respect of the application to the Director of Public Prosecutions, and that the respondent surrender his passport forthwith to An Garda Síochána.

Issues concerning trust and dishonesty were also highlighted in a number of cases. In one such case, the respondent had, among other things, caused or allowed a fictitious contract for the purported sum of €7 million in relation to the purchase of lands, being a false and misleading contract as to the purchase price, as there was an existing contract for the sum of €4.6 million; caused or allowed a fictitious contract for the purchase of lands to bear the signature of the vendor and the complainant's signature as witness, when such signatures were not the signatures of the vendor and the complainant; permitted or allowed a fictitious contract to be forwarded to the solicitors for a bank for the purchase of the site, which the bank placed reliance upon. The tribunal, when considering the issue of penalty in respect of this matter, also took into account the previous disciplinary history of the respondent and, in its report to the President of

the High Court, recommended that the name of the respondent be struck off the Roll of Solicitors.

One particular area of concern arose in respect of stamp duty, where dates on deeds of transfers were altered or inserted to make it appear as if the deeds of transfers were executed at a later point in time than they were, in fact, executed. If, for good or bad reason, a deed is not stamped immediately, a penalty is imposed by the Revenue Commissioners. Conversely, where a deed is not stamped upon execution and the date of execution is altered to make it look as if it has been stamped at a later point in time, the penalty is avoided. Further, stamp-duty rates change on occasion in budgets. The change in rates only applies to deeds executed after the date of the budget. If the rate goes down in the budget, and the date is changed on the deed to make it look as if the deed has been executed after the budget, the State loses out on the revenue it would have obtained if the correct date had been inserted on the deed. Obviously, the State has to rely on the integrity of solicitors in these matters, otherwise conveyancing would come to a halt. The tribunal noted that the Law Society correctly directed that full disclosure be made to the Revenue.

Solicitors Accounts Regulations

Members of the tribunal are mindful of their function to ensure that the regulatory requirements imposed by the *Solicitors Accounts Regulations* are honoured. While some solicitors may encounter difficulties in their practices where, for example, there may be insufficient funds to pay the fees of their reporting accountants, nevertheless, the onus is on them to ensure their accountant's reports are furnished to the Law Society within the prescribed time. It should also be borne in mind that the solicitors' profession is one of the few professions that holds clients' funds and, consequently, the Law Society, and, in turn, the tribunal, as part of the regulatory function, must ensure that there is compliance with the regulations, and that clients'

funds are protected. The tribunal made an order censuring a respondent and ordering him to pay a sum of €5,000 to the Compensation Fund in a case where the respondent had failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 March 2009 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI no 421 of 2001) in a timely manner; through his conduct, showed disregard for his statutory obligation to comply with the *Solicitors Accounts Regulations*, and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

In all, the tribunal made findings of misconduct in respect of 16 applications alleging, among other things, that the respondent was guilty of misconduct in failing to file an accountant's report within the appropriate time limits. The tribunal made a finding of misconduct in respect of each of the cases, and fines ranged from €250 to €5,000. In two cases, the tribunal made a recommendation to the High Court that the respondent be suspended until such time as the outstanding accountant's certificate was furnished. In four cases, the respondent was admonished and advised and the Society was awarded its costs.

During the year under review, a number of serious matters came to light through the diligence of the Law Society's investigating accountants, who are to be commended for their work in discovering these problems. It was disturbing to see what respondents had done, but it was heartening to see that the system of supervision does work, and that the monitoring put in place by the Law Society uncovered the problems.

In a case where the tribunal recommended to the President of the High Court that the respondent was not a fit person to be a member of the solicitors'

profession and that his name be struck off the Roll of Solicitors, the tribunal had found, among other things, that he misappropriated clients' funds, which he used to purchase a bank draft payable to his wife, which was then lodged in their joint account in the bank; he also misappropriated clients' funds, which he then put into his credit-card account; he deprived an elderly beneficiary of the estate of a deceased person of her money for the three years up to when he ceased practice, having misappropriated some of the estate money for his own personal benefit; and he caused the book-keeper/accountant to make false and misleading entries in the books of account. In all, there were 26 separate charges made in respect of this respondent, which were identified following an inspection by one of the Law Society's investigating accountants.

In another case, the respondent admitted that he had allowed a deficit on his client account of €38,505; transferred funds of €20,000 from the client account to pay nursing-home fees for a family member and wrongly posted this payment to the client ledger card of another client; allowed a debit balance of €18,505 in the client account, in breach of regulation 7(2) of the *Solicitors Accounts Regulations 2009*; failed to pay stamp duty totalling €399,707 in respect of a number of conveyances to the Revenue Commissioners in a timely manner, as set out in paragraph 2.4 and appendix 3 of the investigation report of 24 September 2008. In view of the admissions made, the tribunal found the respondent guilty of misconduct, and the tribunal was of the view that the respondent was not a fit person to be a member of the solicitors' profession and recommended to the President of the High Court that his name be struck off the Roll of Solicitors.

Civil proceedings

The tribunal was of the view that the taking of an action such as removing parties from proceedings, even on counsel's advice, without first obtaining the client's instructions, must constitute misconduct. In this particular case, the respondent had removed a named party (a respondent) from a judicial review appeal

without consulting the complainant or seeking her permission. The respondent accepted that he took this course of action without his client's instructions. While a strong claim for vindication was made, the tribunal held that it must fail, as the primary responsibility was to the client. The tribunal accepted that there were no *mala fides* on the part of the respondent and recognised that the complainant had suffered no loss as a consequence of the action. The respondent was advised and admonished.

Regulatory body

For the Law Society to be effective, solicitors must cooperate with the Society – otherwise the public may lose confidence in the ability of the Society to police the profession. It is vitally important that solicitors comply promptly and fully with requests from the Society in relation to complaints. Further, during the course of an investigation of a complaint, the Society's regulatory committees may issue directions and or recommendations and, again, these must be addressed by the solicitor concerned.

However, the tribunal continues to be dismayed by the lack of appreciation on the part of respondents in respect of their duty to reply in a clear and comprehensive manner to the Society, and indeed to their clients.

When such failures are brought to the attention of the tribunal, appropriate fines ranging from €1,000 to €6,000 have been imposed on the respondents.

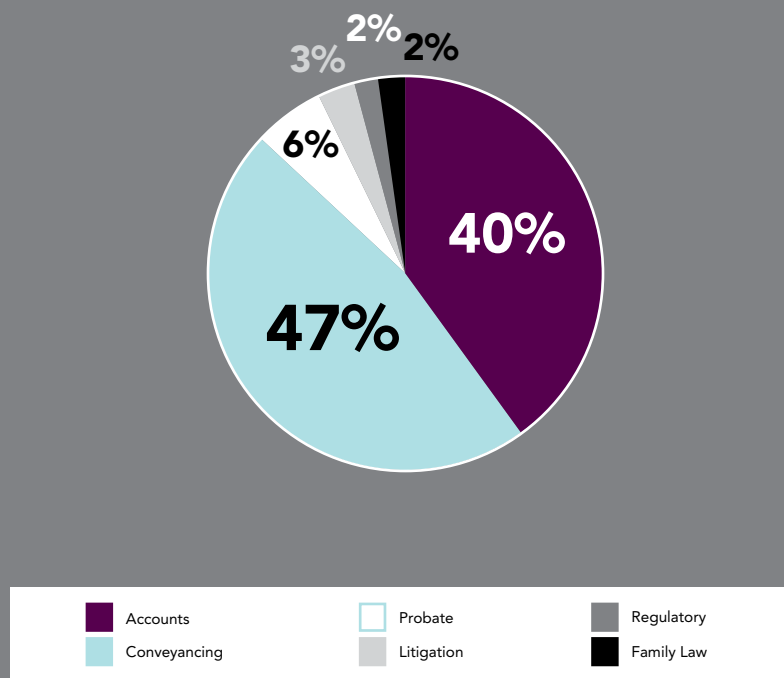


SUBJECT MATTER OF COMPLAINTS

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

CHART 6

Categories of complaints in 2010 in which a finding of misconduct arose



SOME GROUNDS ON WHICH PROFESSIONAL MISCONDUCT WAS FOUND

Administration of estates

Failing to pay the beneficiaries the amounts due to them in a timely manner.

Civil claims

Removing the second-named respondents from the judicial review appeal without consulting the applicant or seeking her permission.

Conveyancing

- Acting for both the vendor/builder, the construction company, and purchasers of 13 newly constructed houses, involving himself in a possible conflict of interest contrary to the provisions of article 4(a) of the *Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997* (SI no 85 of 1997);
- Causing or allowing the name of a solicitor to be written on contracts for sale without the authority of that solicitor;
- Communicating directly with another solicitor's client instead of through that client's solicitor;
- Failing to explain why there were two versions of a contract for the same lands;
- Failing to register the applicant's ownership of sites since 2004;
- Failing to explain why he had not brought the matter of the fictitious contract and purported fraud to the immediate attention of the gardai;
- Failing to honour, as soon as practicable, an undertaking given to the complainant to complete and lodge with the respondent's client's branch of the bank a report and certificate of title in the bank's standard form, together with all documents constituting the bank's security, and also all the title documents or other documentary evidence evidencing the respondent's client's title to the property including, in the case of registered land, the original land certificate and the original

deed of charge with certificate of charge endorsed thereon, under rule 156 of the *Land Registry Rules 1972*;

- Failing to explain why €3.4 million occurred on the client ledger account when he claimed that he had no money to stamp the deed;
- Paying the proceeds of the sale of property directly to the vendor instead of to the vendor's solicitor;
- Through his conduct, precluding the vendor's solicitor from complying with his undertaking to a lending institution;
- Releasing title documents held on trust to the order of the complainant pending payment of the full amount of the purchase monies.

Professional Indemnity Insurance Regulations

Breaching the provisions of the *Professional Indemnity Insurance Regulations* and, in particular, the provisions of statutory instrument no 312 of 1995, as amended by statutory instrument no 362 of 1999, having failed to obtain run-off cover in accordance with the requirements of those regulations.

Solicitors Accounts Regulations

- Allowing a deficit to occur on the client account as of the accounting date, which deficit was due to the existence of client ledger debit balances in breach of regulation 7 of the *Solicitors Accounts Regulations*;
- Allowing debit balances to be created in breach of regulation 7(2) of the *Solicitors Accounts Regulations 2001* on numerous occasions when fees were taken from client account/office account before the fees were received;
- Causing or allowing a possible underpayment of CGT in a case arising from an alteration in the computation by the respondent;

- Deducting costs from the estate of a deceased person in breach of the regulations without issuing a bill of costs;
- Failing to maintain proper books of account at all times, in breach of regulation 12(1);
- Withdrawing professional fees and outlay from client accounts when they were not properly payable to the solicitor at the time, in breach of regulation 11(3);
- Failing to comply with regulation 11 by not furnishing to clients a bill of costs in respect of all fees transferred from client accounts;
- Failing to maintain proper records of bills of costs furnished, in breach of regulation 12 and 20(1)(i);
- Failing to cooperate fully with the investigating accountant, in breach of regulation 28;
- Failing to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2008 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI no 421 of 2001);
- Misappropriating clients' monies to purchase a motor car.

Regulatory body – Law Society of Ireland

- Failing to reply adequately or in some cases at all to the Society's correspondence;
- Failing to attend or arrange representation before the Complaints and Client Relations Committee meeting, despite being directed to attend;
- Failing to adequately comply with the service of a notice pursuant to section 10 of the *Solicitors (Amendment) Act 1994* served on him by the Society;
- Failing to comply with the direction of the Complaints and Client Relations Committee to furnish within ten days a full report on the complaint file, supported by vouching documentation, and to furnish an updated report in a timely manner or at all;
- Failing to comply with the direction of the Complaints and Client Relations Committee, arising from the failure to reply to the Society's correspondence, that the sum of €650 be paid to the Society towards the costs of its investigation.

OTHER ORDERS MADE BY THE TRIBUNAL

The tribunal made three 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

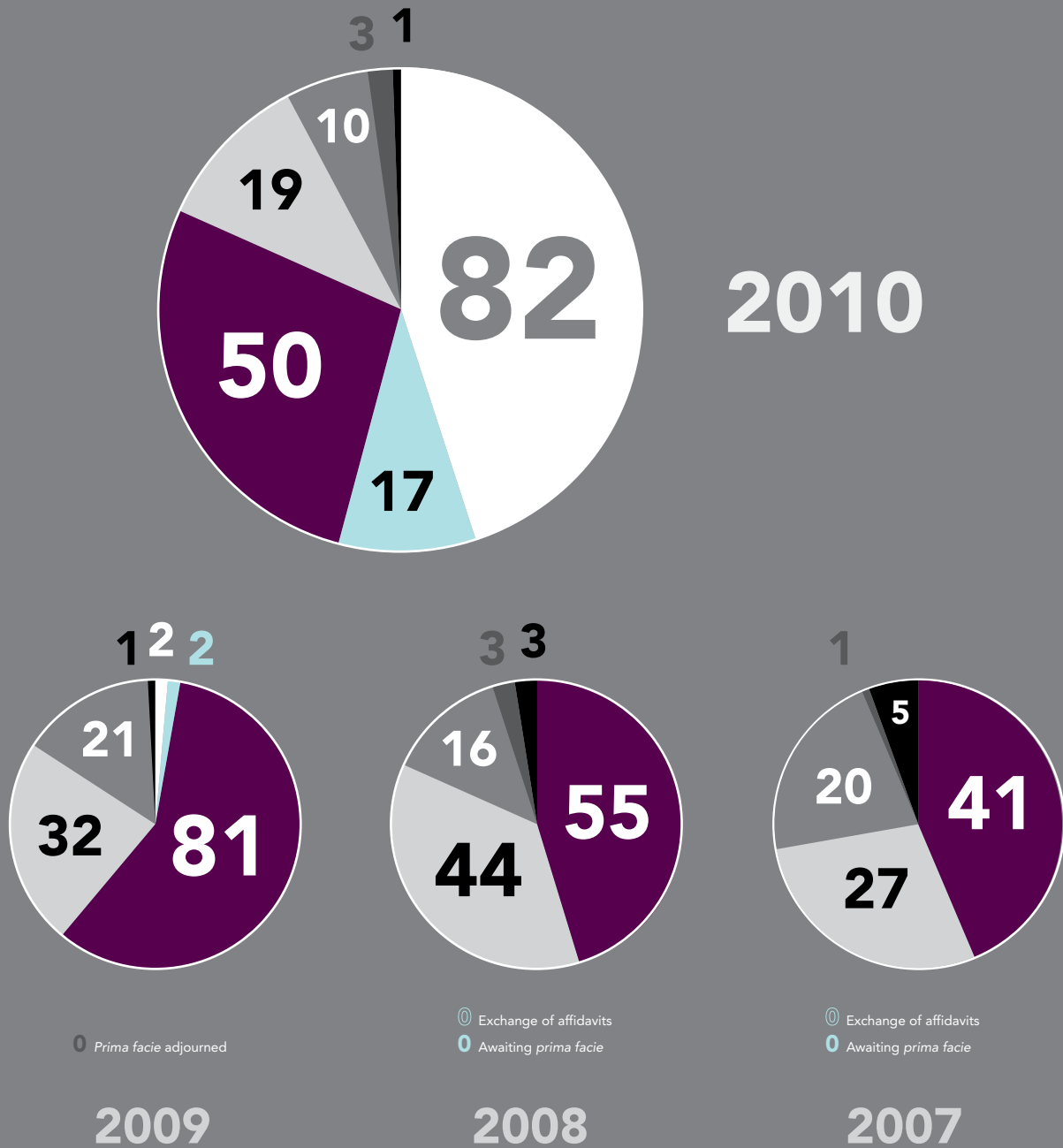
The tribunal recognises that the whole point of an inquiry under the *Solicitors Acts* is to ensure public confidence in the solicitors' profession, and that clients and colleagues are not put at risk by a solicitor's behaviour. However, at times it becomes clear during the course of an inquiry that a respondent does not appear to fully appreciate the extent and seriousness of the nature of the complaints being made against him/her. Despite overwhelming evidence to the contrary, a respondent may attribute his/her conduct to stupidity, lack of attention to detail, succumbing to pressure from a dominant client, or error. This failure to appreciate the gravity of a situation is a matter of concern to members the tribunal, as they not only have to address past conduct, but – where the onus is on the tribunal to protect the public – then clearly it has to look to the future as well.

I wish to take this opportunity to pay tribute to the members of the tribunal for their hard work and sterling service, and in particular to the recently retired solicitor members, Ernest Cantillon, Carol Fawsitt, Maeve Hayes, Michael V O'Mahony and Ian Scott, and lay members, Ted Conlon, Ken O'Neill and Kristin Quinn, whose dedication and commitment was greatly appreciated over the last ten years. I also wish to welcome the appointment of five new solicitor members – Geraldine Clarke, Justin Condon, Patricia Harney, Michael Lanigan, Boyce Shubotham and three new lay members, Dermot Eagney, Vera Kelly and Joseph McPeake – and look forward to working with them.

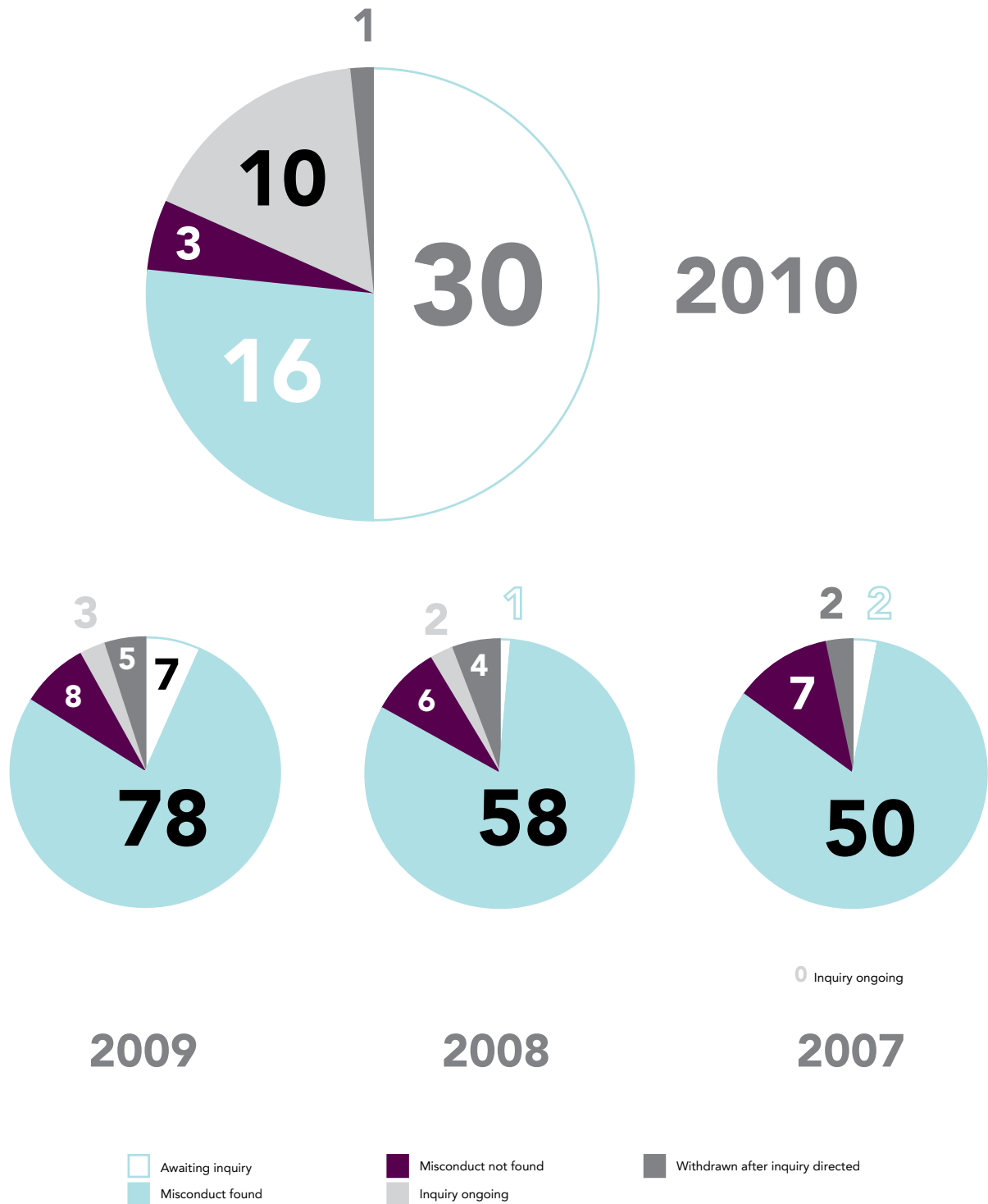
I would also like to thank Mary Lynch, Registrar to the Tribunal, Mary McLoughlin, Fiona Hughes and Ashling McGing for their tireless, endless and cheerful assistance during the year.

**Francis D Daly,
Chairman**

Status of applications received
prior to inquiry



Status of applications received *inquiry stage*



APPENDIX 2

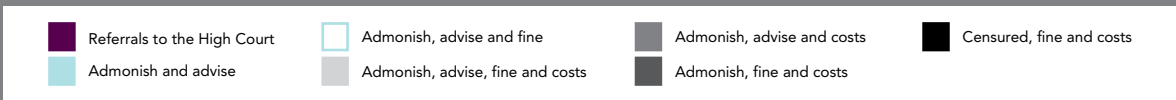
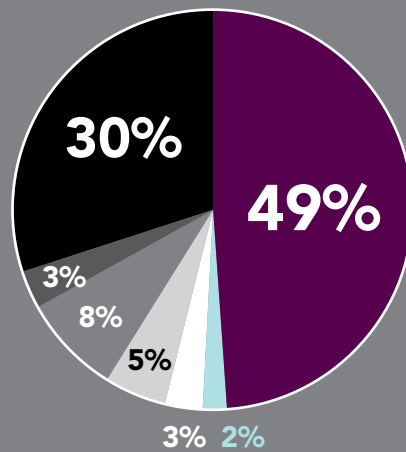
Analysis of applications and decisions

Solicitors Disciplinary Tribunal statistics as at 31 December 2010				
STATUS OF APPLICATIONS	2010	2009	2008	2007
Law Society of Ireland:	117	92	65	53
Others:	65	47	56	41
Total received	182	139	121	94
PRIOR TO <i>PRIMA FACIE</i> CONSIDERATION				
Exchanging affidavits	82	2	0	0
Awaiting <i>prima facie</i> decision	17	2	0	0
<i>Prima facie</i> cases found	50	81	55	41
<i>Prima facie</i> cases rejected	19	32	44	27
<i>Prima facie</i> cases found/rejected	10	21	16	20
<i>Prima facie</i> decision adjourned	3	0	3	1
<i>Prima facie</i> application withdrawn	1	1	3	5
INQUIRY STAGE				
Cases scheduled for inquiry	30	7	1	2
Misconduct found	16	78	58	50
Misconduct not found	3	8	6	7
Part heard	10	3	2	0
Withdrawn	1	5	4	2

Applications received prior to 2007 dealt with in 2010			
PRIOR TO <i>PRIMA FACIE</i> CONSIDERATION		HEARINGS	
Exchanging affidavits	0	Misconduct found	2
<i>Prima facie</i> cases rejected	0	Misconduct not found	0
Awaiting <i>prima facie</i> decision	0	Adjourned/part heard	4
<i>Prima facie</i> decision withdrawn	0	Withdrawn	0
<i>Prima facie</i> decision adjourned	2	Cases scheduled for inquiry	2
<i>Prima facie</i> cases found	0		
<i>Prima facie</i> cases rejected	0		

Penalties of the Tribunal during 2010 (%)

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*.



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.

Recommendations of the Tribunal in 2010	Number of respondents	Number of applications
In respect of the seven applications, the tribunal was of the view that the respondent was not a fit person to be a member of the solicitors' profession and that his name be struck off the Roll of Solicitors; in two cases, it was also recommended that he pay a monetary penalty of €800,000 and €650,000 respectively; in the remaining cases, that he make restitution in varying amounts of €570,000, €180,000, €50,000 and €45,275.94. The tribunal also urged in one case that papers in respect of the application be forwarded to the Director of Public Prosecutions.	1	7
In respect of the six applications, the tribunal was of the view that each respondent was not a fit person to be member of the solicitors' profession and that the name of the respondent be struck off the Roll of Solicitors, and costs.	3	6
In respect of the five applications, the tribunal was of the view that each respondent was not a fit person to be member of the solicitors' profession and that the name of the respondent be struck off the Roll of Solicitors.	4	5
In respect of the two applications, the tribunal recommended 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; in one of the cases, the tribunal also recommended the imposition of a monetary penalty appropriate to the respondent's then financial circumstances and costs.	1	2
That 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 pay a sum of €10,000 to the Compensation Fund and costs.	1	1

Recommendations of the Tribunal in 2010	Number of respondents	Number of applications
<p>In respect of the three applications, the tribunal recommended that the respondent be suspended from practising as a solicitor until such time as all orders of the tribunal and the High Court made against him arising from disciplinary proceedings have been complied with in full; that, in the event that the respondent is returned to practice, he not be permitted to practise as a sole practitioner or in partnership and 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 pay a sum of €1,000 to the Compensation Fund and costs.</p>	1	3
<p>In respect of the three applications, the tribunal recommended that each 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, and costs.</p>	3	3
<p>In respect of the two applications, the tribunal recommended that the respondent be permitted only to practise as a solicitor under the supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland, and costs.</p>	1	2
<p>That the respondent be suspended from practice as a solicitor until such time as the High Court is satisfied that the current suspension from practice by the High Court has been lifted, and costs.</p>	1	1
<p>That the respondent be suspended until such time as the respondent's accountant's report has been furnished to the Law Society for the year ended 31 December 2008.</p>	1	1

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	Number of respondents	Number of applications
In respect of the six applications, it was ordered, among other things, that the name of the respondent be struck off the Roll of Solicitors and that she surrender her passport to the Registrar of the High Court; that, in one case, the Registrar of the High Court refer the papers in the matter to the Director of Public Prosecutions to enquire into the matters contained therein; that, in three cases, the respondent pay restitution to the complainants in varying amounts of €1.25 million, €225,515 and €9,769, respectively, and costs.	1	6
In respect of the seven applications, it was ordered that the name of the respondent be struck off the Roll of Solicitors, that the applicant forward the papers in respect of each application to the Director of Public Prosecutions, and that the respondent surrender his passport forthwith to An Garda Síochána, and costs. It was also ordered, in six cases, that he pay restitution to the complainants in varying amounts of €800,000, €650,000, €570,00, €180,000, €50,000 and €45,275.94, respectively.	1	7
In respect of the two applications, that the name of the respondent be struck off the Roll of Solicitors; that, in one case, he pay a sum of €379,385.66 to the Compensation Fund Committee and, in the other, pay a sum of €2,000 plus VAT to a named former client, and costs in each case.	1	2
In respect of the two applications, it was ordered that the name of the respondent be struck off the Roll of Solicitors; that in one case he pay a sum of €320,000 to a named complainant and costs in each case.	1*	2
In respect of the three applications, it was ordered that the name of the respondent be struck off the Roll of Solicitors, and costs.	1*	3
In respect of the three applications, it was ordered that the name of each respondent be struck off the Roll of Solicitors, and costs.	3	3

Orders of the High Court made on foot of recommendations of the Tribunal	Number of respondents	Number of applications
That the respondent not be permitted to practice as a sole practitioner or in partnership, but that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved by the Law Society of Ireland; pay a sum of €10,000 to the Law Society's Compensation Fund and costs.	1	1
In respect of the four applications, it was ordered that each respondent not be permitted to practise as a sole practitioner or in partnership, but that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved by the Law Society of Ireland, and costs.	4	4
That the respondent be prohibited from practising as a solicitor until such time as he has fully complied with the provisions of the Solicitors Accounts Regulations, and costs.	1	1
That the respondent pay €2,500 to the Compensation Fund of the Law Society of Ireland.	1	1

* *The respondents are appealing the orders of the High Court to the Supreme Court. One case was remitted by the High Court to the tribunal to hear further evidence.*

NOTES

Solicitors Disciplinary Tribunal

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