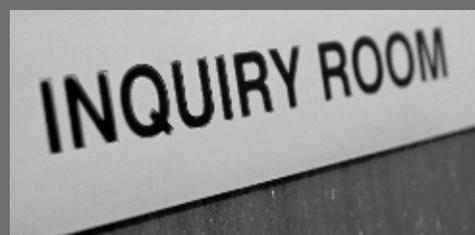


# Chairman's Report 2011



Solicitors  
Disciplinary Tribunal

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## 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

## Lay members

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

## Tribunal registrar

Mary Lynch

## Secretary to registrar

Mary McLoughlin

## Administration assistant

Fiona Hughes

## Administrator/ receptionist

Ashling McGing

# Constitution and powers of the Solicitors Disciplinary Tribunal

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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* and the *Solicitors (Amendment) Act 2011*, as cited in the *Civil Law (Miscellaneous Provisions) Act 2011*. 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 1954-2011*, 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.

# Introduction



This is my eighth *Chairman's Report*, and it covers the period 1 January to 31 December 2011.

As I write this report, I am conscious that my term as Chairman of the Solicitors Disciplinary Tribunal, and that of nine of my solicitor colleagues, is drawing to its natural conclusion. By the end of November 2012, I will have completed ten years (two terms), initially as a member of the tribunal, and then as chairman.

During this time, I have witnessed the enormous commitment of both solicitor and lay members to the work of the tribunal. Many will have found that, while it has been a very interesting experience, it has also at times been a difficult and demanding time, as, unfortunately, members have had to deal with a significant number of cases involving a high degree of dishonesty. For instance, in comparison with the year under review, when seven respondents' names were struck off the Roll of Solicitors, the year 2002 looks a very uneventful one, when the ultimate sanction was imposed on only one

respondent. Overall, since 2002, the names of 37 respondents have been struck off the Roll of Solicitors.

Over the past number of years, a number of respondents have had to consider their suitability to continue in private practice, due to the increased pressure and stresses involved in running a practice. While some respondents accept their situation and make the appropriate arrangements to wind down their practices and perhaps seek an alternative career path, others fail to recognise their plight. In such circumstances, the tribunal, when deciding whether a respondent is a fit person to be a member of the solicitors' profession or, alternatively, practise with a limited practising certificate, has to be cognisant of its duty to ensure the protection of the public.

It must also be said that the assistance of colleagues, not only to respondents, but to the Law Society, the tribunal and ultimately to the profession as a whole, cannot be overestimated. I have observed the extraordinary amount of time, effort and commitment of solicitors who have come to the aid of a colleague who is facing serious charges in respect of his or her practice. Respondents, in particular sole practitioners, should recognise and avail of such assistance, so

that problems may be identified immediately and steps taken to resolve the issues giving rise to the complaints. Needless to say, this kind of support not only benefits respondents, but more importantly their clients.

It is also apparent that a number of respondents who attend before the tribunal often endure the ignominy of losing status in society by being struck off the Roll of Solicitors and by the financial loss of their practice. They may also suffer from depression and anxiety and, as a result, in a limited number of cases, find themselves under the care of a medical practitioner. All this is obviously harrowing, not only for the respondent, but for his or her family.

Nevertheless, solicitors who breach their clients' trust and by their conduct undermine the confidence of the public in the solicitors' profession, should not be in any doubt that the ultimate sanction will be imposed. The tribunal has not shirked from its responsibility and duty in this regard.

As chairman of the tribunal, I wrote to the Minister for Justice, Mr Alan Shatter TD, in relation to the *Legal Services Regulation Bill 2011* and furnished him with a memorandum summarising the views of the tribunal in regard to the proposed

Solicitors who breach their clients' trust and by their conduct undermine the confidence of the public in the solicitors' profession, should not be in any doubt that the ultimate sanction will be imposed. The tribunal has not shirked from its responsibility and duty in this regard.

legislation. I also indicated in my letter to the minister that I would be happy to meet with him to elaborate on any matter contained in my memorandum. Apart from the acknowledgement of the receipt of my letter, there has been no further communication from the minister's office in relation to my invitation. The minister proposes to introduce a widely changed disciplinary regime, which will see this tribunal replaced by the new Legal Practitioners Disciplinary Tribunal. The tribunal has no difficulties with the minister's proposals, but what it does need is clarification as to what is to happen to the existing tribunal. For instance, the minister has not indicated whether the tribunal is to finish all existing cases before it or if, on a particular date, the new tribunal will take over the workload of this tribunal. It would seem extremely wasteful if two tribunals were to run in parallel – the old tribunal with its current workload, and the new tribunal effectively commencing with no workload.

The tribunal was satisfied to note that two solicitors, who had been referred to the President of the High Court with a recommendation that the papers be sent to the Director of Public Prosecutions, have finally been charged. A third case remains yet to be dealt with, although the solicitor concerned does not appear to be in the jurisdiction. The tribunal, however, continues to be concerned at the inordinate length of time it takes to initiate prosecutions where allegations of 'white-collar' crime are made. The above two cases were referred to the president

nearly four years ago. These delays seem endemic in the Irish criminal prosecution system and are, frankly, totally unacceptable.

The recently retired Director of Corporate Enforcement has suggested that the gardai be granted an extended period of detention for the purposes of questioning suspects of white-collar crime. We support this call. However, additional powers are not the answer if the necessary investigative resources are not in place in the first instance. There are a large number of unemployed and underemployed highly competent solicitors, barristers and accountants in the country at the moment. These should be recruited into specialist units within the Garda Bureau for Fraud Investigation to deal with the ever-increasing complexity of corporate and white-collar crime. Until this happens, nothing will change and the delays will lengthen.

Members of the public continue to make direct applications to the tribunal alleging misconduct against solicitors. In the course of the year, 156 people applied for, and received, information on making a direct application to the tribunal, of which 40 made applications to the tribunal for an inquiry into the conduct of a solicitor. During the past decade, there has been a growing awareness of the existence of the tribunal. This may, in part, be due to the practice of both the Law Society and the Independent Adjudicator in drawing the attention of those complainants who appear to be dissatisfied with the Society's treatment of their complaints, to the

existence and function of the tribunal. The tribunal is conscious of the fact that lay applicants who wish to make an application to the tribunal may not be familiar with the disciplinary system. Consequently, members of the public are given the appropriate assistance from the tribunal's staff. The tribunal sat on 106 occasions throughout the year. This is the second-highest number of sittings since 2003. Considerable additional time was also spent reading large volumes of papers when preparing for inquiries and preparing and finalising reasons for decisions and reports. Table 1 shows the number of sittings of the tribunal since 2003.

The tribunal maintains a diary in respect of forthcoming inquiries on its website at [www.solicitorsdisciplinarytribunal.ie](http://www.solicitorsdisciplinarytribunal.ie).

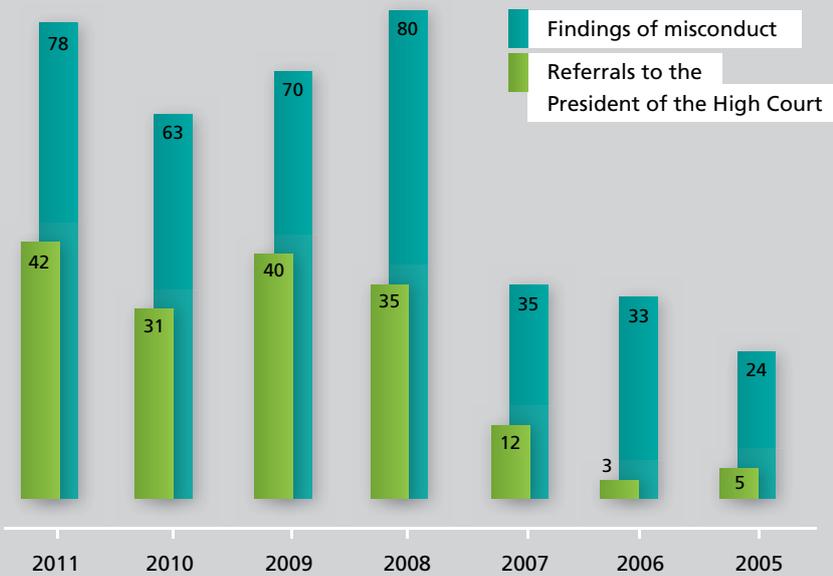
**Table 1**

*Year*      *Number of sittings of tribunal*

2011	106
2010	92
2009	100
2008	110
2007	84
2006	59
2005	55
2004	57
2003	38

## Chart 1

*Findings of misconduct and referrals of 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.

Applications to the tribunal are made by the Law Society 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.

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, 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.

In the year under review, findings of misconduct were made in respect of 78 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 43, of which 24 individual respondents were referred to the President of the High Court.

The *Solicitors Acts* give the tribunal the power and duty to conduct fact-finding inquiries in relation to complaints against solicitors.

Chart 2

Number of new applications received, by year

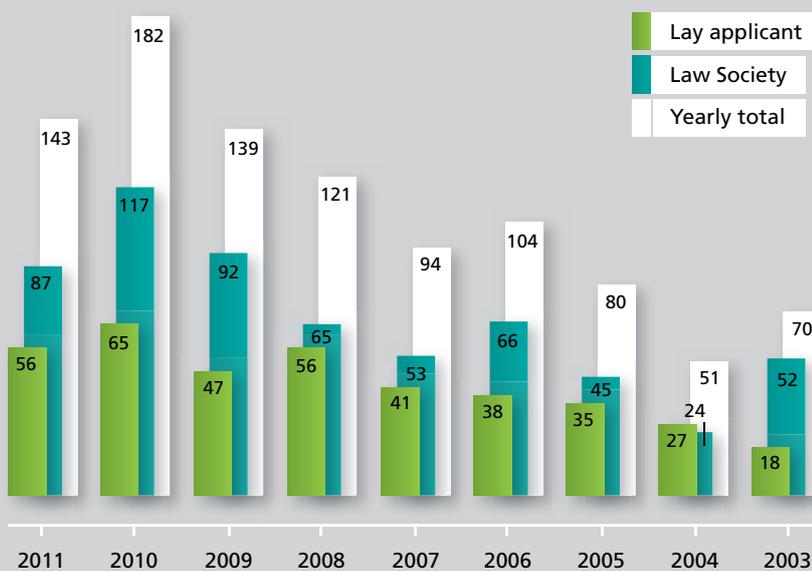
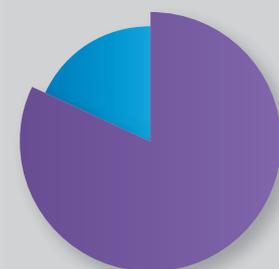


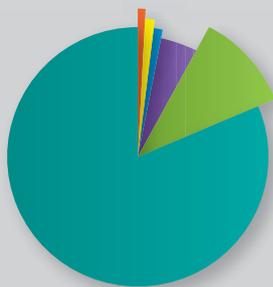
Chart 3

Outcome of inquiries held during 2011



## Chart 4

Full length of inquiries that finished in 2011



78	1 day
11	2 days
4	3 days
1	5 days
1	6 days
1	12 days

### Prima facie decisions

The decision of the tribunal as to whether or not there is a *prima facie* case of misconduct on the part of the respondent for inquiry is made on the basis of, and upon due consideration of, the affidavit or affidavits (and any documents exhibited thereto) furnished by or on behalf of the applicant, and by or on behalf of the respondent.

In a case where it was alleged, among other things, that a respondent had failed to honour expeditiously or within a reasonable time an undertaking dated 10 November

2005, the tribunal was of the view that while there was evidence of delay, there was no evidence that the delay was culpable to the extent that it prejudiced the party who was relying on the undertaking. Therefore, the delay, in itself, was insufficient to amount to a *prima facie* case of misconduct.

### 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.

In one case, while it was recommended to the President of the High Court that the name of the respondent be struck off the Roll of Solicitors, in recognition of the respondent's efforts to pay back the monies to clear the deficit and to regularise his affairs, the tribunal did not make any recommendation in regard to imposing a monetary penalty on him.

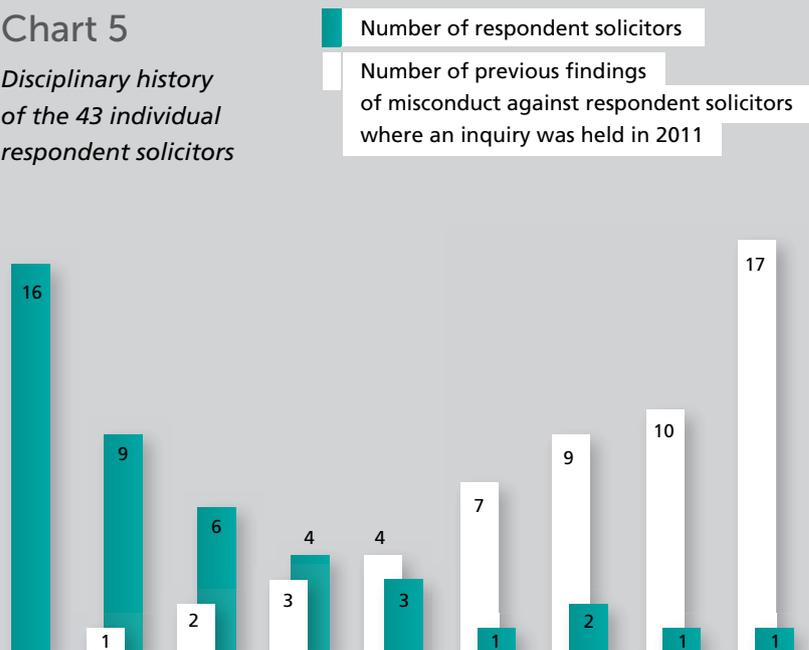
Fines ranging from €500 to €15,000 have been imposed on respondents.

### 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

## Chart 5

Disciplinary history of the 43 individual respondent solicitors



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 is the foregoing procedure departed from, and then only at the discretion of the tribunal.

## 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 against decisions of the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry. In all cases, I am pleased to say the appeals were dismissed and the decisions of the tribunal affirmed.

In one such case, the court acknowledged that the respondent should not have filed the Notice of Change of Solicitor on behalf of the appellant without his instruction or, alternatively, should have served the filed Notice of Change of Solicitor on the appellant's then solicitor once

During the year, the High Court made orders in respect of seven appeals against decisions of the tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry. In all cases, I am pleased to say the appeals were dismissed and the decisions of the tribunal affirmed.

effected. However, the court held that such failure did not meet the legal standard of misconduct. The respondent had apologised for the oversight and offered to pay any costs incurred by the appellant. The court was satisfied that the finding of no *prima facie* case of misconduct on the part of the respondent was appropriate and that, in consequence, the appellant's appeal could not succeed.

In another case, the appellant had, among other things, complained that the tribunal had been remiss in its duty to rigorously investigate his complaint and stated that the findings reached by the tribunal were "peripheral and inadequate". The court held that it was satisfied that the tribunal had considered all matters in issue fully and comprehensively and that the decision of the tribunal was not deficient in any way. In a further case, the appellant made approximately 30 complaints about the respondent's conduct in relation to the administration of an estate. Each of the allegations made by the appellant against the respondent was rejected by the tribunal as having been adequately rebutted

by the respondent; not disclosing conduct that could be construed as misconduct; or because the tribunal found that there was no evidence to support the allegation made. The court agreed with the findings of the tribunal that there was no *prima facie* case of misconduct on the part of the respondent and dismissed the appeal with an order for costs in favour of the respondent.

In all, 17 decisions in respect of appeals to the High Court are awaited where the tribunal found that there was no *prima facie* case.

There is also an appeal by the Law Society against the penalties imposed by the tribunal on one respondent, arising from nine separate findings of misconduct. In addition, they are appealing the penalty imposed on one respondent and a finding of no misconduct against two respondents arising out of the same case. A respondent is also appealing against the findings of misconduct and the recommendation of the tribunal.

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

# Observations on complaints before the tribunal

## Conveyancing

The tribunal continues to assert its view that undertakings must be honoured. Both colleagues and banks rely on the integrity of solicitors when accepting undertakings. A solicitor's undertaking is his bond, and must be regarded in that light. There are no exceptions to that rule. Likewise, a failure to reply to a bank's correspondence in relation to an undertaking is unacceptable.

In a case where a bank suffered a substantial shortfall and the purchasers of various houses found that no purchaser had a good title to his or her property, because releases had not been executed by the bank, the tribunal found that the respondent was guilty of misconduct in that he failed in a timely fashion, or at all, to honour an undertaking to the bank whereby he undertook to lodge with the bank the net proceeds of sale of the residential units from a development when the sales were completed; failed to adequately respond to the complainant's letters to him; and failed to adequately respond to the Society's correspondence. The tribunal, having considered whether the respondent was a fit person to be a member of the solicitors' profession, was of the view that he was not, and accordingly recommended to the President of the High Court that his name be struck off the Roll of Solicitors.

During the period under review, one case came before the tribunal that involved a respondent whose name had been previously struck off the

Roll of Solicitors. On the day of the hearing, there was no appearance by or on behalf of the respondent. Evidence was given in respect of service of the notification of the hearing date on the respondent, and the inquiry proceeded.

The tribunal, after hearing oral evidence in relation to the case, was of the view that the treatment of the complainants was disgraceful. The case arose in circumstances where the respondent had been engaged by the complainants to act for them in relation to the purchase of a property. They subsequently discovered when they came to sell the property that, in fact, the transfer deed had not been stamped and registered in their names.

While the Revenue waived the penalty charge, the complainants had to arrange a loan to fund the interest due. Subsequently, the issue of the interest between the complainants and the respondent was resolved.

The tribunal found the respondent guilty of misconduct in that he had failed to apply the stamp duty fee provided to him by the complainants to the purchase of their property in June 2002 in a timely manner or at

all, with the result that the relevant transfer deed was not properly stamped and registered in the name of the complainants; failed to provide promptly the appropriate stamp duty fee to solicitors for the complainants after the respondent's original failure to ensure the stamping of the deed had been discovered; in his failure to stamp the deed and complete the registration of his client's title, failed/neglected to protect his client's interests.

In view of the extreme personal damage, hardship and financial loss caused to the complainants, the tribunal had no hesitation in recommending to the President of the High Court that the name of the respondent be struck off the Roll of Solicitors; that the respondent make restitution to the complainants as the High Court deem appropriate; and that he pay the applicant's costs.

The tribunal further found a respondent guilty of misconduct in that he had, among other things, misapplied loan monies, knowing this to be a fundamental and egregious breach of an undertaking given by the respondent's firm to a bank which undertaking he had arranged to be signed by a partner in his firm

Both colleagues and banks rely on the integrity of solicitors when accepting undertakings. A solicitor's undertaking is his bond, and must be regarded in that light. There are no exceptions to that rule. Likewise, a failure to reply to a bank's correspondence in relation to an undertaking is unacceptable.

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and given to the bank, and by his action exposed his employers to legal proceedings by the bank for the recovery of all the loan monies plus interest, arising from the breach of this firm's undertaking, which he had caused. The tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession and recommended to the President of

and register title to a property, by dissipating the loan monies so that funds were not available to stamp and register the relevant deeds, and notwithstanding that she had signed a client's retainer and authority giving an irrevocable authorisation to give the undertaking; permitted the foregoing undertaking to be given to the bank by her firm, which included

of misconduct, cooperated fully with the Law Society's investigations, and that no client had suffered any loss arising out of the respondent's misconduct, the tribunal was of the view that, as the respondent had benefited personally from her misconduct, they had no alternative but to recommend to the President of the High Court that the name of the respondent be struck off the Roll of Solicitors.

The Law Society, through its Regulation of Practice Committee has responsibility for ensuring the profession's compliance with the requirements of the *Solicitors' Accounts Regulations*. This is achieved through monitoring the receipt of accountants' reports filed with the Society on an annual basis and in the inspection of the solicitors' practices by the Society's investigating accountants.

## Solicitors' Accounts Regulations

The Law Society, through its Regulation of Practice Committee has responsibility for ensuring the profession's compliance with the requirements of the *Solicitors' Accounts Regulations*. This is achieved through monitoring the receipt of accountants' reports filed with the Society on an annual basis and in the inspection of the solicitors' practices by the Society's investigating accountants. Over the last number of years, the tribunal has recognised and appreciated that it is through these important inspections that serious breaches of the *Solicitors' Accounts Regulations* have come to light.

The President of the High Court, during the period under review, concurred with the recommendation of the tribunal that a respondent not be permitted to practise as a sole practitioner or in partnership; that he be permitted 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

the High Court that the name of the respondent be struck off the Roll of Solicitors. However, by order of the president, it was ordered that the respondent be permitted to practise as an assistant solicitor in the direct employment and supervision of a supervising solicitor of not less than ten years' standing, to be approved in advance by the Law Society.

In a case where it was submitted that the respondent had engaged in a systematic course of untrustworthy conduct over a period of time, the tribunal found her guilty of misconduct in that she had, among other things, prevented her firm's compliance with a solicitor's undertaking to a bank to stamp

as security for the loan another property, when she knew that the property was the subject of a prior undertaking to another bank; misrepresented to a representative of the first bank in relation to the foregoing transaction that mortgages over the two properties had been executed and stamped when they had not; improperly utilised monies to pay stamp duty and interest on six properties owned by the respondent and her husband; and improperly used client monies to pay stamp duty to the Revenue on the purchase deed of a property purchased by her and a partner in the firm.

While it was also submitted that the respondent had no previous findings

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approved in advance by the Law Society. The tribunal had previously made a finding of misconduct against the respondent in circumstances where he had failed to ensure that there was furnished to the Society an accountant's report, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001); 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 another such case, the President of the High Court made an order

clear a deficit and to regularise his affairs, the tribunal did not make a recommendation to the President of the High Court in relation to imposing a monetary penalty. However, the tribunal did recommend to the president that the name of the respondent be struck off the Roll of Solicitors.

In making this recommendation, the tribunal had regard to its findings of misconduct against the respondent where he had, among other things, failed to maintain proper books of account in respect of his practice; failed to furnish reporting accountants' reports to the Law Society as required by the *Solicitors' Accounts Regulations 2001*; falsely

of a client other than a debit balance that was totally offset by a credit balance arising on another clients' ledger account in respect of the same client; and failed to make income tax returns in respect of his practice.

In another case, the tribunal heard a respondent openly admit that his conduct was appalling and shameful. He explained he had set up a busy practice, but had lost control of it. The tribunal, in view of the admissions made and the evidence adduced, found the respondent guilty of misconduct in that he had caused or allowed a deficit to arise on his client account of in or about €99,876; in the course of acting for a client, caused or allowed a transfer deed to be submitted to the Revenue Commissioners for stamping, which had been updated, thereby avoiding possible interest and penalties arising from the late stamping of the deed; deliberately misapplied monies due to third parties to pay stamp duty on behalf of an unrelated client; misleadingly advised a bank's solicitor in a letter that his practice held deposit monies in respect of lands being sold by his client, thereby facilitating the obtaining of loan finance by his client from that bank; confirmed to the bank's solicitor in a letter that the monies received from the bank by way of loan to his client would be solely used for the purchase of property by his client, but subsequent to the draw-down of the loan monies, transferred €575,000 to another client ledger of his client to complete a purchase in an unrelated transaction; and, further, transferred a total of €500,000 to his former

In recognition of a respondent's efforts to pay back the monies to clear a deficit and to regularise his affairs, the tribunal did not make any recommendation to the President of the High Court in relation to imposing a monetary penalty. However, the tribunal did recommend to the president that the name of the respondent be struck off the Roll of Solicitors.

striking the name of the respondent off the Roll of Solicitors following a finding of misconduct against the respondent where she had, among other things, failed to furnish to the Society an accountant's report in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001).

In recognition of a respondent's efforts to pay back the monies to

stated in his application for a practising certificate that his reporting accountant's report had been filed, when, in fact, this had not been done; allowed overpayments to be made to a number of clients, giving rise to a deficit on client accounts in excess of €700,000; committed several breaches of regulation 7(2)(a) of the *Solicitors' Accounts Regulations 2001* by allowing debit balances to arise on the clients' ledger account in respect

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partner as part payment for his former partner's share of the practice. The tribunal recommended to the President of the High Court that the name of the respondent be struck off the Roll of Solicitors.

A further respondent was found guilty of misconduct after he admitted he had failed to account to his client, the complainant, for the total proceeds of their mortgage advance, leaving them with at least an admitted shortfall of €49,915. The tribunal heard that the funds were used to discharge mortgage payments for clients who were not in a position to make such payments. It was submitted that his actions did not result in his own financial gain and that the funds were not used to fund a lavish lifestyle. Reference was also made to the involvement of third parties. The tribunal regarded this complaint as extremely serious. The respondent was told that a solicitor has a vital obligation to look after and keep a proper account of clients' monies. In view of the admissions made by the respondent, the tribunal was of the view that he was not a fit person to be a member of the solicitors' profession and accordingly recommended that his name be struck off the Roll of Solicitors.

In making its recommendation, the tribunal also had regard to a previous finding of misconduct made by another division of the tribunal, a few months previously. In that case, the tribunal, on hearing his admissions, found the respondent guilty of misconduct, in that he had allowed a deficit of client funds in

Treating the regulatory process with disdain by failing to reply to the correspondence from the Law Society and by failing to attend meetings of the Complaints and Regulation Committee when requested to do so, cannot be excused.

the sum of €1,181, 667.04; operated a secret bank account where funds of approximately €1.2 million were lodged, in breach of the *Solicitors' Accounts Regulations*; used client monies to discharge the mortgage debts of clients who defaulted on mortgages; paid the money to third parties and withdrew money for his own use; failed to maintain proper records; and allowed claims to arise on the compensation fund of €1,123,245.11, with €428,735.81 already paid out as of the date of swearing of the grounding affidavit. The recommendation of the majority of the tribunal members was that the name of the respondent be struck off the Roll of Solicitors; it was the opinion of the dissenting member 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, in the employment and under the direct control of another solicitor of at least ten years' standing, to be approved in advance by the Law Society. The tribunal also recommended that, if and when he was in a position to do so, the respondent pay as restitution to the compensation fund such sums as paid by that fund in respect of his practice. In both the aforementioned cases concerning the

same respondent, the President of the High Court made an order striking his name off the Roll of Solicitors. In the latter case, the president also ordered that the respondent make such restitution, if and when in a position to do so, in respect of all payments made by the compensation fund arising from his practice.

## Civil proceedings

The tribunal had to consider another serious case, where the respondent had failed to advise the complainant that her case was statute barred, and led the complainant to believe that proceedings were in being and that her case was being processed. The respondent had also sought instructions from the complainant on a settlement offer without informing the complainant that she, the solicitor, was the source of this offer. The tribunal also found that she had, by her reckless disregard for the interests of her client, brought the profession into disrepute. They made a finding of misconduct in respect of each of these complaints and recommended to the President of the High Court that the name of the respondent be struck off the Roll of Solicitors.

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## Regulatory body

Treating the regulatory process with disdain by failing to reply to the correspondence from the Law Society and by failing to attend meetings of the Complaints and Regulation Committee, when requested to do so, cannot be excused.

It is also important for solicitors to comply fully with the directions of their regulatory body, especially in circumstances where the regulatory body is trying to assist clients by attempting to resolve complaints to their satisfaction. For solicitors to do otherwise stymies such efforts to resolve complaints, and may amount to misconduct in that their conduct may well be regarded as bringing the profession into disrepute.

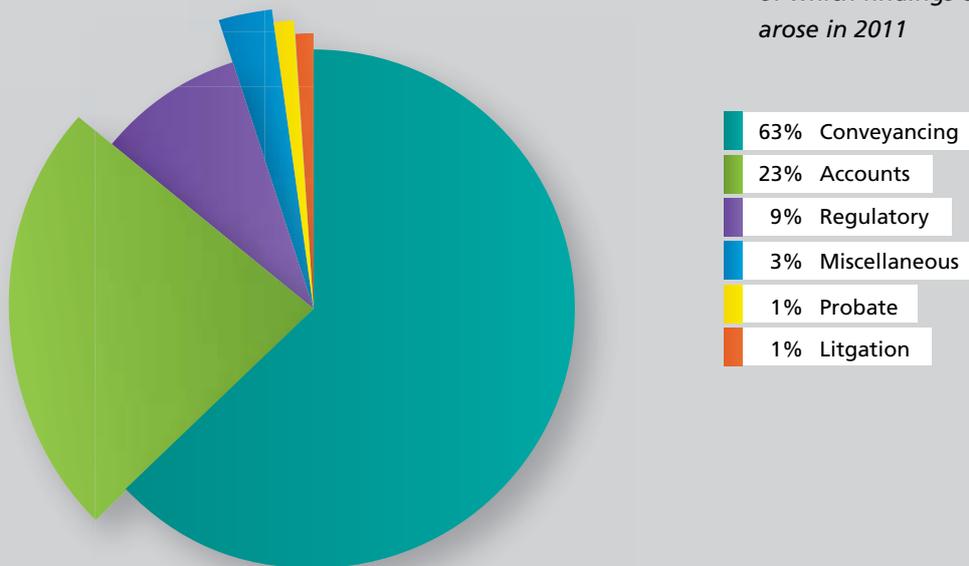
Consequently, it is clear that solicitors who engage in such conduct should not be surprised when they find themselves before the tribunal.

In two cases, involving the same respondent, the tribunal found her guilty of misconduct in that, in the first case, she failed to respond to the Society's letter and failed to attend a meeting of the Complaints and Client Relations Committee, despite being required to do so. In the second case, she failed to comply with the direction of the Complaints and Clients Relations Committee that she furnish progress reports and vouching documentation in relation to the complaint, as directed; failed to comply in full, in a timely fashion, or at all, with the direction of the

Complaints and Client Relations Committee to refund all professional fees paid by the client to the respondent within 21 days; failed to attend the Complaints and Client Relations Committee meeting despite being required to do so; failed to reply to the Society's correspondence in a timely manner or at all. The tribunal was of the opinion that the respondent was not a fit person to be a member of the solicitors' profession and recommended in respect of each case that the President of the High Court strike the name of the respondent off the Roll of Solicitors.

# 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.



# Some grounds on which professional misconduct was found

## Administration of estates

- Breaching an undertaking to the Complaints and Client Relations Committee to submit within 14 days:
  - A legible copy of the Inland Revenue affidavit,
  - A copy of his ledger card,
  - A draft bill of costs;
- Delaying the distribution of the estate of the deceased until after the receipt of a letter of complaint, notwithstanding the deduction by the respondent of fees from the estate;
- Failing to issue a section 68 letter in relation to the administration of the estate, as admitted at a meeting of the Complaints and Client Relations Committee.

## Civil claims

- Failing to advise the complainant that the case was statute barred and led the complainant to believe that proceedings were in being and that the case was being processed;
- Seeking instructions from the complainant on a settlement offer without informing the complainant that she, the respondent, was the source of this offer.

## Conveyancing

- In the course of acting for a client, causing or allowing a transfer deed to be submitted to the Revenue Commissioners for stamping that had been updated, thereby avoiding possible interest and penalties arising from the late stamping of deed;

- Confirming to the solicitor for a bank that the purchase of a property had been completed, thereby facilitating the release of stamp-duty funds of €630,000, without having confirmed that this was the case and in circumstances where balance purchase monies of €1,140,000 were outstanding;
- Conducting a conveyancing transaction in relation to a client in a manner that fell so far below what could be regarded as prudent standard conveyancing practice that the client obtained no title to the property;
- Failing to account to a complainant in relation to the balance of proceeds of sale;
- Failing to apply the stamp-duty fee provided to the respondent by the complainants to the purchase of their property in a timely manner or at all, with the result that the relevant transfer deed was not properly stamped and registered in the name of the complainants;
- Failing to comply with an undertaking given, in respect of clients over property, to a lending institution in which he undertook to discharge prior charges registered in favour of a bank, along with two judgment mortgages registered in priority to the lending institution's charge in respect of the property;
- Failing to discharge a personal liability to the bank on foot of a solicitor's undertaking until after an originating notice of motion was issued by the bank;
- Failing to ensure that a deed of transfer and a mortgage deed were executed to ensure that title was acquired;
- Failing/neglecting to furnish to the complainant the information requested in relation to the disposal of property;
- Failing to return title deeds held by the respondent to the complainant's clients' (former clients) property, despite having been requested to return the said deeds and the complainant's clients being entitled to the return of same;
- Leaving a client with a liability to repay a loan and interest to the credit union, notwithstanding that the client obtained no title to the property, the subject matter of a loan from the credit union;
- Misleadingly advised a bank in a letter that a 10% deposit was paid in respect of the purchase of property from a client, thereby facilitating the drawing down of loan monies to the client of €1.63 million, when the respondent did not hold deposit monies and had not verified payment of same;
- Preparing contracts in respect of the ten deposits, which contracts were never exchanged;
- Confirming to the bank that a "10% deposit was held in each instance", when this was not true;
- Preventing compliance with a solicitor's undertaking to a lending institution to stamp and register title to a property, by dissipating the loan monies so that funds were not available to stamp and register the relevant deeds, and notwithstanding that the respondent had signed a client's retainer and authority giving an irrevocable authorisation to give the undertaking;
- Receiving a land certificate on

accountable trust receipt on foot of a solicitor's undertaking given by him to a lending institution, but failing to forward the proceeds of sale of the property to the bank.

## Solicitors' Accounts Regulations

- Allowing a deficit of client funds in the sum of €1,181,667.04;
- Allowing a deficit arise in the client account by creating client ledger debit balances in breach of regulation 7(2);
- Allowing an office credit balance of €165,593.03, in breach of regulation 10(5) of the *Solicitors' Accounts Regulations 2001*;
- Allowing incorrect entries to be made in the books of account, thereby concealing the existence of debit balances;
- Allowing overpayments to be made to a number of clients, giving rise to a deficit on client accounts in excess of €700,000;
- Allowing wages to be paid from the client account;
- Breaching regulation 8(2) by drawing fees made payable to cash and failing to lodge same to the office account;
- Committing several breaches of regulation 7(2)(a) of the *Solicitors' Accounts Regulations 2001* by allowing debit balances to arise on the clients' ledger account in respect of a client, other than a debit balance that was totally offset by a credit balance arising on another clients' ledger account in respect of the same client;
- Failing to ensure that there was furnished to the Society an

accountant's report, in breach of regulation 21(1) of the *Solicitors' Accounts Regulations 2001* (SI no 421 of 2001);

- Failing to exercise any or adequate supervision over the practice bookkeeper;
- Failing to keep proper or adequate records of sums withdrawn from the client account by having cheques payable to cash in breach of regulation 7(2);
- Failing to maintain proper books of account, in breach of regulation 12(1) of the *Solicitors' Accounts Regulations 2001*;
- Failing to make income-tax returns in respect of the practice;
- Failing to make VAT returns in respect of the practice;
- Failing to retain sufficient or appropriate documentation in respect of a loan made by a party;
- Falsely stating in an application for a practising certificate that a reporting accountant's report had been filed, when, in fact, this had not been done;
- Misappropriating client funds;
- Operating a secret bank account where funds of approximately €1.2 million were lodged, in breach of the *Solicitors' Accounts Regulations*;
- Paying money to third parties and withdrawing money for own use;
- Inappropriately transferring sums of money from the client account to the office account to cover payment of invoices to a nursing home;
- Transferring funds totalling €306,493.21 from the client account to the office account, which funds did not correlate with any bills of costs, and which transfers did not comply with regulation 7(1)(a)

(ii) and 7(1)(a)(iii) of the *Solicitors' Accounts Regulations 2001*;

- Using client monies to discharge the mortgage debts of clients who defaulted on mortgages.

## Regulatory body – Law Society of Ireland

- Failing to reply adequately, or in some cases not 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 to furnish an interim set of estate accounts within two weeks;
- Failing to comply with the direction of the committee that he pay an outstanding sum of money to the complainant's clients (former clients);
- By failing to correspond or instruct his solicitor to correspond with the Society, obstructed the Society's investigation into the complaint.

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## Other orders made by the tribunal

The tribunal made ten 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

Being a solicitor is a great privilege that can bring many benefits. Thus, solicitors are expected to adhere to the core values of the profession by behaving in a moral and trustworthy manner. If they disregard the trust that the public repose in them, they will be called upon to account and will undoubtedly suffer the consequences of their actions.

In conclusion, I would like to express my appreciation to all the members of the tribunal for their sterling service over the past year. They are to be commended for their dedication and hard work in these challenging times.

I would also like to thank the tribunal staff on behalf of all the members of the tribunal and myself – their endless patience, good humour, skill and hard work is a credit to each and every one of them.

Finally, I want to thank the registrar herself for all her help during my term as chairman. Without her, my task would have been impossible.

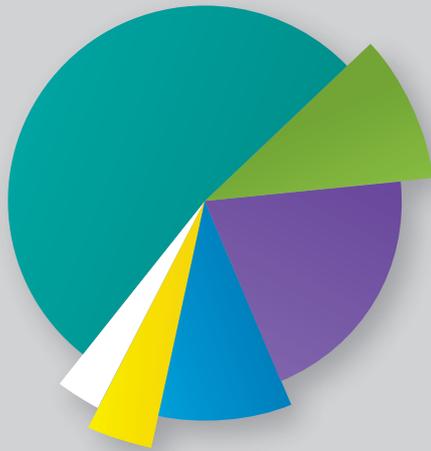
**Francis D Daly,**  
Chairman

# Appendix 1

## Status of applications received: *Prior to inquiry*

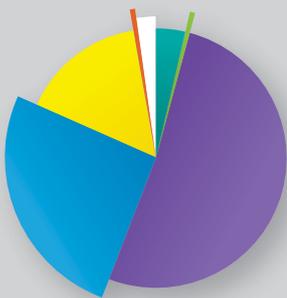
2011

Status of applications received,  
as at 31 December



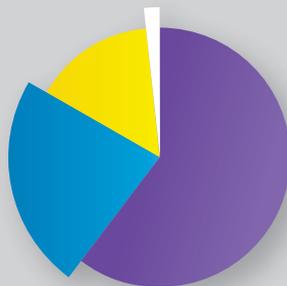
75	Exchanging affidavits
15	Awaiting <i>prima facie</i>
29	<i>Prima facie</i> found
14	<i>Prima facie</i> not found
06	<i>Prima facie</i> found/not found
0	<i>Prima facie</i> adjourned
04	Withdrawn prior to <i>prima facie</i>

2010



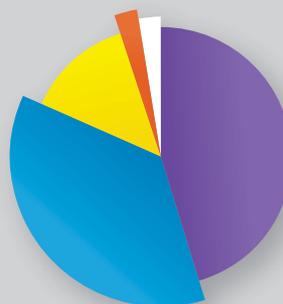
07	Exchanging affidavits
01	Awaiting <i>prima facie</i>
94	<i>Prima facie</i> found
47	<i>Prima facie</i> not found
28	<i>Prima facie</i> found/not found
01	<i>Prima facie</i> adjourned
04	Withdrawn prior to <i>prima facie</i>

2009



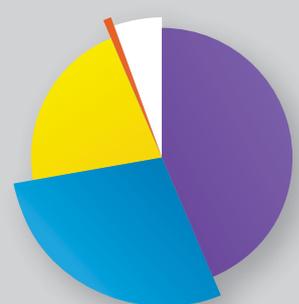
0	Exchanging affidavits
0	Awaiting <i>prima facie</i>
84	<i>Prima facie</i> found
32	<i>Prima facie</i> not found
21	<i>Prima facie</i> found/not found
0	<i>Prima facie</i> adjourned
02	Withdrawn prior to <i>prima facie</i>

2008



0	Exchanging affidavits
0	Awaiting <i>prima facie</i>
55	<i>Prima facie</i> found
44	<i>Prima facie</i> not found
16	<i>Prima facie</i> found/not found
03	<i>Prima facie</i> adjourned
03	Withdrawn prior to <i>prima facie</i>

2007



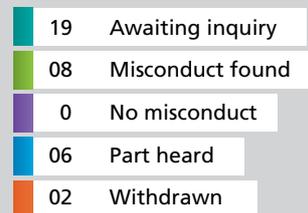
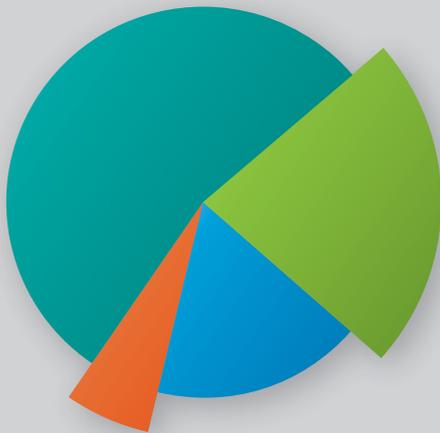
0	Exchanging affidavits
0	Awaiting <i>prima facie</i>
41	<i>Prima facie</i> found
27	<i>Prima facie</i> not found
20	<i>Prima facie</i> found/not found
01	<i>Prima facie</i> adjourned
05	Withdrawn prior to <i>prima facie</i>

# Appendix 1 (continued)

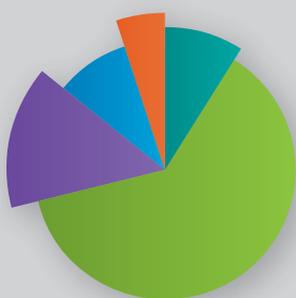
## Status of applications received: *Inquiry stage*

2011

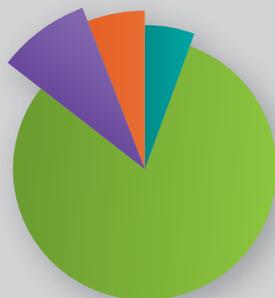
Status of applications received,  
as at 31 December



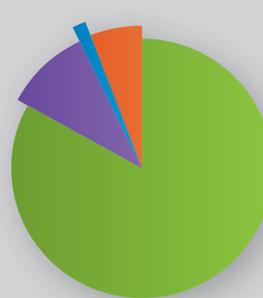
2010



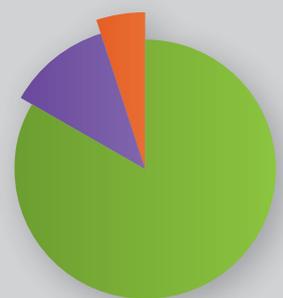
2009



2008



2007



# Appendix 2

## Analysis of applications and decisions

### Solicitors Disciplinary Tribunal statistics, as at 31 December 2011

Status of applications	2011	2010	2009	2008	2007
Law Society of Ireland:	87	117	92	65	53
Others:	56	65	47	56	41
<b>Total received</b>	<b>143</b>	<b>182</b>	<b>139</b>	<b>121</b>	<b>94</b>
<b>Prior to <i>prima facie</i> consideration</b>					
Exchanging affidavits	75	07	0	0	0
Awaiting <i>prima facie</i> decision	15	01	0	0	0
<i>Prima facie</i> cases found	29	94	84	55	41
<i>Prima facie</i> cases rejected	14	47	32	44	27
<i>Prima facie</i> cases found/rejected	06	28	21	16	20
<i>Prima facie</i> decision adjourned	0	01	0	03	01
<i>Prima facie</i> application withdrawn	04	04	02	03	05
<b>Inquiry stage</b>					
Cases scheduled for inquiry	19	11	06	0	0
Misconduct found	08	76	84	59	51
Misconduct not found	0	18	09	07	07
Part heard	06	11	0	01	0
Withdrawn	02	06	06	04	03

### Applications received prior to 2007, dealt with in 2011

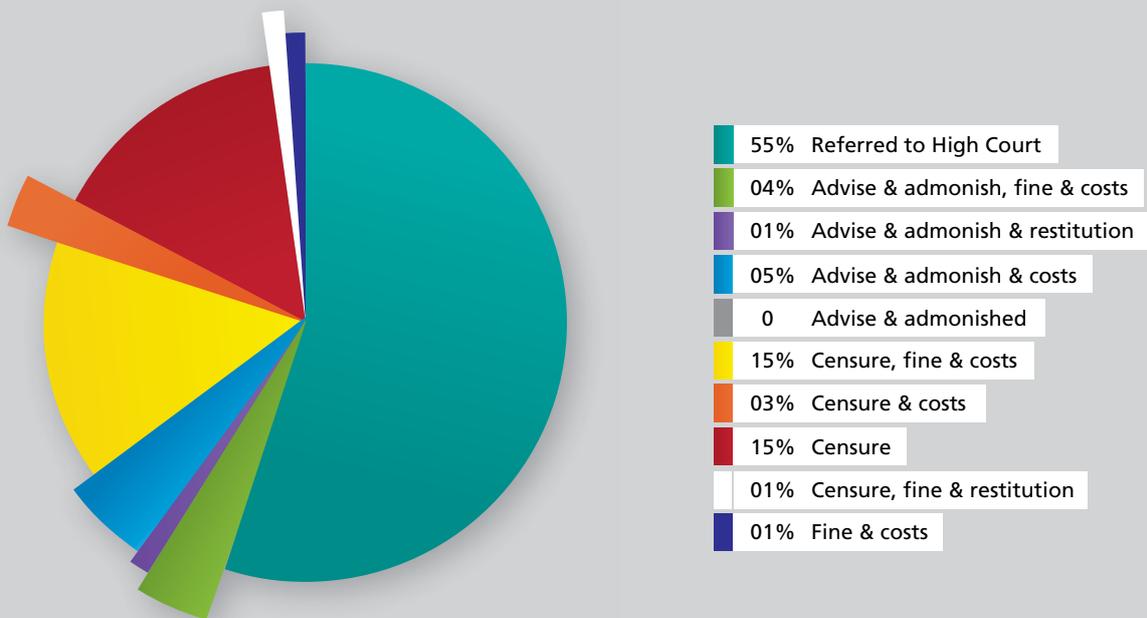
Prior to <i>prima facie</i> consideration		Hearings	
Exchanging affidavits	0	Misconduct found	3
<i>Prima facie</i> cases rejected	0	Misconduct not found	0
Awaiting <i>prima facie</i> decision	0	Adjourned/part heard	0
<i>Prima facie</i> decision withdrawn	0	Withdrawn	1
<i>Prima facie</i> decision adjourned	0	Cases scheduled for inquiry	2
<i>Prima facie</i> cases found	2		
<i>Prima facie</i> cases rejected	0		

# Appendix 3

## Penalties of the tribunal during 2011 (%)

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*.

Outcome of inquiries held in 2011 (%)



# 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 2011	Number of respondents	Number of applications
That the name of the respondent be struck off the Roll of Solicitors; that two of the respondents also make restitution as the court deems appropriate – costs.	11	24
That the name of the respondent be struck off the Roll of Solicitors; that the respondent make such restitution to the Law Society in respect of payments made by the compensation fund arising from the respondent’s practice as the court thinks fit and, pending such restitution, the High Court make an ancillary order freezing the respondent’s assets – costs.	1	1
It was the opinion of the majority of the tribunal that the name of the respondent be struck off the Roll of Solicitors; that if and when he is in a position to do so, he pay as restitution to the compensation fund sums paid by that fund in respect of his practice – costs.  It was the opinion of the dissenting member 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, in the employment and under the direct control of another solicitor of at least ten years’ standing, to be approved in advance by the Law Society; the respondent, if and when he is in a position to do so, pay as restitution to the compensation fund sums paid by that fund in respect of his practice – costs.  In another application concerning the same respondent, the tribunal was also of the opinion that the name of the respondent be struck off the Roll of Solicitors – costs.	1	2
That the name of the respondent be struck off the Roll of Solicitors.	1	5
That the first-named respondent not be permitted to practise as a sole practitioner or in partnership, that she 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 in advance by the Law Society; that the name of the second-named respondent be struck off the Roll of Solicitors – costs.	2	1

Recommendations of the tribunal in 2011	Number of respondents	Number of applications
That the respondent be suspended from practice for a period of six months; that the respondent not be permitted to practise as a sole practitioner or in partnership, and 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 in advance by the Law Society after the expiration of his period of suspension; that the respondent pay the sum of €2,000 as restitution to complainants; that the respondent pay costs.	1*	1
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 in the employment and 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 pay the sum of €1,000 to the compensation fund – costs.	1	1
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 in the employment and 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.	5	6
That the respondent continue 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 in advance by the Law Society – costs.	1	1

\* One respondent appealing decision to the High Court.

# 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 in 2011	Number of respondents	Number of applications
That the name of the respondent be struck off the Roll of Solicitors – costs.	5	8
That the name of the respondent be struck off the Roll of Solicitors; that the respondent do make restitution if and when he is in a position to do so in respect of all payments made by the compensation fund arising from the respondent's practice – costs.	1	1
That the name of the respondent be struck off the Roll of Solicitors; that the respondent do make such restitution, being the amount in respect of payments made by the compensation fund arising from the respondent's practice, and that the assets of the respondent's practice be frozen pending such restitution to the Law Society – costs.	1	1
That the respondent shall be suspended from practising as a solicitor until further order; that the respondent is prohibited from attending at the offices of his practice or holding himself out in any way as a solicitor until further order – costs.	1	1
That the respondent be suspended from practising as a solicitor until such time as all orders of the Solicitors Disciplinary Tribunal and the High Court made against him, and arising from disciplinary proceedings, have been complied with in full; that in the event that the respondent returns to practice, 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 in the employment and 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 pay €3,000 to the compensation fund – costs.	1	3
That the respondent should not be permitted to practise as a sole practitioner or in a partnership, 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 in advance of the Law Society – costs.	5	7

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Recommendations of the tribunal in 2011	Number of respondents	Number of applications
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 in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society.	2	2
That the respondent should be permitted to continue 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 in advance by the Law Society – costs.	1	1

**Solicitors Disciplinary Tribunal**

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