

Solicitors Disciplinary Tribunal

CHAIRMAN'S
REPORT 2009



Solicitors
Disciplinary Tribunal

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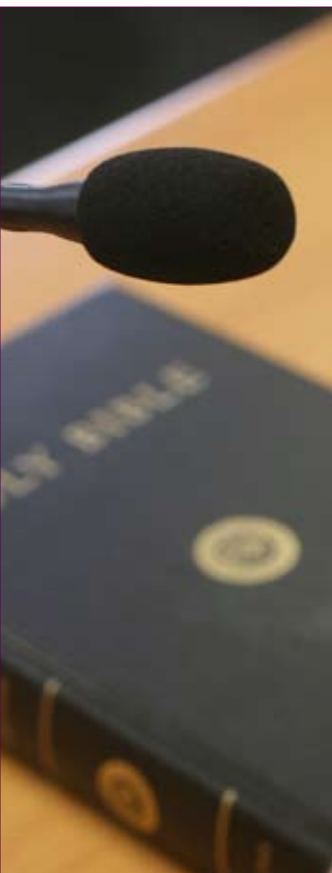


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SOLICITORS DISCIPLINARY TRIBUNAL

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

Procedures of the Tribunal are also governed by the *Solicitors Disciplinary Tribunal Rules 2003*, which came into operation on 1 March 2003. Under the *Solicitors Acts 1954 to 2008*, the Tribunal's powers are mainly confined to receiving and hearing complaints of 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
Ernest Cantillon
Mary Cantrell
Michael Carrigan
Niall Casey
Helen Jeanne Cullen
Joseph Deane
Caroline Devlin
Paula Duffy
Anthony Ensor
Carol M Fawsitt
Isabel Foley
Berchmans Gannon
Maeve Hayes
Edward McEllin
Brian M McMahon
Caroline O'Connor
Michael V O'Mahony
Hugh O'Neill
Ian Scott

Lay members

Seamus Byrne
Colette Carter
Úna Claffey
Brenda Clifford
Ted Conlon
Padraic Ingoldsby
Mary King
Ken O'Neill
Siobhan Toale
Kristin Quinn

Tribunal registrar

Mary Lynch

Secretary to registrar

Monica Murray

Administration assistant

Barry Lennon

Introduction

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This is my sixth *Chairman's Report*, and it covers the period 1 January to 31 December 2009, which has seen a further increase in the number of new applications coming before the Tribunal. In my report for 2008, I reported a 28% increase in new applications. This year, the Tribunal received 139 applications, an increase of approximately 14%. This is illustrated in Chart 2, which also shows a decline in the number of applications received from members of the public. This decline may be just a temporary lull or it may well be an indication that there is more public satisfaction with the manner in which the Law Society is dealing with their complaints. The Tribunal sat on 100 occasions throughout the year. Chart A shows a decrease in the number of sittings compared with the previous year. This decrease is attributable to the fact that the majority of new applications made during the year under review were received in the latter part of the year. As a result, 59 cases received in 2009 have been carried forward into 2010, when they will be listed, in due course, for *prima facie* decision. A further 24 cases received in 2009 are awaiting determination in 2010. Despite the increased workload, applications continued to be processed in an expeditious and competent manner.

There were a number of pending applications before the Tribunal where the name of the respondent had already been struck off the Roll of Solicitors by order of the High Court. The question

arose as to whether a struck-off solicitor came within the definition of a 'solicitor' as defined in section 3(1) of the 1954 act (as amended), namely:

"'Solicitor' means a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires."

The Tribunal, in two cases concerning a respondent whose name had been struck off the Roll of Solicitors, proceeded with the inquiries in regard to the matters alleged against him and made a finding of misconduct. The Tribunal reported to the President of the High Court, noting the order striking the name of the respondent off the Roll of Solicitors, and entrusted the issue of penalty to the President of the High Court.

It is now clear from a recent judgment of the President that the Tribunal has jurisdiction in respect of respondents whose names have been struck off the Roll of Solicitors. Consequently, it will proceed to process and to hold inquiries in respect of such applications.

It is also clear from the judgment of the President that the Tribunal does not have any jurisdiction in respect of deceased solicitors.

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

The Tribunal made findings of misconduct in respect of 70 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 32, of which 23 respondents were referred to the President of the High Court. This reflects the gravity of the matters that have come before the Tribunal during the year under review.

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

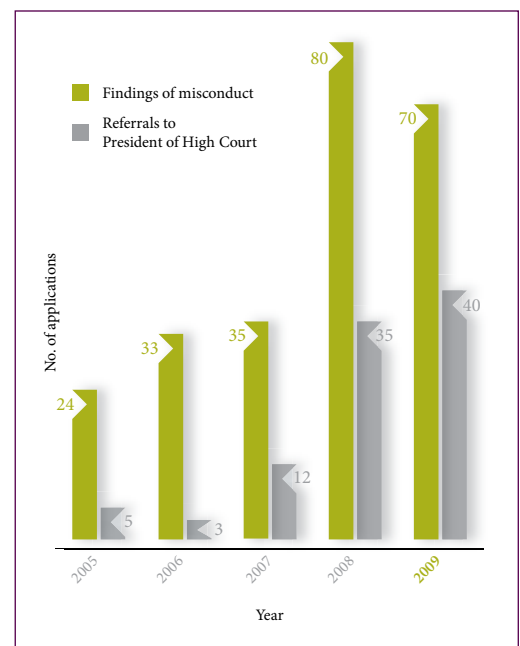
- Coordinating, in conjunction with the Tribunal Registrar, the administrative function of the Tribunal,
- Liaising with the President of the High Court in relation to the efficient administration of the Tribunal, and
- Convening and presiding at general meetings of members of the Tribunal, held from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

Chart A:



Chart 1:

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



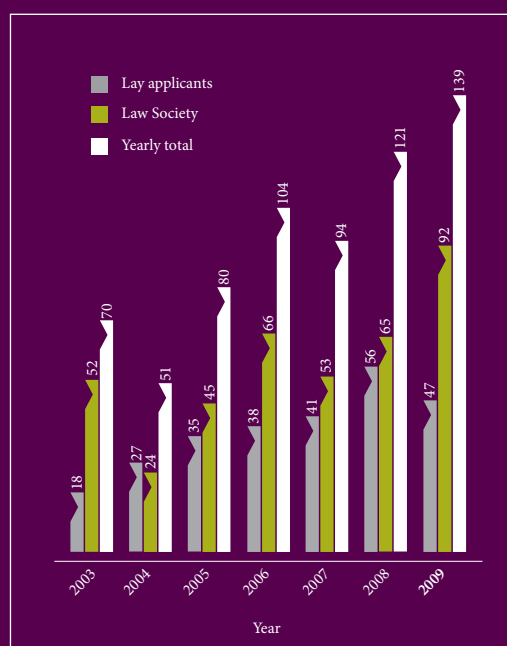


The role of the Tribunal is largely confined to receiving applications for an inquiry to be held into the conduct of a solicitor(s), or trainee solicitor(s), on the ground of alleged misconduct and, where a *prima facie* case of misconduct for inquiry is found by a division of the Tribunal, proceeding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

Applications to the Tribunal are made by the Law Society 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, 110 people applied for, and received, information on making a direct application to the Tribunal.

Chart 2:
Number of applications received, by year.



Prima facie decision

Representations have been received by the Tribunal from both applicants and respondents in respect of their perceived entitlement to attend before and address the Tribunal when it sits to determine whether or not there is a *prima facie* case of misconduct on the part of the respondent for inquiry. However, it should be stated that, for this purpose, members of the Tribunal do not hold a formal hearing, but make their decision in accordance with rule 9 of the Tribunal's rules, which provides that the Tribunal's decision shall be made on the basis of and upon due consideration of the affidavit or affidavits (and any exhibited documents) furnished to the Tribunal Registrar by the applicant and by the respondent.

In one case, where the Tribunal was of the opinion that there was no *prima facie* case of misconduct, it did so on the basis that all issues concerning the application had been dealt with by the courts and were the subject matter of a previous application to the Tribunal. Consequently, any such issues were *res judicata* and, as such, were not amenable to review or further decision by the Tribunal. The applicant appealed this decision to the High Court, which held that the Tribunal was "not only entitled but obliged to take the view as it did". The court dismissed the appeal and made an 'Isaac Wunder' order restraining the applicant from bringing any further complaints against the respondent.

In another case, the Tribunal was of the opinion that there was no *prima facie* case for inquiry concerning matters alleged to have occurred approximately 25 years ago, by reason of the unconscionable delay in making the application. The applicant in this matter also appealed this finding to the High Court, which upheld the decision as "entirely appropriate", as 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.

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 will 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.

However, the Tribunal has had occasion to express its considerable concern in regard to adjournments. In one case, a respondent made an application for an adjournment and agreed, at the time, that he would be ready to proceed to a full plenary hearing on the adjourned date. Subsequently, at the 11th hour, a further application was made for an adjournment in relation to the case, which had been trundling along since 2006. It transpired that, some six days prior to the new hearing date, the respondent wrote looking for documentation, the existence and whereabouts of which he was aware since 2007. The Tribunal indicated its displeasure that everyone was assembled to commence the inquiry, only to be met with an application for a further adjournment on the basis of seeking documents that should have been sought years earlier.

Accountant's reports

Arising out of his/her practice, a solicitor receives, holds and controls money belonging to clients. As a consequence, the *Solicitors Accounts Regulations* were formulated to ensure a solicitor keeps clients' money separate from his own money and any other money passing through his accounts.

Consequently, every practising solicitor who handles clients' moneys is required to furnish to the Law Society an accountant's report within a six-month period from their year end.

The accountant's report is designed to disclose (a) whether, during the period under review, the solicitor has kept proper books of account and (b) whether there are sufficient funds in the client account to cover the sum due to clients.

In a case, which is referred to later in this report, the Tribunal regarded the failure of a respondent's reporting accountants to call attention, in writing, to the respondent and – more importantly – to the Law Society, to the serious deficiencies in the respondent's accounting records, when they first became aware of same, as a relevant factor in the consideration of the matter before them. Consequently, accountants who prepare such reports must bear in mind the purpose for which a report is required and the reliance that will be placed upon it by the Society.

Inquiries

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

As can be seen from Chart 3, of the 79 inquiries completed by the Tribunal during the year, misconduct was found in 70 applications.

A remarkable 80% of applications heard by the Tribunal during the year under review were completed in one day.

The Tribunal is cognisant of the requirement to observe basic fairness of procedures and consequently to ensure that hearings are conducted in accordance with the rules of natural and constitutional justice. In this regard, where the allegations are being contested, evidence is given orally and tested by cross-examination.

Sanctions

As reported earlier, the Tribunal referred 23 individual respondents to the President of the High Court recommending, *inter alia*, in 11 cases, that the name of each such respondent be struck off the Roll of Solicitors. Included in the 11 cases was a recommendation that the respondent was not a fit person to be a member of the solicitors' profession, that the name of the respondent be struck off the Roll of Solicitors, and that the respondent make restitution to the lending company in an amount to be determined by the President. The Tribunal invited the President to forward the papers in respect of the matter to the Director of Public Prosecutions.

In another matter, the Tribunal recommended, *inter alia*, that the respondent not be permitted to practise as a sole practitioner or in partnership, that he be permitted only to practise as a solicitor under the direct control and supervision of an approved solicitor, for the rest of his practising life as a solicitor, such practice to be limited to litigation practice, and that he pay €10,000 to the Compensation Fund. However, when the matter came before the President, he ordered, *inter alia*, that the name of the respondent be struck off the Roll of Solicitors and that he pay a sum of €10,000 to the Compensation Fund.

Chart 3:
Outcome of inquiries
held during 2009 (%)

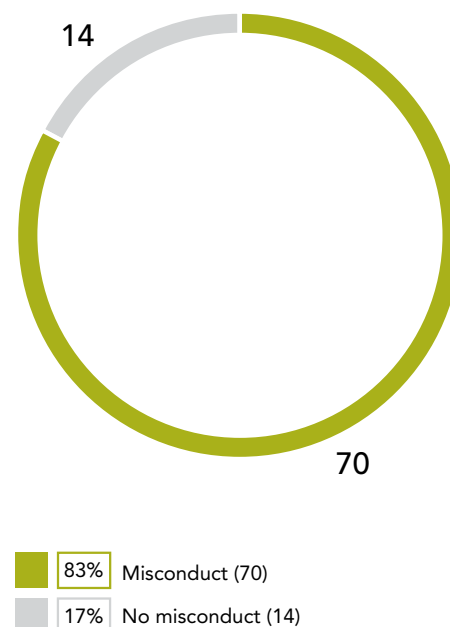


Chart 4:
Length of inquiries held during 2009 (%)

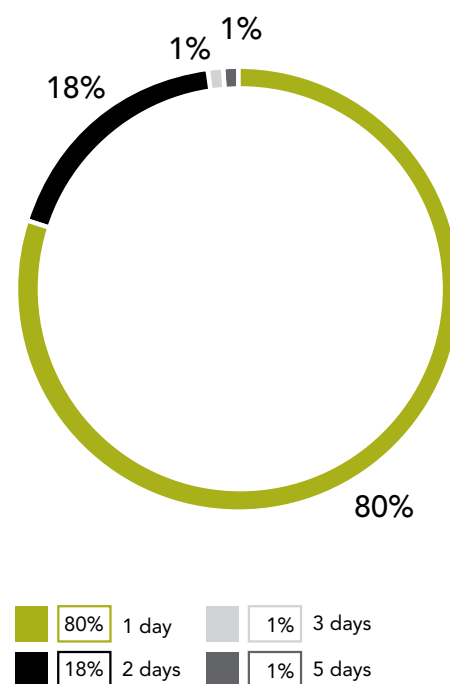
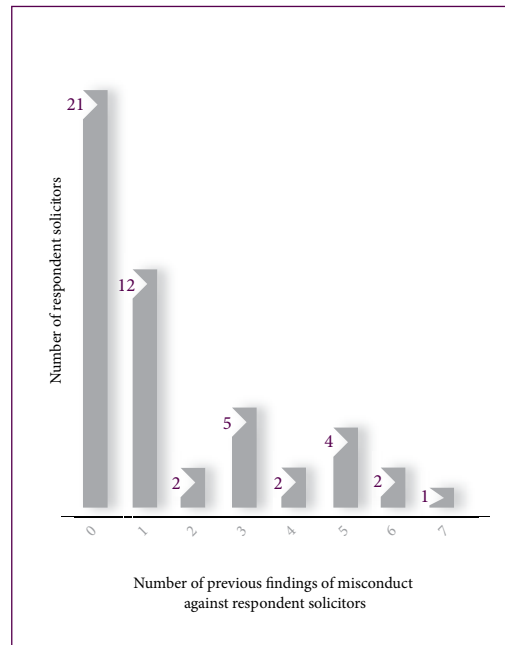


Chart 5:
Disciplinary history of respondents



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.

Judgments of the higher courts provide much useful guidance and support to the Tribunal in its endeavours to ensure that decisions of the Tribunal are made in a fair and appropriate manner.

During the year under review, in an appeal by the Law Society in respect of a High Court order made in 2008 that supported the severe recommendations of the Tribunal, the Law Society argued that the High Court should have used its discretion and struck the name of the respondent off the Roll of Solicitors. The Supreme Court, however, upheld the order of the High Court and was satisfied that the High Court had fully apprised itself of the facts of the case and had taken into account mitigating factors that were regarded as relevant considerations, such as:

- “1) The ultimate full admissions of the allegations of misconduct, with particular reference to the fact that these admissions were made a good deal earlier than the hearing before the Disciplinary Tribunal.
- 2) After the initial attempts to frustrate and deceive the Society, the respondents made a decision that they would thereafter cooperate with the investigation and they engaged the assistance of professionals so as to unravel the events which had preceded the discovery of the misconduct charges in 2003.
- 3) They complied with the request to provide interim financial security, which they did in the lodgement of €600,000.
- 4) They made full admissions to the Tribunal.
- 5) They owned up to their motive for indulging in the ‘very grave practices’, i.e. tax evasion, but in that regard they made a full settlement with the Revenue Commissioners. The judge was satisfied that they had become and remained tax compliant.
- 6) The judge’s belief that there was not any likelihood of a repetition of the events. He pointed out that Mr Carroll was about 57 or 58 and that Mr Colley was 51 or thereabouts. In this connection, the judge had been aware that Mr Carroll had resigned from practice some considerable time before the hearing. Mr Colley was continuing in practice.
- 7) What the judge regarded as ‘the most critical persuading fact’ in his decision was that ‘no monies have ever been found wanting in terms of the solicitors being unable to meet their liabilities. In other words, ‘clients were not left without funds.’ Furthermore, the judge went on to point out that, even though it was late in the day, barristers who were owed very substantial sums of money were paid and there was never

a worry that the Compensation Fund would have to be called upon. He noted that a sum of €600,000 was released back some years ago and made it clear that if there had been any shortfall in the fund he would have struck both solicitors off. But he was satisfied there was not."

The Supreme Court noted the test the High Court had used:

"That if this court were to impose by way of final order and sanction the recommendations of the Disciplinary Tribunal, would that be sufficient in terms of maintaining public confidence in the solicitors' profession as well as doing justice to the solicitors in question and also upholding the good name of the Law Society? I think on balance it would."

The Supreme Court further held that, in considering the question of striking the name of a solicitor off the Roll of Solicitors:

"It is clearly the law in this jurisdiction therefore that in considering the question of striking a solicitor off the roll, there must be put into the balance, among the other factions, any question of real potential injustice being caused to the solicitor in question" – (Colm Carroll and Henry Colley v Law Society of Ireland, reported 20 May 2009, Supreme Court).

In relation to appeals to the High Court in respect of decisions by the Tribunal that there was no *prima facie* case of misconduct on the part of the respondent for inquiry, three cases were dismissed and the decisions of the Tribunal affirmed. In another matter, the High Court dismissed the appeal for want of prosecution and for the non-appearance of the appellant at the hearing.

Three decisions in respect of appeals to the High Court are awaited.

The Supreme Court affirmed an order of the High Court, which upheld a finding of no misconduct made by the Tribunal.

It also ordered an applicant/appellant to pay to the respondent the costs of an appeal, when taxed and ascertained, in a case where the court upheld the order of the High Court, which in turn had affirmed the decision of the Tribunal that there was no *prima facie* case for inquiry.

An order of the High Court striking the name of a solicitor off the Roll of Solicitors has also been appealed to the Supreme Court in the period under review.

"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."

Undertakings

There is demonstrable cause for concern in regard to the giving of undertakings by solicitors where there were gross breaches of trust in respect of undertakings relating to property transactions given to lending institutions.

It is recognised by the profession that the system of undertakings is essential to the commercial life of lending institutions. It is a system that facilitates individual borrowers and clients and is of benefit to all until it is abused. In view of the nature of undertakings, it is vitally important when a solicitor gives an undertaking that he or she complies with it. The old saying that "your word is your bond" should be enforced and there should not be any wriggle-room in it. The Tribunal regards such failures as serious.

In one case, the Tribunal was of the opinion that the respondent's conduct was not only unbecoming of an officer of the court, but had also denigrated the solicitors' profession. The Tribunal regarded the gravity of the numerous allegations, all of which were admitted by the respondent, as self-evident. The respondent at all times had held herself out to be a practising solicitor, with the necessary professional indemnity insurance cover, who had been authorised to give undertakings to lending institutions. Furthermore, in that capacity, she engaged in a serial and sinister manner to falsely obtain monies from a lending institution.

In a further two applications, concerning the same respondent, the complaints before the Tribunal could be summarised as being matters where the respondent gave an undertaking in each case in the standard form to a mortgage company to take certain steps regarding the perfection of title, stamping and registering the deeds. This undertaking was given on behalf of clients, so that the clients would not have to go on bridging finance and could draw down the funds from the lending institution. The Tribunal found

that there had been misconduct on the part of the respondent in respect of the failure to comply in full and in a timely manner with the undertaking given to the lending institution on behalf of the client, despite multiple requests by and on behalf of the lending institution to comply with the undertaking – in particular, the respondent failed to comply with the terms of the undertaking that required the respondent "as soon as practicable" to stamp and register a mortgage deed/charge in favour of the lending institution and to lodge with it a duly stamped and registered mortgage deed and title documentation.

The Tribunal was of the opinion that the respondent was not a fit and proper person to be a member of the solicitors' profession and recommended in its report to the President of the High Court that the name of the respondent should be struck off the Roll of Solicitors and that the respondent make restitution to the former client, the borrower, for the losses (the extent of which had to be ascertained by the Law Society) that had been suffered.

In another case, the Tribunal found that the respondent had failed to comply with an undertaking to discharge a mortgage on premises and to furnish a partial discharge. During the course of the hearing, the Tribunal was told that the respondent was being sued on foot of the undertaking on which the lending company was seeking to rely. However, while counsel for the respondent pointed out that the undertaking was given by the client, as opposed to the respondent, the evidence was that the respondent gave the undertaking, after whatever sham transaction he was involved with. The respondent never received any release from that undertaking either from the client or his solicitors. The Tribunal's view was that he was in breach of his undertaking and it would be improper to seek to look beyond it.

The Tribunal was of the opinion that the respondent was not a fit person to be a



member of the solicitors' profession and that his name should be struck off the Roll of Solicitors, and this was so reported to the President of the High Court.

Solicitors Accounts Regulations

The Law Society relies on the veracity of the client account and the vouching documentation to ensure compliance with the *Solicitors Accounts Regulations*.

In one case, a respondent had over €300,000 of clients' moneys in the office account and, while it was accepted that he had rectified the situation, had he not been able to do so, that would have created a deficit. The respondent had engaged in a practice of using clients' moneys to effectively ensure a cash flow, where he did not have adequate overdraft facilities on his office account. The Tribunal noted the admissions made by the respondent and duly found him guilty of misconduct in that he lodged clients' moneys to the office account in breach of regulation 4; caused a deficit of approximately €300,000 on clients' accounts because of his failure to lodge clients' moneys to clients' accounts; wrote cheques on office accounts in payment of third-party outlays, but these cheques were not released for payment, so the amounts due on behalf of clients were not obvious from a review of the clients' ledger accounts; placed letters on clients' files that gave the impression that the amounts had been paid to various barristers, engineers, and so on, in breach of regulation 12; failed to keep proper books of account as required by regulation 12; failed to have the original of each paid cheque drawn on clients' account, in breach of regulation 20(f); and failed to have available copies of the balancing statements for the client account, in breach of regulation 12.

The Tribunal, in view of the submissions made by the Law Society and made on behalf of the respondent, indicated that it was not referring the matter to the High Court and instead made an order censuring the respondent, directing that he pay a sum of €15,000 to the Compensation

Fund and pay the whole of the Law Society's costs. The Tribunal, in deciding not to refer the matter to the High Court, took into account the clean report from the Law Society's investigating accountant. It also recommended to the Law Society that the respondent's practice be further investigated within two years.

“The Law Society relies on the veracity of the client account and the vouching documentation to ensure compliance with the Solicitors Accounts Regulations.”

In a separate case, an inquiry was adjourned to allow the respondent an opportunity to present specific proposals in relation to self-regulation and supervision that would carry adequate proximity, control and authority to satisfy both the Law Society and the Tribunal. However, despite the best efforts made, the respondent was not in a position to inform the Tribunal of any firm written proposals in that regard. Accordingly, the Tribunal was of the opinion that the matter should be referred to the President of the High Court. The Tribunal had, at the initial hearing of the matter, found the respondent guilty of misconduct when he admitted, *inter alia*, he had caused a deficit of €3,044 and a debit balance of €21,615.42 in the clients' ledgers; further, in the course of acting for clients in a purchase of properties, interest and penalty on the stamp duty were avoided because he “updated” the deeds (12) to a date close to when the deeds were submitted to the Revenue; delayed in completing stamping and registration; provided incorrect information to the Revenue Commissioners when he stated that the deed of transfer was sent to the Revenue on a specific date; and provided incorrect information to a lending institution when he informed the bank that 12 contracts had been executed in relation to a development being carried out by a client, who was a builder.

The Tribunal, in its report to the High Court, stated that it was of the opinion that the respondent should not be permitted to practise as a sole practitioner, that he be permitted only to practise as a solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society.

In another instance, the Tribunal considered that the respondent had shown an unreasonably coloured view of his regulatory body. There was an unquestionable refusal on the part of the respondent to reply at all or within a reasonable time and in a reasonable manner to correspondence issued by the Law Society. He had also displayed a haphazard attitude to his clients' funds and extreme vagueness as to billing for services rendered. Further, the evidence adduced left the Tribunal with grave concerns as to the ability of the respondent to recognise and comply with his professional responsibilities to his clients, his former clients, his colleagues and the Law Society.

The Tribunal had found that there had been misconduct on the part of the respondent in respect of his failure to vouch and account to his former clients for various disbursements made by him out of the proceeds of an arbitration award, the subject matter of complaint to the Society; without reasonable cause, failed to respond appropriately in a timely manner to the Society's correspondence; failed to attend a meeting of the Registrar's Committee, notwithstanding the undertaking given by his counsel to the President of the High Court that he would attend meetings of the Registrar's Committee; breached section 68(1) of the *Solicitors (Amendment) Act 1994* by failing to provide to his clients particulars in writing of his charges as prescribed by the section; received moneys being rents out of property owned by the complainants, failed to account to the complainants for these moneys and appropriated these moneys towards fees

without the knowledge, authority or consent of the complainants and without raising a bill of costs.

The cumulative effect of the findings of misconduct in this matter was of such gravity as to warrant a referral to the High Court with a recommendation that the respondent was not a fit person to be a member of the solicitors' profession and that his name should be struck off the Roll of Solicitors. The President of the High Court concurred with this recommendation and duly made an order striking the name of the respondent off the Roll of Solicitors.

Further, the failure of a respondent's reporting accountants to call attention, in writing, to the respondent and, more importantly, to the Law Society, in their annual accountants' reports, of the serious deficiencies in the respondent's accounting records, when they first became aware of same, was regarded by the Tribunal as a relevant factor in its consideration of a matter. The Tribunal noted it was not the Tribunal's function to adjudicate on the professional obligations of accountants as reporting accountants to the respondent, other than to observe that the Tribunal was aware of the provisions of the *Solicitors Accounts Regulations* in relation to the obligations imposed on reporting accountants, and that the respondent's accountants should have called attention to these deficiencies in their reporting accountants' reports to the Law Society.

In this case, the Tribunal noted, *inter alia*, that the respondent had acknowledged, in his own evidence to the Tribunal, that he had ultimate personal responsibility for the keeping of his accounting records; that he had consented to an order that the Law Society had made under section 59 of the *Solicitors (Amendment) Act 1994* (which is a power that the Law Society has to restrict the nature of a practising certificate issued to a solicitor) restricting the respondent's practising certificate to only practising as an assistant solicitor in the employment of another solicitor of at

least ten years' standing; that the overall circumstances of this case were that there was no deficit found in the respondent's client account; and that he had cooperated throughout in the detailed and lengthy investigation of his accounting records to establish the position.

The Tribunal found that there had been misconduct on the part of the respondent in that he had failed to maintain proper accounting records for his practice over a period of years, such that it was not possible to determine from his accounting records a true and accurate statement of client affairs. In addition, owing to the extent of the failure to maintain proper accounting records, it was not possible to prepare, with any degree of reliability, a true and accurate statement of client affairs without the completion of an independent forensic examination and that, even at the completion of the forensic examination, only a qualified statement of client affairs could be determined. Also, he had caused or allowed incorrect debit balances to arise on his client ledger accounts of, in or about, €2.4 million, which said debit balances arose due to persistent failures, namely deficient bookkeeping, inaccurate recording of transactions on client matter files, failures to create or monitor audit trails, and inadequate controls and reviews of the client ledgers and accounts.

In its report to the President of the High Court, the Tribunal recommended that the respondent should 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 approved solicitor of at least ten years' standing.

Conveyancing

Well-founded and basic matters of procedure, which were disregarded, gave rise to several complaints during the course of the year.

The Tribunal heard that the proceeds of a sale were handed over to the respondent

on the usual terms that he would hold on to the sale proceeds and not release them to his client until the respondent had procured title for the purchasers. The sale closed on that basis, and possession was given of the site and property to the purchasers. In the normal course of events, what should have happened was that the respondent should have procured the outstanding title documents, which in the main was a discharge of a charge that had been put on the property by the vendors in favour of the bank.

However, when that did not happen immediately in accordance with the undertaking, understanding and contractual obligation of the vendor and the respondent, the purchaser's solicitor started writing and telephoning the respondent. Regrettably, the respondent never once responded to any of these.

Consequently, the purchaser's solicitor, with reluctance, reported the matter to the Law Society, who then wrote to the respondent on a number of occasions. They failed to get an adequate response. The Tribunal recognised that the unfortunate victims in all of this, were, of course, the purchasers, who were been left without title to a property in which they were residing.

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 that he make restitution in such sum as the President may, in his discretion, think fit and that sum be paid to the purchasers.

In a case where, by reason of the cooperation of the respondent with the Law Society and the fact that he had paid all stamp duty interest and penalties to the Revenue and that he had put new systems in place to ensure that there would be no repetition of the matters that had resulted in the respondent coming before it, the Tribunal decided it was appropriate to make an order censuring the respondent, directing him to pay a sum of €15,000 to the Compensation

Fund. The Tribunal also urged the Law Society to inspect the respondent's practice in 12 months.

In another case, the respondent accepted that he should not be practising on his own account. The Tribunal had found him guilty of misconduct in that he had failed to pursue a tax rebate application to the Revenue Commissioners in respect of capital gains tax paid on the sale of the property of the complainant's father; failed to respond adequately to the complainant's correspondence, telephone calls and emails over a three-year period from 2005 to 2007; failed to comply with the directions of the Complaints and Client Relations Committee and to reply adequately to the Law Society's correspondence.

The Tribunal, in its report to the High Court, 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 approved solicitor, and that he make restitution to his client in the sum of €2,000 (the fee of his then solicitor).

Regulatory body

The Tribunal is always concerned with a solicitor's inability or unwillingness to deal with Law Society correspondence. The Tribunal takes a serious view of such failure. It is self-evident that such conduct makes the investigation of complaints by the regulatory body almost impossible. When this occurs, the Society cannot deal with the complaint and, in turn, they cannot satisfy or convince the complainant that the Law Society is in any way effective, or dealing with their complaint.

The Tribunal, in the course of a case heard during the year under review, stated that it was not prepared to tolerate solicitors not responding to the Law Society. Ten letters – ranging from 24 May to 22 October 2007 – went unanswered. It was

the Tribunal's view that such conduct throws the whole complaints and public relations systems into total disarray. The respondent compounded the situation by also ignoring a section 10 notice issued by the Law Society. Further, the respondent had a habit of ignoring the Law Society and, in a previous case, had ignored six letters. However, while the Tribunal had a mind to impose a more substantial fine, it took into consideration the respondent's health and the fact that he was working as an assistant solicitor, otherwise the fine would have been substantially more. The Tribunal made an order, *inter alia*, censuring the respondent and ordering him to pay a sum of €2,500 to the Compensation Fund.

In another case, the Tribunal found a respondent guilty of misconduct, in that she had failed to respond satisfactorily to the complainant's correspondence requesting a comprehensive statement of account, properly vouched, in respect of the disbursement of funds of in or around €86,620.09 received by her on behalf of a former client and had also failed to provide such a statement as directed by the Law Society. The Tribunal, having taken into account the respondent's previous disciplinary history, referred the respondent to the President of the High with a recommendation that her name be struck off the Roll of Solicitors.

Civil proceedings

A solicitor must at all times take instructions from his/her client and must at all times act in the best interests of that client. The Tribunal found that the failure of a respondent to take meaningful instructions from her client and the taking of decisions herself, without reference to her client, amounted to misconduct.

In this case, the Law Society contended that solicitors owe a duty to clients to seek their instructions at every stage of a process and that nothing should happen without procuring the client's instructions. It was also argued that the

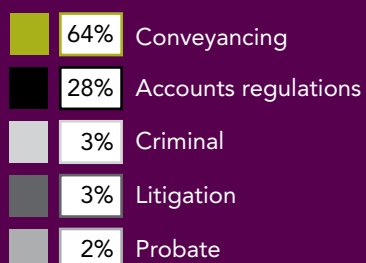
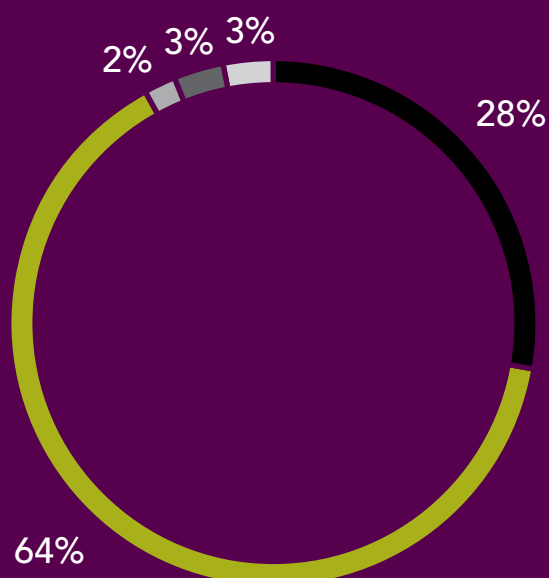
respondent was not entitled to reject an offer solely on the basis that her costs would not be discharged in full, without the client's instructions.

The Tribunal agreed with the submissions made by the Law Society and pronounced that the case was the client's and that it was only the client's position and well-being that must be considered; all the more so where the rights of an individual, threatened with deportation, were concerned. The Tribunal made an order, *inter alia*, censuring the respondent and ordering her to pay a sum of €2,500 to the Compensation Fund.

“The Tribunal is always concerned with a solicitor’s inability or unwillingness to deal with Law Society correspondence. The Tribunal takes a serious view of such failure. It is self-evident that such conduct makes the investigation of complaints by the regulatory body almost impossible. When this occurs, the Society cannot deal with the complaint and, in turn, they cannot satisfy or convince the complainant that the Law Society is in any way effective, or dealing with their complaint.”

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

*Chart 6:
Category of complaint out of which a finding of misconduct arose*





Administration of estates

- Failing in particular to respond appropriately and in a timely manner, or at all, to the complainant's correspondence and requests for information concerning the administration of her mother's estate and, in particular, the retention and disposal of moneys held by him out of the proceeds of the said estate on foot of an undertaking to the Revenue Commissioners to discharge capital acquisitions tax due by the beneficiaries of the estate;
 - Delaying in the administration of an estate;
 - Deducting fees in relation to the administration of the estate without the issue of a bill of costs at the time of the deduction and without advising the executrix that this deduction had been made.
- particular, allowing the sale to close without assuring that all the purchase moneys were in place and that the client had or would receive all the moneys due to him by the purchaser in consideration for the sale;
- Agreeing, without the instruction of the client (the complainant), that the purchaser would retain in or about €500,000 of the consideration for the site as repayment of a prior loan to the complainant, and thereby preferred the interests of another client to those of the complainant and committed a breach of trust, and conflict of interest;
 - Facilitating the sale of property to a third party by contract, against the wishes and without the knowledge of the client, thereby committing a breach of trust;
 - Failing to inform the client of the true identity of the purchasers and failing to adequately respond to the client's enquiries and misleading her as to the true identity of the purchaser of the property;

Civil claims

- Failing to issue proceedings on behalf of a client, notwithstanding having instructions to do so in 1997, and thereby allow the client's cases to become statute barred;
 - Failing to inform the client of the correct position regarding the case and leading the client to believe the matter was progressing when no proceedings had been issued at all;
 - Producing a misleading report on her actions on behalf of the client.
- Delaying in paying stamp duty in respect of a number of purchases and only paid same and interest and penalties when the matter was brought to the solicitor's attention;
 - Updating the transfer documents in respect of a number of purchases where there had been delay in paying stamp duty and to pay the correct stamp duty until such time as the matter was brought to the solicitor's attention following an investigation;

Conveyancing

- Not completing the necessary work in order that the client be registered as the legal owner of the property; charging fees for his services, yet the property remained registered in the name of the vendor;
- Acting for a developer and purchaser in a number of transactions, in breach of section 4(a) of the *Solicitors (Professional Practice Conduct and Discipline) Regulations 1997* (SI no 85/1997).
- Failing to take sufficient steps to protect the client's (the complainant's) interest in the sale of a site and, in

Regulatory body – Law Society of Ireland

- Failing to reply to correspondence from the Law Society in a timely manner or at all;
- Failing to pay an increased levy of €1,000 towards the Law Society's costs levied by the Complaints and Client Relations Committee against the respondent;
- Failing to comply with a direction of the Complaints and Client Relations Committee;
- Failing to comply with a notice issued pursuant to section 10 of the *Solicitors (Amendment) Act 1994* in a timely manner and failing to produce his file to the Law Society until compelled to do so by order of the High Court;
- Failing, up to the expiration of a stay of 21 days imposed by the Law Society, to provide a comprehensive statement of account, properly vouched, in respect of the disbursements of funds received by her on behalf of her former client to the complainant;
- Failing to attend at the Complaints and Client Relations Committee meeting, despite being requested to attend;
- Obstructing the Law Society's investigation of a complaint by failing to correspond with the Society;
- Failing to comply in full with the directions given by the Complaints and Client Relations Committee and, in particular, failing to comply with the direction of the committee that the respondent write to the complainant, and the other beneficiaries of the estate, advising them as to the up-to-date position in relation to the matters that were the subject of the complaint;
- Failing to comply in full with the directions given by the committee and, in particular, failing to comply with the

direction that he write, within three weeks, to the complainant and the other beneficiaries of the complainant's mother's estate, a full and detailed letter giving them a full account in relation to the matter and also advising them of the respondent's undertaking to the Law Society in relation to the fact that the beneficiaries would not be at a loss.

Practising certificates

- Failing to apply for a practising certificate by 1 February 2006;
- Breaching section 56(1) of the *Solicitors (Amendment) Act 1994* by continuing to practise as a solicitor while not qualified for the period from 1 January 2006 to 24 April 2006.

Solicitors Accounts Regulations

- Misappropriating client funds by improperly transferring moneys from the client account to the office account and, in particular, improperly transferring moneys from the client account to the office account in circumstances where he had failed to furnish fee notes and where there was no evidence of work done to justify the transfer of funds in respect of fees;
- Causing a deficit on clients' accounts because of his failure to lodge clients' moneys to clients' accounts;
- Writing cheques on office accounts in payment of third-party outlays, but these cheques were not released for payment, so the amounts due on behalf of clients were not obvious from a review of the clients' ledger accounts;
- Failing to keep proper books of account, in compliance with regulation 12 of the *Solicitors Accounts Regulations 2001*, that would show the true financial position in relation to each client and the monetary transactions of the client;

- Allowing material debit balances to arise on client ledger accounts;
- Failing to maintain a copy of the party-and-party bill of costs or the letter received enclosing the party-and-party costs cheque on the client's file;
- Causing transfers to be made between accounts in the clients' ledger without maintaining supporting documents to enable the transfers to be appropriately vouched, in breach of the *Solicitors Accounts Regulations*;
- Breaching regulation 21(1) of the *Solicitors Accounts Regulations* (SI no 421/2001) in failing to ensure that there was furnished to the Law Society an accountant's report in a timely manner or at all;
- Through the respondent's conduct, showing a disregard for statutory obligations to comply with the *Solicitors Accounts Regulations* and showing disregard for the Law Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

Other orders made by the Tribunal

The Tribunal made six 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*.

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Conclusion

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The Tribunal has, over the last two years, made recommendations to the President of the High Court that papers in three cases should be forwarded to the Director of Public Prosecutions. These are cases where there are serious allegations of fraud and misconduct. In each of these cases, the President has endorsed the Tribunal's recommendation and directed that the papers be furnished to the Director of Public Prosecutions.

The Tribunal is extremely disappointed that no action appears to have been taken in any of these cases. The papers furnished by the Law Society are usually prepared with the assistance of forensic accountants and particularise in detail, with the appropriate backup documents, the allegations of fraud. One would have thought that it would be relatively easy for the Director of Public Prosecutions Office and/or the Garda Síochána to take the matter from there. Many solicitors have approached me wondering how our American counterpart can investigate, prosecute, try, sentence and imprison individuals like Madoff in a relatively short period of time, while we seem to flounder in inactivity. It is unfair to the profession – which has paid out millions of euro because of the activities of a few – that these few are not being pursued by the appropriate authorities. In fact – ironically – it is also unfair on those who might well have transgressed the law and have to wait seemingly indefinitely for the law's long arm to be extended. Justice delayed is justice denied.

The year under review was another challenging year for the Tribunal and for solicitors in general. The workload of the Tribunal is now greater than ever. With the ever-changing landscape in which the legal profession operates, I do not see that changing in the near future.

It goes without saying that it is more important than ever to attend to clients' business and needs in a professional manner. Providing clients with up-to-date and relevant information in respect of their business is crucial. Solicitors must

ensure that the interests of their clients are at the centre of everything they do.

Solicitors must cooperate with the Law Society in order for it to be effective; otherwise, the public may lose confidence in the ability of the Society to police the profession. It is vitally important that solicitors reply and reply promptly to 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.

In conclusion, I would like to thank the members of the Tribunal for all their hard work and support throughout the year. Voluminous documents are read each year by members who generously give of their time and expertise to ensure that the work of the Tribunal is carried out in a professional manner.

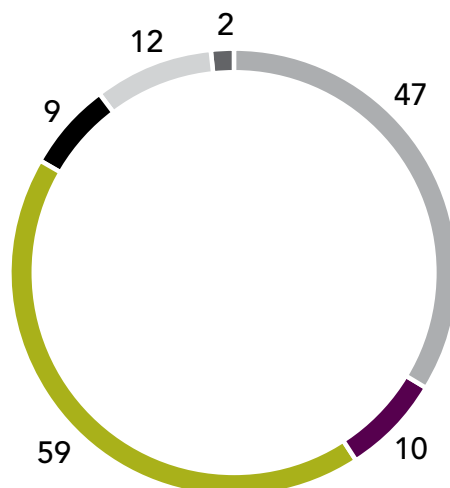
I would like to thank our retiring members, Caroline Caslin, Sean McClafferty, Margaret O'Shea and Fergus O'Tuama, who retired during the year, for their selfless contribution to the Tribunal. I would also like to thank our current lay members. The role of our lay members is extremely important to the work of the Tribunal, and their contributions are a vital and integral part of the working of the Tribunal. Their input into all the Tribunal's decisions is greatly valued.

Finally, I would like to express my thanks and appreciation to the Tribunal Registrar, Mary Lynch, the secretary to the Registrar, Monica Murray, and Barry Lennon, administrator, for all their hard work. The pressure is never ending on the Tribunal staff, and the workload increases every year – this year by approximately 14%.

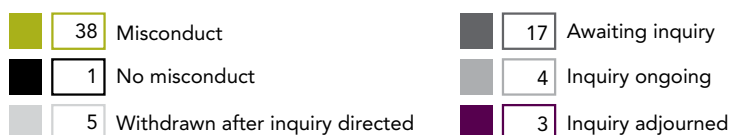
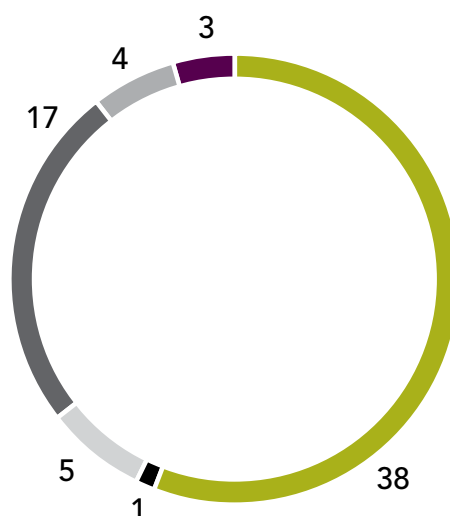
The smooth running of the Tribunal is a tribute to their tireless work and dedication, which is appreciated by all.

Francis D Daly,
Chairman

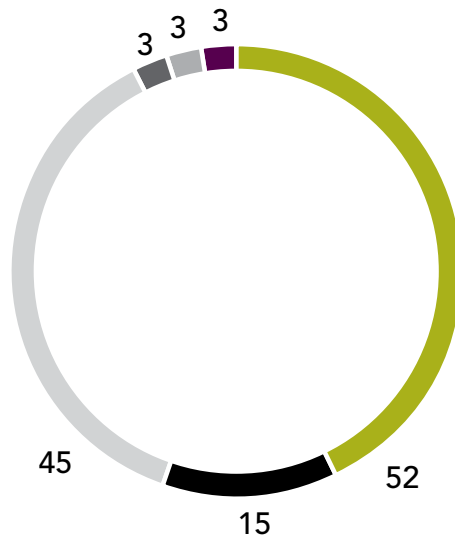
Status of all applications received in 2009: prior to inquiry



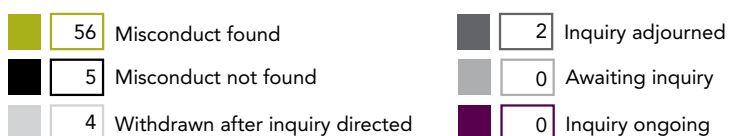
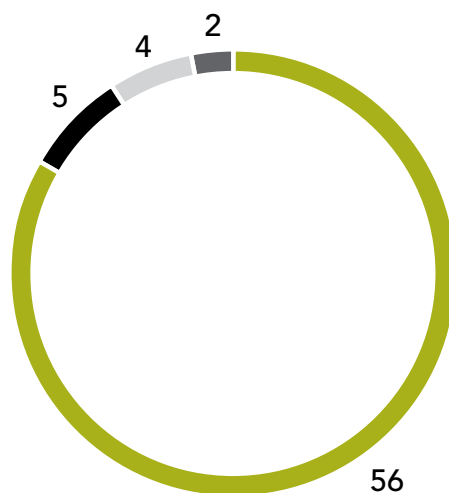
Status of all applications received in 2009: inquiry stage



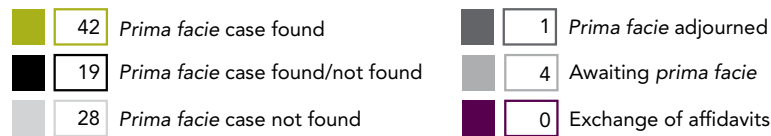
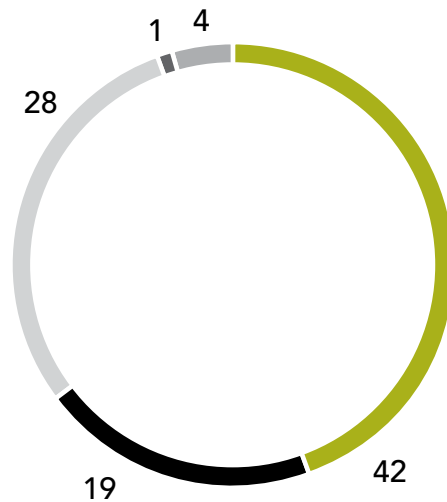
Status of all applications received in 2008: prior to inquiry



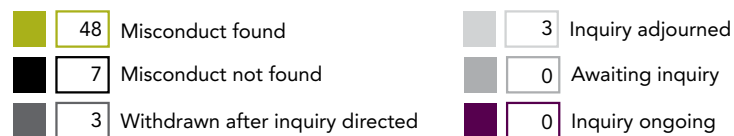
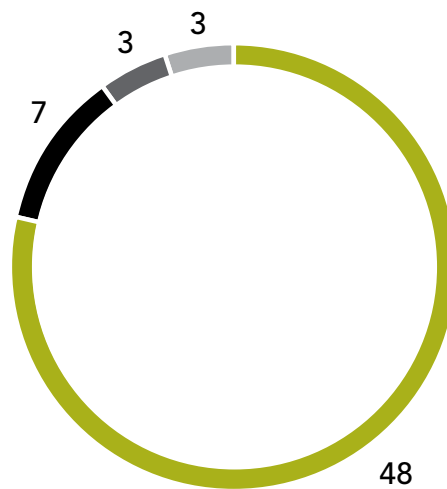
Status of all applications received in 2008: inquiry stage



Status of all applications received in 2007: prior to inquiry



Status of all applications received in 2007: inquiry stage

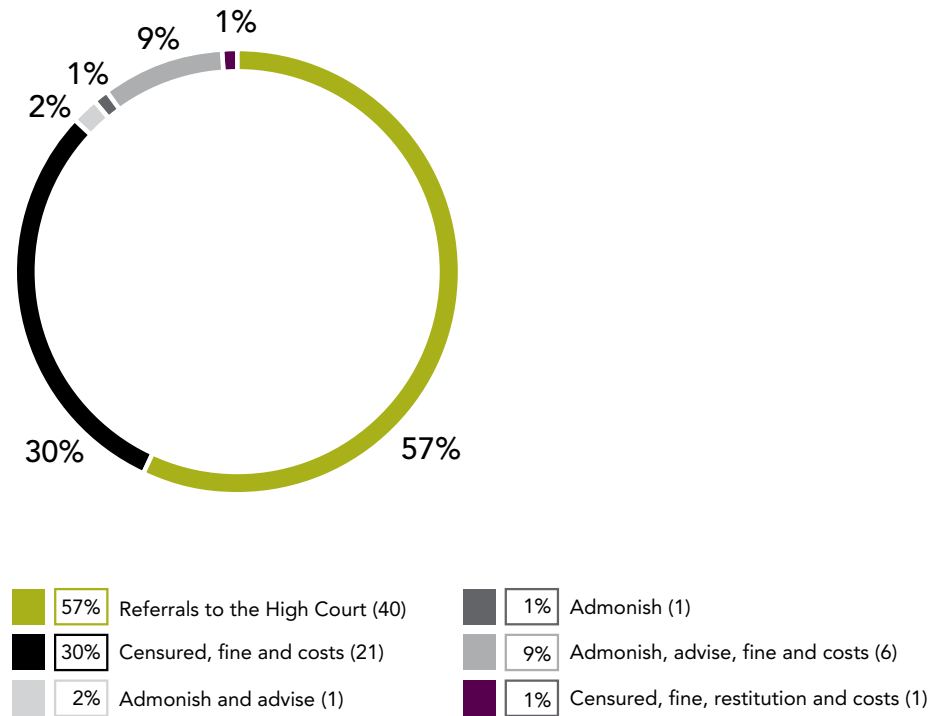


Solicitors Disciplinary Tribunal statistics as at 31 December 2009			
Status of applications	2009	2008	2007
Law Society of Ireland:	92	65	53
Others:	47	56	41
Total received	139	121	94
Prior to <i>prima facie</i> consideration			
Exchanging affidavits	47	0	0
Awaiting <i>prima facie</i> decision	10	3	0
<i>Prima facie</i> cases found	59	52	42
<i>Prima facie</i> cases rejected	12	45	28
<i>Prima facie</i> cases found/rejected	9	15	19
<i>Prima facie</i> decision adjourned	2	3	1
<i>Prima facie</i> application withdrawn	0	3	4
Inquiry stage			
Cases scheduled for inquiry	17	0	0
Misconduct found	38	56	48
Misconduct not found	1	5	7
Part-heard	7	2	3
Withdrawn	5	4	3

Applications received prior to 2007 dealt with in 2009			
Prior to <i>prima facie</i> consideration			
Exchanging affidavits			0
<i>Prima facie</i> cases rejected			0
Awaiting <i>prima facie</i> decision			0
<i>Prima facie</i> decision withdrawn			0
<i>Prima facie</i> decision adjourned			2
<i>Prima facie</i> cases found			0
<i>Prima facie</i> cases rejected			0
Hearings			
Misconduct found			2
Misconduct not found			8
Adjourned/part-heard			7
Withdrawn			0
Cases scheduled for inquiry			2

Penalties of the Tribunal during 2009 (%)

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*:



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	No of respondents	No of applications
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors; that the respondent pay restitution and costs; and that the papers be referred to the Director of Public Prosecutions.	1	1
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors, pay restitution and costs.	2	3
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors, pay restitution and costs.	1	1
The respondent is not a fit person to be a member of the solicitors' profession; that the name of the respondent be struck off the Roll of Solicitors, and costs.	7	9
The respondent is not a fit person to be a member of the solicitors' profession and that the name of the respondent be struck off the Roll of Solicitors.	3	5
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; censure, fine and costs.	1	2
The respondent not be permitted to practise as a sole practitioner, or in partnership; that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland; pay outstanding costs due to the Law Society pursuant to a previous order of the Tribunal; pay €750 plus VAT in respect of legal fees due to a colleague, and costs.	1	1
The respondent not be permitted to practise as a sole practitioner, or in partnership; that he be permitted to only 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, for the rest of his practising life, such practice to be limited to litigation practice; pay a fine of €10,000, and costs.	1	1

Recommendations of the Tribunal	No of respondents	No of applications
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 and that he pay restitution.	1	1
The respondent not be permitted to practise as a sole practitioner, or in partnership; that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland and that he pay the Law Society's costs.	4	11
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.	1	1
Noting the order of the President of the High Court striking the name of the respondent off the Roll of Solicitors, the Tribunal decided to entrust the issue of appropriate penalty to be imposed on the respondent to the President of the High Court, save that the Tribunal recommended that the respondent pay the whole of the costs of the Law Society, to be taxed by a taxing master of the High Court in default of agreement.	2	3
The respondent be censured; pay a sum of €5,000 to the Compensation Fund; pay restitution as the High Court shall deem fit and costs.	1	1

Appendix 5

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Orders of the High Court made on foot of recommendations of the Tribunal	No of respondents	No of applications
The name of the respondent be struck off the Roll of Solicitors and costs were awarded.	5	12
The name of the respondent be struck off the Roll of Solicitors; fined and costs.	3	3
The name of the respondent be struck off the Roll of Solicitors.	1	1
The respondent pay a monetary penalty to the Compensation Fund; 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. Costs were awarded.	1	1
The respondent not be permitted to practise as a sole practitioner, or in partnership; that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland; pay outstanding costs due to the Law Society pursuant to a previous order of the Tribunal; pay €750 plus VAT in respect of legal fees due to a colleague. Costs were awarded.	1	1
The respondent be censured; that she not be permitted to practise as a sole practitioner, or in partnership; that she be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society.	1	1
The respondent not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society. Costs were awarded.	2	4
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.	1	1
Case struck out. Costs awarded to the Law Society.	1	1

Solicitors Disciplinary Tribunal

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