



# DISCIPLINARY CODE FOR THE BAR OF IRELAND

Adopted by a General Meeting of the Bar of Ireland  
on Monday 5<sup>th</sup> July 2010

## **A. BARRISTERS' PROFESSIONAL CONDUCT TRIBUNAL:**

A1. Complaints of misconduct against barristers shall be investigated and adjudicated upon by a body to be known as the Barristers' Professional Conduct Tribunal ("the Tribunal") and, on appeal, by a body to be known as the Barristers' Professional Conduct Appeals Board ("the Appeals Board"). The Tribunal, and the Appeals Board, shall seek to ensure the existence of consistent, effective, fair and transparent complaint and appeal procedures and shall act in accordance with natural and constitutional justice.

A2. The said Tribunal shall be composed of nine members. Four of such members shall be practising barristers who shall be appointed by the Bar Council, but the Bar Council shall have discretion to appoint a non-practising barrister as a member. The other five members shall be non-lawyers, one of whom shall be nominated by the Irish Business and Employers Confederation, another shall be nominated by the Executive Council of the Irish Congress of Trade Unions, while the remainder shall be nominated by the Bar Council.. Any barrister member of the Tribunal who becomes a member of the Professional Practices Committee of the Bar Council shall cease forthwith to be a member of the Tribunal.

A3. Each member of the Tribunal shall hold office for a period of two years from the date of appointment. In the event of the death or resignation or other termination of the holding of office of a member of the Tribunal the power to nominate a new member, for the balance of the former member's term, to the Tribunal shall lie in the person or body who appointed the former member.

A4. The function of the Tribunal shall be to investigate allegations of misconduct made by any person or body against a barrister and to decide whether such barrister has been guilty of

misconduct constituting a breach of the Code of Conduct for the Bar of Ireland or constituting a breach of proper professional standards.

Where a complaint against a barrister is made by another barrister or a judge to the Bar Council, the Professional Practices Committee shall investigate the matter and shall take such and all steps, as it thinks fit, with a view to resolving to the satisfaction of the parties, the said complaint. The views of the Committee in carrying out this investigation shall not be binding on either party, and if unacceptable, recourse may be had to any other procedure provided for in this Code.

A5. There shall be a quorum of at least three members for each meeting of the Tribunal whether such meeting is for administrative purposes or for the hearing of a complaint. The Tribunal shall sit with a majority of non-lawyers and at least one member who is a barrister, (who shall act as Chairman of the meeting).

A6. The members of the Tribunal shall at the first meeting of the Tribunal elect a Chairman from among their number who shall be a barrister. A Secretary to the Tribunal shall be appointed by the Bar Council. In the event of the death or resignation or other termination of the holding of office of the Chairman, the members of the Tribunal shall at their next meeting following such death, resignation or other termination of office, similarly elect a new Chairman.

A7 In addition to appointing or nominating members of the Tribunal under paragraph A2, any person or body appointing or nominating a member may appoint or nominate two alternate members, either of whom shall be entitled to sit in place of a member appointed or nominated by that person or body, in the event of such member being unable to act for any reason.

A8. Decisions of the Tribunal shall be by a simple majority of the members present.

## **B. PROCEDURE:**

B1. A complaint of misconduct against a barrister shall be made on a complaint form as set out in Schedule One hereto. The Tribunal may postpone consideration of a complaint arising out of litigation continuing in the Courts, or for other good reason. A complaint may be re-submitted upon the cessation of the reason for its not being processed. The Secretary to the Tribunal shall communicate the fact of, and the reasons for, the non-processing of the complaint, to the complainant as soon as possible. Such communication shall be treated as a Decision for the purposes of Paragraph E1

B2 A copy of the complaint form shall be sent by the Secretary to the Tribunal to the barrister against whom an allegation of misconduct has been made, as soon as possible.

B3. A barrister shall have a period of fourteen working days from the date of receipt of the complaint form to reply to the said complaint. Such reply shall be made on a form as set out in

Schedule Two hereto. A copy of the reply shall be sent by the Secretary to the Tribunal, to the complainant, as soon as possible.

B4. The complainant shall state on the complaint form whether an oral hearing of the complaint is sought and also the reasons why such oral hearing is sought. The barrister shall in the reply state whether he seeks an oral hearing of the complaint and the reasons why such oral hearing is sought. The Tribunal shall be entitled to hold an oral hearing in regard to a complaint whether sought or not. The Tribunal shall decide in each case whether to hold such an oral hearing in respect of the complaint, or any part thereof, and there shall be no appeal from such Decision of the Tribunal.

B5. The Tribunal shall at any time be entitled to seek further information from either the complainant or the barrister. In the event of the complainant or the barrister refusing or failing to provide such further information within the time specified by the Tribunal, the Tribunal shall be entitled to make a Decision on the complaint, or to hold a hearing of the complaint in the absence of such further information. A copy of any such further information received by the Tribunal from either the complainant or the barrister shall be sent by the Secretary to the Tribunal to the other party, as soon as possible.

B6. The Tribunal shall be entitled to determine the procedures to be adopted by it in investigating and adjudicating upon any complaint. Such procedures shall be designed to ensure a fair hearing of the complaint and shall be in accordance with the rules of constitutional and natural justice. Either a complainant or a barrister may request that the Tribunal give priority to a particular complaint. The Secretary to the Tribunal shall communicate the fact of, and the reasons for, the granting or not granting of priority to the complainant and the barrister as soon as possible. Such communication may be treated as a Decision for the purposes of Paragraph E1.

B7. The Tribunal shall be entitled to reject a complaint where it finds that there is no basis for it. It may do so at any stage, including, without prejudice to the generality of the foregoing, prior to the communication of the complaint to the barrister concerned. However, in every case the Tribunal shall notify the barrister of such rejection. Where the Tribunal rejects, or declines to process a complaint, it shall nonetheless be entitled to refer the complaint to the Professional Practices Committee for its consideration.

B8. Either the complainant or the barrister shall be entitled to be legally represented. Unless the Tribunal in its absolute discretion decides otherwise, the cost of such representation shall be borne by the barrister and the complainant respectively. No costs shall be awarded by the Tribunal. The Bar Council shall make available such reasonable assistance from its secretariat to any counsel representing a complainant as the Tribunal may direct.

B9. All proceedings before the Tribunal shall be heard in private. The Secretary to the Tribunal shall notify in writing the Chairman of the Professional Practices Committee of all complaints

upon receipt of same. The Secretary to the Tribunal shall provide the Chairman of the Professional Practices Committee with such information relating to the complaint or any appeal and the progress thereof as the Chairman of the Professional Practices Committee may reasonably require from time to time. All documents connected with the proceedings, including (subject to paragraph C3 hereof) the Decision, shall be confidential as between the complainant, the barrister, the Tribunal and the Professional Practices Committee. The Tribunal shall be entitled to reject a complaint on the grounds that the complainant has breached the confidential nature of such proceedings. Breach of the confidential nature of such proceedings by a barrister shall constitute conduct contrary to proper professional standards.

B10. The Tribunal shall be entitled to adjourn the consideration of a complaint from time to time. Where an oral hearing of the complaint is adjourned, the same members of the Tribunal shall sit at the resumed hearing, including any hearing regarding a penalty, as sat at the initial hearing. Should the period in office of any member or members of the Tribunal expire or cease (including resignation or otherwise) when an oral hearing of a complaint has been commenced but not completed, notwithstanding any other provision of the Code such member shall continue to be a member of the Tribunal for the purpose only of completing the hearing of such complaint until such complaint has been completed.

B11. The Tribunal may request the attendance of any person to give evidence before it, irrespective of whether such person is produced as a witness by either party. The Tribunal may also request any person, whether witness or otherwise, to make available any documents or other evidence which it wishes to consider irrespective of whether either party request the production of such documents or evidence. Where the person to whom a request under this rule is made is a barrister, it shall be a matter of professional obligation upon such barrister to attend any hearing of the Tribunal, to give such evidence as the Tribunal may direct and to make available such documents or other evidence as the Tribunal may direct, subject only to such barrister's obligation of confidentiality to a client.

### **C. THE DECISION**

C1. Every complaint processed by the Tribunal shall be the subject matter of a Decision by the Tribunal. Every Decision of the Tribunal in regard to a complaint shall be in writing and shall be signed by at least one member of the Tribunal. A Decision of the Tribunal on the merits shall contain a summary of the complaint and the reply thereto and shall also contain a summary of any oral or written submissions or evidence considered by the Tribunal. A Decision shall also set out the findings of fact reached, and the reason for the Decision, together with any disciplinary measures that maybe imposed. If a complaint is upheld, the Tribunal shall, in stating the reasons for its Decision, specify whether the barrister has been guilty of a breach of the Code of Conduct or of a breach of proper professional standards.

C2. The Tribunal in its Decision shall either uphold or reject a complaint in whole or in part. If the facts of any complaint are accepted by the Tribunal but the complaint is rejected by reason of

incapacity, the Tribunal shall request the Bar Council to refer the matter to the Disciplinary Committee of the Benchers of the Honorable Society of King's Inns with a view to suspending the barrister unless and until appropriate medical opinion is produced that the barrister has the capacity to resume the rights and duties of a barrister.

C3. Any Decision of the Tribunal imposing one or more of the disciplinary measures provided in paragraphs D3 (e), (f), (g), (h), and (i) shall be published by the Tribunal on the Bar Council Website and in such other manner as it may think fit. The Decision shall remain confidential if it is the subject of any appeal to the Appeals Board, and may not be published before the expiry of the time for lodging an appeal. Notwithstanding any other provision of this Code, the Tribunal shall be entitled to make disclosure any of its Decisions, or any part thereof, in such manner as it may think fit. A Decision of any Tribunal shall state whether such Decision, or any part thereof, is to be disclosed and if so, in what manner it is to be disclosed.

#### **D. DISCIPLINARY MEASURES:**

D1. Where the Tribunal upholds a complaint, it shall give an adequate opportunity to both the complainant and the barrister to make representations to it as to the appropriate disciplinary measure to be imposed before reaching a Decision as to the nature of such disciplinary measure. Such representations shall be in writing and shall be furnished to the Tribunal within such time as may be set by the Tribunal. A copy of any representation made by the complainant as to the appropriate disciplinary measure shall be sent as soon as possible to the barrister by the Secretary to the Tribunal. A copy of any representation made by the barrister as to the appropriate disciplinary measure shall be sent to the complainant as soon as possible by the Secretary to the Tribunal. Where an oral hearing has been held in regard to a particular complaint, the Tribunal shall be entitled to exercise its discretion as to whether a further oral hearing should be held in regard to the question of the appropriate disciplinary measure to be imposed. The Tribunal shall be entitled to hold an oral hearing to decide the appropriate disciplinary measure to be imposed notwithstanding that the complaint giving rise to such disciplinary measure was determined without an oral hearing.

D2. The Tribunal shall be entitled to take into account, in deciding the appropriate disciplinary measure to be imposed in any case, the previous disciplinary record of a barrister as disclosed in the records of any previous disciplinary hearings maintained by the Tribunal.

D3. The Tribunal shall be entitled to impose one or a combination of the following disciplinary measures in a case in which it has upheld a complaint that a barrister has been guilty of conduct constituting a breach of the Code of Conduct or constituting a breach of proper professional standards:

- (a) Take no action save to record the result of the complaint;
- (b) Advise the barrister as to future conduct;

- (c) Require the barrister to attend on a nominated person to be given advice as to future conduct;
- (d) Require the barrister to complete a course of Continuing Professional Development to the satisfaction of the Tribunal at the barrister's own expense;
- (e) Require the Bar Council to remove the barrister from the list of Pupil Masters;
- (f) Admonish the barrister;
- (g) Impose a fine, the proceeds of such fine to be payable to the Bar Council;
- (h) Require repayment of specified fees by the barrister or to order the barrister to forego the payment to him of specified fees;

In a case in which the Tribunal imposes a fine or a requirement to repay fees, the Tribunal shall be entitled to specify the time within which the said fine is to be paid or repayment of fees is to take place, after which time the barrister, if in default, shall be suspended from membership of the Law Library until such fine is paid or such fees are repaid or, in the case of a non-member of the Law Library, the Tribunal shall require the Bar Council to prefer and present a complaint against the barrister to the Disciplinary Committee of the Benchers of the Honorable Society of King's Inns.

- (i) Suspend the barrister from membership of the Law Library or in the case of a non-member of the Law Library, require the Bar Council to prefer and present a complaint against the barrister to the Disciplinary Committee of the Benchers of the Honorable Society of King's Inns.
- (j) Require the Bar Council to prefer and present a complaint against the barrister to the Disciplinary Committee of the Benchers of the Honourable Society of King's Inns;

D4. The Tribunal shall be entitled to exercise its discretion whether to disclose any Decision, or any part thereof, in regard to a disciplinary measure to be imposed on a barrister whether the Decision, or any part thereof, in respect of the complaint which gave rise to the disciplinary measure has or has not been disclosed. A barrister in respect of whom a complaint has been dismissed shall be entitled to require that the fact that the complaint was dismissed shall be disclosed.

D5. Where a complaint is not upheld against a barrister the Tribunal will nonetheless have power to advise the barrister as to his conduct provided that in no circumstances should the fact be disclosed.

#### **E. APPEALS BOARD:**

E1. Save as otherwise provided herein, either the complainant or the barrister shall be entitled to appeal any Decision of the Tribunal to a body to be known as the Barristers Professional Conduct Appeals Board ("the Appeals Board").

E2. The Appeals Board shall be composed of five members. The Chairman shall be a retired Judge of the Superior Courts, who is not a practising barrister or solicitor and who shall be nominated by the Bar Council. One member shall be a practicing barrister of not less than twenty years standing who shall be nominated by the Bar Council. The other members shall be non-lawyers, two of whom shall be nominated by the Attorney General and one shall be nominated by the Chairman of the Bar Council. Each of the bodies or person nominating a member may also nominate two alternate members, either of whom may sit in the event that the member nominated by that body or person is unable to act.

E3. The members of the Appeals Board shall hold office for a period of two years from the date of their appointment. The remuneration and allowances for expenses, if any, of a member of an Appeal Board shall be such as may be determined by the Bar Council.

E4. The retired Judge appointed to the Appeals Board shall act as Chairman of the said Appeals Board. The Secretary of the Tribunal shall also act as Secretary of the Appeals board.

E5. Decisions of the Appeals Board shall be by a simple majority of the members.

#### **F. APPEALS BOARD PROCEDURE:**

F1. An appeal to the Appeals Board shall be in writing on an appeal form as set out in Schedule Three hereto. Such appeal form shall be lodged with the Appeals board within twenty one days from the date of the Decision which is the subject of the appeal.

F2. The appeal form shall state whether all or a portion of the original Decision is being appealed and shall, if appropriate, specify the portion of the Decision which is being appealed. The appeal form shall also set out the grounds upon which the Decision or a portion of the Decision is being appealed.

F3. A copy of the appeal form shall be sent as soon as possible to the other party by the Secretary to the Appeals Board. Such other party shall be entitled to lodge a reply to the said appeal within fourteen days of the receipt by him of the said appeal form. Such reply shall be on a form as set out in Schedule Four hereto. A copy of the said reply shall be sent as soon as possible to the appellant by the Secretary to the Appeals Board. If the respondent wishes to oppose the said appeal, the reply shall state the grounds upon which the appeal is opposed.

F4. The Appeals Board shall decide in regard to every appeal whether the appeal shall be heard by way of oral hearing, whether sought or not.

F5. The Appeals Board shall consider and decide appeals solely on the basis of the matter contained in the Decision of the Tribunal, any documents considered by the Tribunal and the grounds of appeals and reply lodged in respect of the appeal. In the case of any oral hearing of an

appeal, the Appeals Board shall also have regard to the oral submissions of the appellant and the respondent. The Appeals Board shall not be entitled to consider evidence which was not considered by the Tribunal unless in exceptional cases the Appeals board decides that consideration of such evidence is necessary to prevent a miscarriage of justice. The Appeals Board shall not consider any such new evidence unless it is satisfied that same was not available at the time of the hearing before the Tribunal. The procedures of the Appeals Board shall be designed to ensure a fair hearing of the Appeal and shall be in accordance with the rules of constitutional and natural justice. Either a complainant or a barrister may request that the Appeals Board give priority to a particular complaint. The Appeals Board shall communicate the fact of, and the reasons for, the granting or non – granting of priority to the complainant and the barrister as soon as possible.

F6. Either the appellant or the respondent shall be entitled to be legally represented, at their own expense, at an oral hearing before the Appeals Board.

F7. The Appeals Board shall have power either to allow or reject the appeal either in whole or in part and to vary the Decision of the Tribunal as necessary in accordance with the terms of its Decision. The Appeals Board shall have power to impose any disciplinary measure which could be imposed by the Tribunal. If the facts of any complaint are accepted by the Appeals Board but the complaint is rejected by reason of incapacity, the Appeals Board shall request the Bar Council to refer the matter to the Disciplinary Committee of the Benchers of the Honorable Society of King's Inns with a view to suspending the barrister unless and until appropriate medical opinion is produced that the barrister has the capacity to resume the rights and duties of a barrister. Further, the Appeals Board shall have power to refer the complaint back to the Tribunal to be re-heard by it in accordance with any directions of the Appeals Board.

F8. Save as is otherwise provided herein, the Appeals board in hearing an appeal shall have the same powers as are vested in the Tribunal while hearing a complaint at first instance.

F9. A Decision of the Appeals board shall be in writing and shall be signed by a member of the Appeals Board. Such Decision shall contain a summary of the submissions made by the appellant and the respondent, the matters considered by the Appeals Board and the reasons why the Appeals Board reached its Decision.

F10. Any Decision of the Appeals Board imposing a disciplinary measure as provided in paragraph D3 (e), (f), (g), (h), and (i), shall be published by the Appeals Board on the Bar Council Website and in such other manner as it may think fit. Notwithstanding any other provisions of this Code, the Appeals Board shall be entitled to disclose in such manner as it thinks proper either all or any part of any Decision of the Appeals Board. A Decision of the Appeals Board shall state whether all or part of the said Decision is to be disclosed and if appropriate shall specify how such Decision or part thereof is to be disclosed.

F11. No Decision of the Tribunal shall take effect until the time for lodging an appeal from the said Decision has expired. The lodgement of an appeal in respect of all or a part of the Decision of the Tribunal shall operate as a stay on the said Decision until the said appeal has been finally determine by the Appeals board. A barrister, in respect of whom an appeal has concluded that a complaint is unsustainable, shall be entitled to require that the fact to be disclosed.

F12. Where the outcome of an appeal is that the complaint against a barrister was not sustained the Tribunal will nonetheless have power to advise the barrister as to his conduct provided that in no circumstances should the fact be disclosed.

## **G. REGISTERED LAWYERS**

G1. Registered Lawyers shall be subject to this Disciplinary Code in respect of professional activities pursued by them in the State, and for this purpose references to a barrister in this Disciplinary Code are to be construed as including references to a registered lawyer, save were the context otherwise requires.

G2. The Bar Council shall: -

- (a) before disciplinary proceedings are initiated, inform the relevant authority in the home member state as soon as practicable and furnish it with all relevant details.
- (b) cooperate with it throughout the proceedings, and
- (c) inform it as soon as practicable of the outcome of the proceedings (including proceedings on any appeal) and of any sanction imposed and the reasons for it.

G3. The relevant authority in the home member state is entitled to make submissions at the hearing of any appeal against a Decision made by the Tribunal

G4. If, while a barrister is practising under the Directive in a member state, disciplinary proceedings are initiated under the Code or the Disciplinary Code in relation to the barrister, the Bar Council shall -

- (a) so inform the corresponding authority in that state as soon as practicable and furnish it with all relevant details, and
- (b) inform it as soon as practicable of the outcome of the proceedings (including proceedings on any appeal) and of any sanction imposed and the reasons for it.

G5. The Tribunal shall decide what action to take, in the light of any Decision of the corresponding authority in a member state concerning a barrister practising under the Directive therein.

#### **H. MISCELLANEOUS:**

H1. Both the Tribunal and the Appeals Board shall have power to extend or abridge the time for the lodgement of any document or the taking of any step before it. Prior to exercising such power, the Tribunal or the Appeals Board as the case may be shall give the parties an opportunity to make representations in writing in regard to the extension of time which is sought. The Secretary of the Tribunal shall as soon as possible send any such representation made by either party to the other party.

H2. Documents to be sent to any party to a complaint under the provisions of this Code shall be sent to that party by ordinary pre-paid post and shall be deemed to be received by that party no later than the second working day after the posting of the said document. Documents may be served in any other manner as the Tribunal or Appeals Board may decide.

H3. The Tribunal and the Appeals Board shall be entitled to consider and adjudicate upon a complaint or an appeal as the case may be notwithstanding that either party fails to make any representations in accordance with the provisions of this Code or fails to participate in any oral hearing in respect of such complaint or appeal.

#### **I. DEFINITIONS:**

I1. In this Code the following expressions shall have following meanings:

"Barrister": means a member of the Bar of Ireland

"Bar Council": means The General Council of the Bar of Ireland.

"Code of Conduct": means the Code of Conduct for the Bar of Ireland.

"Directive" means Directive No. 98/5EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained and includes -

(a) a measure which is in force by virtue of the entry into force of the Swiss Confederation Agreement, and

(b) the Decision of the EEA Joint Committee No. 85/2002 of 25 June 2002 amending Annex VII (Mutual Recognition of Professional Qualifications) to the EEA Agreement;

"Non-Lawyer": means a member of the Tribunal or Appeals Board who is not a qualified solicitor or barrister.

"Judge": means a Superior Court Judge.

"A Working Day": means a day on which the Courts are sitting in Term as defined in the Superior Court Rules.

"relevant authority in the home member state", in relation to a lawyer, means the authority in that member state with which the lawyer is registered;

I2. In this Code any word importing the masculine gender shall import the feminine gender and any word importing the singular shall import the plural, unless the contrary intention appears.

I3. Any other word or expression used both in this Disciplinary Code and in the Code of Conduct has, unless the contrary intention appears, the meaning that it has in the Code of Conduct.

5<sup>TH</sup> July 2010