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Solicitors' Disciplinary Hearings in Queensland 1930-2000: A Statistical Analysis

Abstract
This article reports on the results of a study undertaken by the author together with her research assistant, Heather Green. The study collected and analysed data from all disciplinary tribunal decisions heard in Queensland since 1930 in an attempt to provide empirical information which has previously been lacking.

This article will outline the main features of the disciplinary system in Queensland, describe the research methodology used in the present study and then report on some findings from the study. Reported findings include a profile of solicitors who have appeared before a disciplinary hearing, the types of matters which have attracted formal discipline and the types of orders made by the tribunal. Much of the data is then presented on a time scale so as to reveal any changes over time.

Keywords
discipline of solicitors, Queensland, disciplinary tribunal decisions

Cover Page Footnote
I would like to thank the Professional Standards Department of the Queensland Law Society, in particular Mr Keith Thompson, Director of Professional Standards, for his support of this project and Reid Mortensen and Richard Johnstone for detailed comments on an earlier draft. Expert statistical support was provided by Heather Green BSc (Hons).

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ARTICLES

SOLICITORS' DISCIPLINARY HEARINGS IN QUEENSLAND 1930-2000: A STATISTICAL ANALYSIS

By Linda Haller[*]

Introduction

For over 70 years there has existed a statutory framework to deal with the discipline of solicitors in Queensland. For the first 50 years that framework was altered in only minor ways, but in the past 16 years there have been extensive changes to the legislative framework on two occasions, with talk of further changes to come. In 1985 an office of Legal Ombudsman was created to oversee the disciplinary system.[1] The 1985 legislative amendments also created a second, lower level tribunal, the Solicitors Disciplinary Tribunal to hear less serious charges and also provided for the appointment of a lay member to that lower level tribunal. Other Australian States also made significant changes to their disciplinary structures in the late 1980s and early 1990s.[2] Further legislative changes were made to the disciplinary structure in Queensland in 1997,[3] disbanding both the Statutory Committee and the Solicitors Disciplinary Tribunal and replacing them with one tribunal, the Solicitors Complaints Tribunal. Less than two years later in 1999, there were further plans to restructure the disciplinary system. The State Government issued a Green Paper which proposed that the disciplinary tribunal come under more direct control of the Supreme Court with much less connection to the Law Society. The New South Wales government also made significant changes in 2000.[4]

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* Lecturer in Law, University of Queensland. I would like to thank the Professional Standards Department of the Queensland Law Society, in particular Mr Keith Thompson, Director of Professional Standards, for his support of this project and Reid Mortensen and Richard Johnstone for detailed comments on an earlier draft. Expert statistical support was provided by Heather Green BSc (Hons).

1 *Queensland Law Society Act Amendment Act 1985* (Qld). When first established, the Legal Ombudsman's office was referred to as the Lay Observer. Its name was changed and powers extended in 1997: *Queensland Law Society Legislation Amendment Act 1997* (Qld), ss 6AE-6AI.

2 *Legal Profession Act 1987* (NSW); *Legal Profession Practice (Amendment) Act 1989* (Vic); *Legal Practitioners Act 1981* (SA); *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992* (WA).

3 *Queensland Law Society Legislation Amendment Act 1997* (Qld).

4 *Legal Profession Amendment (Complaints and Discipline) Act 2000* (NSW); See also *Legal Practice Act 1996* (Vic).

Legislative changes both in Queensland and in many other Australian States were made in the late 1980s and again in the early 1990s without a full empirical investigation in to how the disciplinary systems in those States were already operating. Even now there have been only limited efforts to look at patterns in formal discipline over time. The current enquiry by the New South Wales Law Reform Commission does compare the rate and type of complaints lodged in the previous three year period,[5] and the annual reports of the various State Legal Ombudsman's offices do report the annual rate of complaints, disciplinary hearings and outcomes of hearings since the time of their establishment, but they have not collated equivalent data for the many years of discipline prior to their establishment. In addition, much of the data is presented in a piecemeal way. Individual instances of discipline are usually reported in a simple table, showing charge and outcome,[6] with only absolute numbers reported.

In addition to this piecemeal form of recording, the data reported to date only refers to rises and falls in the absolute number of complaints or disciplinary hearings, without taking account of changes in the size and profile of the legal profession. This form of reporting means that the data is only of limited usefulness.

Not only does this simple form of reporting mean that there has been only limited knowledge of how the disciplinary system has changed over time, if at all. It also means that legislative amendments have been made in the absence of empirical data and often on the basis of anecdotal information or general impressions of the system.

This article reports on the results of a study undertaken by the author together with her research assistant, Heather Green. The study collected and analysed data from all disciplinary tribunal decisions heard in Queensland since 1930 in an attempt to provide empirical information which has previously been lacking.

This article will outline the main features of the disciplinary system in Queensland, describe the research methodology used in the present study and then report on some findings from the study. Reported findings include a profile of solicitors who have appeared before a disciplinary hearing, the types of matters which have attracted formal discipline and the types of orders made by the tribunal. Much of the data is then presented on a time scale so as to reveal any changes over time.

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5 New South Wales Law Reform Commission, *Complaints Against Lawyers: Review of Part 10*, Issues Paper 18, NSW Law Reform Commission (2000) 21-23.

6 An example of this can be seen in the Annual Reports of the Office of the Legal Services Commissioner which merely lists the determinations of the Legal Services Tribunal.

SOLICITORS' DISCIPLINARY HEARINGS IN QUEENSLAND 1930-2000:
A STATISTICAL ANALYSIS

Disciplinary Framework in Queensland

The Supreme Court of Queensland has always held inherent jurisdiction to regulate the conduct of solicitors and barristers in Queensland. In 1927 this regulatory power was also given to the Queensland Law Society.[7]

The main features of the disciplinary system are discussed below.

Complaints

Any person who feels that a solicitor has engaged in 'malpractice, professional misconduct or unprofessional conduct or practice' may lodge a complaint to the Queensland Law Society.[8] Complaints can be lodged by any person. Although usually lodged by a client or former client of the solicitor,[9] other potential complainants include other solicitors, barristers or a third party such as an unrepresented party in court proceedings. Complaints must be in writing[10] and are handled by the Professional Standards Department of the society.

Investigations

Under the Act, the Law Society is not required to proactively seek out misconduct. However, if a written complaint is lodged, it must be investigated.[11] The Law Society can also choose to investigate a solicitor in the absence of any complaint[12] and can conduct random audits.[13]

Upon receipt of a written complaint, a copy is sent to the solicitor, asking for their response. Following the investigation of the complaint, the Professional Standards Department will dismiss the complaint if it is not substantiated. However, if that department does feel that the matter requires further action, it will prepare a

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7 *Queensland Law Society Act 1927* 18 Geo 5 no 14, s 5 (1)(a). The Supreme Court's powers remain intact: s 6AA *Queensland Law Society Act 1952* (Qld). However, the court has indicated that it would prefer most disciplinary matters to be dealt with pursuant to the statutory system: *Qld Law Society Inc v Smith* [2001] 1 Qd R 649.

8 s 5E.

9 Although figures on the source of complaints are not available for Queensland, in New South Wales nearly half of complaints are from clients and another 19% are filed by third parties: Professional Standards Department of the Law Society of New South Wales, *1999-2000 Annual Report*, 13.

10 s 5E(1).

11 s 5F(1).

12 s 5F(2).

13 Two hundred and seventeen (217) trust account audits were conducted by the Law Society in the 12 months ended 30 April 2000: Queensland Law Society, *72nd Annual Report 1999-2000*, 30.

report for the Professional Standards Committee of the Law Society. That Committee has a number of options available to it. It may:

- Dismiss the complaint;
- Recommend that formal charges be brought before the tribunal;
- Censure or admonish the solicitor itself; or
- Obtain undertakings from the solicitor itself.[14]

Alternatively, the Committee may recommend to the Law Society Council that formal charges be laid. Notice of charges is given to the solicitor charged, and to any complainant, containing particulars of the charges and requiring the solicitor to respond within 28 days.

Disciplinary Bodies

Until 1985, the only disciplinary tribunal operating in Queensland was the Statutory Committee. That committee comprised 5 members[15] nominated by the Council of the Law Society and appointed by the Governor in Council. All members were required to have been in practice in Queensland for at least 5 years.[16] It sat with at least three members.[17]

In 1985 a second, lower level disciplinary tribunal was added, the Solicitors Disciplinary Tribunal ('SDT').[18] This tribunal included nine solicitor members and three lay members, sitting with two solicitor members and one lay member.[19] The solicitor members were selected from a panel of 18 nominated by the Law Society.[20] A lay person was defined as a person who was not a practitioner nor a public servant.[21]

This tribunal had less power than the Statutory Committee. It could not strike off or suspend but could only fine up to $5,000.[22] The SDT was also encouraged to make a much wider range of orders than the Statutory Committee had done in the past, including attendance at continuing legal education programs, the filing of reports and inspections.[23]

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14 s 5J.
15 The number was increased in 1974 to 7 members: *Queensland Law Society Act Amendment Act 1974 (Qld)*, s 5.
16 s 6(1)(c), *Queensland Law Society Act 1952* (Qld), repealed
17 s 6(1)(d), *Queensland Law Society Act 1952* (Qld), repealed.
18 s 6A, inserted by *Queensland Law Society Act Amendment Act 1985 (Qld)*, s7, repealed by *Queensland Law Society Legislation Amendment Act 1997* (Qld), s 9.
19 s 6D(1).
20 They also needed to have been in practice in Queensland for at least 5 years: s 6A(2)(a).
21 s 6A(7), inserted by *Queensland Law Society Act Amendment Act 1985 (Qld)*, s 7.
22 s 6J, inserted by *Queensland Law Society Act Amendment Act 1985 (Qld)*, s 7.
23 Ibid.

No cases were referred to the lower level SDT by the Law Society after December 1994. In 1997 both the Solicitors Disciplinary Tribunal and the Statutory Committee were disbanded and replaced by one tribunal, the Solicitors Complaints Tribunal.[24]

The solicitor members of the Solicitors Complaints Tribunal are selected from a panel of 18 practitioners nominated by the Law Society Council.[25] Two practitioner members hear cases with one of three lay members. Lay members are nominated by the Minister for Justice and cannot be a lawyer, legally qualified or a member of the public service.[26]

Disciplinary Hearings

As a disciplinary tribunal, the Solicitors Complaints Tribunal must ensure procedural fairness.[27] Although disciplinary proceedings are neither criminal nor civil proceedings, the more serious the charges which a practitioner faces, the closer that the standard of proof must approach the criminal standard.[28] In addition, as a judicial body, the disciplinary tribunal is required to give reasons for its decision.[29]

Appeals

The practitioner, the Queensland Law Society, the Attorney-General and the Legal Ombudsman all have a right of appeal to the Court of Appeal.[30] The appeal is by way of rehearing[31] and must be lodged within 28 days.[32]

Dissatisfied Complainants

While dissatisfied complainants have no right of appeal, they can lodge a complaint with the Legal Ombudsman about the Law Society's handling of the complaint.[33]

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24 *Queensland Law Society Amendment Act 1997* (Qld).
25 s 6B(2)(b), *Queensland Law Society Act 1952* (Qld).
26 s 6B(3).
27 *Wentworth v New South Wales Bar Association* (1992) 176 CLR 239, as were its predecessors, the Statutory Committee and the Solicitors' Disciplinary Tribunal. This article uses the generic term 'tribunal' to refer to all disciplinary tribunals which have operated in Queensland, namely the Statutory Committee (1930-1998) the Solicitors' Disciplinary Tribunal (1987-1997) and the Solicitors' Complaints Tribunal (1998-) except where the context indicates otherwise.
28 *Adamson v Queeensland Law Society Inc* [1990] 1 Qd R 498 at 504-6 per Thomas J.
29 Ibid, at 508.
30 s 6Z(1),(6), *Queensland Law Society Act 1952* (Qld).
31 s 6Z(3).
32 Ibid.

Tip of the Iceberg

The data reported here does not tell the full story of solicitor misconduct nor of solicitor discipline in Queensland. The database has only recorded those matters which have come before a hearing of the disciplinary tribunal in Queensland. Only about 1.7% of written complaints received by the Law Society in the 1990's led to formal discipline.[34] There are many factors which limit the number of matters which come before a disciplinary hearing. A matter cannot proceed to a hearing unless it has first come to the attention of the investigative arm of the disciplinary system, in this case the Queensland Law Society. Usually this will occur when a client complains about the conduct of their solicitor. However, a client may not complain even though misconduct may have occurred. The client may not be aware of the misconduct, or may in fact benefit from the misconduct.[35] Similarly, the client may deal with the issue in another way,[36] may not be aware of the complaint procedure or may feel unable to pursue a complaint.

Even when a matter is brought to the attention of the Law Society through the lodging of a complaint, although its staff must investigate all *written* complaints,[37] the vast majority of complaints do not lead to the laying of formal charges of misconduct.[38]

Despite the narrow focus of the present study, much can be learned from the cases which have proceeded to a formal hearing and which form the basis of this study. These were the matters which the Law Society considered the most appropriate for formal discipline. It is these cases that will inform Queensland solicitors as to what conduct will be dealt with most severely. From the cases which were chosen for prosecution, we can glean much about the approach of the professional body to its role in regulating its members. We can also learn much about the approach of the various disciplinary tribunals: the Statutory Committee (1930-1997), the Solicitors Disciplinary Tribunal (1985-1997) and the Solicitors Complaints

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33 s 6AF(1)(b) *Queensland Law Society Act 1952* (Qld).

34 Figures for the number of complaints during earlier periods are not available.

35 Under s 50A of the Act, inserted in 1996, the Law Society must report any suspected offence, whether committed by a solicitor or any other person, to the proper authorities, such as the Commissioner of Police. Potential complainants are told of this in a prominent warning at the top of the pro-forma complaints form. This is likely to deter complaints from persons who were parties to illegal conduct by a solicitor.

36 A study by Tomasic found that those most likely to use lawyers, such as property owners and those in high status occupations, were most sceptical about using a law society complaints procedure to redress unsatisfactory service: R Tomasic, *Lawyers and the Community*, Law Foundation of New South Wales (1978) 133.

37 s 5F, *Queensland Law Society Act 1952* (Qld).

38 See Table 2 for the rate of hearings to the rate of written complaints and number of practitioners.

Tribunal (1997-) from the way in which they disposed of those cases which came before them.

Research Methodology

Data Set

The dataset of interest was all professional disciplinary proceedings against solicitors in Queensland from inception in 1930 to 30 April 2000.[39] During this time, the professional disciplinary bodies brought charges in 473 matters. Matters were excluded if records were missing (20 matters) or the individual involved was not a solicitor (11 matters). One hearing assigned a single number by the Statutory Committee was entered as four separate cases for this study to record the four different solicitors involved. The total number of cases analysed was 450.

Of the 11 cases excluded because they were brought against non-solicitors, 5 cases involved non lawyer employees,[40] 2 involved conveyancers, and 1 involved a barrister.[41] Three cases were brought against individuals whose professional status could not be ascertained from existing records and these 3 cases were therefore excluded from analysis.

Structure of Database

Data were entered into the statistical program, Statistical Package for the Social Sciences (SPSS 9.0) by the author and research assistant working together. There was one line per case. Each case represented one hearing of charges against one solicitor. Variables entered in the database are contained in Appendix 1 and were developed from several sources, including material supplied by the Queensland and New South Wales Law Societies on their methods of statistical analysis and a study of disciplinary proceedings against solicitors in Canada.[42]

The database was structured to preserve details at data collection and to allow information to be combined later for ease of interpretation. Charges were recorded by numbering charges in the order they were listed and by assigning a

39 This date was chosen because it is the final day of the Law Society Year 2000, being 70 years from when the statutory system of discipline commenced.

40 Under the legislation, the tribunal has power to deal with non-lawyer employees: s5F (2)(b). These were excluded from analyses because these employees are not members of the legal profession, which was the focus of the research.

41 The cases involving conveyancers and the barrister occurred during a period when the legal profession in Queensland was fused. They were excluded from analysis, again, because the research focused on self-regulation of solicitors by solicitors.

42 BL Arnold, *A Life Course Dynamics Approach to Professional Deviance and Self-Regulation: The Case of Ontario Lawyers*, PhD thesis, University of Toronto, (1991)

code of 1-81 for the type of charge.[43] It was decided to limit the number of charges individually coded to the first 35 charges per case, and to separately record the total number of charges. The finding of guilt or otherwise was coded separately for each charge, in the same order that the charges were listed. Sometimes charges were expressed in the findings and orders with alternative wording to that used in the initial charges, or were formally amended during the hearing. In these cases, the charges were coded to be consistent with the charges as they were finally expressed in the findings, and not with the charges as originally worded by the Law Society.

Data Collection Procedure

Data for analysis came from Queensland Law Society archives. Case records were available in up to three hard copy formats at the Law Society. The preferred format was the Findings and Orders that the Law Society had recorded for the hearing as these were on the public record. The *Queensland Law Society Act 1952* (Qld) requires that a copy of the findings and orders made by the tribunal be filed with the Supreme Court of Queensland.[44] The findings and orders therefore form part of the public record and are available for public inspection.[45] The legislation contains very strict confidentiality requirements: any information is considered confidential if acquired by reason of a person's employment or office.[46] Working from the public record ensured that the research complied with the confidentiality provisions of the legislation.

Where findings and orders were not available, records were entered from a transcript of the hearing or a summary entered in a ledger for older cases. Of the cases analysed, 244 were from Findings and Orders, 202 from summaries and 4 from transcripts. Rather than risk any breach of the confidentiality provisions of the Act, the staff of the Professional Standards Department of the Queensland Law Society agreed to collate additional data regarding individual practitioners which was missing from the findings and orders. In most cases this related to the practitioners' dates of birth, dates of admission and details about the type of practice of the practitioner at the time of the disciplinary proceedings. This retrieved data was matched by case number to ensure accuracy.

Statistical Analysis

For several analyses, variables were grouped and recoded, as described below.

43 see Appendix 2.
44 s 6W, formerly s 5(3)(b).
45 s 6X.
46 s 50.

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Recoding of Charges

The 81 individual charge types were collated into 10 categories of charges, as shown in Appendix 2. New variables were computed to note whether the case had any instances that were found proved, for each charge type and charge category.

Recoding of Penalties

In the majority of cases, the tribunal chose between orders to strike off, suspend or fine the practitioner. In addition, the tribunal normally made an order in relation to the costs of the hearing. Whilst penalties such as strike off and suspension were naturally mutually exclusive, that is, a practitioner could not be simultaneously struck off and suspended, other penalties were not naturally mutually exclusive. For instance, a practitioner could be suspended and ordered to pay a fine.

Much of the analysis was concerned with the main penalty which was imposed by the tribunal so that clearer comparisons of severity of sanctions could be made. For these analyses, a new variable, "penalty", was created that had mutually exclusive categories of penalties in a hierarchical order. The use of this hierarchy when mutual exclusivity was imposed upon the data would mean, for example, that a practitioner who was fined and ordered to submit reports would be coded as 'fined', not coded under 'rehabilitative order'. This categorisation of penalties is shown in Appendix 3. It was thought that this was a valid hierarchy for comparison of penalties for much of the analysis, particularly to answer any queries about whether penalties were becoming more or less severe over time. It would be generally agreed that a strike off is the most severe sanction that could be imposed by the tribunal. Traditionally, a suspension would be considered the next harshest and fines the least harsh of these three main sanctions, although it could be the case that, at least in a strictly economic sense, a three month suspension could be less severe than a $50,000 fine.

The study was also interested in the degree to which the tribunal utilised more restorative and rehabilitative orders, such as orders to compensate complainants, or to undertake education or counselling, in addition to suspending or fining a practitioner. For such analyses, no mutually exclusive hierarchy of orders was imposed.

Recoding of Date Information

In cases for which the date of hearing was missing, the missing value was estimated. Cases were sorted by case number and SPSS's Replace Missing Values procedure was used to give a linear interpolation of the missing dates. Six cases had their hearing dates estimated in this manner.

Using the known or estimated hearing date, cases were categorised by year to be consistent with annual figures reported by the Queensland Law Society. The Law

Society reports collate 12-month periods ending 30 April each year. For example, cases that had a value of 1997 for 'Law Society Year' were those heard between 1 May 1996 and 30 April 1997. A case heard on 1 June 1997 would have a value of 1998 for the Law Society year because it would be included in the Law Society's report produced in 1998. The annual report, in addition to reporting on the number of disciplinary hearings held in the previous 12 months, also includes information on the number of practitioners in Queensland, the number of trust account audits conducted by the Law Society, the number of written complaints against practitioners received by the society, the number of investigations referred to the Professional Standards Committee, the number of censures issued by that committee, and the expenses incurred by the disciplinary system.

Unfortunately, the Legal Ombudsman's Office in Queensland does not use the same 12 month reporting period as the Law Society but instead reports the number of complaints, investigations and tribunal hearings for the period 1 July to 30 June. However, it was decided to parallel the Law Society year ending on the 30 April because it was with data from this body rather than from the Ombudsman's office that most comparison was to be undertaken. This system was also adopted to allow cross-checking with figures previously published by the Law Society to ensure that all relevant cases were included.

Data were also categorised by decades. Decades were groupings of 10 Law Society years. For example, the 1930s period included cases heard between 1 May 1930 and 30 April 1940. This corresponded to the Law Society years, 1931-1940. A further time analysis was done to examine comparable time periods before and after the introduction of a Legal Ombudsman. Although this legislation came into force on the 20 December 1985, it took several months to establish the office and appoint an Ombudsman. Therefore, for the analysis of data, it was decided to choose 1 May 1986 as the effective implementation date of the Ombudsman's office. This had the advantage of corresponding with the commencement of the next Law Society year and thus again allowed for the cross-checking of figures. Data were compared for equivalent time periods (14 years) before (1973-1986) and after (1987-2000) the creation of the Ombudsman's office.

The number of cases heard by the tribunal in any one year was considered too small to justify analysis on a yearly basis. However, it was considered important to examine changes over time, to determine whether or not there were changes to the practices of the tribunal as a result of legislative changes, appellate court decisions or other external influences. For this purpose, an analysis by decades was considered an unduly long period of time for some analyses. In addition, the 1985 amendments occurred in the middle of the decade 1981-1990. Five year periods were therefore considered appropriate for much of the analysis.

Analysis of Repeat Appearances

When one individual appeared before the tribunal on more than one occasion, there was potential to over-report the number of practitioners prosecuted for alleged misconduct. In keeping with the standard statistical reporting procedures of the Queensland Law Society and similar bodies, most analyses treated each hearing as an individual case, regardless of whether or not the practitioner had appeared on previous occasions. However, for analyses of the *characteristics* of individual practitioners, such as their age, type of practice, or place of practice, practitioners were included only if it was their first hearing before the tribunal. Analysis of disciplinary proceedings for repeat offenders was conducted by tracking repeat hearings for the same individual. Three categories of practitioners were compared: those with 0, 1 and 2 or more previous findings of professional misconduct or unprofessional conduct. This allowed the database to be used to compare how repeat 'offenders' are treated in subsequent appearances before the disciplinary tribunal.

Results

Number of Hearings

The tribunal heard many cases in the first 10 years of its existence, but in the period 1940-1969 heard much fewer, as Table 1 shows.

Table 1
Number of Disciplinary Hearings in Each Decade 1930-2000

Decade	Number of Disciplinary Hearings
1930-1939	67
1940-1949	31
1950-1959	34
1960-1969	37
1970-1979	56
1980-1989	95
1990-1999[47]	130

When account is taken of the number of solicitors in practice, the rate of formal discipline has declined over the period of the study, as shown in the following table.

47 The cut off date for this period is in fact 30 April 2000 so as to equate with Law Society years.

Table 2
Rate Of Hearings To Number Of Practising Certificates

Decade	Hearings	Practising Certificates	Average / Ref Year[48]	Ratio: Hearings to Prac Cert.
30	67	457	1939	0.15
40	31	444	1949	0.07
50	34	543	1959	0.06
60	37	815	average	0.05
70	56	1517	average	0.04
80	95	3386	average	0.03
90	130	4560	average	0.03

These results show that, whilst the absolute number of disciplinary hearings has increased over time, the rate of formal discipline has decreased as a proportion of the number of solicitors in practice.

Rate Of Hearings To Rate Of Complaints

Only 130 of the 7442 written complaints received by the Law Society in the 1990's[49] proceeded to a hearing. This equates to 1.7% of written complaints. Because no record has been kept of the number of complaints received in the 1930's through to the mid 1980's, it is impossible to determine if there has been any variation in the rate of disciplinary hearings to the rate of complaints over that period.

One obvious explanation for the reduced rate of disciplinary hearings as a proportion of the number of solicitors in practice is that solicitors have attracted fewer complaints in recent times.[50]

Table 3 shows the rate of complaints and 'miscellaneous enquiries' received by the Queensland Law Society for the years 1984 and 1987 to 2000, the only years available.

48 Where not all years were available to calculate an average, the number of practising certificates has been taken from the reference year shown.

49 1 May 1990- 30 April 2000, which corresponds to Law Society Years 1991-2000.

50 It is not only complaints which can generate disciplinary hearings. Matters may be referred by the courts. In addition, the Queensland Law Society conducts random audits which can also lead to disciplinary hearings in the absence of a written complaint. Given the strict confidentiality provisions under s 50 *Queensland Law Society Act 1952* (Qld), it has not been possible to identify the source of each investigation which led to a disciplinary hearing, ie whether it arose from a complaint, audit or other referral. However, other studies have shown that the vast majority of the hearings do arise from complaints.

Table 3
Rate of Complaints as a Proportion of Number of Practising Certificates[51]

Year	Prac Cert (PC)	Complaints (C)	Misc Enquiries	Rate: C to PC
1984	2081	487	4367[52]	0.23
1987	2668	351	Not available	0.13
1988	2851	331	452	0.12
1989	3112	425	511	0.14
1990	3386	521	558	0.15
1991	3626	566	737	0.16
1992	4146	1003	460	0.24
1993	4179	969	369	0.23
1994	4505	721	522	0.16
1995	4731	740	Not available	0.16
1996	4785	640	879	0.13
1997	4697	624	857	0.13
1998	4816	675	776	0.14
1999	5056	753	665	0.15
2000	5300	751	702	0.14

The table shows a fluctuation in the rate of written complaints from year to year. For the years in which the number of complaints have been reported, the rate of written complaints reached a peak in 1992, with a rate equivalent to 24% of solicitors receiving a written complaint about them.[53] A high rate of written complaints also occurred in 1984 and 1993. There appears to have been a general downward trend in the rate of complaints since 1993, but, with such limited data on the number of complaints over earlier years (1930-1986), it is not possible to determine whether or not the lower rate of disciplinary hearings per number of solicitors in practice in the 1980's and 1990's was a result of fewer written complaints received.

It is also possible that the number of disciplinary hearings per number of practising certificates has been dropping because the Law Society has dealt with complaints in ways other than formal discipline, for instance through the

51 Queensland Law Society Annual Reports, 1984-2000.

52 This is such a high figure that it would suggest that it includes telephone calls not included in the law society's later definition of 'miscellaneous enquiries'.

53 The number of individual solicitors who attract complaints is not as high as this statistic would first suggest because some firms attract multiple complaints. In his June 2000 Annual Report, the Legal Ombudsman reported that one firm had 15 complaints against it and another firm had 11 complaints: *Legal Ombudsman 13th Annual Report July 1999-June 2000*, Legal Ombudsman, Brisbane, (2000) 6.

mediation of complaints or through informal discipline by the Professional Standards Committee. However, the fact remains that the rate of formal discipline has been declining over time.

Sex

The overwhelming majority of practitioners appearing before the tribunal were male. In the 70 year period of the study, only 11 female practitioners faced a disciplinary hearing. This comprised only 2% of solicitors appearing before the tribunal. The first of these women did not appear until the 1980s,[54] even though by then women represented 15% of solicitors in practice in Queensland.[55] By the year 2000, the end of the period of the study, women comprised 27% of solicitors in practice[56] and yet during the 1990s they represented only 8 of the 130 cases heard (6%).

Why do so few female solicitors face formal discipline? While it is beyond the ambit of this article to attempt any comprehensive explanation, some preliminary points can be made. While no figures are available for Queensland, figures from New South Wales would suggest that female practitioners attract fewer written complaints than their male counterparts.[57] In addition, a Canadian study has suggested that, even when accused of misconduct, a female lawyer is less likely to face disciplinary charges.[58] Clearly, further research needs to be undertaken to examine why women are under-represented in formal discipline.

Age and Experience

The average age of those who appeared was 40.[59] This is only slightly younger than the average age of solicitors in Queensland in 2000, when the average age was 41.[60] However, it is generally accepted that the median age of solicitors has

54 Case 239, 22 Jul 1981.

55 H Gregory, *The Queensland Law Society Inc 1928-1988*, Queensland Law Society, (1991) 150. The 1984 Annual Report of the Queensland Law Society records that of the 2081 practising certificates issued, only 179 of these were issued to female solicitors, a percentage of 8.6%.

56 Queensland Law Society *72nd Annual Report 1999-2000*, 23.

57 Professional Standards Department of the Law Society of New South Wales, above n 9, 15.

58 Arnold, above n 42, 73.

59 Median years of experience was 11 years. The date of birth and date of admission was only retrieved for cases since 1977. This information did not usually appear in the Findings and Orders of the disciplinary tribunal. It is therefore not part of the public record and was therefore retrieved with the co-operation of the staff of the Professional Standards Department so as to comply with the confidentiality provisions of s 50 *Queensland Law Society Act 1952* (Qld).

60 Figure collated from table in Queensland Law Society *72nd Annual Report 1999-2000*, 24.

been dropping,[61] hence it may be that the median age of all solicitors over the period of study would be greater than 41, suggesting that younger solicitors were over-represented in disciplinary hearings over the period of study.

However, it is not simply young and inexperienced solicitors who are more likely to face disciplinary proceedings: the average number of years of experience of those facing a disciplinary hearing was 14 years. This finding tallies closely with the results of a Canadian survey which found that the average years of experience of lawyers in the Ontario professional disciplinary process was 13.9 years in practice.[62]

This result is not surprising given that solicitors are more likely to be closely supervised and willing to seek guidance and advice in their first few years of practice. However, by the time that they have been in practice for about 14 years, they are likely to be operating much more independently. They are also perhaps more willing to take risks than in their earlier years of practice.

Geographical Catchment Area

Most of those who came before the tribunal practised in the Brisbane CBD (41%). This tallies closely with the concentration of solicitors in the CBD at the end of the period of study (2000), when 40% of Queensland solicitors were practising in the Brisbane CBD.[63] It may be quite misleading to only compare the areas of Queensland which are most prominent in disciplinary hearings with the geographical distribution of solicitors in these later years, given that there is likely to have been significant shifts in concentrations of lawyers over the period of study.[64] In 1992, the percentage of solicitors practising in the CBD was higher, comprising 46% of practitioners.[65] It could be that the legal profession in Queensland is now more decentralised than in earlier times. If in fact this is the case and the percentage of solicitors practising in the CBD for the full period 1930-2000 was higher than its current rate, then this would confirm that city solicitors have been under-represented in disciplinary proceedings in Queensland.

Thirteen percent (13%) of practitioners who appeared before the tribunal came from the suburbs of Brisbane, where 17% of solicitors practised in the year 2000.[66] Other significant catchment areas were the Gold Coast (12% of disciplinary

61 J Disney, P Redmond, J Basten and S Ross, *Lawyers*, (2nd ed, 1986) 50; Gregory, above n 55, 144.
62 Arnold, above n 42, 60.
63 Queensland Law Society, *72nd Annual Report 1999-2000*, 24.
64 Disney et al above n 61, 53; Gregory, above n 55, 147.
65 Queensland Law Society, 'The Q and A of PI Insurance', (1992) March *Proctor* 11, 13.
66 Sixteen percent in 1992: Ibid.

hearings compared to 10% of solicitors in 2000[67]) and Central Queensland (12% of hearings compared to 4% of solicitors in 2000).

Practising Status

A significant number of practitioners (22%) were not practising at the time that the charges against them were heard. Of those who remained in practice at the time of the hearing,[68] 60% were sole practitioners (n=108). A further 32% were partners and only 7% were employee solicitors.[69]

It would seem from these figures that sole practitioners are significantly over-represented in disciplinary hearings. As at the year 2000, sole practitioners represented only 16% of solicitors in practice in Queensland. However, there are a number of reasons for caution in relying on these figures. Firstly, because these figures only reflect practising status at the time of the disciplinary hearing, this could inflate the rate for sole practitioners. Some solicitors who are facing serious disciplinary charges will leave a partnership and work as a sole practitioner. Secondly, although only 16% of solicitors were sole practitioners in 2000, the percentage of sole practitioners has been declining over time.[70] Therefore, if records of practice types for earlier periods show a higher percentage of solicitors in sole practice, their relative rate of discipline may not be as high as the currently available figures would suggest.

However, an over-representation of sole practitioners appearing before the tribunal is not surprising as it confirms findings from studies of other disciplinary systems. The practising status of solicitors against whom complaints are filed is not available for Queensland. But in New South Wales, for instance, although sole practitioners represented 29% of all solicitors in 1977, they were the subject of nearly half of all complaints at that time.[71] Although large firms[72] employed about 10 percent of solicitors in New South Wales, they received less than one percent of all complaints at that time. Eighty-two percent (82%) of solicitors struck off in

67 In the early 1980's 10% of solicitors practised on the Gold Coast, by 1988 this had risen to 14% and in 1992 comprised 11%: Gregory, above n 55, 235; above n 65.

68 Demographic data was retrieved, with the assistance of the Law Society, for cases since 1977. The practising status is that status as at the time of the tribunal hearing. While it may be more useful for creating a 'risk profile' of solicitors if status could be determined as at the date of the misconduct, this was not considered to be feasible, given the range of possible dates possible.

69 Data on practising status was only available for the period 1977-2000.

70 In 1985, 32% of all solicitors in private practice were sole practitioners: Disney et al, above n 61, 58. In 1992, the number of sole practitioners was 20%: Queensland Law Society, 'The Q and A of PI Insurance, (1992) March *Proctor* 11, 13 (Figure 6).

71 New South Wales Law Reform Commission, the Legal Profession – Background Paper III (1980) 51 Table 3, cited in D Weisbrot, *Australian Lawyers*, (1990) 204. See also RG Evans and MJ Trebilcock, *Lawyers and the Consumer Interest: Regulating the Market for Legal Services*, (1982).

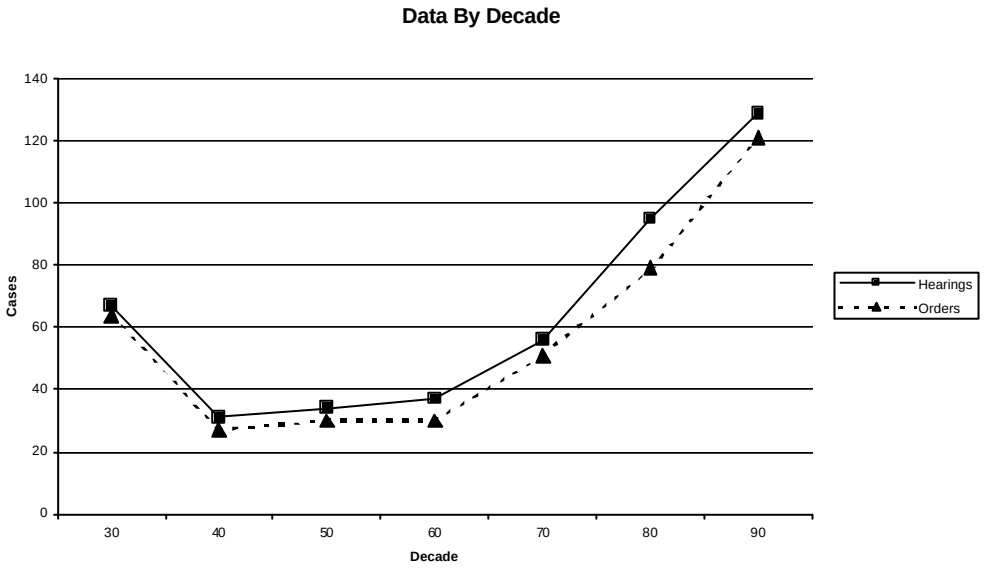
72 Nominated by the study as firms with ten or more partners.

New South Wales between 1968 and 1982 were sole practitioners and another 9% of those struck off practised in two partner firms. This trend would appear to have continued in New South Wales: The majority of complaints are made against Sole Practitioners (38.2%), though this group constitutes only 17 per cent of the practising profession.'[73]

Results Of Hearings

It was usual for the Law Society to make out its case. Eighty-nine percent (89%) of hearings resulted in at least one order being made. Only 6.3% of cases were dismissed. A further 2.2% were withdrawn and 1% adjourned or referred to a higher tribunal.[74] Figure 1 compares the number of hearings each decade with the rate at which orders were made, in other words, the rate at which at least some of the charges were found to have been proved.

Figure 1
Comparison of Number of Hearings Per Decade and Number of Cases in Which Orders Were Made



73 Professional Standards Department of the Law Society of New South Wales, *1999-2000 Annual Report*, Law Society of New South Wales, (2000) 11. Similarly, in a Canadian study, sole practitioners were over-represented in the number of complaints: Arnold, above n 42, 95.

74 Namely, from the Solicitors Disciplinary Tribunal to the Statutory Committee, where the tribunal felt that the matter was too serious for it to deal with.

During the 1980's the Law Society had less success in proving its case than during other periods: 11 of 95 cases brought to hearing during the 1980's were dismissed by the tribunal. This comprised 12% of all hearings during that period.[75]

Types of Charges[76]

Charge Category[77]

As Table 4 shows, over the period of study, the most common category of charge was that which related to breaches of the *Trust Accounts Act 1973* (Qld) (46% of cases). Also common were 'compliance' charges, in other words, charges relating to a failure to comply with Queensland Law Society statutory requirements, occurring in 30% of cases.[78]. Charges of misleading or dishonest conduct were also prevalent (19%). Less prevalent were charges relating to actual or potential conflicts of interest (12%) and other 'ethical' issues (10%).[79]

Table 4
Category of Charges Found Proved[80]

	N	Percent
Trust fund	212	46.1
Compliance	136	30.3
Misleading	88	19.2
Conflict	55	12.2
Ethics	46	10.2
Quality of service	34	7.6
Costs/bills	18	4.0
Documents	5	1.1

75 The decade included cases heard between 1 May 1980 and 30 April 1990. Law Society years end on the 30 April so the decade of analysis corresponded with Law Society reporting years of 1981-1990.

76 The statistics in this section are based on charges which were found to have been proved, not charges which were laid by the Law Society so as to provide an easier analysis of the sanctions which particular charge types attracted. Given the high rate at which charges were made out before the tribunal (89%), any difference in figures for charges laid and charges made out is not significant.

77 For a full list of charge categories and specific charge types within each category, refer to Appendix 2.

78 Most commonly, a failure to respond to a notice under s 5H of the Act (20%) Sections 5G requires a solicitor to respond to a complaint. Failure to do so is deemed to be professional misconduct: s 5H.

79 For instance, and as listed more fully in Appendix 2, this 'ethics' category includes: failing to honour an undertaking, failure to follow instructions, acting without instructions, breach of confidentiality and advertising.

80 More than one category of charge can be proved, therefore the total number of charges exceeds the number of solicitors and the percentage exceeds 100%.

Table 4 cont

	N	Percent
Communication	4	0.9
Costs agreement	0	0.0
Total number of cases: 450		

The high rate of charges relating to Trust Account breaches confirms its prevalence in the disciplinary context. The strong prevalence of charges relating to compliance is also reflected in other jurisdictions.[81]

As also reflected in other jurisdictions,[82] the emphasis in formal discipline upon trust account and compliance responsibilities is vastly different to the areas of concern which figure within written complaints. As mentioned previously, until the mid 1980's, there was no reporting of complaint details in Queensland. However, in its 1984 Annual Report, the Law Society reported the following areas of written complaints:

Table 5
Areas of Written Complaints received by Qld Law Society
1 May 1983 – 30 April 1984[83]

Costs	81	16.6%
Delay	67	13.8%
Professional Conduct	51	10.5%
Lack of communication	47	9.6%
Failure to Account	35	7.2%
Failure to Act	35	7.2%
Matrimonial	30	6.2%
Negligence	29	6.0%
Failure to recover costs	7	1.4%
Miscellaneous	105	21.5%
TOTAL	**487**	100%

So while 16.6 per cent of complaints received in the 12 months ending 30 April 1984 were about costs, charges in relation to costs have appeared in only 4% of disciplinary cases over the period of study. A further 13.8% of complaints in 1984

81 Canada: HW Arthurs, The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?' (1995) 33 *Alberta Law Review* 800, 802.

82 New South Wales Law Reform Commission, *Complaints, Discipline and Professional Standards – Part 1* (Discussion Paper no 2) (1979) 40; New South Wales Law Reform Commission, *The Legal Profession - Background Paper III*, 1980, 12-13, cited in D Weisbrot, *Australian Lawyers*, (1990) 203.

83 Queensland Law Society Inc, *Fifty-Sixth Queensland Law Society Annual Report*, (1984) 8. The inclusion of 'Matrimonial' as an area of complaint warrants further enquiry.

were in relation to delay, yet such allegations were also unlikely to lead to formal discipline, comprising charges in only 5% of all cases.[84] In the 1999-2000 Annual Report of the Legal Ombudsman, some detail is provided of the areas of complaints received by the Law Society for each of the years 1998, 1999 and 2000.[85] These figures confirm that most written complaints continue to relate to delay, costs, failure to comply with instructions and a lack of communication rather than to breaches of the Trust Accounts Act or compliance with the Queensland Law Society Act or Rules.[86] Some caution needs to be exercised when comparing the areas of complaint with the nature of conduct which attracts formal disciplinary charges, as some of the categories used for complaints are different and often broader than those used in this study to categorise charges.[87] In addition, the coding of complaints could be less reliable than the coding of charges given that this task may be undertaken in a perfunctory way by the person processing the initial written complaint and also given that such initial coding is not available for independent checking, given the strict confidentiality provisions of the *Queensland Law Society Act 1952 (Qld)*.[88]

Specific Charges Types

Trust Fund

As mentioned previously, 46% of cases before the disciplinary tribunal involved one or more charges relating to the manner in which the solicitor managed their trust account. Two particular types of charges featured in this group: 22% of all cases included a charge that the solicitor had fraudulently used trust monies.[89] Twenty two percent (22%) of cases included a charge that the solicitor had handled trust monies in a way which was not authorised.[90] In this second category, no allegation of fraudulent intent is involved, simply that the solicitor did handle the money in a way that was not authorised.[91] The remaining group of

84 Coded as 44 'delay'= 3.4% of cases or 45: 'failure to file documents in time'= 1.6% of cases.

85 Legal Ombudsman (Queensland), *Annual Report For The Year Ending 30 June 2000*, Brisbane, (2000) 6.

86 Although the latter category did form the basis of 114 complaints in 1999-2000, following only 12 and 17 complaints in 1997 and 1998.

87 This study used 10 categories of charges and 81 sub-categories, as shown in Appendix 2. It was decided not to use the categorisation of complaints used by the Queensland Law Society or the Queensland Legal Ombudsman as these categories have been only recently in use, have sometimes been varied and were not thought to be sufficiently precise for the purposes of this study.

88 Section 50.

89 Coded as Type 1.

90 Coded as Type 2. These charges usually referred to a breach of either s 7 (receipt of trust monies) or s 8 (disbursement of trust monies) of the *Trust Accounts Act 1973* (Qld).

91 These percentages relate to the number of cases in which one or more such charges appear. As cases could include multiple charges, the total percentage exceeds 100%.

charges relating to the Trust Accounts Act, figuring in 26% of cases, relate to a number of breaches, from inadvertent book-keeping errors to a failure to complete an annual audit within the specified period.

Table 6
Specific Charge Types Within Trust Account Category

Specific Charge Type	% of cases
Type 1: Fraud	22.0
Type 2: Unauthorised handling of trust monies[92]	21.7
Other breach of *Trust Accounts Act 1973*	26.0

Compliance

The most common specific charge within the compliance category of charges related to a failure to supply an explanation for alleged misconduct. Section 5G of the *Queensland Law Society Act 1952* (Qld) requires a solicitor to respond to a complaint. Failure to do so is deemed to be professional misconduct pursuant to section 5H.[93] Such a charge was present in 20% of all cases before the tribunal.

Level of Misconduct Found Proved

Professional Misconduct

The disciplinary tribunals in Queensland have always been primarily concerned with professional misconduct.[94] The Queensland legislation has never provided a statutory definition of professional misconduct. The tribunal is primarily guided by the common law test of professional misconduct, namely 'conduct which would be reasonably regarded as disgraceful or dishonourable by professional brethren of good repute and competency'.[95] In addition, following a challenge in the High Court,[96] the common law definition has been extended by a partial statutory definition of professional misconduct. This is contained in sections 5G and 5H of the Act. These sections deem a failure to provide an explanation of a matter under law society investigation within the period allowed to be professional misconduct.[97]

92 This included breaches of either section 7 or 8 of the *Trust Accounts Act 1973* (Qld).
93 This provision was previously contained in 82 and 83 Rules of the Queensland Law Society Inc 1987.
94 The initial legislation charged it with deciding upon issues of 'illegal or professional misconduct': *Queensland Law Society Act 1927* 18 Geo 5 No 14.
95 *Allinson v General Council of Medical Education* [1894] 1 KB 750.
96 *Hally v Qld Law Society Inc* (1960) 105 CLR 286.
97 Originally pursuant to rr 82-3 *Queensland Law Society Rules 1987* and subsequently by s 5H *Queensland Law Society Act 1952*.

Where charges were proved, this was to the standard of the common law test of professional misconduct in 63% of cases.[98] In a further 15% of cases, the only charges proved related to professional misconduct as defined by section 5H. A further 6% of cases included a mixture of charges, including charges under s5H,[99] thus making it impossible to determine whether the tribunal had found the common law test or the statutory test satisfied.

Thus, over the 70 year period under study, where charges against a solicitor were found to have been proved, this was most likely to be on the basis that professional misconduct had occurred (84% of matters). Unprofessional conduct was found in only 13% of matters.

Sanction Where Common Law Test Of Professional Misconduct Satisfied

Where the common law test of professional misconduct was found proved by the tribunal, there was a high likelihood that the practitioner would be struck off. This occurred in 48% of such cases. But suspensions and fines were also common. Suspensions were imposed in 22% of cases with a finding of common law professional misconduct and fines in another 26% of such cases. Censures were only rarely imposed where serious misconduct was found to exist (4% of cases).

Sanction Where Statutory Test Of Professional Misconduct Satisfied: Section 5H

The statutory provisions in section 5H were presumably included to give Law Society investigations 'more teeth'. Therefore, the legislation deems a breach of those sections to be professional misconduct. This would infer that Parliament intended such breaches to be taken as seriously as a finding of professional misconduct pursuant to the common law test. This investigation was interested in whether Parliament's apparent intention was reflected in the imposition of orders as harsh as those imposed where the common law test of professional misconduct was satisfied.

This did not appear to be the case. In cases in which the only charges found proved related to a breach of section 5H,[100] the vast majority of solicitors were only fined (67%) or censured (13%). Only 1 was struck off and the remainder were suspended (18%). This shows that the tribunal did not give effect to Parliament's intention that a breach of section 5H of the Act be treated as seriously as other forms of professional misconduct. Breaches of section 5H were dealt with relatively leniently, usually by way of a fine, while a finding of professional misconduct pursuant to the common law test was taken much more seriously and led to 48% of solicitors being struck off.

98 N=251.
99 Or its predecessor r 83.
100 Or by r 83. N=61.

Unprofessional Conduct

In 1938, the conduct within the jurisdiction of the disciplinary tribunal was amended from 'illegal or professional misconduct' to 'malpractice, professional misconduct or unprofessional conduct or practice'.[101] As with professional misconduct, there is no statutory definition of unprofessional conduct. Unprofessional conduct is defined at common law to include, not only disgraceful or dishonourable conduct but 'conduct which may reasonably be held to violate or to fall short of, to a substantial degree, the standard of professional conduct observed or approved of by members of the profession of good repute and competency'.[102] Apart from the possible conflation of the two tests in more recent times,[103] it is still fair to say that over the 70 year period of study, a finding of 'unprofessional conduct' was used by the tribunal to refer to conduct which did not involve the same degree of moral turpitude as involved in professional misconduct but which showed that the practitioner had engaged in conduct which fell substantially short of professional standards.

The tribunal only rarely found unprofessional conduct: only 13% of cases were so categorised. A finding of unprofessional conduct generally led to a lesser sanction than a finding of professional misconduct: Eighty-one percent (81%) of solicitors in this group were fined, with only 2 practitioners struck off and 3 suspended. This would confirm that the tribunal does use the term 'unprofessional conduct' to indicate less serious conduct.

Disposition for Repeat Offenders

A significant number of those against whom charges were brought had appeared before the tribunal on a prior occasion. While 69% of cases involved individuals appearing for the first time, in the remaining 31% of cases, the solicitor had appeared before the tribunal on at least one earlier occasion. Whilst it may be expected that a practitioner would be dealt with more harshly where there were prior findings of professional misconduct or unprofessional conduct, the results do not bear this out. While 'first-timers' were struck off in 31% of cases, the strike off rate for those with one previous adverse finding against them rose only slightly, to 32.9%. For those practitioners who had appeared before the tribunal on 2 or more prior occasions, the rate of strike off was 28.9%.

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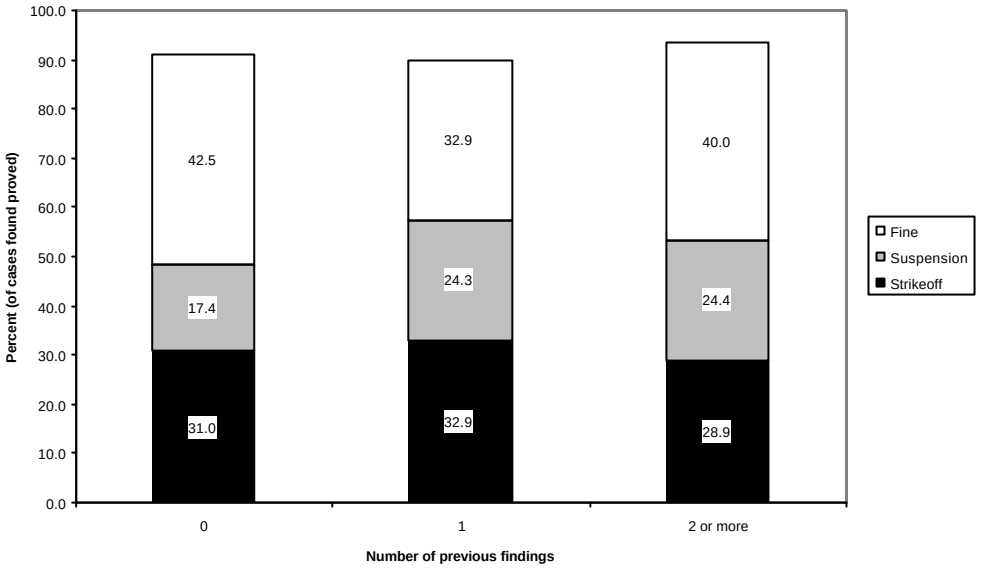
101 Section 5 (1)(a) of the 1927 Act as amended by section 2 of *Queensland Law Society Acts Amendment Act 1938* 2 Geo 6 No 6. The relevant provision was relocated to section 6 in 1952 by *The Queensland Law Society Act of 1952* (Qld).

102 *Re R, a practitioner of the Supreme Court* [1927] SASR 58.

103 *Adamson v Queensland Law Society Inc* [1990] 1 QdR 498; D Searles 'Professional Misconduct – Unprofessional Conduct: is there a Difference?' (1992) 23 QLSJ 239. See also the more recent discussion in *Clough v Qld Law Society Inc* [2000] QCA 254.

Figure 2
Sanction Imposed by Number of Previous Adverse Findings Before Disciplinary Tribunal



Types of Orders Made

Over the 70 year period of the study, over all levels of misconduct, the most common form of penalty imposed was a fine, comprising 41% of orders made. The next most likely form of order was an order striking a practitioner from the roll. One hundred and twenty-five practitioners were struck from the roll by the tribunal, comprising 31% of all orders made. An order to suspend a practitioner from practice was much less common, ordered on only 78 occasions (19% of orders). Occasionally the tribunal censured a practitioner, but this only occurred in 28 cases.[104]

Changes in Preferred Orders Over Time

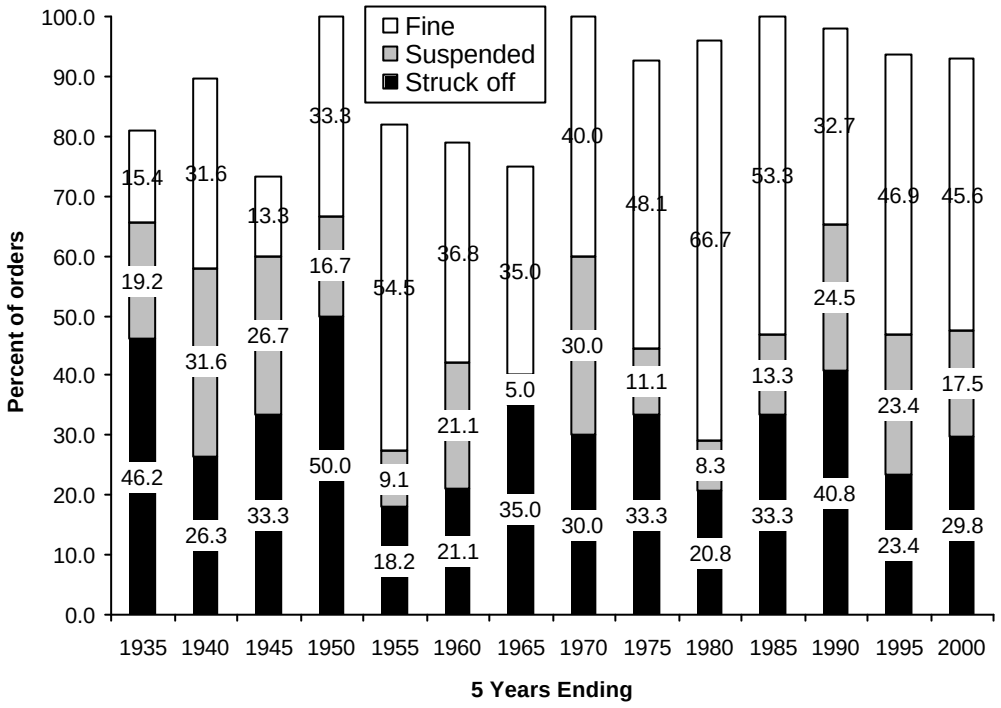
Although fines have been the most common form of order over the period of study, the proportionate use of fines, strike offs and suspensions has not remained static

104 Orders that the practitioner merely pay costs or undertake some form of education are much less likely: orders to pay costs only have only been ordered on 2 occasions since 1930 and that the practitioner attend education, only on 3 occasions. However, it is usual for the practitioner to be ordered to pay costs in addition to a more substantive order for striking off, suspension or fine. Similarly, a practitioner suspended from practice may also be ordered to undergo some practice management course before resuming practice.

over time. There were periods when fines represented a much smaller proportion of orders made.

The chart below shows the percentage of fines, suspensions and strike offs ordered in 5 year blocks from 1930 until April 2000.[105]

Figure 3
Types Of Orders Imposed: 1930-2000



When dealing with these percentages, it must be remembered that from 1940-1970 very few cases were heard by the tribunal. Some caution should therefore be exercised when extrapolating from figures for these years. The number of cases in 5 year blocks is shown in Table 7.

105 Much of the analysis has looked at changes over 5 year periods. Given that the number of hearings per year was very low, annual figures are not statistically significant. Conversely, an analysis by decadels was thought to be too long a period to be sensitive to significant dates, such as the implementation of legislative changes in 1985, midway through the 1980's decadel.

Table 7
Number of Disciplinary Hearings in Which Orders Were Made

Five years ending:	Number of cases
1935	26
1940	38
1945	15
1950	12
1955	11
1960	19
1965	20
1970	10
1975	27
1980	24
1985	30
1990	49
1995	64
2000	57

Sanctioning Trends: The Early Years

When the tribunal was first established, a finding of 'illegal or professional conduct'[106] was very likely to lead to an order striking the practitioner from the roll. Such an order was imposed in 12 of the 26 cases in which orders were made between 1930 and 1935 (46.2%).[107]

Although many more cases were heard in the latter half of the 1930's, rising from 27 in the first 5 years of the tribunal's existence to 39 in the period 1936-1940, strike offs became less common. Between 1936 and 1940, the rate at which the tribunal struck a solicitor from the roll dropped from 46.2% to only 26.3% and the use of suspensions and fines increased.

Although the graph indicates that the rate at which practitioners were struck from the roll rose over the next 10 years to its all-time highest rate of 50% of orders made in the period 1946-1950, this cannot be taken as an indication of a harsher disciplinary regime. The number of disciplinary hearings dropped markedly during the war years. Thirty nine (39) cases were heard between 1935 and 1940, but in the subsequent 5 year period (1941-1945) only 16 cases were heard. The number of disciplinary hearings continued to drop in subsequent years with only 15 cases heard between 1946 and 1950 and only 13 between 1951 and

106 The definition of behaviour liable to discipline was amended in 1938 to refer to 'malpractice, professional misconduct or unprofessional conduct or practice': *Queensland Law Society Acts Amendment Act 1938 2 Geo 6 No 6* s 2.

107 Refer to Figure 3.

1955.[108] So whilst the chances of being brought before a disciplinary tribunal were less in the period 1946-1955,[109] those against whom disciplinary proceedings were brought and adverse findings made had a high probability of being struck from the roll (50%).[110]

Sanctioning trends: 1970-2000

Given that the number of hearings did not reach a sizable amount again until the late 1950's, it is unwise to look for trends in sanctions until then. More reliable as a source of indicating trends are those orders made by the tribunal in the most recent 30 years, from 1970, because during that time the absolute numbers of disciplinary hearings increased markedly.[111]

No consistent trends over the 30 years since 1970 can be noted from Figure 3, although the rates of strike offs, suspensions and fines do rise and fall markedly over that time. The overall figures for the period 1930-2000 show that fines were the most common method to dispose of a disciplinary hearing, accounting for 40% of cases. The rate at which a practitioner was struck off varied from only 21% of all orders made in 1976-1980, to 41% in the period 1986-1990. The rate of suspensions varied from 8% of cases in 1976-1980 to 25% in 1986-1990. Apart from the rare case in which only a censure was imposed following a finding of professional misconduct or unprofessional conduct, the balance of cases were disposed of by the imposition of a fine. The size of these fines varied considerably. The largest fine imposed was one of $40,000, imposed in 1996.

Types of Charges Over Time

Over the 70 year period under study, the most common types of charges[112] have been for general breaches of the Trust Accounts Act (26%)[113], fraudulent use of

108 The table comparing the rate of strike off, suspension and fine only takes account of those matters in which charges were found proved and therefore orders made. Given that some matters will be heard in which the case is not made out, the number of hearings will be greater than the number of matters in which orders were made and which are therefore referred to in the table.

109 Another variable which can influence these results is the number of practitioners in practice. A drop in the number of disciplinary hearings does not necessarily suggest the chance of being disciplined has also decreased if there has been a corresponding decrease in the size of the profession. This did occur in the war and post war years.

110 Refer to Figure 3.

111 In the 1960s, only 37 matters were heard but by the 1970s this had risen to 56. The 1980s saw another sharp rise in the number of disciplinary hearings, with figures almost doubling to 95. Although the number of hearings increased, the rate of increase flattened out during the 1990s, when the tribunal heard 130 cases.

112 The figures quoted are for charges found proved rather than charges laid.

113 In the earlier years of the disciplinary tribunal, charges relating to alleged breaches of the Trust Accounts Act were not framed with the same level of particularity as they

trust monies (22%), unlawful movement of trust monies (no fraud alleged: 22%) and failure to supply explanations for apparent misconduct to law society investigators (20%).[114]

While in most cases, the nature of the alleged misconduct will dictate the form of the charge, this is not necessarily the case in relation to charges in relation to the Trust Accounts Act. A charge that the solicitor breached section 7 or section 8 of the Trust Accounts Act merely requires that the solicitor actually transferred those trust monies. It does not require the prosecuting body to establish that this was done with fraudulent intent. The practitioner does not have the same rights of cross-examination as exist in a court of criminal jurisdiction, despite the right to legal representation contained in the Act.[115] Given that the standard of proof will be higher in relation Type 1 charges because of the serious allegation of fraud,[116] the prosecuting body may be satisfied to bring charges of Type 2. Type 2 charges do not allege fraudulent intent and therefore can be established to a lower standard of proof.

Figure 4 shows the number of charges of Type 1 (trust account fraud) and Type 2 (unauthorised movement of trust monies, no fraud alleged) found proved.

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were in later years. Where it was difficult to determine whether the charge related to trust account fraud, the then equivalent sections to sections 7 and 8 of the Trust Accounts Act or to a simple book-keeping transgression of the Trust Accounts Act, it was recorded as the latter. Therefore, this category is somewhat inflated in the early years. However, the attendant conduct could have been much more serious than such a record would suggest.

114 The total number of charges exceeds 100% because multiple charges can be laid in one case.

115 Section 6H, *Queensland Law Society Act 1952* (Qld). *O'Rourke v Miller* (1985) 156 CLR 342. This is further confirmed by section 6N(2)(b)of the Act which states that 'a witness before the tribunal must not fail to answer a question that the person is required to answer by the tribunal'. This would suggest that the witness can refuse to answer any other questions. In addition, the tribunal can decide the matter on affidavit material alone: *Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997* (Qld) s 9.

116 *Briginshaw v Briginshaw* (1938) 60 CLR 336, cited with approval in *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498 at 506 per Thomas J, with whom Ambrose and Connolly JJ agreed.

SOLICITORS' DISCIPLINARY HEARINGS IN QUEENSLAND 1930-2000:
A STATISTICAL ANALYSIS

Figure 4
Comparison of Rate of Findings of Fraudulent (Type 1) and Non-Fraudulent (Type 2) Use of Trust Monies

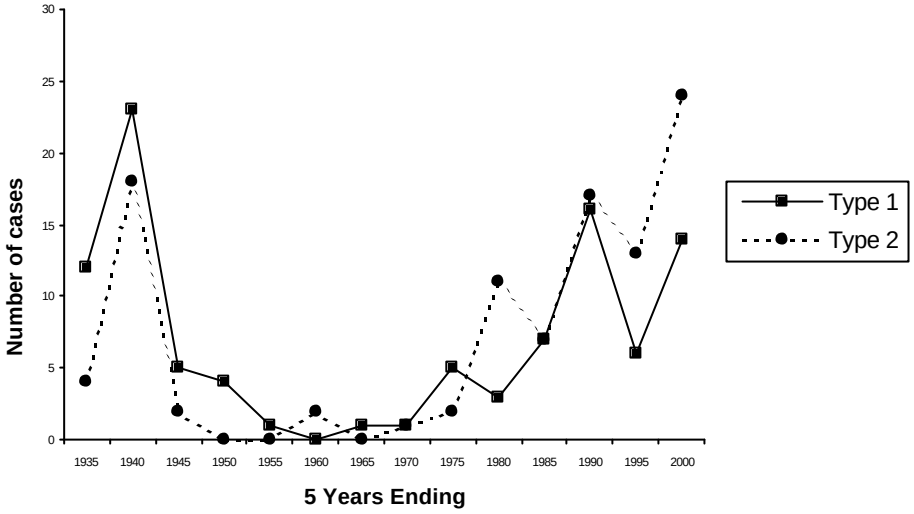

Table 8
Charge Types Laid and Found Proved[117]

Type 1, 5 years ending	# Laid	All cases	%Type 1	# Proved	% of charges laid found proved
1935	12	27	44.4	12	100.0
1940	25	40	62.5	23	92.0
1945	6	16	37.5	5	83.3
1950	4	15	26.7	4	100.0
1955	1	13	7.7	1	100.0
1960	0	21	0.0	0	n/a
1965	1	26	3.8	1	100.0
1970	1	11	9.1	1	100.0
1975	8	30	26.7	5	62.5
1980	3	26	11.5	3	100.0
1985	8	38	21.1	7	87.5
1990	16	57	28.1	16	100.0
1995	9	70	12.9	6	66.7
2000	14	60	**23.3**	14	100.0
Total	**108**	**450**	**24.0**	**98**	**90.7**

117 These are cases which included one or more instances of Type 1(fraud) or Type 2 trust account charges. The case may have also included other charge types.

Table 8 cont

Type 2					
1935	4	27	14.8	4	100.0
1940	18	40	45.0	18	100.0
1945	2	16	12.5	2	100.0
1950	0	15	0.0	0	n/a
1955	0	13	0.0	0	n/a
1960	2	21	9.5	2	100.0
1965	1	26	3.8	0	0.0
1970	1	11	9.1	1	100.0
1975	3	30	10.0	2	66.7
1980	11	26	42.3	11	100.0
1985	11	38	28.9	7	63.6
1990	18	57	31.6	17	94.4
1995	14	70	20.0	13	92.9
2000	27	60	**45.0**	25	92.6
Total	**112**	**450**	**24.9**	**102**	**91.1**

These figures do show that trust account fraud (Type 1) was of particular concern in the late 1930's (5 years ending 1940) and again in the late 1980's (5 years ending 1990). However, the figures also show that since 1985, a solicitor is more likely to face Type 2 charges than Type 1 charges. In the 5 years ending 2000, 45% of cases contained a Type 2 charge but only 23% of cases contained a Type 1 charge. Given that Type 2 charges do not require proof of fraudulent intent, they are less serious than Type 1 charges and are therefore less likely to lead to an order striking a practitioner from the roll.

Failure to co-operate

The rate at which practitioners were found to have breached section 5H provides some indication of the degree to which practitioners co-operated with law society investigations.

Figure 5
Number of Findings That Solicitor Did Not Co-Operate With Law Society Investigation (Section 5H)

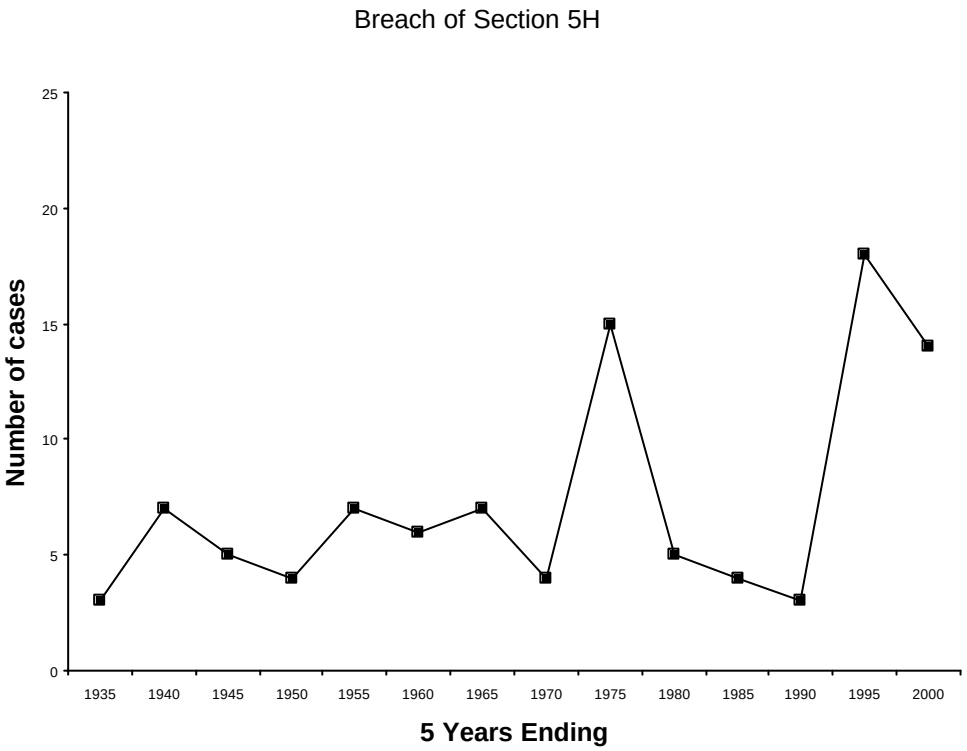

Table 9
Compliance Charges Laid and Found Proved

5 years ending	# Laid	All cases	% compliance	# proved	% of charges laid found proved
1935	3	27	11.1	3	100.0
1940	7	40	17.5	7	100.0
1945	5	16	31.3	5	100.0
1950	4	15	26.7	4	100.0
1955	7	13	53.8	7	100.0
1960	6	21	28.6	6	100.0
1965	8	26	30.8	7	87.5
1970	4	11	36.4	4	100.0
1975	18	30	60.0	15	83.3
1980	7	26	26.9	5	71.4

Table 9 cont

5 years ending	# Laid	All cases	% compliance	# proved	% of charges laid found proved
1985	4	38	10.5	4	100.0
1990	3	57	5.3	3	100.0
1995	20	70	28.6	18	90.0
2000	15	60	25.4	14	93.3
Total	**111**	**450**	**24.7**	**102**	**91.9**

As Figure 5 shows, there was a significant use of these charges in the early 1970's. Such a charge appeared in 60% of cases brought before the tribunal. Although the graph suggests that the prosecuting body relied heavily on such charges again in the early 1990's, the graph only shows absolute numbers. By comparison, Table 9 shows the number of cases with one or more compliance charges as a percentage of all cases. When viewed in this way, the rate of compliance charges in the early 1990's becomes less striking. This confirms that the greatest use of compliance charges, by any measure, was during the early 1970's, when such charges appeared in 60% of all cases. The number of such compliance charges remained relatively low at other times, suggesting periods during which there was greater co-operation by practitioners under investigation.

Suspensions

The following chart shows the degree to which the period of suspension has fluctuated over the period of study.

Table 10
Variation in Length of Suspensions Over Time

5yrs ending:	Mean	Median	Std Dev	Min	Max	Count
1935	25.2	12.0	22.6	6	60	5
1940	23.3	24.0	13.3	3	36	12
1945	6.8	7.5	6.2	0	12	4
1950	48.0	48.0	17.0	36	60	2
1955	9.0	9.0	n/a	9	9	1
1960	17.0	13.0	13.1	6	36	4
1965	6.0	6.0	n/a	6	6	1
1970	14.0	12.0	9.2	6	24	3
1975	19.7	25.0	11.0	7	27	3
1980	31.5	31.5	40.3	3	60	2
1985	22.3	23.5	12.3	6	36	4

Table 10 cont

5yrs ending:	Mean	Median	Std Dev	Min	Max	Count
1990	17.5	15.5	10.7	5	36	12
1995	19.8	17.5	10.8	6	36	15
2000	15.2	12.0	9.8	0	33	10

As can be seen from the table, very few solicitors were suspended in the period 1941-1985, hence the figures for the average length of suspension during that period should be treated with caution. However, the figures for the 5 year blocks ending 1990, 1995 and 2000 do comprise sufficient cases to be able to suggest that the tribunal has imposed an informal upper limit of 3 years (36 months) on the length of suspension. Although there is no upper limit stated in the legislation, the court has indicated that the imposition of a long period of suspension is liable to challenge on appeal as it may suggest that an order striking the practitioner from the roll was more appropriate.[118]

Average size of fines

In 1979, the maximum fine which the tribunal could impose was increased from $1,000 to $5,000.[119] In 1987, that limit was increased to $100,000.[120] And yet, the tribunal has never approached these limits in practice. When imposed, fines have remained relatively modest, even if account was taken for inflation.

Table 11
Average Size of Fines[121]

5yrs to	Mean	Median	Std Dev	Minimum	Maximum	Count
1935	23.8	25.0	6.3	15	30	4
1940	21.0	17.9	11.8	10	50	12
1945	38.3	25.0	32.1	15	75	3
1950	42.8	25.0	38.2	21	100	4
1955	21.7	20.0	14.0	5	40	6
1960	46.4	25.0	30.4	25	100	7
1965	50.6	50.0	47.3	4	150	7
1970	70.0	77.5	31.9	25	100	4
1975	182.7	150.0	133.6	25	500	13

118 *Mellifont v Qld Law Society Inc* [1981] QdR 17. In that case, a 5 year suspension was overturned on appeal and the practitioner struck off.
119 Rule 26 of the Rules of Court, gazetted 31 March 1979.
120 First contained in r 24 *The Queensland Statutory Committee Rules 1987*, and now contained in *Queensland Law Society Act 1952* (Qld) s 6R(1)(c).
121 The figures up until 1965 are in pounds and in dollars thereafter.

Table 11 cont

5yrs to	Mean	Median	Std Dev	Minimum	Maximum	Count
1980	662.5	750.0	334.4	100	1000	16
1985	1725.0	575.0	1796.8	200	5000	16
1990	2112.5	1500.0	1700.9	100	5000	16
1995	6490.0	3750.0	7616.6	400	25000	30
2000	8518.5	5000.0	9022.9	500	40000	27

In the period under study, the largest fine ever imposed by the tribunal was a fine of $40,000 imposed in 1996.[122] Following complaints from clients and other solicitors, a practitioner was charged with breaches of the *Trust Accounts Act 1973* (Qld), gross delay and failure to respond to Law Society notices under Rule 82.[123] Eight clients were affected. The practitioner pleaded guilty to the charges, although he denied that any of the breaches were committed knowingly. After taking note of the practitioner's prior good character and a medical report, the tribunal imposed a fine of $40,000.[124]

Apart from that fine of $40,000, four fines of $25,000 have been imposed,[125] as well as two fines of $20,000.[126] However, despite the invitation contained within the 1987 amendments to impose fines as high as $100,000 in appropriate cases, the results show a continued reticence by the tribunal to dispose of matters in such a way. The figures show that most fines have been relatively small. Hence they can generally be regarded as a more lenient sanction than a suspension.

Correlation Between Seriousness of Charges and Harshness of Sanction

Serious charges are likely to lead to harsher sanctions than less serious charges. It is therefore likely that the periods in which sanctions became more harsh will correspond with periods in which solicitors face more serious charges. The difficulty is in how to determine whether charges are serious or not. Up to 81 different charge types were coded in the present study. The Canadian study referred to earlier did attempt a categorisation of 'most serious', 'serious' and 'less serious' charges,[127] however in that study, Arnold accepted the Law Society of Upper Canada's categorisation. For instance, Arnold adopted a Law Society

122 Statutory Committee ('SC') 377, 22 October 1996.
123 The predecessor to the current s 5G.
124 The tribunal's belief that the risk of any further misconduct had passed proved to be ill-founded: 3 years later the practitioner reappeared before the tribunal on further charges, was found guilty of professional misconduct and struck off: Solicitors Complaints Tribunal ('SCT') 6141, 10 August 1999.
125 SC 314, 17 July 1990, SC 319, 25 July 1990; SC 353, 8 March 1994 and SCT 6190, 8 September 1999.
126 SC 332, 4 March 1992 and SCT 6167, 27 May 1998.
127 Arnold, above n 42, Table 3.2, 40.

definition which included in the 'most serious' category 'conduct unbecoming' and in the 'less serious' category a 'failure to follow client's instructions'.[128] Not only are descriptions such as 'conduct unbecoming' very uninformative, from the point of view of a consumer, a failure to follow instructions is likely to be considered more serious than 'unbecoming conduct' by a solicitor.

The present study was concerned to avoid subjective definitions of 'serious' misconduct, or at least sought to use definitions which were transparent. It was thought that charges involving dishonest or misleading conduct would be generally considered to be the most serious charges, given that this is the type of conduct which most impinges on 'fitness to practise' and is the reason most cited by the courts for striking a practitioner from the roll. The distinction between dishonest conduct can be clearly seen between Type 1 and Type 2 charges: a finding of guilt on Type 1 includes a finding that the practitioner had a fraudulent intent. A Type 2 charge merely alleges the movement of trust monies without authority, which may have occurred accidentally.

There are other difficulties in finding a correlation between seriousness of offence and harshness of sanction. Sanctions are imposed upon a finding of professional misconduct or unprofessional conduct and not upon individual charges as they are in criminal proceedings. Up to 35 charges were specifically coded in the database, although the median number of charges was 4. It was therefore only possible to find a clear correlation between charge and sanction in those cases in which there was only one charge. This greatly limited the number of cases available for such an analysis.

The database also recorded the number of clients affected and the amount of money stolen (Type 1) or transferred without authority (Type 2), as it may be that it is more serious to mishandle large sums of money held for many clients, even if fraud cannot be proved, than it is to steal a sum of say $20. But even with these refinements on the categorisation of seriousness of charges used in the Canadian study, any attempt to seek a correlation between seriousness of charges and harshness of sanction merely on the basis of quantitative data as contained in this database, must proceed extremely cautiously.

With that proviso, it can be seen in Figure 4 and Table 8 that, in the late 1970's (5 years ending 1980), practitioners were more likely to face and be found guilty of the less serious, Type 2, charges than Type 1. Only 3 cases included a charge of trust account fraud in the 5 years ending 1980; charges were more likely to be framed as the less serious Type 2, which appeared in 11 cases during that period. This may be one reason why the number of strike offs and suspensions was so low during the late 1970's.

Similarly, the period when the tribunal began to impose harsher sanctions in the 1980's corresponds with periods during which the number of cases alleging trust

128 Ibid.

account fraud increased. Similarly, a preponderance of Type 2 charges over Type 1 charges in the 1990's corresponds with an overall drop in the number of strike off orders during that time.

But this is far too simplistic a view, given the complexity of possible charges in any one case. Further analysis of the dataset will look at the category of misleading or dishonest conduct to see if any trends are apparent there. But generally speaking, initial indications are that the seriousness of Trust Account charges could account for at least some of the trends in the harshness of sanctions imposed by the tribunal.

Discussion Of Results

In many respects, the findings merely confirm what has been found in other studies. For instance, it is not surprising to know that most solicitors who have appeared before the disciplinary tribunal are more likely to be sole practitioners, as this has been found to be the case in previous studies in other jurisdictions. Similarly, it is not surprising to find such a preponderance of charges in relation to trust account matters rather than charges reflecting the types of matters about which clients complain: delay, overcharging, lack of communication.

It is of some concern to see the preponderance of solicitors who have appeared before the tribunal on a subsequent occasion, suggesting that formal discipline does not have the deterrent effect that one would hope. Of equal concern to the fact that they reappear at all is the fact that, on second and subsequent occasions, they do not appear to have been dealt with more harshly than when they first appeared, as one would expect.

The most interesting results are those which examine trends over time. While these results do confirm the results of studies undertaken in the 1970's and early 1980's in other jurisdictions, since then there has been extensive legislative changes made to the disciplinary system in Queensland.[129] In addition to these legislative changes, the Supreme Court has constrained the circumstances in which suspensions can be imposed.[130] It could be expected that these legal developments may have led to a perceptible change in disciplinary outcomes. But generally speaking they did not. For instance, while the legislature gave the tribunal power to impose large fines, the tribunal remained relatively conservative in the size of any fines that it imposed and while the rate of suspensions could have been expected to drop, it has not.

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129 *Queensland Law Society Amendment Act 1985* (Qld); *Queensland Law Society Act Amendment Act 1997* (Qld).

130 *Mellifont v Queensland Law Society Inc* [1981] Qd R 17; *Attorney-General v Brown* QCA 241/1992, 11 June 1993, Fitzgerald P, Davies JA, Demack J, unreported; *Queensland Law Society v Mead* [1997] QCA 83 (22 April 1997); *Queensland Law Society Inc v Carberry* [2000] QCA 450.

The tribunal's independent approach can be seen in another aspect of its practice. For a number of years the Supreme Court has reminded the tribunal in very clear terms that, as a judicial body, it is required to give reasons for its decisions and to state its findings on questions of fact.[131] Despite these clear directives, the tribunal has continued to give very brief decisions, often merely stating which charges were found proved.

Similarly, although legislation has explicitly stated that a failure to co-operate with a Law Society investigation constitutes professional misconduct, the tribunal has remained reticent to deal with such practitioners very harshly at all, imposing only a fine, and usually a small fine, in 67% of such cases.

Conclusions

While the analysis of the dataset is continuing, it has already provided valuable information about disciplinary hearings in Queensland during the first 70 years of self-regulation by the Queensland Law Society. The availability of such data allows any further reforms to the disciplinary system in Queensland to take place on an informed basis rather than on the basis of anecdote or impression, as appears to have been the case to date. That said however, most complaints about lawyer misconduct are finalised well before formal discipline. Therefore, no clear view of the disciplinary system will emerge without further research into the complaints, investigative and prosecution stages of that system. Further research is also needed to seek possible reasons for the findings reported here.

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131 *Walter v Council of Queensland Law Society* (1988) 62 ALJR 153 at 157; *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498 at 508; *Attorney-General v Kehoe* [2000] QCA 222 at paras 22-26 per Thomas J and at para 3-4 per de Jersey CJ, with whom Ambrose J agreed. *QLS v Carberry* [2000] QCA 450 at 6 per Pincus JA, who said, 'It is my respectful opinion that, at least in major matters, the Tribunal's practice of stating unreasoned conclusions, when dealing with such a serious question as possible removal of a practitioner, is entirely unsatisfactory. A result of the practice can be that conclusions are reached as a matter of impression, rather than by careful analysis of the details of the evidence. Perhaps the Tribunal members are not adequately paid; for whatever reason, they were unwilling or unable to formulate any explanation of the basis of the assertion that the respondent's advancement of the interests of others than the client was inadvertent or accidental.' The courts prefer to rely on the common law basis of the obligation of statutory tribunals to give reasons than on the relevant legislative provisions. In *A-G v Kehoe*, the court cited *Cypressvale Pty Ltd v Retail Shop Lease Tribunal* [1996] 2 Qd R 462 at 476-477, 482-484, and made no reference to the legislative provisions: *A-G v Kehoe* [2000] QCA 222 at 22 per Thomas JA. The need to state findings on questions of fact has been contained in the Act since its inception in 1927: in s6(3)(b) of the 1952 Act and now in s 6V(1)(b). The need to provide reasons for the particular order made, in addition to giving findings on questions of fact is now stated explicitly in *Queensland Law Society (Solicitors Complaints Tribunal) Rule* 1997 s14(h).

Appendix 1: Variable Coding

Up to 35 charges were recorded. "1" at the end of variable name = charge number 1; "2" = charge 2 and so on. The total number of charges was also recorded, if known, and this was not truncated at 35.

Two types of missing values were noted: -99 = not in file; -9 = not applicable.

Name	Description	Coding
filenonm	File number in numeric form	Numeric variable. Separate persons charged under the same file number are listed as ~.1, ~.2 etc.
code	Initials	Missing initials are coded as X
chargeno*	Additional number assigned by tribunal, for filenonm>6000	
transcrp	Source of information	1=transcript; 2=findings and orders; 3=summary
tribnat	Nature of tribunal	1=Solicitors Complaints Tribunal 2=Statutory Committee 3=Solicitors Disciplinary Tribunal
sex	Sex/gender	1=male, 2=female
dadmit	Date admitted	Date
dob	Date of birth	Date
dhearing	Date of hearing	Date (latest hearing date/ date of orders)
lopartic	Legal Ombudsman / Lay observer present at hearing	0=No; 1=Yes
status	Professional status	1=sole practitioner 2=employee solicitor 3=partner in firm 4=articled clerk 5=non lawyer employee 6=barrister junior 7=barrister senior (QC/SC) 8=corporate solicitor 9=legal aid lawyer 10=government solicitor 11=solicitor, status not known 12=barrister, status not known 13=conveyancer 14=not practising
partnrnm	Number of partners in firm	0+
postcode	Postcode of law practice	4xxx (later classify as metropolitan, suburban, rural)
costtype*	Type of costing arrangement	1=Time costing 2=Scale 3=Lump Sum 4=Speculative 5=Combination

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prevcomp	Previous complaints made	0=no; 1=yes; -99=not known
prevcmnm	Previous complaints number	Number of previous complaint occasions
prevcens*	Previous censure/ admonishment/ stern letter by council (1 or more)	0=no;1=yes
prevcsnm*	Previous censure number	Number of previous censured occasions
prevpmup	Previous finding of PM/UPC by tribunal	0=no;1=yes
prevpmnm	Previous PM/UPC number	Number of previous occasions PM/UPC found
charge1 ...charge35	Nature of each charge	1-81 (See Appendix 2 for these codes)
chargenm	Total number of charges	Numerical 0+
doffence	Date of offence	Date (earliest referred to in charges)
source*	Source of complaint (earliest)	1=Client 2=Opposing client 3=Unrepresented client 4=Previous clients 5=Barrister for client 6=Barrister for opposing client 7=Barrister for self 8=Solicitor for client 9=Solicitor for opposing client 10=Solicitor for self 11=Friend/relative 12=Beneficiary/executor/administrator 13=Non legal service provider 14=Legal Ombudsman 15=Cost Assessor 16=Legal Aid Office 17=Government Agency 18=Judge/Quasi Judicial Officer 19=Bar Association 20=Law Society 21=Witness 22=Anonymous 23=Other
legalmat*	Legal matter leading to complaint	1=Commercial/corporations law 2=Conveyancing 3=Criminal 4=Family/defacto 5=Immigration 6=Industrial law 7=Land and environment 8=Leases/mortgages/franchises 9=Professional negligence 10=Personal injuries 11=Probate/wills/family provisions 12=Victim's compensation 13=Workers compensation

legalmat* cont		14=Other civil 15=Other legal matter not specified above
guiltc1	Guilt, charge 1	0= No finding made 1= Found proved 2= Admitted 3= Not found proved 4=Charge withdrawn/not proceeded with 5=Adjourned
guiltc2... guiltc35	Guilt, charges 2-35	As for guiltc1
suspcanc	Suspension/cancellation of practising certificate by Law Society s41B	0=no;1=yes
dispostn	Disposition of charges	1=Charges all dismissed 2=Adjourned 3=Finding of guilt, no orders made 4=Orders made 5=Withdrawn all charges 6=Referred to Statutory Committee
tribfind	Finding of Tribunal (most severe)	0=None 1=Professional Misconduct: common law test satisfied 2=Professional Misconduct: breach of s5G,R83 sustained 3=Professional Misconduct: basis unclear 4=Unprofessional conduct 5=All charges dismissed 6=Other (adjourned, all charges withdrawn)
ordjob	Orders/undertakings – career	0=None 1=Practitioner struck off 2=Practitioner suspended 3=Employee non lawyer ordered not to be employed 4=Other
ordcost	Orders/undertakings – pay costs of tribunal	0=None 1=Practitioner to pay 2=Law Society to pay 3=Third party to pay
ordemp	Orders/undertakings –time working as employee only	0=No; 1=Yes
ordlien	Orders/undertakings – waive lien	0=No; 1=Yes
ordcen	Orders/undertakings – censure	0=No; 1=Yes
ordfee	Orders/undertakings – practitioner's fees/costs	0=None 1=Practitioner's fees: waive or repay client 2=Reimburse cost assessor's fees 3=Work free or for stated amount

SOLICITORS' DISCIPLINARY HEARINGS IN QUEENSLAND 1930-2000:
A STATISTICAL ANALYSIS

ordsus	Orders/undertakings – period of suspension	Numerical (months)
susstart	Start date of suspension	Date (default is dhearing if not specified)
susend	End date of suspension	Date
ordfin	Orders/undertakings – fine	Numerical (size of fine ie 0+)
ordfinp	Orders/undertaking – fine, number of pounds	Numerical (pre 14/2/1966) – number of whole pounds
ordfins	Orders/undertakings – fine, number of shillings	Numerical (pre 14/2/1966) – amount to the nearest shilling that the fine exceeded ordfinp
ordcomp	Orders/undertakings – compensation	Numerical (amount of compensation awarded 0+)
ordcompp	Orders/undertaking – compenstn, number of pounds	Numerical (pre 14/2/1966) – number of whole pounds
ordcomps	Orders/undertakings – compensn, number of shillings	Numerical (pre 14/2/1966) – amount to the nearest shilling that the compensation exceeded ordcompp
ordins	Orders/undertakings – allow document inspection	0=No; 1=Yes
ordrep	Orders/undertakings – submit reports	0=No; 1=Yes
ordedu	Orders/undertakings – legal education/practice management	0=No; 1=Yes
ordcoun	Orders/undertakings counselling	0=No; 1=Yes
ordlim	Orders/undertakings limited practice	0=No; 1=Yes
ordoth	Orders/undertakings other	0=No; 1=Yes
mitig	Issues raised in mitigation by tribunal	0=None referred to 1=1 or more issues referred to
mitigrem	Issues raised in mitigation – admission of guilt/ remorse/ cooperation	0=No 1=Yes
mitigres	Issues raised in mitigation – restitution	0=No 1=Yes
mitignod	Issues raised in mitigation – no damage to client	0=No 1=Yes
mitigcea	Issues raised in mitigation – ceased practice	0=No 1=Yes
mitigmed	Issues raised in mitigation – medical	0=No 1=Yes
mitigfin	Issues raised in mitigation – financial pressure	0=No 1=Yes
mitigfam	Issues raised in mitigation – family/personal	0=No 1=Yes
mitigcha	Issues raised in mitigation – good character	0=No 1=Yes

mitigine	Issues raised in mitigation – inexperience	0=No 1=Yes
mitigiso	Issues raised in mitigation – isolated/no further risk	0=No 1=Yes
mitigmis	Issues raised in mitigation – no personal gain sought/ honest mistake	0=No 1=Yes
mitigfor	Issues raised in mitigation – other penalty incurred: formal proceedings (criminal, contempt)	0=No 1=Yes
mitiginf	Issues raised in mitigation – other penalty incurred: informal (public shame, loss of business)	0=No 1=Yes
mitigure	Issues raised in mitigation – made undertaking re restitution	0=No 1=Yes
mitigsub	Issues raised in mitigation – subsequent conduct	0=No 1=Yes
mitigoth	Issues raised in mitigation – other issue	0=No 1=Yes
aggrav	Issues raised in aggravation by tribunal	0=None referred to 1=1 or more issues referred to
aggrins	Aggravating factors – lack of insight / contrition	0=No 1=Yes
aggrdel	Aggravating factors – deliberate	0=No 1=Yes
aggrpat	Aggravating factors – pattern of behaviour	0=No 1=Yes
aggrpri	Aggravating factors – prior complaints	0=No 1=Yes
aggrper	Aggravating factors – personal gain sought	0=No 1=Yes
aggrloss	Aggravating factors – loss to client	0=No 1=Yes
aggrrec	Aggravating factors – no attempt to rectify	0=No 1=Yes
aggroth	Aggravating factors – other	0=No 1=Yes
clientnm	Number of clients affected	Numerical (>=10 coded as 10)
persgain	Total amount fraudulently misappropriated	Numerical (Dollars)
trustamt	Total amount of trust money transferred without authority (no fraud alleged)	Numerical (Dollars)
overamt	Amount of alleged overcharging	Absolute amount above assessment (in dollars)
overdeg	Degree of alleged overcharging	Magnitude of amount charged/cost assessment

persganp	Amount fraudulently misappropriated (pounds)	Numerical (pre 14/2/1966; Pounds)
persgans	Amount fraudulently misappropriated (shillings)	Numerical (amount in shillings that personal gain exceeded persganp)
trustamp	Amount inappropriately transferred (pounds)	Numerical (pre 14/2/1966; Pounds)
trustams	Amount inappropriately transferred (shillings)	Numerical (amount in shillings that inappropriate transfer exceeded trustamp)

Appendix 2: Coding of Charges

#	Category	Specific Charge Type	
1	Trust fund	Fraud	
2	(1)	Unauthorised trust monies in general account	
3		Failure to account for trust monies	
4		Refusal to release money	
5		Other breach of Trust Accounts Act	
6	Misleading or	Fraud (not trust fund)	
7	dishonest	Misleading the Queensland Law Society	
8	Conduct	Misleading or dishonest conduct in Court	Conduct calculated to mislead
9	(2)		Breach of professional rules
10			Court-related: Other
11		Misleading or dishonest conduct not in Court	About progress
12			Documents: Post-dating
13			Documents: Forgery
14			Documents understate value
15			False execution of documents
16			Overstating client's entitlement
17			Other misleading/dishonest conduct
18	Conflict of	Borrowing from client Rule 86	
19	interest	Excluded mortgage Rule 85	
20	(3)	Actual: prefer own or other interest	
21		Potential: own interest/act for both	
22		acting against previous client	
23		other conflict/breach of fiduciary duty	
24	Ethics (4)	Communicating with another solicitor's client	
25		Failure to honour undertakings	about money
26			about future acts
27		Breach of confidentiality	
28		Instructions not followed	
29		Acting without instructions	

30	Ethics cont	Advertising	touting Rule 81 (until 1995)
31			misleading
32			other advertising complaint
33		Abuse of process	
34		Personal conduct (not in course of practice)	
35		Other complaint about ethics	
36	Compliance with Law Society (5)	Failure to comply with sec 5G/Rule 82, 83 notice	
37		Failure to comply with order	
38		Unauthorised practice	
39		Failure to comply with undertaking to QLS	
40		Other compliance complaint (not deception)	
41	Quality of service (6)	Overservicing	
42		Failure to supervise	employee/office
43			matter
44		Delay	
45		Negligence	Failure to file/claim documents in time
46			Failure to advise properly
47			Failure to use all available evidence
48			Failure to cross examine competently
49			Failure to prepare properly
50			Failure to appear at court/meeting
51			Failure to pay third party
52			Lacking in expertise/experience
53			Mistake
54		Other quality of service complaint	
55	Documents (7)	Failure to transfer	Lien claimed
56			No lien claimed
57		Lost documents	
58		Other complaint about documents	
59	Costs agreement (8)	No written agreement	
60		Agreement not signed	
61		Agreement unreasonable	
62		Lack of disclosure/informed consent	
63		Other complaint about costs agreement	

64	Costs/bills (9)	Failure to provide account, inc. detailed account	
65		Overcharged	
66		Failure to pay third party	barrister
67			agent
68			non-legal service provider
69			witness
70		Other complaint about costs/bills	
71	Communication (10)	rudeness	
72		poor	return of calls
73			response to letters
74			advice on progress
75			explanation of issues
76		no	return of calls
77			response to letters
78			advice on progress
79			explanation of issues
80		Other communication complaint	
81	Other complaint		

Appendix 3: Hierarchy of Penalties

When penalties were considered as mutually exclusive categories, they were categorised in the following order of precedence:

1. Struck off
2. Suspended
3. Fined
4. Censured
5. Rehabilitative order
6. Costs only
7. Costs from third party