Mr. B Hayes QC
for Legal Practitioners Conduct Board

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court: Doyle CJ, Millhouse and Nyland JJ)

In The Matter of NEVILLE JOHN JORDAN V. THE LEGAL PRACTITIONERS CONDUCT BOARD

In The Estate of THE LATE STEPHEN JOHN MORRIS (DECEASED)

THE LAW SOCIETY OF STH AUST v NEVILLE JOHN JORDAN

Judgment of the Honourable the Chief Justice
(The Honourable Justice Millhouse and the Honourable Justice Nyland concurring)

21 August 1998

PROFESSIONS AND TRADES — LAWYERS — MISCONDUCT, UNFITNESS AND DISCIPLINE — DISCIPLINARY PROCEEDINGS

Whether a decision of the Legal Practitioners Conduct Board not to deal with complaints against practitioners by conciliation is reviewable by the Court - whether there is any obligation on the Legal Practitioners Disciplinary Tribunal to enquire into the Legal Practitioners Conduct Board's use or failure to use processes of conciliation

Legal Practitioners Act s74(1)(b), referred to.

Whether, and to what extent, the Legal Practioners Disciplinary Tribunal is obliged to make available to a practitioner facing charges before it copies of its past decisions.

The standard of proof resting on the Legal Practitioners Conduct Board in proceedings before the Legal Practitioners Disciplinary Tribunal.

Re Ward [1953] SASR 308; *T v Medical Board of South Australia* (1992) 58 SASR 382; *Versteegh v Nurses Board* (1992) 60 SASR 128; *Rajogapalan v Medical Board of South Australia* (unreported, 2 February 1998, Judgment No.S6667), considered.

On Appeal from LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL
Appellant/Respondent NEVILLE JOHN JORDAN: In Person
Applicant THE LAW SOCIETY OF SOUTH AUSTRALIA: Counsel: MR D SMITH - Solicitors: THE LAW SOCIETY OF SOUTH AUSTRALIA
Respondent LEGAL PRACTITIONERS CONDUCT BOARD: Counsel: MR B HAYES QC WITH MR D PEEK - Solicitors: LEGAL PRACTITIONERS CONDUCT BOARD

Hearing Date/s: 06/07/98, 09/07/98.

File No/s: SCGRG-97-1339, SCGRG-97-721, SCGRG-94-2155

B

Judgment No. S6809

Whether the number and nature of the demands made on the appellant by the Legal Practitioners Conduct Board and by the Legal Practitioners Disciplinary Tribunal were such that the proceedings before the Tribunal were fundamentally unfair.

Whether the Legal Practitioners Disciplinary Tribunal was correct in allowing charges laid by the Legal Practitioners Conduct Board to be amended.

Smith v NSW Bar Association (1992) 176 CLR 256; *Weaver v Law Society of NSW* (1979) 142 CLR 201; *Walter v Council of Queensland Law Society* (1988) 62 ALJR 153, considered.

Whether the Legal Practitioners Disciplinary Tribunal was correct in excluding certain evidence from the proceedings before it - whether the exclusion of the evidence could have affected the Tribunal's decision.

Whether it is unprofessional conduct for a practitioner to represent to a potential client that the practitioner will use information gained from a former client against that former client.

Whether failure by a practitioner to co-operate with the Legal Practitioners Conduct Board in relation to complains which the Board was investigating amounted to unprofessional conduct.

Johns v Law Society of NSW [1982] 2 NSWLR 1; *Re Veron; Ex Parte Law Society of NSW* (1966) 84 WN (Pt 1) (NSW) 136, considered.

Whether failure to comply with directions to lodge a bill of costs amounted to unprofessional conduct.

Whether practising without a certificate amounted to unprofessional conduct.

Mee Ling v Law Society of NSW [1974] 1 NSWLR 490, considered.

Whether a practitioner's failure to submit a copy of an auditor's report relating to his trust account amounted to unprofessional conduct.

Whether, in disciplinary proceedings, the Supreme Court has the power to receive and act upon findings of the Legal Practitioners Disciplinary Tribunal or those of a Supreme Court Master.

Supreme Court Act s7(1); *Legal Practitioners Act* ss88(1),89(3),89(5), referred to.
Re Maidment (unreported, 26 August 1992, Judgment No.S3583); *In Re Practitioners* (1980) 26 SASR 275, considered.

PROCEDURE — COSTS — TAXATION — REVIEW

Whether, on a review of a taxing Master's decision, a judge should intervene.

Australian Coal and Shale Employees' Federation v Commonwealth (1953) 94 CLR 621; *Dalgety Australia Operations Ltd v FF Seeley Nominees Pty Ltd (No 2)* (1988) 49 SASR 75, considered.

The approach to be taken to a Master's findings of fact on a review by a Judge of taxation.

Supreme Court Rules rr97,97.17,101.21(2), referred to.
Simpson Limited v Arcipreste (1989) 53 SASR 9, considered.

In the matter of NEVILLE JOHN JORDAN &
In the matter of THE LEGAL PRACTITIONERS ACT 1981

THE LAW SOCIETY OF SOUTH AUSTRALIA v NEVILLE JOHN JORDAN

and

NEVILLE JOHN JORDAN v LEGAL PRACTITIONERS CONDUCT BOARD

and

In the matter of THE LEGAL PRACTITIONERS ACT 1981 &
In the Estate of THE LATE STEPHEN JOHN MORRIS (deceased)

JORDAN v ESTATE OF STEPHEN JOHN MORRIS (deceased)

Full Court: Doyle CJ, Millhouse & Nyland JJ

DOYLE CJ

The Court has before it three matters.

First, an appeal pursuant to section 86 of the *Legal Practitioners Act* ("the Act"). The appeal is against findings made by the Legal Practitioners Disciplinary Tribunal ("the Tribunal"). The Tribunal found Mr Jordan guilty of a number of charges of unprofessional conduct. The Tribunal recommended, pursuant to section 82(6)(a)(v), of the Act that disciplinary proceedings be commenced against Mr Jordan in the Supreme Court.

Second, the Court has before it an application by Mr Jordan. The application is made pursuant to Rule 101.21 of the *Supreme Court Rules*. The application is for an order to review the taxation of a bill of costs, Mr Jordan being dissatisfied with the allocatur after the taxation was reconsidered by the Master who conducted the taxation. In his reasons given in the course of the taxation, the Master made a number of findings that reflect adversely upon Mr Jordan as a legal practitioner.

Third, there is a motion by the Law Society of South Australia for an order that Mr Jordan's name be struck off the roll of legal practitioners. That application is made to the Court under section 89 of the Act. In support of the motion the Society relies upon the findings of the Tribunal and on the findings of the Master.

Background and procedural matters

I propose to set out, in more detail than would usually be necessary, the steps that led to the hearing before the Full Court. I do so because some of the grounds of appeal can be understood only in the context of that history.

Mr Jordan is a legal practitioner.

Mr Jordan does not hold a current practising certificate. He did not apply for a practising certificate in respect of the 1998 year.

On 12 February 1998, sitting as a single Judge, and Mr Jordan not opposing the making of the order, I ordered that his right to practise the profession of the law be suspended until further order.

The Legal Practitioners Conduct Board ("the Board") is constituted by virtue of section 68 of the Act. Its functions are set out in s74 of the Act. They are to investigate suspected unprofessional conduct and complaints of unprofessional conduct, to resolve them by conciliation if in the Board's opinion they are capable of resolution in that way, to admonish legal practitioners when that is appropriate, and to lay charges of unprofessional conduct before the Tribunal when that is appropriate.

Some of the events relevant to the matters before the Court occurred when the relevant body was the Legal Practitioners Complaints Committee. However, for convenience, I will refer only to the Board.

The Board received a considerable number of complaints relating to the conduct of Mr Jordan. The complaints of which I am aware, as a result of these proceedings, appear to have begun in about December 1991. A number of other complaints were received in that year, in 1992, in 1993, in 1994 and in 1995.

The Board, exercising its powers under section 74(1) of the Act investigated the complaints. In due course it exercised its power under section 74(1)(d) to lay charges of unprofessional conduct before the Tribunal.

Charges were laid on a number of dates. In some cases the charge document charged a number of separate counts. Charges were laid on 17 March 1994, 5 October 1994 (two sets), 6 March 1995, 4 May 1995 (two sets) and 4 October 1995.

The charges relate to Mr Jordan's conduct as a legal practitioner. On my count they relate to him acting for about sixteen different clients.

Some of the charges relate to conduct by Mr Jordan in the course of dealings between Mr Jordan and the client. They include charges of misinforming clients. One group of charges alleges unprofessional conduct in that Mr Jordan failed adequately to respond to requests from the Board for information. The information sought related to complaints made by clients. Another group of charges alleges a failure to supply information requested by the Board, also relating to complaints by clients. There are charges of practising without holding a current practising certificate. There are charges of failing to comply with section 33 of the Act, relating to the annual audit of the legal practitioner's accounts. There are charges of filing an affidavit which Mr Jordan had sworn and which he knew contained false information. There is a charge of failing to comply with a direction by the Tribunal. There are charges of grossly overcharging clients.

The first directions hearing before the Tribunal took place on 29 March 1994. Thereafter, there were numerous directions hearings relating to the various complaints.

For the purposes of the charges that alleged gross overcharging, it was necessary for the Tribunal to have resolved the amount that Mr Jordan was entitled to charge.

The Tribunal consulted with a Master of this Court. As I understand it, without any objection from Mr Jordan, the Tribunal devised a procedure, in consultation with the Master, under which the Master would tax bills of costs lodged by Mr Jordan, the bills claiming costs in the matters in which there was an allegation of overcharging. Pursuant to this arrangement, on 16 December 1994 the Tribunal directed, pursuant to Rule 9(d) of the Tribunal's rules, that Mr Jordan forthwith lodge a bill of costs for taxation in the Estate of Morris (deceased). The Tribunal further directed that the Board lodge with the Court its objections to that bill. I mention that, pursuant to earlier procedural directions of the Tribunal, Mr Jordan had already prepared his bill of costs, and the Board had already prepared its objections. The arrangement reached with the Master of this Court was that the Master would then tax the bill, presumably under section 42 of the Act.

It was understood, and agreed to by the beneficiaries in the Morris estate, that the Board would assume the role of opponent to Mr Jordan's claim. It was already quite clear that there was a significant dispute between Mr Jordan and the beneficiaries about the amount of his entitlement. The beneficiaries did not wish to appear on the taxation.

On 9 December 1994 the Tribunal had directed that Mr Jordan prepare and lodge by 28 January 1995 his bill of costs in the matter of Mr MB. The direction was given with Mr Jordan's consent. This was another matter in which there had been a complaint by a client of Mr Jordan of overcharging. Mr Jordan requested that this be the next matter dealt with. Mr Jordan claimed that Mr MB owed him a substantial amount of money. I will refer later to the failure of Mr Jordan to comply with this direction, and to his failure to comply with later directions fixing new dates for the lodging of the bill in this matter. When the hearing before the Tribunal concluded, in December 1995, the bill had not been delivered.

On 3 March 1995 the Tribunal made a further direction. On this occasion it directed Mr Jordan to lodge with the Supreme Court a bill of costs, that he had already prepared, in relation to the affairs of Mrs F. She was another client who had made a complaint about Mr Jordan's charges.

On 25 May 1995 the Tribunal ordered Mr Jordan to prepare and deliver a bill of costs in relation to the affairs of Mr McK by 29 June 1995.

It will be seen, from what I have said above, that during this period, and subsequently, charges were being laid by the Board against Mr Jordan.

It should also be said that during this time there was a good deal of correspondence passing between the Board and Mr Jordan. That correspondence appears to have begun in late 1991. It continued during the subsequent years. The bulk of the correspondence appears to have been during 1992 and 1993, but there was a fair bit of correspondence in 1994 and 1995. As will appear later, much of the correspondence comprised letters from the Board to Mr Jordan, seeking his comments on complaints or seeking information from him. Many of these letters went unanswered, and that was the subject of a number of the charges. However, in terms of setting the scene, it is relevant to note that there were at least fifteen different clients who laid complaints against Mr Jordan, and in respect of whom Mr Jordan was receiving correspondence from the Board.

The taxation in the Estate of Morris began before a Master of the Court on 8 May 1995. It proceeded for four days. There was another day of hearing on 14 July 1995, and one more on 1 September 1995, and two more on 12 and 13 October 1995. A number of the beneficiaries in the estate gave evidence. Mr Jordan was represented by counsel for most of the time, and the witnesses were cross examined. Mr Jordan himself gave evidence. The transcript of the taxation is about 500 pages in length, excluding the concluding submissions.

There are about 200 pages of exhibits. The Master reserved his decision on 13 October 1995.

On 24 July 1995 the Tribunal began to hear certain charges against Mr Jordan. The charges were two of the charges laid on 17 March 1994, these charges having been relaid as the second set of charges of 4 May 1995, charges of 6 March 1995 and charges of 4 May 1995. Mr Jordan was represented by counsel. The hearing continued on 25, 26 and 27 July. the Tribunal had fixed the time for the hearing of these charges, taking into account Mr Jordan's commitments in connection with the taxation in the estate of Morris.

The hearing of the charges resumed on 30 October. The hearing had reached the stage at which Mr Jordan was being cross-examined. The Board had presented its case. Mr Jordan was now unrepresented. The hearing proceeded on that day and on the following day, and then was adjourned to 22 November 1995. Mr Jordan sought an adjournment on 30 October, but that was refused. A further application for an adjournment, made on 31 October, was successful.

From November onwards there were directions hearings in connection with the charges laid on 4 October 1995.

On 22 November 1995 the Tribunal resumed the hearing of the charges for one day. The hearing was then adjourned to 13 December 1995 for final submissions.

On 5 December 1995 the Master published his findings on the taxation of Mr Jordan's costs in the estate of Morris. He made a number of strongly adverse findings relating to Mr Jordan. He found that in a number of respects Mr Jordan had been incompetent while acting as executor, he found that he had lied to beneficiaries of the estate, and he found that his incompetence had resulted in Mr Jordan's charging far more than should have been charged for the work that Mr Jordan had done. The Master left to a further occasion the actual taxation of the costs.

Due to Mr Jordan's ill health, the further hearing of the charges before the Tribunal did not proceed on 13 December 1995. Final submissions were heard on 20 December 1995.

The transcript relating to these charges runs to some 600 pages. The exhibits occupy some 800 pages

On 19 February 1996 the Tribunal began hearing the charges of 4 October 1995. The Tribunal sat for one day. The matter was adjourned.

On 15 March 1996 the Master who was dealing with the estate of Morris published a further set of reasons, setting out his conclusions on the taxation of costs. The bill lodged by Mr Jordan claimed an amount of about $23,000. The Master allowed Mr Jordan costs of $2,000, his disbursements, and $1,500 for costs paid to another firm of solicitors instructed by Mr Jordan to advise him in relation to certain matters that arose in connection with the administration of the estate.

On the same day the Tribunal resumed the hearing of the charges of 4 October 1995. The matter was not completed on that day. Final submissions were heard on 3 April 1996.

The transcript of the evidence and submissions relating to these charges runs to some 300 pages. There are about 100 pages of exhibits.

On 10 October 1996 the Tribunal published its findings on the charges that it had heard. It published detailed reasons, extending to 141 pages. It found Mr Jordan guilty on most of the charges laid. An application to amend certain of the charges had been foreshadowed. The Tribunal stood over that application, certain other matters and the question of penalty.

Having heard further submissions, on 17 April 1997 the Tribunal published further findings. It allowed certain of the charges to be amended, and made a finding of guilt on those charges. It resolved an issue that had arisen on other charges, and made a finding of not guilty on those charges. It declined to undertake the hearing of charges arising out of the practitioner's conduct in connection with the Morris estate. It did so because, having made adverse findings about Mr Jordan's credit, the Tribunal considered that there was a reasonable apprehension of bias on its part should it hear further charges that would require it to consider Mr Jordan's credit. It dealt with the question of penalty and with the question of costs.

On 20 May 1997 Mr Jordan filed a notice of appeal against the decision of the Tribunal.

On 11 June 1997 Mr Jordan made application for an order extending the time with which he might appeal against the decision of the Master on the taxation of his costs in the estate of Morris. He also sought an order that the appeal be heard concurrently with his appeal against the decision of the Tribunal.

This application produced a flurry of affidavits, including affidavits from counsel who had appeared for Mr Jordan and his solicitors. The affidavits

dealt, among other things, with a claim by Mr Jordan that the delay in making the application was due to the fault of his legal advisers.

By Notice of Motion dated 11 September 1997, the Law Society sought an order, pursuant to s89 of the Act and pursuant to the inherent jurisdiction of the Court, that Mr Jordan's name be struck off the roll of legal practitioners.

Mr Jordan's application, for an extension of time within which to appeal against the decision of the Master, was heard by a judge of this Court on 7 and 8 October 1997. The judge gave his decision on 31 October. The judge rejected Mr Jordan's assertion that the delay was the fault of his legal advisers. He rejected a claim that the delay was explicable because of, and excused by, the fact that Mr Jordan was suffering from stress. He refused the application.

By notice of appeal dated 5 December 1997, Mr Jordan appealed to the Full Court against that decision.

On 5 February 1998, sitting as a single judge, I began the first of a number of directions hearings. My object was to have the three matters listed for hearing. Mr Jordan was suffering from ill health, and had been suffering from ill health for some months. That meant that, initially, the matters could not be listed for hearing. I mention here that Mr Jordan suffered a heart attack in October 1997. The state of his health explains some of the delay in the latter part of 1997 and early 1998. However, I have not reached any adverse conclusion based upon that delay, and so I say no more about it.

On 4 May 1998 the Full Court, differently constituted, heard the appeal against the decision of the judge who refused the application to extend time within which to appeal against the decision of the Master. The Full Court held that the appeal was incompetent, and struck it out. The appeal was incompetent because there was no right of appeal until, pursuant to Rule 101.19, Mr Jordan had sought a reconsideration by the Master of his decision.

Mr Jordan then made that application to the Master. On 11 June 1998 the Master heard the application. He gave his decision on 12 June 1998. The Master said that if he had a discretion to refuse to entertain the application, he would have done so, in view of the delay. He referred to the delay by Mr Jordan, to the fact that Mr Jordan had still not repaid to the estate the amount of the charges that he had deducted from the estate in excess of the amount allowed on taxation. (According to an affidavit sworn by an officer of Public Trustee, who is now the executor of the estate, Mr Jordan should have repaid an amount of $9207.00. After some delay, on 2 June 1994 he paid $9500.00 in to Court, but interest was still owing). He said that the objection to the taxation raised "nothing new". He said that all matters had been argued in

detail. He refused to vary his decision, and said that he would then proceed to sign the allocatur.

By application dated 25 June 1998, made pursuant to Rule 101.21 of the Supreme Court Rules, Mr Jordan made application for an order to review the Master's decision on taxation. In the ordinary course, that application would have come before a judge in chambers.

On 6 July 1998 Mr Jordan's appeal against the decision of the Tribunal, and the motion by the Law Society for the removal of his name from the roll of practitioners, came on for hearing before the Full Court, pursuant to orders made by me.

On that day counsel for the Board applied for an order that the application for a review of the taxation be reserved for consideration by the Full Court. The application was made on the grounds that Mr Jordan's application was closely related to the matters before the Full Court, and that it was convenient, and in the interests of the administration of justice, that all matters be dealt with together. Mr Jordan ultimately opposed the application, but in doing so he himself acknowledged the advantage of having all of the matters dealt with at the one time. I exercised my powers as a single judge, under s49 of the *Supreme Court Act*, to reserve for the consideration of the Full Court the application by Mr Jordan.

The hearing of all three matters then proceeded.

Review of taxation of costs - basis of approach

Usually, on a review of a taxing Master's decision, a judge will be slow to intervene: *Australian Coal and Shale Employees' Federation v Commonwealth* (1953) 94 CLR 621 at 628; *Dalgety Australia Operations Ltd v FF Seeley Nominees Pty Ltd (No 2)* (1988) 49 SASR 75. The reason for this is that many of the decisions made in the course of a taxation involve the exercise of a judgment that the taxing Master, using the experience gained from other taxations, in best placed to make. As well, some of the decisions made on a taxation are discretionary in nature.

In the present case Mr Jordan sought to use the review to challenge findings of fact made by the Master. Counsel for the Board argued that the Court should decline to undertake a review in this sense. I disagree. The findings caused the Master to decline to allow Mr Jordan's costs for much of the work that he had done, or claimed to have done. The amounts involved are substantial. The findings reflect adversely upon him as a practitioner. If the

findings stand, the Law Society will rely upon them in support of its application to have Mr Jordan's name struck off the roll of practitioners.

Under these circumstances, justice requires the Mr Jordan be given the opportunity to challenge the Master's findings. The long delay by Mr Jordan in pursuing the appropriate procedure (see above) does give rise to a difficulty, even allowing for the effect of his heart attack in October 1997. Mr Jordan has spent a lot of time pursuing an inappropriate procedure. As a solicitor, he should have realised that the procedure he adopted was inappropriate. Suggestions were made to him to that effect, but he persisted with the course of action chosen. This means that still the administration of the estate of Morris is not complete. As well, bankruptcy proceedings have been brought against Mr Jordan based upon his failure to repay to the estate monies due to it as a result of the taxation. Despite all that, I consider that the Court should review the findings of the Master, having regard to their seriousness. To do so will not inflict any further delay upon the estate.

In support of his application, Mr Jordan tendered an affidavit sworn on 3 July 1998. The affidavit contains some additional evidence by way of statements of fact by Mr Jordan, and by exhibiting a small amount of additional correspondence. It also contains submissions in support of the application. Apart from that affidavit, Mr Jordan argued the application on the basis of the evidence taken before the Master.

Counsel for the Board opposed the receipt of the affidavit. I consider that the affidavit should be received. It is desirable, within reason, that Mr Jordan has every opportunity to place all relevant material before the Court. The additional material is of little significance, and the receipt of the material has not disrupted the hearing of the review.

I am not aware of any authority that bears on the approach to be taken to the Master's finding of fact on a review by a judge of a taxation. Rule 101.21(2) provides as follows:

> "The application shall be heard and determined by a judge upon the evidence which has been brought in before the Master, and further evidence shall not be received upon the hearing of the application unless the judge so orders."

I have dealt already with the question of further evidence. It is unclear whether Rule 97, a rule that regulates appeals to the Supreme Court other than those to be heard by the Full Court, applies to this appeal. Rule 97.17 provides that an appeal under Rule 97 is to be by way of rehearing.

Either way, I do not consider that the review is to be conducted by the judge hearing the matter afresh. Rule 101.21 makes that clear. In my opinion, even if Rule 97.17 applies, the position is that Mr Jordan carries the onus of satisfying the Court, having regard to the evidence given before the Master and such further evidence as the Court might receive, that the Master erred in the findings that he made: cf *Simpson Limited v Arcipreste* (1989) 53 SASR 9 at 19 Cox J, at 21 Duggan J. In dealing with Mr Jordan's submissions, the Court must make appropriate allowance for the fact that the Master heard the witnesses, and had to resolve issues on which his conclusions as to the credibility of the witnesses were vital. In such a case the Court will be slow to interfere with findings of fact.

The estate of Morris - a brief chronology

What follows is drawn from the Master's decision, and from a chronology which was put before the Master, and from some of the exhibits before him.

Stephen Morris made a will appointing Mr Jordan as his executor. By the will he left his property to his parents and to a brother. He excluded one of his other brothers, Craig Morris. For about seven years he lived in a defacto relationship with Ms A. They separated in about July 1987. Stephen Morris died on 6 February 1989.

Apparently the family did not know that Stephen Morris had made a will that excluded Craig from his estate. The Morris family had had contact with Mr Jordan in the past. They did not like Mr Jordan. They did not want him to be the executor. In this it seems that they were fortified by a note that they claimed that Stephen wrote shortly before his death. The note said that he wanted his father and Craig to "look after his affairs". This note was never produced to Mr Jordan. The family said that they discarded it, believing it to be of no legal significance, apparently having been advised to that effect by Mr Jordan. For all these reasons the Morris family wanted Mr Jordan to renounce his executorship. He was asked to do so by a letter of 7 March 1989.

Mr Jordan declined to do so. That decision appears to have been communicated by a letter of 11 April 1989.

Also in April 1989 Mr Jordan was advised by solicitors, acting for Ms A, of her intention to make a claim under the *Inheritance (Family Provision) Act*, on the basis that she was a putative spouse of Stephen Morris.

The Morris family gave evidence that they met with Mr Jordan on 5 May 1989. The effect of their evidence seems to have been that by then they had accepted, reluctantly, that Mr Jordan would continue as executor.

They said that they agreed then to provide Mr Jordan with details of the estate. It appears to have been a relatively modest and uncomplicated estate. They said that Mr Jordan told them that the obtaining of probate would be straight forward, would take between two and three months, and would cost about $2,000. They also said that Mr Jordan told them that Ms A's claim had no prospects of success. Mr Jordan strongly denies having said this about Ms A's claim. He says that, all along, he recognised that the claim was likely to succeed, as indeed it was.

There was another meeting between the family and Mr Jordan in September 1989. At that meeting the family claimed that Mr Jordan told them that he had made application for a grant of probate but that the relevant form had changed, or something like that, and that he needed further information in relation to valuations and motor vehicles. Mr Jordan denies having said this.

By letter dated 10 October 1989 the parents of Stephen Morris made a written compliant to the Board about Mr Jordan. Broadly, they complained about his delay in obtaining probate. They complained that he had told them that he had made an application for probate, but that when they went to the probate office to check they were informed that no application had been made.

Probate was obtained on 5 June 1990.

In September 1990 Mr Jordan received letters from Ms A's solicitors, reminding him that the estate should not be distributed, without her consent, until her claim was resolved.

In January 1991 an order was made, by consent, declaring Ms A to be a putative spouse of Stephen Morris. Her solicitors wrote to Mr Jordan calling upon him to provide to the Court details of the estate and of its value.

In July 1991 Mr Jordan received the proceeds of the sale of Stephen Morris' house.

On 10 August 1991 Mr Jordan swore an affidavit that he filed in the action in which Ms A was making her claim. He there disclosed that he had deducted fees of $13,878.82, and had paid an amount of $3,830.59 to a firm of solicitors whom he had retained to advise him in connection with the claim by Ms A and certain other matters.

Mr Jordan had not informed the Morris family of these deductions. He had not rendered accounts to the beneficiaries. He had provided some computer print-outs recording the costs attributable to work apparently done by

him. On my rough estimate, the costs itemised in these print-outs amount to about $3,800.

The disclosure in the affidavit no doubt alarmed the Morris family. On 12 August 1991, in the claim by Ms A, a Master ordered, by consent, that Mr Jordan pay into Court $8,000 pending resolution of the question of his entitlement to costs. On the same day, in the action in which Ms A made her claim, it was ordered that Ms A receive one quarter of the residuary estate of Shane Morris.

Despite the order just referred to, on 5 December 1991 Mr Jordan transferred a further sum of $500 from the estate to his costs account, without informing the Morris family.

The order for payment into Court was not complied with until 2 June 1994, almost three years after it was made. Mr Jordan then paid into Court $9,500. He did so pursuant to a further order by the Master which extended the time for the making of payment, and provided for the payment of $1,500 by way of interest.

On 12 July 1994 a Master declared, in proceedings brought by Mr Jordan, that he was entitled to remuneration at the rate applicable to professional work done by a solicitor. Of course, no proper bill of costs had still been prepared.

As I said earlier, on 16 December 1994 the Tribunal directed that Mr Jordan lodge for taxation the bill of costs that he had by then prepared in the estate of Morris. According to the Master who later taxed the bill, the bill claimed costs of about $23,000.

The Master's findings

What follows is drawn from the Master's findings, but also from Mr Jordan's submissions to the Court and from his written submission to the Master.

It is convenient to begin with a summary of Mr Jordan's explanation for these events. They are events which, on their face, seem extraordinary for such a straightforward estate.

Mr Jordan said that, from the outset, the Morris family aimed to get him to renounce his executorship, or to have him removed. This desire motivated their conduct throughout. He said that he knew about Ms A's claim early on, and believed that it would succeed. Accordingly, there was no reason for him to treat the obtaining of probate as urgent. The estate could not be distributed

until her claim was resolved. He denied that he told the family that Ms A's claim would not succeed. He said that there was no reason for him to say that. He said that at first the family claimed there was a new will. He said that this caused delay. He said that it was only in May of 1989 that it became apparent that he was to continue as executor. That, he suggested, explained any delay until then. He said that the family was slow in providing information that he requested, and on occasions obstructive. He said that they dealt with assets of the estate without consulting him, and that this caused further problems. He said that they took away records and documents that he needed. He said that they gave him false or unreliable information about the assets of the estate. He said that they opposed him selling the house of Stephen Morris, although that was the only sensible thing to do. He said that their complaint to the Board of 10 October 1989 was just another attempt to have him removed. He said that they were obstructive in relation to Ms A's claim, and instructed him to be unco-operative with her solicitors. He said in evidence that he was under no obligation at all as executor to inform the beneficiaries of the amounts being deducted for his work. He did not consider that s41 of the Act required him to forward an account before deducting his charges. He blames some of the delay in later years, and some of the complications, on the solicitors that he retained to handle Ms A's claim, and on the solicitor whom he retained to handle his own claim for costs.

As stated earlier, the Master heard lengthy evidence from the members of the Morris family and from Mr Jordan. Other evidence was put before him, as were a number of documentary exhibits.

The Master accepted the members of the Morris family as truthful witnesses.

He found that Stephen Morris had left a note of some sort shortly before his death, and that it was along the lines claimed by the family. He found that the family did not want Mr Jordan to be the executor. He found that "grudgingly perhaps" they nevertheless accepted him as executor. He accepted that, in the early months, Mr Jordan was entitled to suspect that the family members wanted to include Craig in the distribution of the estate. He accepted that Mr Jordan saw it as his duty to deal with the estate as the will provided. However, he expressly rejected Mr Jordan's claim, in evidence before him, that the family "intentionally deceived" Mr Jordan about a new will, with a view to removing records and estate assets without interference by Mr Jordan.

The Master found that, to the extent that family members removed assets of the estate, they acted "properly and reasonably". He does not explain this finding. I assume that he meant that the assets were removed for safe keeping

or that they were dealt with by the family members because of Mr Jordan's failure to deal with them in a satisfactory manner.

He found that at the meeting on 5 May Mr Jordan did advise the family that Ms A's claim had no prospect of success.

He found that, acting with reasonable efficiency, Mr Jordan should have obtained probate by September 1989. He had affidavit evidence from the Registrar of Probates as to what was required to obtain a grant of probate. He found that the failure to have obtained probate by September 1989 was due to Mr Jordan's inactivity and incompetence.

He found that at meeting with the family in September 1989, Mr Jordan lied to the family when he told them that he had lodged an application for probate, but that due to a change in the form, or something like that, he could not proceed with the application and had to get further details.

As to most of the matters of contention between the family and Mr Jordan during the administration of the estate, the Master found that the family had acted reasonably, in the face of delay and incompetence by Mr Jordan. I do not need to go into the details of these matters. The Master found Mr Jordan's evidence to be "utterly unreliable" and "deceitful". In effect, he found that Mr Jordan falsely attempted to blame the family for his own inadequate performance, and that he lied to the Master in doing so. He found that Mr Jordan's failure to get probate sooner, and to get the estate in order sooner, was due to "a certain lack of competence".

In his second set of reasons the Master found, in effect, that Mr Jordan's own incompetence had resulted in him doing work that should not have been done, and spending time that should not have been spent. He found that proper advice to the family about Ms A's claim, and proper advice about the sale of the house, would have meant that each of these matters would have been handled much more expeditiously and simply than they were handled. In short, he found that Mr Jordan had done a lot of work that was attributable to his own incompetence, and had caused a lot of unnecessary costs to be incurred.

There are, therefore, clear findings of incompetence in the discharge of his function as executor, of lying to and misleading the beneficiaries of the estate, of incompetent advice to the beneficiaries, and of giving deliberately false evidence to the Master.

Submissions on review

In effect, Mr Jordan sought to reargue the issues decided by the Master.

He said that in view of the claim by Ms A, obtaining a grant of probate was not urgent. It was not until May 1989 that it was clear that he would remain as executor. The family was slow in providing information. In the light of that, a failure to obtain probate by September was not indicative of incompetence.

Under the circumstances, I agree that the failure to obtain probate by September 1989 did not demonstrate incompetence. But I do not consider that the Master intended to so find. The Master criticised Mr Jordan for "delay and inactivity". In my opinion that criticism is sound. The failure to obtain probate until June 1990 adds to that criticism. I consider that it can be said that the overall delay was indicative of incompetence.

As to the finding that Mr Jordan had lied about the attempted application for probate, Mr Jordan pointed to nothing that cast any doubt on the Master's findings. He referred again to the family's desire to have him removed, suggesting that this was the motive for their lie. He produced some handwritten notes of his attendance of 15 September 1989. They contain a reference to information "needed for probate". He also produced some copy letters to the family referring to information that he needed. But this does not clash with the claim by the family that he told them that he had lodged an application. Their complaint is that he said that because of the new form his application was rejected. Their letter of complaint to the Board said that he told them that he "also required more detailed information". The further material produced by Mr Jordan provides no basis for disturbing the finding by the Master.

Similarly, Mr Jordan pointed to nothing that would disturb the Master's finding that Mr Jordan inappropriately advised the family that the claim by Ms A had no prospect of success. His only argument was that he would not have said that. While it is surprising that he would have said it, the Master's finding that he was an unreliable witness means that one cannot assume Mr Jordan would act as would be expected.

As to the more general finding that he displayed incompetence in failing to deal, with reasonable expedition, with the administration of the estate, thereby producing the occasion for unwarranted work to be done, he really did no more than assert again that it was the family that had obstructed him, and that had caused the delays. He referred again to their attempts to mislead him. All of these matters were thoroughly considered by the Master, and were investigated in detail in the evidence. Mr Jordan could point to no errors in the Master's approach. I reject his submission on this matter.

I do not find it necessary to deal with Mr Jordan's argument that delays in the latter stages were attributable to his own legal advisers. The Master made no specific findings on the issue. Affidavits put before the Court in connection with Mr Jordan's application for an extension of time cast doubt on the basis of his submission. But, as I said, the Master made no adverse findings about this aspect of Mr Jordan's conduct and so I do not propose to deal with it.

It follows, in my opinion, that there is no reason to disturb the implicit finding that he displayed gross incompetence as a solicitor while acting as executor of the Morris estate. There is no reason to disturb the finding that on two matters he lied to the beneficiaries, and that in his evidence he lied to the Master in his attempts to blame his own inadequacies on the conduct of the Morris family. I add that in my opinion his failure to inform the beneficiaries adequately of the costs being deducted was inappropriate conduct, even if there was no obligation under the Act to render an account before deducting the costs. I content myself with the observation that, in my firm opinion, proper conduct on the part of a solicitor required that Mr Jordan give the beneficiaries reasonable information about the charges being deducted from the estate. On his own admission he did not do so.

I reject Mr Jordan's complaints that the Master erred in taxing off specific items, thereby reducing the bill to about $9,000, and then making a further broad axe reduction on account of Mr Jordan's incompetence. The Master clearly formed the view that, for the task at hand, the charges were excessive, even when reduced to apparently allowable items. The Master was quite entitled to make the further reduction that he did; see *Copini & Sons v Skopalj* (1985) 124 LSJS 198, *Brown v Burdett* (1888) 40 ChD 244.

Mr Jordan complained that costs of $3,830.59, paid by him to the solicitors that he retained, were reduced to $1,500 without adequate particulars of those costs. If adequate particulars were not before the Master, that was the fault of Mr Jordan. In any event, the Master clearly made a broad axe assessment of what was a justified charge for the work that reasonably needed to be done. That assessment meant that, whatever the solicitors might have charged, it would not be allowed because it was work that was attributable to Mr Jordan's own deficiencies. The same answer can be made to a further claim by Mr Jordan that those same solicitors were owed a further $2,204.82. In my opinion it is now too late for Mr Jordan to make a further claim. In any event, that claim would fail for the reasons given by the Master.

In my opinion, the findings of the Master should stand. The application for review should be dismissed.

During the hearing of the review the Court indicated that, should the proper allowance for specific items fall for consideration, the matter would be referred back to a single judge. As will appear from what I have said, no issue appears to arise as to specific items. I can see no reason why Mr Jordan should now be permitted to challenge specific items. My tentative view is that the review should be refused without qualification, but before doing so I consider that Mr Jordan should be given an opportunity to persuade the Court otherwise.

The appeal - the Tribunal's findings

The first set of charges considered by the Tribunal was dated 4 May 1995. There were two charges on unprofessional conduct. First, that Mr Jordan represented to Ms P:

> "... that it would be to her advantage that he represented her in proceedings against her former defacto spouse Mr R since the practitioner had previously acted for the said Mr R when in fact such a proposal constituted an unprofessional conflict of interest."

The second charge was that Mr Jordan had acted for Ms P when he knew or should have known that he could not act for her because a conflict of interest arose from him having acted for Mr R.

The Tribunal took the view that it could not convict on the charges unless there was in fact a conflict of interest. The Tribunal found that Mr Jordan had confidential information concerning the affairs of Mr R. However, it was not satisfied that he had any confidential interest relevant to the matter in which he acted for Ms P. Accordingly, the Tribunal acquitted Mr Jordan on these charges.

Nevertheless, the Tribunal accepted evidence from Ms P that before Mr Jordan began acting for her, he said that he was in dispute with Mr R :

> "... and that he would be ideal for me as far as representing me due to the fact that he had hands on experience with [R], and he knew the nature of the person and that he had his own personal vendetta basically, to expose him in Court as the liar that he knew he was."

In so finding, the Tribunal preferred the evidence of Ms P to that of Mr Jordan.

The Tribunal also found that on 7 April 1992, while at the Court, Mr Jordan said to the solicitor acting for Mr R that:

> "... he would use whatever knowledge he had of my client's company and personal injuries matters to his client's advantage."

Again, the Tribunal accepted the evidence of the solicitor, although Mr Jordan denied having made such statement. Mr Jordan admitted that a conversation had taken place on the occasion in question.

After the Tribunal published its findings and in the light of the finding that there was in fact no conflict of interest, the Board applied to amend the charge, by adding the following further particular of unprofessional conduct:

> "The practitioner represented to Ms [P] that it would be to her advantage that he represented her in proceedings against her former defacto spouse Mr [R] since the practitioner had previously acted for the said Mr [R]."

Particulars were given of that allegation.

The Tribunal allowed the amendment, over Mr Jordan's opposition, and refused to allow Mr Jordan to call further evidence in his defence to the amended charge.

The Tribunal said that all along Mr Jordan had been well aware that the two conversations were in issue. The Tribunal found that Mr Jordan had not identified any further evidence that could bear on the issue of whether either conversation had taken place. Accordingly, it rejected his application to be allowed to call further evidence. The Tribunal found Mr Jordan guilty on the amended charge. It said that the conduct "... has not been a major consideration in our determination of the appropriate penalty".

The second set of charges was laid on 6 March 1995. The Tribunal called these the non-cooperation charges. So will I, from time to time. They alleged "unprofessional conduct in relation to complaints against him [Mr Jordan] by various of his clients or ex clients".

The first count was that:

> "The practitioner failed adequately to provide within a reasonable time the responses and information requested by the [Board] in relation to ...."

The particulars that were given related to 14 different clients, including the estate of Morris. The particulars identified 65 letters in all, addressed by the Board to Mr Jordan, and some others addressed to solicitors who at times acted

for him. The first letter was dated 7 July 1992, the last was dated 30 June 1995.

The second charge was that he was guilty of unprofessional conduct in that:

> "The practitioner failed adequately to produce to the [Board] within a reasonable time files and other documents in relation to ...."

The particulars identified five clients, four of whose matters were the subject of the first charge. The particulars identified a specific letter of request relating to each such client.

The Tribunal began by holding that there is an obligation on a practitioner to co-operate with the Board, having regard to the role of the Board in the scheme of the Act. Mr Jordan did not dispute this. He did complain that the Board, instead of investigating the matter itself, had expected him to provide information for it. That is more a matter of comment. I agree with the Tribunal's conclusion on the point.

The Tribunal considered each client's matter separately. It examined the letters from the Board, and such responses as Mr Jordan had made. It did not confine itself to the letters particularised. It considered the explanations given by Mr Jordan in evidence. The Tribunal found that the explanations for the delayed responses, when they were delayed, and for the failure to respond when there was no response, were inadequate.

The Tribunal found that in all 14 cases Mr Jordan had failed to provide either any or an adequate response to the Board's letter within a reasonable time.

As to the second charge, the Tribunal again considered all of the relevant correspondence. The Tribunal found that some of the documents requested were provided, over the course of about 12 months. That was the case in four of the five matters. However, important documents that were sought had not been provided. No documents at all had been provided in one matter. The Tribunal recognised that the production of the documents called for by the Board required a significant effort on the part of Mr Jordan. The Tribunal considered his explanation. Mr Jordan claimed that his files were boxed up for a time in his own premises, and then later removed to storage. For various reasons it was difficult for him to get access to the files. The Tribunal accepted that some delay in producing the documents called for might have been justified. But the Tribunal found that:

> "... the practitioner's conduct in this case and the explanation he proffered illustrated either a complete lack of appreciation of his legal obligations and the seriousness of the situation, or an indifference (and at times his conduct and evidence suggested almost a contempt) towards the Committee and his professional obligations in relation to its requests."

The Tribunal also found that evidence put before it, to the effect that Mr Jordan was, from late 1994, suffering from "an adjustment disorder with anxious and depressed mood" did not justify Mr Jordan's conduct. In any event, the Tribunal regarded the medical opinion to that effect as unreliable, because it depended entirely upon history provided by Mr Jordan, and the Tribunal regarded his evidence as unreliable.

The Tribunal found Mr Jordan guilty of this charge.

Next, the Tribunal considered a charge dated 4 May 1995. This alleged a failure to comply with an order made by the Tribunal on 9 December 1994 requiring him to prepare and deliver a bill of costs in taxable form for the work that he had done for Mr M B.

The direction was given by the Tribunal as part of a programme to determine the amount that Mr Jordan was entitled to charge in matters which there was a complaint about his costs. The direction was given with the consent of Mr Jordan. It required delivery of the bill by 28 January 1995. On 27 January 1995 there was a further directions hearing. Mr Jordan told the Tribunal that the bill was 60% complete. Nevertheless, the bill did not arrive, and a number of extensions were granted. By April 1995 Mr Jordan was represented by a solicitor, who was instructed to assist him in preparing the bill. Still the bill did not arrive. At the conclusion of the hearing, on 30 October 1995, the bill had not been delivered.

Mr Jordan's evidence was that he could not complete the bill because the file, like other files, was in storage. The Tribunal found Mr Jordan's evidence about the delay, and the reasons for it, to be unsatisfactory and unreliable. The Tribunal concluded that any difficulty in getting access to the file did not excuse the long delay. The Tribunal was not satisfied that Mr Jordan had made any genuine effort to locate the file.

The Tribunal found Mr Jordan guilty on this charge.

The Tribunal next considered charges dated 4 October 1995. These alleged unprofessional conduct in practising the law without holding a current practising certificate, in failing to have his accounts audited and in failing to

submit a copy of the auditor's report, and in filing an affidavit in connection with the renewal of his practising certificate which contained information which was false and which he knew or ought to have known was false. There was also a count alleging a failure to comply with the Tribunal's order, made on 25 May 1995, for the delivery of a bill of costs in relation to work done for Mr Mc K.

There was not a great dispute about the facts relevant to these charges.

After allowing a minor amendment to the charge of practising without a practising certificate, which amendment was not opposed, the Tribunal found Mr Jordan guilty of practising without holding a current practising certificate during 1994, and during 1995 until 29 August 1995. It found him not guilty in relation to the period from 29 August 1995.

In relation to the auditing of accounts and the lodgement of a report, the Tribunal concluded that the relevant section of the Act created only one offence. It found Mr Jordan not guilty of unprofessional conduct in having failed to have his accounts audited for the financial years ended 30 June 1994 and 30 June 1995. It found him guilty of failing to submit an auditor's report by the due date in 1994 and in 1995.

The Tribunal found Mr Jordan guilty of the charge of unprofessional conduct relating to the affidavit sworn by him when applying for a practising certificate. Mr Jordan had sworn he had not "committed any act which might constitute a proper ground for disciplinary action ...". The Tribunal referred to the matters in relation to which Mr Jordan had made no reply to the Board, and to his failure to comply with the Tribunal's direction to lodge a bill of costs for work done for Mr M B. The Tribunal could not understand how, in light of those matters, Mr Jordan could have said what he said. Mr Jordan knew that he had not replied to certain letters, knew that he had not complied with certain directions, and knew that charges had been laid against him. The advice upon which he claimed to have relied did not justify what he said. The Tribunal found that Mr Jordan ought to have known that his statement was not correct.

The Tribunal found Mr Jordan guilty on the charge of failing to comply with an order, made by the Tribunal on 25 May 1995, that Mr Jordan prepare and deliver a bill of costs in taxable form in relation to a complaint of "gross overcharging" by Mr McK, the bill to be delivered by 29 June 1995.

Mr Jordan had pleaded guilty to the charges of practising without holding a practising certificate in 1994 and in 1995, to failing to have his trust account audited in due time for the years ending 30 June 1994 and 30 June

1995 and to the charge of failing to prepare and lodge a bill of costs in taxable form.

The facts established in relation to these charges reveal that in 1994 Mr Jordan did not apply for a practising certificate for that year until March. He paid the relevant fees at that time. He should have obtained the practising certificate before the year began. He was advised by letter, in April 1994, that because his application for a certificate was late, an affidavit would have to be filed stating that he had not committed any act that might constitute a proper ground for disciplinary action. Such an affidavit is required by s17(1)(b) of the Act. Mr Jordan did not file the affidavit. To compound things, he did not apply for a practising certificate for the 1995 year until August 1995. It was the affidavit for the purposes of s17 of the Act, lodged in connection with that application, that led to the charge based upon his affidavit. In December 1995 Mr Jordan was issued with practising certificates for the 1994 and 1995 years. The evidence established that Mr Jordan did not have his trust account audited for the years ended 30 June 1994 and 30 June 1995 until late in 1995.

Mr Jordan's explanations for these failures on his part reflected badly on him.

Mr Jordan said that he did not respond to the letter in April 1994, referring to the need for an affidavit before his late application could be granted, because he regarded the affidavit as a formality. There was no reason why he could not have prepared the affidavit. He did not apply for a practising certificate in 1995 in due time because he lacked the funds to pay the required fees. He attributed the lack of funds to problems he was having with his computerised billing system. The Tribunal did not accept that the problem with the computer system was as great as Mr Jordan claimed. Mr Jordan called evidence from a computing consultant who worked on his computing system, but that evidence did not support his claims about the extent of the problem. Mr Jordan offered no real explanation for the failure to have his trust account audited. He did claim that for some time the relevant records were in the possession of a trust account inspector. That, however, was no explanation for the prolonged delay. As to the affidavit, Mr Jordan said that he had relied upon certain advice given to him by the solicitor working for the Board. The Tribunal found that, knowing what Mr Jordan knew, he ought to have known that the relevant paragraph stating that he had not committed any act which might constitute a proper ground for disciplinary action under the Act, was not correct. The Tribunal did not find that he knowingly swore a false affidavit.

In dealing with the charge of practising without a practising certificate, the Tribunal said that:

> "... the practitioner's explanation reveals either a complete lack of understanding by the practitioner who has professional obligations, or a self interested approach to such obligations."

In my opinion that comment is amply justified, and applies equally to the charges relating to the failure to have the trust account audited as required. As to the affidavit, Mr Jordan's conduct displays a lamentably casual approach to his obligations to the Court.

As to the failure to prepare the bill of costs as directed, the charge to which Mr Jordan pleaded guilty, his explanation was once again that he had problems in getting the relevant files because they were in storage. As I have previously indicated, the Tribunal had already found Mr Jordan's evidence about his difficulty in getting access to files to be quite unsatisfactory.

The result was that in relation to this set of charges the Tribunal found Mr Jordan guilty of two counts of practising without a practising certificate, two counts of failing to submit an auditor's report in due time, one count of swearing an affidavit containing a statement that he ought to have known was false, and one count of failing to comply with a direction of the Tribunal to file and deliver a bill of costs. The Tribunal found Mr Jordan not guilty on a number of other counts included in this set of charges.

The Tribunal's decision on penalty

The Tribunal's conclusion was that disciplinary proceedings should be commenced against Mr Jordan in the Supreme Court. It must have taken the view that the penalties available to it, which did not include striking the practitioner's name off the roll, were not adequate.

The Tribunal referred to the following matters.

It said that Mr Jordan's departure from acceptable standards of practice "was and is substantial and serious". It was there referring to his failure to comply with orders of the Tribunal, his failure to reply to the Board's requests, his failure to obtain a practising certificate and his failure to have his trust account audited and to lodge an audit report.

The Tribunal noted that Mr Jordan had not, by 17 April 1997, filed the bills of costs in the matters of Mr M B and Mr McK. The Tribunal noted that even on his own evidence he had, for some time, had no reason for not doing so. It noted that in a number of matters he had still not provided to the Board the information that it sought.

The Tribunal noted that Mr Jordan's explanations for his defaults were, in most cases "highly unsatisfactory".

The Tribunal said that Mr Jordan's evidence was not given "in a frank and candid way". It said that he showed "very little, if any, contrition" for what he had done. The Tribunal made a further finding which is relevant to a number of the charges. It said:

> "The practitioner continually blamed others for circumstances he said were beyond his control for his predicament. He did not seem to appreciate his overriding duty to comply with his professional obligations."

The Tribunal also ordered Mr Jordan to pay the Board 80% of the costs in relation to the charges with which the Tribunal had dealt. It took account, in particular, of the charges in relation to which the Board had been unsuccessful.

Grounds of Appeal

A number of the grounds of appeal against the Tribunal's findings overlap. It is convenient to group some of them together. Subject to that, the various grounds are as follows.

Two of the grounds are, in substance, that the Board failed to resort to conciliation in relation to the complaint that it had received, and that the Tribunal proceeded without being satisfied that conciliation had taken place.

One ground complains that the Tribunal did not make available to Mr Jordan its previous decisions in other matters, putting Mr Jordan at a disadvantage.

One ground complains that the Tribunal erred in requiring the Board to prove its case only on the balance of probabilities.

Two grounds complain of the Tribunal's decision to allow fresh charges to be laid during the proceedings.

Three grounds raise what is, in substance, a complaint that the proceedings before the Tribunal were oppressive or, at the least, fundamentally unfair. In these grounds the following points are made. It is claimed that Mr Jordan did not have a reasonable opportunity to prepare or to conduct his defence. This was said to be due to the number of complaints being pursued

by the Board, the demands that the Board made of Mr Jordan for explanations and for documents, the demands made of Mr Jordan by the directions of the Tribunal, and in particular the directions to lodge detailed bills of costs, and the demands imposed upon Mr Jordan by the hearings before the Tribunal and before the Master of this Court. Mr Jordan claimed that these pressures were imposed at a time when he was experiencing "personal and commercial" difficulties, and that the Tribunal gave insufficient weight to his "psychological condition".

One ground complains that the Tribunal, in assessing Mr Jordan's demeanour made insufficient allowance for the impact upon Mr Jordan of the manner in which the Board had conducted its investigations, and had conducted the hearing before the Tribunal.

One ground complains the Tribunal wrongly excluded evidence tendered by Mr Jordan relating to a complaint in respect of which no proceedings had been brought. This evidence is said to have been relevant to explaining Mr Jordan's attitude to the Board.

One ground complains that the Tribunal rejected evidence given by Mr Jordan when that evidence was not directly challenged by the Board.

Mr Jordan challenges the conviction on the new charges that the Board allowed to be laid. He submits that his conduct was not wrongful, and he challenges the acceptance of the evidence of Ms P in relation to these charges.

Six grounds relate to the non-cooperation charges and to the charges of failing to provide documents to the Board. Mr Jordan complains that the Board had behaved oppressively; that it was beyond his capacity to deal with all of the complaints; that his conduct was proper having regard to the adversarial manner in which the Board conducted its investigations; that he was entitled to "reserve the defence" on these matters; that the findings were against the weight of the evidence, and that the Tribunal should not have acted on evidence of non-cooperation that occurred after some of the charges were laid.

In relation to the failure to lodge the two bills of costs that he was directed to lodge, Mr Jordan claims that under the circumstances he had been unable to complete the bills.

One ground challenges the findings of unprofessional conduct on the charges of practising without a practising certificate and of failing to have the trust account audited.

Finally, Mr Jordan complains of the failure of the Tribunal to act on evidence of mitigating circumstances, and of the order that he contribute to the Board's costs.

Failure to conciliate

In my opinion, there is nothing at all in this point. Section 74(1)(b) of the Act authorises the Board to deal with complaints by conciliation. I doubt whether a decision not to resort to conciliation is reviewable by this Court. If it is, the failure to conciliate would have to be challenged by proceedings by way of judicial review or by way of a properly supported objection to the hearing of charges proceeding. It cannot be raised, after the event, by way of appeal against the findings of the Tribunal. Nor is there any obligation on the Tribunal to enquire into the Board's use or failure to use processes of conciliation. In any event, in view of the number and nature of the charges, and Mr Jordan's pretty firm denial of any wrongdoing in those matters in which he did reply to the Board, I do not consider that there is any prospect at all of a Court concluding that the Board was obliged to engage in conciliation.

In support of this ground, Mr Jordan referred to a letter of 27 February 1993 that he had written to the Board. The letter dealt generally with the complaints that the Board had raised with Mr Jordan. It dealt with two specific complaints. Mr Jordan then said:

> "Let's see if we can get rid of some others. It would be nice if we could resolve some by other process than complete sacrifice of my fees ... I would be pleased to have the opportunity to discuss these matters with you at some opportunity. ... I look forward to hearing from you."

I do not consider that that letter cast upon the Board any particular obligation to change its approach. The invitation was one that the Board might have chosen to take up. Apparently it did not. It was always open to Mr Jordan to pursue the matter further if he saw fit. I strongly suspect that the Board had no confidence that worthwhile progress would be made by taking up the suggestion. Be that as it may, I do not consider that this letter adds any substance to this ground of appeal.

Availability of Tribunal decisions

There is nothing in this point. The first request for access to previous decisions of the Tribunal, identified by Mr Jordan in his submissions, was on

16 May 1997, after the Tribunal had made its decision. The request was for access to all decisions of the Tribunal.

That request, and the requests that Mr Jordan made thereafter for access to decisions, were couched in terms that went beyond what I consider to be a reasonable request on his part.

There are some restraints upon the Tribunal in making copies of past decisions available. It is not necessary to go into them. The Tribunal should do its best to meet any reasonable request for access to decisions that might provide relevant guidance to a practitioner facing charges before the Tribunal. But, in my opinion, Mr Jordan has not shown that he was refused access while the charges were being heard, nor has he pointed to any particular disadvantage that he suffered through lack of access to previous decisions. The issues before the Tribunal were not issues as to which the extent of his professional obligations was unclear. His request, after the event for access to decisions on a whole range of matters was not a reasonable request.

Standard of proof

The Tribunal directed itself that the required standard of proof was proof on the balance of probabilities. The Tribunal referred to the decision of the Full Court in *Re Ward* [1953] SASR 308, to conflicting views expressed on the matter in *T v The Medical Board of South Australia* (1992) 58 SASR 382 and to *Versteegh v Nurses Board* (1992) 60 SASR 128.

Since the Board gave its decision, this Court has reviewed the question. In *Rajagopalan v Medical Board of South Australia* (unreported, 2 February 1998, Judgment No. S6667) the Full Court held that in disciplinary proceedings alleging misconduct by a member of a profession, the standard of proof is proof on the balance of probabilities. That is a decision that binds this Court, and in the light of it the decision of the Tribunal was correct.

Unfairness

Under this heading I deal with the grounds that complain that the number and nature of the demands made on Mr Jordan by the Board and by the Tribunal were such that the proceedings before the Tribunal were oppressive or fundamentally unfair. As my earlier summary of these grounds indicates, a number of other matters were raised under this heading.

I refer to the chronology that appears near the beginning of my reasons. Mr Jordan's submissions are to be assessed, bearing in mind the events there set out.

A short answer to these grounds is, I consider, that they were never properly put before the Tribunal. An objection to the proceedings continuing before the Tribunal required of Mr Jordan that he put before the Tribunal evidence of all relevant facts, and evidence to support his claim that the cumulative impact of all of the complaints and what they involve was such that there could not be a fair hearing before the Tribunal. My impression is that the matters advanced on appeal were not all put, or at least developed, before the Tribunal. On 18 May 1995 counsel appearing for Mr Jordan had asked the Tribunal to desist from setting a date for the hearing of the charges until after a hearing by the Master of the issues that arose in the Morris estate. That hearing was to take place in July. The submission was that it was an abuse of process for Mr Jordan to have to face a multiplicity of proceedings. The Tribunal weighed this matter up, but refused Mr Jordan's application, although it did make allowance for the demands upon him by fixing the date for the hearing at 24 July 1995. On 30 October 1995, when the hearing resumed with Mr Jordan's cross-examination in progress, Mr Jordan was not represented. During the course of that day he applied for an adjournment on the grounds that he was unrepresented. The adjournment was sought until, apparently, Mr Jordan had sufficient funds to afford representation. He provided no details in support of his claim that he could not afford representation. Once again, the Tribunal considered his submission but declined to act upon it. On 31st October 1995 Mr Jordan sought an adjournment to enable him to produce evidence relating to his psychiatric condition. The hearing was adjourned to 22nd November 1995 so that that could be done.

As appears from what I have just said, some of the matters relevant to this ground were raised before the Tribunal at one stage or another of the proceedings. My impression is that they were not put collectively, in the way in which they are now put. On appeal, Mr Jordan, in substance, sought to pull all the different threads of this argument together, and seemed to invite the Court to make findings of fact that the Tribunal was probably never asked to make. Even before this Court the argument depended, to considerable extent, upon an assertion by Mr Jordan that, taking all of the surrounding circumstances into account, he could not reasonably be expected to have coped with all of the matters demanding his attention in the course of the Tribunal proceedings.

The submission by Mr Jordan puts little, if any weight, upon the obligation of the Board and of the Tribunal to deal with what were serious matters. The Tribunal must, in the public interest, determine charges that allege that a practitioner is unfit to practise. It cannot decline to deal with such charges on the grounds that to do so will impose heavy burdens upon the practitioner. Proceedings before the Tribunal are brought in the public

interest, and not to punish the practitioner. The public interest requires that the fitness of a practitioner to practise be resolved as soon as is practicable. That is not to suggest that the Tribunal can ignore questions of fairness. My point is that the charges against Mr Jordan had to be determined, sooner or later. If Mr Jordan sought a determination at a slower rate than would otherwise be appropriate or desirable, it was incumbent upon him to produce evidence establishing that there could not otherwise be a fair hearing. It was also incumbent upon him to demonstrate that, if matters were to be left in abeyance for a time, and were to be disposed of more slowly than was desirable, he would so conduct himself in the meantime that there was a reasonable prospect of an ultimate orderly disposition of the charges in a reasonable time. In short, it was incumbent upon Mr Jordan to show that a reasonable programme for determining the charges could be devised, taking into account the public interest and the requirements of fairness. There is no sign that Mr Jordan ever directed his mind towards the latter aspect of the issue. His attitude appears to have been that his interests were the primary concern, his interests manifesting themself in the contention that he should not have to defend the charges under circumstances that put him at a disadvantage. I am prepared to accept that he was at something of a disadvantage because of the matters that required his attention.

Mr Jordan's submission appears to me to misconceive the nature of the proceedings before the Tribunal. The Tribunal was concerned to determine whether Mr Jordan had so behaved that he might be unfit to remain as a practitioner. As I have already said, the protection of the public is an important aspect of such proceedings. It was necessary for the Tribunal to resolve the matter as promptly as it could, so that Mr Jordan's entitlement to continue to practise could be resolved and also, I add, so that the complaints made by particular clients could be resolved. It would reflect poorly on the legal profession if either matter were unduly delayed. It was Mr Jordan's professional duty to act so that the Board and the Tribunal could discharge their responsibilities with reasonable expedition. A plea for more time, on the grounds that there are numerous complaints against a practitioner, cannot be ignored, but nor did the Tribunal ignore it. But such a plea must be substantiated, and needs to be scrutinised and considered with great care. Such a plea has a paradoxical aspect to it, and it if acceded to too readily would reflect badly on the legal professional and on its disciplinary processes.

In short, I consider that this ground was never properly substantiated at the primary level of putting before the Tribunal material to show that to proceed as the Tribunal did proceed meant that Mr Jordan *could not* have a fair opportunity to present his defence. Nor was there material to support a conclusion that there was a reasonable prospect of a revised approach that would still permit the disposition of the various charges within a reasonable

time. Mr Jordan failed to put forward facts on the former matter, and failed to advance a constructive approach in relation to the latter.

Despite all that, I have considered on their merits the matters argued by Mr Jordan under this heading on appeal.

I have read the correspondence that passed between the Board and Mr Jordan, relating to the matters before the Tribunal. I have borne in mind that there were other complaints taken up with Mr Jordan that were not the subject of charges.

The correspondence that I reviewed relates to 14 different clients. There are many letters from the Board. However, they are spread over a period of time from late 1991 to early 1995. They continued after charges were first laid by the Board on 17 March 1994. I have tried to make a realistic assessment of the burden imposed upon Mr Jordan by this correspondence.

A rough pattern emerges from the correspondence. In six matters Mr Jordan never replied to the letters from the Board asking for his response to a complaint, despite various follow-up letters. In four matters there was a reasonably prompt substantive response, but Mr Jordan then ignored requests for further information or for further comments. In three matters there was a substantive response after an unacceptably long delay, but later a failure again to respond to further letters. In one matter (the Morris estate) there were a number of substantive responses from Mr Jordan, but later a failure to inform the Board of a number of relevant matters.

A picture emerges from this of an apparent failure to treat the Board's letters seriously. It is no excuse that there were numerous complaints. The Board had a statutory obligation to investigate them. My assessment is that replying to them, or replying sooner than Mr Jordan did, would not have imposed a great burden upon Mr Jordan. After all, he was being asked to do no more than to comment on allegations by his clients. He did not have to present a complete defence to the allegations. A prompt and reasonable response might, indeed, have led to the resolution of some of the matters. To the extent that matters were outstanding by the time Mr Jordan had to consider how he would face the charges before the Tribunal, they were outstanding because of his own failure to respond.

Mr Jordan's explanation for the absence of or delay in responses was, in substance, as follows. In some cases he said that the response that he sent constituted an answer to the complaint, and that he had nothing more to say. That might have been a reasonable approach to take, but it does not justify him in simply ignoring letters from the Board. In some cases he said that he

thought that further requests from the Board raised nothing new. Once again, the problem is that he simply ignored letters, rather than at least put forward this contention. In some cases he said that he was still in contact with the client, after the complaint was made. He said that he thought that, because of this, the complaint must have been resolved. Once again, it would have been simple for him to inform the Board of that, leaving it to the Board to inquire of the client whether the complaint was to be pursued. In some of the cases he said that he no longer had access to his file. Overall, he referred to his preoccupation with other complaints, especially early in 1995. In some cases Mr Jordan said that he despaired of being able to deal with the matters raised. Once again, one can understand a practitioner under the circumstances that faced Mr Jordan feeling a sense of desperation, but that is hardly an excuse for the approach that Mr Jordan took.

I conclude that the Tribunal was entitled to reach its conclusion that, taking Mr Jordan's overall conduct in relation to the correspondence from the Board, that conduct disclosed a disregard of his obligations that amounted to unprofessional conduct. No single case, of itself, amounted to unprofessional conduct. His explanations might have precluded such a finding if there were only a few cases of failure to respond. But when the correspondence is viewed as a whole, the explanations are inadequate, and do indicate a disregard of his professional obligations.

But that is not the issue on appeal. Relevantly to the appeal, I do not accept that dealing with the correspondence would have imposed such a burden on Mr Jordan that he could not have been expected to deal with it. I do not accept that dealing with the correspondence would have imposed such a burden that he could not adequately present his defence before the Tribunal. Doing the best I can, taking into account the terms of the correspondence and, to some extent, using my own experience as a practitioner, I consider that dealing with the correspondence in a manner consistent with his professional obligations would have imposed only a moderate burden on Mr Jordan. Reasonably prompt responses would have meant that, by 1995, the burden of dealing with outstanding correspondence would have been less than it was. I do not accept that the burden of dealing with the complaints either justified the failure to deal with them, or was such that the processes of the Tribunal were unfair.

As I have already said, in my opinion Mr Jordan's submissions on appeal pay insufficient attention to the duty of the Board to investigate complaints made to it. The Board's practice of writing to a practitioner seeking a comment on a written complaint is a practical and appropriate approach. It was Mr Jordan's obligation to respond if he reasonably could.

The explanation that he offered does not justify the number of letters that he failed to reply to, or the delays that occurred on various occasions.

To the extent that Mr Jordan argued that dealing with the correspondence meant that he could not adequately prepare his defence to the charges, the answer is surely that at the relevant times he was not making much of an effort at all to deal with the correspondence. I may have misunderstood his argument, but it seems to me that he was saying on the one hand that he could not deal with the correspondence, but on the other hand that dealing with the correspondence imposed burdens upon him that meant that he could not fairly defend himself before the Tribunal. In this respect his argument appears to me to be self-contradictory.

The same comment applies to the directions given by the Tribunal to prepare bills of costs. In the matter of Morris, Mr Jordan was guilty of gross delay. The original order for the filing of a bill of costs was made on 12 August 1991. The bill was not actually lodged until 8 November 1994. In the matter of Mr M B, the bill of costs was never lodged, even though it was Mr Jordan who requested that this be the next bill dealt with. In the matter of Mc K the order for the lodgement of a bill of costs was never complied with. Once again, I fail to see how Mr Jordan can claim that dealing with these directions prevented him from being able to mount his defence before the Tribunal. Nor do I consider that his conduct in relation to the lodging of bills of costs can be said to be the result of the demands upon his time made by dealing with the proceedings before the Tribunal and before the Master of the Court. On the available evidence, there is simply nothing to support that contention. I doubt whether it can be supported, but whatever the possibilities may be, the fact is that Mr Jordan has not demonstrated that there is an acceptable explanation for his delays.

The proximity of the hearings before the Tribunal and before the Master, in relation to the estate of Morris, undoubtedly put pressure on Mr Jordan. The Tribunal was alive to this problem, and to some extent accommodated it. In his submissions on appeal Mr Jordan did not descend into any detail in relation to this point. The complaint that he could not cope with both sets of proceedings was put in a sweeping fashion. This is true of his submissions generally. I am left in the position of saying that I am not satisfied that the hearings raised issues of such complexity, and would have made such demands upon his time, that he could not fairly have coped with the timetable as it in fact developed.

In the course of this and other submissions Mr Jordan put particular weight on a letter of 8 March 1994 that he wrote to the Board. In that letter Mr Jordan acknowledged that there were letters to which he had not

responded. He indicated an intention to deal with them. He referred to some of the difficulties faced by practitioners in private practice these days. He said that he had introduced a new computer system. He said that that would lead to better credit control, thus avoiding some of the problems that had developed between him and his clients, better quality control and better trust account records. The letter concludes as follows:

> "I am optimistic that the steps I have taken will overcome the problems I have had. This does leave the outstanding complaints to be dealt with. I have noticed that while the complainants are relieved of financial obligations, the matters seem to sit happily. There are a couple which are not in that category, and they have been pressing. Nonetheless, I am keen to finalise them all. I will start where you direct me. In the interim, I will respond to [W] and [C], so as not to waste time. You will have my letters by 16th March."

Mr Jordan appeared to argue that in some way this letter called for a particular response from the Board that he never received. He seemed to argue that it put some sort of onus on the Board to change its approach. I do not agree. Mr Jordan's defaults in dealing with correspondence continued. I fail to see how anything in letter referred to, and the lack of any specific response from the Board, in any way lessens the obligation that Mr Jordan had to deal with the correspondence from the Board.

Mr Jordan also referred to evidence put before the Tribunal from a psychiatrist, to the effect that he was suffering from "an adjustment disorder with anxious and depressed mood" commencing in about November 1994. That opinion, that was given in October and November 1995, was based upon a history provided by Mr Jordan to the psychiatrist. The Tribunal did not accept the opinion, because it did not regard as reliable the evidence from Mr Jordan upon which the diagnosis of the psychiatrist was based. It was open to the Tribunal to reject that evidence. That disposes of the point. For completeness, I record that in material put forward in connection with the appeal there are reports from medical practitioners that disclose that Mr Jordan suffered a myocardial infarction in October 1997, coupled with the onset of diabetes. His medical condition in subsequent months is not relevant to this appeal, except to the extent that it meant that the appeal could not proceed as soon as it otherwise would have.

Mr Jordan complained about an alleged failure by the Board to investigate matters adequately. He said that the Board expected him to provide information that the Board could have ascertained for itself. On my reading of the correspondence, this complaint is without substance. There are

matters raised by the Board, or raised by complaints from clients, which the Board could have investigated for itself. But that does not make it inappropriate for the Board to forward the complaint to Mr Jordan, inviting his comments. After all, as the matters to which Mr Jordan referred related to aspects of the work that he did for clients, the information was readily accessible to him, or should have been.

Mr Jordan did not demonstrate, as distinct from assert, that, the difficulty in getting access to his files significantly hindered the preparation of his defence. Nor, having regard to the issues, do I consider that it is likely to have done so.

I have also considered the fact that, during the latter part of proceedings before the Tribunal, Mr Jordan was unrepresented. He was represented by counsel for much of the time. Mr Jordan relied upon the lack of representation in a general way. I do not accept that the lack of representation during the latter part of the proceedings meant that the proceedings were not fair.

In my opinion these grounds of appeal fail. The difficulties to which Mr Jordan was subject in defending himself, such as they were, were to some extent the product of his own behaviour. In any event, they were not such that it was fundamentally unfair for the Tribunal to proceed as it did.

The Tribunal's decision to allow fresh charges to be laid

This ground relates to the decision of the Tribunal to allow the charges alleging a conflict of interest to be amended. As I explained in summarising the Tribunal's findings, the amendment was sought and allowed after the Tribunal found that there was in fact no conflict of interest, and found Mr Jordan not guilty on the charges laid.

In my opinion the Tribunal had power to allow the amendment, if it could do so without causing unfairness to Mr Jordan in his defence: *Smith v NSW Bar Association* (1992) 176 CLR 256 at 269. The Tribunal is not a Court dealing with charges brought by the State against an individual. While it hears charges presented to it, its function of deciding whether a person is fit to practise may at times mean that it can or should allow a procedure that would not be followed in criminal proceedings or in civil proceedings.

The Tribunal's findings were that Mr Jordan had made certain representations to Ms P. This was conduct that self evidently might have led to a finding of unprofessional conduct. The matter could not be ignored by the Tribunal. I refer to the decisions in *Weaver v Law Society of NSW* (1979) 142 CLR 201 at 207 Mason J, *Walter v Council of Queensland Law Society* (1988)

62 ALJR 153 at 157. These decisions establish the disciplinary proceedings are proceedings sui generis. In such proceedings the Court is concerned to protect the public from misconduct on the part of practitioners. In such proceedings, issues cannot be resolved simply on the basis of considerations applicable to ordinary adversarial proceedings.

It had been clear from the outset that the conversations relied upon to support the amended charge were in issue, and were an important aspect of the charges originally laid.

In my opinion it was appropriate, bearing in mind the functions of the Tribunal, for it to allow the charge to be amended, even though such an amendment might not have been allowed in ordinary adversarial proceedings. In my opinion there was no unfairness in allowing the charge to be amended, bearing in mind the matters just referred to by me.

My only concern is a slightly different one. Mr Jordan submitted that, before the Tribunal, his case had been fought on the basis that he did not need to persuade the Tribunal to reject the relevant evidence of Ms P and Ms McK, to secure an acquittal. The main focus of the defence case had been on denying that there was a conflict of interest. He submitted that to find later that the fact of the conversation might be used against him meant that he was irretrievably prejudiced, not having pressed as hard as he would have on this point, had he realised that a finding on the point might be used against him. It was not, as he submitted, a case in which some new element had emerged during the hearing. The Board knew all along of the facts upon which it relied, and could have laid an alternative charge from the outset.

I have some sympathy for that point. In my opinion the submission is an illustration of the way in which, even in disciplinary proceedings, the requirements of fairness might fetter what would otherwise be done. However, this argument was put to the Tribunal and rejected by the Tribunal. The Tribunal said:

> "... we do not accept the practitioner's assertion that his approach to the telephone conversation in mid 1991 would have been different had he not thought the proof that an actual conflict of interest was an essential element of the charges as originally laid. In his evidence the practitioner denied that the telephone conversation in mid 1991 took place and had a full opportunity to produce evidence to support his denial."

That is an assessment that the Tribunal, the hearing having taken place before it, was better placed to make than I am. I am not prepared to differ from it, even though I have some hesitation about it.

For the same reason, I am not prepared to differ from the Tribunal's conclusion that Mr Jordan should not be allowed to call any further evidence. The Tribunal was satisfied that Mr Jordan had not identified any relevant evidence that it had not already heard.

For those reasons, these grounds fail.

Even if the Tribunal erred on this point, it is clear that its finding of unprofessional conduct was not a significant factor in its approach to penalty.

Adverse findings based upon Mr Jordan's behaviour and demeanour

It was not easy to understand this ground of appeal. In part the submission appears to have been that the Board conducted its investigations and its case before the Tribunal in an unnecessarily adversarial manner, and that this caused Mr Jordan to fail to present his case adequately, in particular by failing to present some documentary evidence that would have assisted his case. To some extent the submission appears to have been that the Tribunal did not understand the impact on Mr Jordan of the various problems confronting him at relevant times, when it made adverse findings based in part on his behaviour at those times and on his demeanour. There was also a complaint that the Board, in investigating complaints, had been too adversarial, and had made unreasonable demands of Mr Jordan.

There was a suggestion that this had caused Mr Jordan to behave in a manner that, in the abstract, might not be justifiable, but was understandable in context.

As to the first aspect, all I can say is that Mr Jordan pointed to nothing specific to support his contention that the Board conducted itself in a manner that unfairly disadvantaged Mr Jordan before the Tribunal. The Board was obliged to deal with the complaints made to it, and went about its task in an appropriate fashion.

As to the second and third aspects, it was for the Tribunal to make its assessment of Mr Jordan's conduct, and of his behaviour as a witness. It did that, after carefully reviewing the evidence. It was clearly aware of the points that Mr Jordan sought to make on appeal. My reading of the correspondence between the Board and Mr Jordan does not support Mr Jordan's complaints. It

may be that in one or two instances the Board pressed for further information or for further explanations from Mr Jordan, when he had said all that he usefully could say. That, however, is no answer to the fact that generally Mr Jordan simply failed to respond adequately or at all to correspondence from the Board.

I add that the Tribunal heard Mr Jordan in evidence at some length. It was well placed to assess his reliability as a witness. The members of the Tribunal are experienced practitioners. The Tribunal repeatedly found Mr Jordan to be an unsatisfactory witness. It repeatedly found explanations that he offered for his behaviour to be either unsatisfactory, in the sense of irrelevant or meaningless, or unsatisfactory in the sense of not being believable. There is no reason to think that in reaching these conclusions the Tribunal failed to consider Mr Jordan's conduct in the circumstances in which it occurred. To point, as Mr Jordan did, to one or two instances in which it might be arguable that his failure to respond to the Board was in respect of a relatively minor matter, misses the point.

In my opinion this challenge to the Tribunal's findings fails.

Excluded evidence

Mr Jordan sought to lead evidence before the Tribunal about a complaint that was not the subject of any charges. In support of the appeal, he put before the Court the relevant correspondence. That correspondence, and the submissions on appeal, indicate clearly enough the evidence that he sought to lead.

In the course of correspondence with the Board, an agreement had been reached which resolved the complaint made by a Mr and Mrs S. Mr Jordan contended, nevertheless, that the Board had behaved unreasonably. It had, in a letter of 8 February 1993, threatened to take action on the complaint unless Mr Jordan agreed to a settlement proposal that the Board considered to be reasonable. Faced with that threat, Mr Jordan had agreed to the settlement proposal. Before the Tribunal, Mr Jordan wished to lead evidence with a view to arguing that the settlement proposal had been an unreasonable one, and with a view to further arguing that this illustrated the unreasonable attitude of the Board, and to argue further that this attitude may have caused an "attitude problem" on his part.

The Tribunal ruled (T1752) that the evidence was not relevant. I consider that the evidence was relevant. Unreasonable behaviour on the part of the Board might explain a subsequent failure by Mr Jordan to comply with his obligations. However, in my opinion the significance of the evidence was

so slight that its exclusion could not have made any difference to the ultimate outcome. I have read the relevant correspondence, and have considered Mr Jordan's written submissions on the matter. I am not satisfied that the Board's proposal was unreasonable. But, even if Mr Jordan was entitled to regard the Board's attitude in this particular matter as unreasonably favourable to his clients, I do not accept that the attitude of the Board in that particular matter could have affected his attitude generally to dealing with correspondence with the Board. Whatever one might make of the settlement proposal, the amounts at issue were trifling, and there was a lot to be said for simply resolving the matter. So, even if Mr Jordan did think that the Board was unreasonable, the whole matter was so trifling that it could not possibly justify his subsequent conduct.

Accordingly, while I consider that the evidence was relevant, its value was so slight that its exclusion could not have affected the Tribunal's decision, and the failure to receive the evidence can be put to one side.

Rejection of unchallenged evidence

Mr Jordan complains that the Tribunal should have accepted evidence from him that was not the subject of a specific challenge by the Board before a the Tribunal.

In the course of dealing with one of the matters comprising the non-cooperation charges, the Tribunal said (Reasons p56):

> "The Tribunal finds it difficult to accept any evidence of the practitioner that was not supported by independent evidence or was inherently likely."

Similar findings are made elsewhere in the course of the Tribunal's reasons. The conclusion is obviously based on the fact that, in a number of instances, the Tribunal had found Mr Jordan's evidence to be quite unsatisfactory.

It was open to the Tribunal to reach that conclusion about Mr Jordan's reliability. Having reached that general conclusion, the Tribunal was entitled to reject his evidence even when not the subject of a specific challenge. Mr Jordan did not point to any particular instance of the Tribunal having rejected his evidence in a fashion that would cause one to have any doubt about the soundness of the approach of the Tribunal.

In my opinion there is no substance in this point.

Challenge to finding of unprofessional conduct in representations made to Ms P

As I have said earlier, the Tribunal found Mr Jordan guilty of unprofessional conduct in that he told Ms P, in effect, that she would do well to instruct him to act for her against Mr R, because he had previously acted for Mr R and had knowledge of Mr R's affairs that he could use to the advantage of Ms P.

To the extent that the challenge to this findings rests on a submission that the Tribunal should not have accepted the evidence of Ms P and Ms McK, it cannot succeed. The Tribunal was entitled to accept their evidence in preference to that of Mr Jordan.

Mr Jordan also argued that this conduct was not unprofessional conduct. The Tribunal used as its standard a statement by the Full Court in *In Re R* [1927] SASR 58 at 61, where the Court said that unprofessional conduct included:

> "... 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."

In dealing with the evidence on this charge, the Tribunal said (Reasons p15):

> "It may be that, depending on the circumstances, it would be unprofessional conduct for a legal practitioner to represent to a potential client that it would be to that person's advantage for the practitioner to act because he or she had previously acted for a party the client was now in dispute with even if no actual conflict of interest existed."

Later, in the course of finding that the conversation that Ms P said took place, had taken place, the Tribunal said (Reasons p39):

> "The practitioner's conduct in making the comments he did during these conversations was well below the standard observed or approved of by members of the profession of good repute and competency."

No doubt, the later finding of guilt, after the charge was amended, was on the basis of these remarks.

The effect of the Tribunal's finding was that Mr Jordan had represented to Ms P that it was to her advantage that he represent her because he had previously acted for Mr R. I consider that the conduct as found was unprofessional conduct. The situation was one in which Mr Jordan was under an obligation to ensure that, were he to act for Ms P, he did not make use of any confidential information acquired while acting for Mr R. To encourage Ms P to instruct him by saying what he was found to have said, was to imply that he could and would use information available to him, gained while acting for Mr R, to Ms P's advantage. Ms P was not to be expected to understand the distinction between confidential and other information. The statement to Ms P amounted to a holding out by Mr Jordan that he could and would use information gained from a former client against that client. It implied that he would do so without regard to the former client's interests, and so implied that he would act in an improper manner, even if Mr Jordan was not in fact intending to so act. It was a representation of a willingness to act in a manner that would bring the profession into disrepute. Mr Jordan was proposing to act in circumstances in which particular care was required on his part. In fact, his representation was to the contrary, and implied that he would not do so.

In my opinion it is unprofessional conduct for a practitioner to represent a potential client that the practitioner will use information gained from a former client against that former client. Such a representation is a representation that the practitioner is willing to act in a manner that is unprofessional, and that would shake confidence in the profession. In my opinion, the Tribunal was correct.

Challenge to finding of unprofessional conduct on non-cooperation charges

The submission in support of this ground covers material already referred to by me.

Mr Jordan made the following points. The Board had failed to conciliate. Without responding to his letter of 8 March 1994, it had laid charges on 17 March 1994. It was the Board that was being uncooperative, not Mr Jordan. Mr Jordan said that he had responded adequately to the Board. He said that any non-cooperation on his part was attributable to the Board's unreasonable and unduly adversarial approach. Mr Jordan said that he had regarded the Board's approach as "ill considered and incompletely considered". The complaints by his clients meant that his fees were not being paid while the complaints were investigated. This caused a financial crisis that compounded his difficulty in dealing with the Board's request. Some of the non-cooperation charges related to conduct that occurred after the first of such

charges was laid in March 1994. Once those charges were laid, Mr Jordan argued that any obligation on his part to cooperate with the Board had come to an end.

I have already referred to the letter of 8 March 1994. In my opinion, that letter is no explanation for previous and subsequent failures by Mr Jordan to reply to the Board.

My own review of the correspondence satisfies me that, overall, the Board acted properly. Its requirements were not unreasonable. Mr Jordan did not deal with the Board's letters in manner consistent with his obligations as a practitioner. The Tribunal found his excuses for not doing so to be unsustainable and inadequate. The fact is that the Board was not making much progress in its attempts to deal with the complaints against Mr Jordan. In my opinion it was appropriate for the Board to lay charges when it did.

It was for the Tribunal to assess the significance of the financial difficulties experienced by Mr Jordan, when considering his conduct. The Tribunal did so. It regarded his evidence as unreliable. In any event, making reasonable allowance for the problems faced by Mr Jordan in dealing with his disintegrating practice, I consider that his conduct still fell below the required standard. I do not think that the difficulties to which he points are capable of explaining his defaults. I rely upon the instances in which there was no reply to the Board, the delay in other cases, and his failure to take a reasonable approach generally in his dealings with the Board.

I do not consider that once charges alleging non-cooperation had been laid in March 1994, Mr Jordan could regard himself as absolved from the obligation to conduct himself properly in dealing with complaints made to the Board. That obligation continued.

In my opinion this ground of appeal fails.

The finding of unprofessional conduct in failing to comply with directions to lodge bills of costs

The charge of 4 May 1995 alleged unprofessional conduct in failing to comply with the direction of the Tribunal, given on 9 December 1994, that Mr Jordan prepare and deliver a bill of costs in taxable form relating to work done for Mr M B. The Tribunal considered the evidence relating to this matter in some detail. It rejected Mr Jordan's explanations for the delay. It found much of his evidence on this matter to be unreliable and unsatisfactory.

The charge of 4 October 1995 included a charge that Mr Jordan had failed to comply with an order of the Tribunal, made on 25 May 1995, that he deliver a bill of costs in relation for work done for Mr Mc K. Mr Jordan pleaded guilty to that charge, and the Tribunal found him guilty.

The submission on appeal was simply that Mr Jordan did not have the capacity to complete the bills of costs. The effect of the findings of the Tribunal is that that explanation is without substance. There is nothing in this ground of appeal.

Challenge to finding of unprofessional conduct in practising without a practising certificate and in failing to submit a copy of an auditor's report

The complaint on appeal is that although Mr Jordan had pleaded guilty to these charges, he should not have been found guilty of unprofessional conduct, having regard to the circumstances under which his defaults occurred.

The defaults were significant. I have already summarised the facts. Mr Jordan did not hold a current practising certificate from the beginning of 1994 until late in 1995. He did not submit the auditor's report relating to his trust account for the years ending 30 June 1994 and 30 June 1995 until late in 1995, the accounts not having been audited until about then. I have earlier summarised the facts surrounding these charges, and Mr Jordan's explanations. The explanations offered are inadequate for the conduct that occurred. The obligation to hold a current practising certificate is straightforward and well known. The obligation to have a trust account audited, and to submit a report, is an important regulatory requirement. A short delay in complying with either of these obligations might be justified by personal and professional difficulties, such that the delay would not constitute unprofessional conduct. But there were no circumstances here that could have justified the substantial defaults of which Mr Jordan was guilty. I can find nothing in the difficulties to which he was subject to explain such a long delay in complying with his obligations.

In my opinion the Tribunal was correct.

Exclusion of evidence of mitigating circumstances

As developed in Mr Jordan's written Summary, the submission was that the Tribunal erred in failing to accept and to act on evidence given by Mr Jordan, when that evidence of mitigating circumstances was not specifically challenged.

In my opinion this ground fails for the same reason that the challenge to adverse findings fails. I earlier dealt with that matter.

Challenge to order as to costs

The challenge to the Tribunal's order that Mr Jordan pay 80% of the Board's costs rests upon the number of charges upon which the Board failed, complaints about the Board's unduly adversarial approach, and complaints about the Board's failure to conciliate or otherwise to proceed in a manner that would have narrowed the issues to be fought.

The Tribunal said that it took a "broad axe" approach to the question of costs. It took account of the fact that the Board failed on a number of matters, and of the time taken by those matters. In my opinion its decision does not suggest that it failed to make a reasonable assessment of those matters. The actual decision appears to me to be within the range that one would expect on a broad axe approach. The Tribunal was entitled to take that approach. Its discretion was a wide one. In my opinion, on the available material, there is no substance to the submission that the Board improperly prolonged or complicated the hearings.

It follows that there is no substance in this point.

Appeal - summary

In my opinion all of the challenges to the findings of the Tribunal should be rejected.

The Law Society's Motion

In support of its Motion to have Mr Jordan's name struck off the roll of legal practitioners, the Society relies upon the findings of the Tribunal and upon the findings of the Master made in the course of taxing Mr Jordan's costs in the estate of Morris.

For the reasons that I have given, in my opinion the appeal against the findings of the Tribunal fails. For the reasons that I have given, in reviewing the findings of the Master, I would decline to interfere with any of those findings.

Section 89(5) of the Act provides as follows:

"In any disciplinary proceedings -

(a) the Supreme Court may, without further inquiry, accept and act on any findings of the Tribunal or of a Judge or Master to

whom a matter has been referred for investigation and report under subsection (4); and

(b) the Supreme Court may -

(i) receive in evidence a transcript of evidence taken in any proceedings before a court of any State or Territory of the Commonwealth and draw any conclusions of fact from the evidence that it considers proper;

(ii) adopt, as in its discretion it considers proper, any findings, decision, judgment or reasons for judgment of any such court that may be relevant to the proceedings."

The Court did not refer any matter to the Tribunal or to the Master for investigation and report, and accordingly s89(5)(a) does not provide a basis for receiving and acting upon the findings of the Tribunal or of the Master.

However, in my opinion it is implicit in s89 that the Court may accept and act on the findings of the Tribunal. After all, the Court has heard an appeal against those findings, and has dismissed the appeal. The findings stand. Section 89(1) of the Act authorises the Society to institute disciplinary proceedings when the Tribunal:

> "... after conducting an inquiry into the conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court ..."

It would be peculiar if, in such a case, the Court had no choice but to rehear the evidence, or to go through the process of referring to the Tribunal, for investigation and report, the matters with which it had already dealt. It is for those reasons that I consider that s89(1) by implication authorises the Court to receive and to act upon findings of the Tribunal.

In any event, I consider that the Court has power to do that exercising its inherent jurisdiction, which is preserved in terms by s89(3) of the Act. In *Re Maidment* (unreported, 26 August 1992, Judgment No. S3583), this Court adopted and applied findings of the Tribunal. Although the Court does not state the precise basis upon which it did so, I consider that it must have followed the same process of reasoning that I have identified. In *In Re Practitioners* (1980) 26 SASR 275 Mitchell J, with whom Mohr J agreed firmly asserted the inherent jurisdiction of the Court to regulate the conduct of practitioners. In so doing (at 279) she referred to cases in which an order had been made, striking a name off the roll of practitioners, on the basis of findings made by a judge of the Court in a civil action. It appears that her Honour must have taken the view that, exercising the Court's inherent jurisdiction, it was at liberty to act upon findings made by a judge of the Court.

I therefore conclude that the Court is at liberty to act upon the findings of the Tribunal. Mr Jordan did not submit that the Court did not have power to do so.

The same process of reasoning supports the conclusion that the Court has power to adopt and act upon findings of the Master. In the case of the findings of the Master, there is the added consideration that the Master is a constituent member of the Court: see s7(1) of the *Supreme Court Act*. It would be curious if, acting under s89(5)(b), the Court could adopt findings made by a Court of another State or Territory, but could not adopt findings made by a member of this Court. I conclude that the Court has power to adopt and to act upon the findings of the Master.

In my opinion, the Court should adopt and act on the findings of the Tribunal and of the Master.

As to the Tribunal, it should do so because those findings were made upon a hearing of the charges in question, and the findings have survived the challenges made to them on the appeal against them. Considerations of convenience strongly favour the Court adopting the findings. There can be no unfairness to Mr Jordan in the Court doing so.

As to the findings of the Master, the position is a little different. The Master was not hearing disciplinary charges. He was determining the amount of costs properly claimable by Mr Jordan. However, the taxation of Mr Jordan's costs was conducted before the Master on the basis that the conduct of Mr Jordan was in issue. The Master was asked to find that Mr Jordan had acted incompetently, that he had misled the beneficiaries and that his evidence to the Master should be rejected. The Board and Mr Jordan joined issue on these matters before the Master. The taxation was conducted on the footing that these matters were in issue. The issues were thoroughly investigated before the Master. It is not a case of a taxation in which, incidentally or along the way, the Master has made some adverse findings or comments about the practitioner whose bill is the subject of taxation. The taxation was conducted on the basis that it was alleged that Mr Jordan had grossly overcharged the beneficiaries, had performed work unnecessarily due to his own incompetence, and had otherwise conducted himself inappropriately. In my opinion there is no unfairness to Mr Jordan in acting on the findings made in those circumstances. There can be no question of him having been taken by surprise. There can be no suggestion that he was not able to present his case in answer to those criticisms, subject to the complaints which he advanced on appeal, complaints that I have rejected.

I now return to the findings of the Tribunal. The Court will give considerable weight to the opinion of the Tribunal on the question of whether conduct is unprofessional. As it happens, I agree with the views of the Tribunal, and so in this case no question arises as to the extent to which, if at all, the Court is bound by the views expressed by the Tribunal.

The Tribunal has found Mr Jordan guilty of unprofessional conduct in a number of respects. Earlier in these reasons I summarised the Tribunal's findings. The question now is, whether, in the light of those findings, Mr Jordan's name should be struck off the roll of practitioners.

The Tribunal did not regard as particularly serious the unprofessional conduct constituted by the representation made to Ms R. Nor do I.

The Tribunal did regard the failure to respond adequately to requests by the Board for information as a serious departure from the required standards of conduct. So do I. The Tribunal said:

> "The extent of the departure from acceptable standards was and is substantial and serious. We are referring here to the practitioner's failure to comply with the Tribunal's orders, his failure to respond to the Board's requests, his failure to obtain a practising certificate and his failure to lodge an audit report."

I agree with those remarks. A practitioner whose conduct is the subject of an inquiry by the Board has a duty to assist the Board in its inquiries: *Johns v Law Society of NSW* [1982] 2 NSWLR 1 at 6, *Re Veron; Ex Parte Law Society of NSW* (1966) 84 WN (Pt 1) (NSW) 136 at 141-142. That does not mean that the solicitor must disregard his own interests. But it does mean that there is an obligation upon the solicitor to respond to reasonable requests for information, particularly when one takes into account the fact that often the solicitor will have a better knowledge and understanding of the matter, the subject of the complaint, than will the client who complains. In the present case, Mr Jordan fell a long way short of meeting his obligation. By his conduct Mr Jordan has delayed, and to some extent frustrated the Board in its attempts to deal satisfactorily with the complaints made to it. I consider that his conduct manifests a plain disregard, over a sustained period, of his professional obligations when dealing with the Board and in relation to the other matters referred to in the passage just set out. Mr Jordan's attitude before the Tribunal appears to have been one of self justification and blame of others. The Tribunal rejected his explanations as in any sense adequate to justify his conduct.

I regard the charges of failing to prepare and deliver the two bills of costs that the Tribunal directed him to deliver, as serious matters. The directions were given in the context of complaints of overcharging. They represented a sensible approach to this disposition of the complaints. Mr Jordan's failure to comply with the directions is another instance of his failure to provide appropriate information and assistance to the Board and to the Tribunal in relation to those complaints. Mr Jordan's conduct has effectively prevented the Board and the Tribunal from dealing satisfactorily with the complaints. His failure to comply with the directions means also that the clients in question have not been able to ascertain the amount for which they are properly liable. There is a separate breach of the duty that Mr Jordan owes to his clients to provide adequate information to them of the charges that he has made to them.

The extract that I set out above from the Tribunal's reasons indicate that it took a serious view of the failure to obtain a practising certificate and the failure to lodge an audit report. Once again, I agree. These statutory requirements are not mere matters of form. They are an important part of the statutory scheme that regulates the practice of the law in the public interest: *Mee Ling v Law Society of NSW* [1974] 1 NSWLR 490. The practitioner was guilty of a conscious and sustained breach of these statutory provisions. Quite apart from their relevance to the regulation of the profession, these provisions are in any event statutory obligations imposed on a practitioner, and Mr Jordan's disregard of his legal obligations was a serious one.

I also regard Mr Jordan's conduct, in swearing an affidavit which contained the statement that he ought to have known was false, to be a serious breach of his professional obligations. It is incumbent upon legal practitioners to uphold the sanctity of the oath, and to take particular care when they make statements on oath. While Mr Jordan has not been found to have made a statement that he knew to be false, his conduct indicates an unacceptable degree of carelessness in the swearing of his affidavit.

Considering the findings of the Tribunal as a whole, it appears to me that Mr Jordan fails to understand or to accept his professional obligations in a number of respects. That is the only conclusion open when one considers the number of professional defaults, their seriousness, and the sustained nature of them. In my opinion this conclusion is confirmed by the inadequate explanations that Mr Jordan offered to the Tribunal, most of which were persisted in for this Court on appeal. Mr Jordan's behaviour exhibits an alarming preparedness to blame others for matters which are his responsibility, and a preparedness not to accept his personal responsibility in professional matters.

Overall, the findings of the Tribunal mean that there are a number of serious departures from the standard of conduct required of a legal practitioner. Some of them are serious in their nature, and made more serious by the prolonged period over which the failure to observe the required standard occurred. Others are less serious. In all matters Mr Jordan's conduct has clearly fallen short of accepted professional standards.

The mitigating circumstances put forward by Mr Jordan not only fail as a defence, but are entitled to little weight when considering the action that the Court should take. The matters put forward by Mr Jordan do not justify his conduct. Nor do they diminish its seriousness to any significant degree. In my opinion, the best that can be said in Mr Jordan's favour is that in the years in question he was clearly under considerable pressure, professionally and financially. But even when I make allowance for his circumstances, I consider that his conduct falls far short of what would be expected of a practitioner in those circumstances.

I consider that, on the findings of the Tribunal, Mr Jordan's name should be struck off the roll of practitioners. His conduct cannot be regarded as a temporary aberration, or as due to particular circumstances, and so unlikely to be repeated. His conduct is indicative of a failure to understand and to accept the required standards of conduct. In my opinion Mr Jordan has demonstrated that he is unfit to practise.

I turn to the Master's findings.

There is a finding by the Master of serious delay in the obtaining of a grant of probate. I do not consider that, in itself, that constitutes unprofessional conduct. It may be that the failure to obtain probate until June of 1990 did represent such a neglect of his duties as solicitor, that a finding of unprofessional conduct should be made, but I do not consider that the findings of the Master are clear enough for this finding to be made.

There is a finding by the Master that Mr Jordan lied to his clients at the meeting in September 1989. That is a serious matter, and clearly amounts to unprofessional conduct. The Master has also found that, in a number of respects, Mr Jordan's evidence was "utterly unreliable and ... deceitful", and that Mr Jordan did this to "cover up his own demonstrated deficiencies". I consider that that amounts to a finding of unprofessional conduct. The Master has found that, in an attempt to justify his own charges and his delay, Mr Jordan has put a false construction on his dealings with this clients.

In relation to Mr Jordan's costs, the Master found that what had taken place was "a certain lack of competence and overcharging on his part" rather

than "any deliberate and fraudulent intent to 'milk' the estate ...". I do not consider that there is a basis for a finding of unprofessional conduct in that respect.

In submissions, counsel for the Law Society initially suggested that the Court should be prepared to act on the basis of certain matters not dealt with by the Master, but ultimately desisted from that suggestion.

The Master's findings to which I have referred as amounting to findings of unprofessional conduct indicate that, when his own interests are at stake, Mr Jordan is prepared to attempt to shift blame from himself, in an unprofessional manner, and that he puts little weight upon his duties as a practitioner to be frank and honest in his dealings with the Court. It is clear that, in this respect, Mr Jordan's conduct has fallen short of the standard required of a legal practitioner. In that respect the Master's finding provide further support for the conclusion that Mr Jordan's name should be removed from the roll of practitioners. However, as I have indicated, I consider that the Tribunal's findings are a sufficient basis for that order.

For those reasons, in my opinion, the orders sought by the Law Society should be made.

Conclusions

In my opinion the appeal against the findings of the Tribunal should be dismissed.

I would not interfere with the findings of fact made by the Master in taxing Mr Jordan's bill of costs. I would allow Mr Jordan the opportunity to attempt to persuade the Court that the review of the taxation should be referred to a single judge to consider particular items dealt with in the course of the taxation, but indicate that my tentative view is that in view of the time that has elapsed, and all the circumstances, it would be inappropriate to do so unless there is a significant matter of principle at issue.

I would order that Mr Jordan's name be struck off the roll of practitioners.

I can see no reason why the Court should not order that Mr Jordan pay the costs of the Board and of the Law Society in connection with the proceedings, but would hear Mr Jordan on that matter before making an order.

MILLHOUSE J

For the reasons canvassed by the Chief Justice, I agree that the appellant should be struck of the roll.

I add, that I cannot imagine any justification for several of his actions. There is no excuse for lying to clients, little reason to justify taking 16 months to obtain probate of a simple estate, while almost ten years later the administration of the estate is not complete. Mr Jordan's representation to Ms P in using confidential information of a past client is quite unprofessional. His overall contempt for clients shewn by delay and overcharging is utterly reprehensible.

Jordan has done very little to help himself by putting obstacles in the way of the Legal Practitioners Disciplinary Tribunal and the Legal Practitioners Conduct. This obstruction alone is enough to have him struck off. His contempt shewn by not replying to letters, by not taking out a practising certificate or having his trust account audited, indicates his attitude to the legal profession. Lastly, not only has he made the job of the Tribunal and Board exceedingly difficult, he has angered at least 14 clients who remain understandably dissatisfied with the legal profession. At the least Jordan should have cooperated in these investigations for the sake of his clients.

Throughout the whole sorry history of these matters Mr Jordan has delayed and obstructed everyone at every turn. Whether he has acted deliberately or through a lack of appreciation of what he was doing, neither the public nor the legal profession should have to put up with such a man in practice.

NYLAND J

I have had the advantage of reading the draft reasons for judgment of the Chief Justice. I agree with the reasons he has expressed.

I agree that the appeal against the findings of the Tribunal should be dismissed.

I agree that there should not be any interference with the findings of fact made by the Master in taxing Mr Jordan's bill of costs but Mr Jordan should be given the opportunity to attempt to persuade the court that the review of taxation should be referred to a single judge.

I agree that Mr Jordan's name should be struck off the role of practitioners.