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PROVINCE OF SASKATCHEWAN )  
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**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990  
AND IN THE MATTER OF KIM ALAN STINSON,  
A LAWYER OF REGINA, SASKATCHEWAN**

**AGREED STATEMENT OF FACTS  
BETWEEN KIM ALAN STINSON AND  
THE LAW SOCIETY OF SASKATCHEWAN**

**In relation to the Formal Complaint dated May 12, 2008, attached at Tab 1.**

**Jurisdiction**

1. Kim Alan Stinson (hereinafter “the Member”) is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (hereinafter the “Law Society”), and accordingly is subject to the provisions of *The Legal Profession Act, 1990* (herein after the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”). Attached at **Tab 2** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s status.
2. The Member is currently the subject of a Formal Complaint dated May 12, 2008. The Formal Complaint is comprised of four counts. The Formal Complaint was sent to the Member on May 13, 2008 via registered mail and he accepted delivery of it on May 21, 2008. Proof of service of the Formal Complaint upon the Member is included at Tab “1”.

3. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaints against him are well founded. The Member further acknowledges service of the Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.
4. The Member has agreed to enter a guilty plea in relation to Count #1 and Count #3 of the Formal Complaint. The Law Society has agreed to withdraw counts #2 and #4. This Agreed Statement of Facts relates solely to Counts #1 and #3.

### **Particulars of Conduct**

5. These proceedings arose as a result of a Law Society investigation in relation to complaints received from the Canada Revenue Agency and a charitable organization known as Organization X. Both complaints relate to the Member providing inappropriate undertakings, which he did not and could not fulfill, to members of the public which they relied upon to their detriment.

### ***Organization X***

6. The original complainant in this matter was Mr. X, a member of the Board of Directors for Organization X. The complaint of Mr. X related to the member's involvement with Organization X and a closely related entity carrying on a construction operation known as Organization X1. Both Organization X and Organization X1 were run by a common Board of Directors. The day-to-day operations of Organization X and Organization X1 were conducted by Ms. Y (Executive Director) and Mr. Z (Associate Director), neither of whom were on the Board of Directors, but were duly appointed by and responsible to the Board of Directors. At the relevant times in this matter, Mr. X., the complainant, was not a member of the Board of Directors nor was he involved in the management of Organization X or Organization X1. It was alleged that the Member had been involved in obtaining an increase of a line of credit held by Organization X1 without permission from the full Board of Directors.
7. The initiative to obtain the increase of the line of credit from \$30,000.00 to \$60,000.00 was spearheaded by Mr. C, the Construction Supervisor and Manager of Organization X1, as well as the aforementioned Ms. Y, Mr. Z and Ms. W, Vice

President of the Board of Directors of both organizations. The Member had from time to time acted as a legal advisor to the Board of Directors, and in that capacity was asked to assist in obtaining the increase to the line of credit. After Organization X discovered possible financial irregularities in relation to the management of Organization X an investigation ensued as to how the increase in the line of credit was obtained. It had generally been known by the management of Organization X and Organization X1, as well as the Member, that Mr. C had been previously convicted of fraud. The Member and Mr. C were never involved together in any other business dealings. The Member represented Mr. C on the other complaint dealt with in these proceedings relating to Canada Revenue Agency, but on no other legal matters. The Member considered Mr. C as a friend.

8. After receiving the complaint from Mr. X, the Law Society investigated the matter further. Two letters were discovered in which the Member provided an undertaking to the Bank of Nova Scotia in order to obtain an increase in the Organization X1 line of credit. Both letters were written by Kim Stinson on his firm letterhead and directed to Ms. A, the Manager of the Bank of Nova Scotia branch located at ----- in Regina.
9. The first letter was written on November 17, 2005. A copy of the letter is attached at **Tab 3**. In the letter the Member refers to prior conversations between Mr. C and the bank relating to an increase in the Organization X1 line of credit. The Member states that he will be receiving money from the Saskatchewan Housing Program on behalf of Organization X1. The Member then states the following:

**I am happy to offer my undertaking to the Bank of Nova Scotia that all funds accruing due to Organization X1 will be paid to the Bank of Nova Scotia to cover all or any amount of overdraft or line of credit owed by Organization X1. With this assurance, I understand that the Bank of Nova Scotia will increase the line of credit on behalf of Organization X1.**

10. The second letter was written on January 17, 2008. A copy of the letter is attached at **Tab 4**. In that letter the Member reiterates the contents of the November 17, 2008 letter in which he gave his undertaking. The Member states the following:

**In that letter I gave my undertaking to ensure that any additional overdraft incurred by Organization X1. would be paid, to the extent that I am able to control, from the proceeds of the Saskatchewan Housing Program. It is my understanding that those funds will be deposited into my account shortly, and as soon as I can ascertain the progress of work, Organization X1 will be able to begin accessing those monies. I can then begin directing that the overdraft be repaid.**

**I am again happy to offer my undertaking to the Bank of Nova Scotia that all funds accruing due to Organization X1. will be paid to the Bank of Nova Scotia to cover all or any amount of overdraft or line of credit owed by Organization X1. With this assurance, I understand that the Bank of Nova Scotia will increase the line of credit on behalf of Organization X1.**

11. After receiving the letters from the Member the Bank of Nova Scotia ultimately did extend the limit on the line of credit to Organization X1 by \$30,000.00. Ms. A has confirmed that the undertakings of the Member impacted the decision to increase the limit on the line of credit. Not only did the Member's reassurances and undertakings cause Ms. A to agree to the increase in the line of credit, she was so confident in the undertakings of the Member, that she did so outside of her internal banking policy in order to enable the advance to occur in a more timely fashion. She believed the situation to be urgent. This increase was completed without a board resolution and without the knowledge of the board as a whole, although the board of Organization X would have become aware of the credit line increase approximately two weeks after it was authorized when their bank statements arrived.
12. The Member was asked to provide a response in relation to the allegations of Organization X that he acted without authority as well his provision of undertakings to the Bank of Nova Scotia. The Member's response to the Law Society dated November 27, 2006 is attached at **Tab 5**.
13. It was determined that at no time did the Member have authority from the Board of Directors as a whole of either Organization X or Organization X1 to request an increase in the line of credit. At no time did the Member have control over any money from the Saskatchewan Housing Program or any other government program related to the Organization X operation. The Member was not involved in the application process relating to the receipt of any government funding.

14. The Member also stated the following in relation to his use of the word “undertaking” in his letters to the Bank of Nova Scotia:

**It was never my intention, nor was it ever asked of me, to provide personal undertakings or guarantees to any lending institution. In my conversations with the Bank of Nova Scotia there was no indication given, nor do I believe any inference taken that I was assuming any legal liability on behalf of the Organization X. Perhaps I made inadvertent use of the word “undertaking”, however I believe that no action was ever taken by any lending institution in that regard.**

15. The Member states in his response letter that he was asked by individuals involved with the Organization X to “contact the Bank of Nova Scotia to offer whatever assurances I could that the Organization X was poised to enter into an agreement with the Sask Housing Corporation for funding...”
16. At no time before or after the provision of the undertakings to the Bank of Nova Scotia did the Member have any form of control over whether or not the line of credit would be paid by Organization X or Organization X1. The Member was neither a director nor an officer of either corporation. Thus, the Member provided written undertakings to Ms. A of the Bank of Nova Scotia, which she relied upon to her detriment, that he was never in a position to fulfill.
17. Ultimately, the Bank of Nova Scotia was forced to “write off” the line of credit as a bad debt. Portions of the amounts written off included the amounts advanced in connection with the Members undertakings.
18. The Member received no financial gain or monetary benefit from these expenditures. The Member had no involvement in the day-to-day financial operation of Organization X or Organization X1.

### ***Canada Revenue Agency***

19. The complaint in relation to the Canada Revenue Agency matter was made by Ms. B, a Canada Revenue Agency Collections Officer. Attached at **Tab 6** is her letter to the Law Society dated May 19, 2007. This complaint also stems from the Member’s involvement with Mr. C already mentioned above.
20. The Member represented Mr. C in a collection proceeding initiated by the Canada Revenue Agency. During the course of the Member’s involvement with the

Canada Revenue Agency matter, the Member wrote a letter to Ms. B dated August 9, 2006. That letter is attached at **Tab 7**. In that letter the Member provided a cheque drawn on Mr. C's personal chequing account in the amount of \$13,167.19 and the cheque was provided subject to a series of "trust conditions" as follows:

**On acceptance of the offered cheque, you will;**

- a. Confirm that the within trust conditions and undertakings are acceptable to you;**
- b. Contact the writer immediately if either these trust conditions or undertakings are not acceptable to you;**
- c. If you are unable or unwilling to accept all of the within trust conditions and undertakings, immediately return the enclosed cheque without negotiating same, unless an alternative written alternative is reached:**

**On the date of Negotiation of the enclosed cheque, or immediately prior to negotiation of the enclosed cheque, you will:**

- a. Release, cancel or void, as the case may be, any and all garnishment proceedings taken or in effect with regard to Mr. C with regard to his employer ----- a corporate entity duly registered and operating in Saskatchewan;**
- b. Immediately contact, in writing, the writer to advise that these garnishment proceedings have, in fact, been released, cancelled or voided;**
- c. Release, cancel or void any and all recovery measures taken with regard to the tax debt owed by Mr. C;**
- d. Execute any and all documentation necessary to ensure that all debt collection measures undertaken by your department will immediately cease;**
- e. Immediately contact, in writing, the writer to advise what documentation has been executed to give effect to your undertakings.**

21. In exchange for imposition of the above trust conditions, the Member offered the following unequivocal undertaking to Ms. B:

**We undertake as follows:**

**To ensure that sufficient funds remain on deposit to negotiate the offered and enclosed cheque.**

22. Ms. B took the Member's undertaking at face value and accepted the cheque drawn on the personal account of Mr. C. She discontinued all collection and recovery proceedings against Mr. C in accordance with the "trust conditions" that had been imposed by the Member. Unfortunately, the Member had no control over the money in Mr. C's personal account and the cheque could not be negotiated due to insufficient funds. The Canada Revenue Agency was forced to reinstate proceedings from scratch in the form of a new requirement to pay directed to Mr. C.
23. When Ms. B attempted to contact the Member thereafter she was at first unable to get a response to her phone messages. After approximately two weeks the Member left Ms. B a message on her voice mail and advised that since she had reissued a new requirement to pay, that the account would have to be paid off in that manner.
24. On October 17, 2006 Ms. B left the Member a message requesting an explanation in relation to how the cheque could be returned "NSF" when the Member had provided an undertaking that funds would be available. The Member did not respond to this enquiry. Ms. B again voiced her concerns to the Member in writing on January 18, 2007. That letter is attached at **Tab 8**. After receiving no response, Ms. B complained to the Law Society. In the meantime, the Member had contacted Mr. C who assured the Member that he would promptly attend to payment of the outstanding settlement amount. The settlement amount was ultimately paid to the CRA on December 11, 2006 as a result of a CRA garnishee of Mr. C's pension fund.
25. The Member responded to the complaint in a letter dated July 16, 2007. That letter is attached at **Tab 9**. In his response the Member stated the following:

**I was contacted by Mr. C to deal with his matter involving payment of tax arrears. I was told by Mr. C of a pension payout he would be receiving from the Province of Saskatchewan, delivery of which was imminent. I wrote to the Canada Revenue Agency on behalf of Mr. C to advise that I would undertake to keep on deposit sufficient funds to negotiate the cheque Mr. C had, or would be delivering as settlement. In fact, those funds never arrived at my office. I acknowledge and understand that my mistake was to give such an undertaking prior to actual delivery of the anticipated**

**pension funds... Regardless, I believe in hindsight that I should not have given any assurance to the Canada Revenue Agency as I did, until the issued pension funds were secured in my trust account.**

26. The Member explained that the pension payout he expected to receive was delayed and ultimately, did not come through his firm. The Member goes on to state the following:

**While I agree that the situation was not of my making, I believe that I could not have given the undertaking to keep on deposit such funds to ensure the Mr. C cheque was honoured, when those funds had not yet been received. In fact, it was a mistake to give the apparent impression that I, indeed, was in receipt of such funds. I see how my letter would of could be misconstrued, and for that I am responsible.**

27. The Law Society inspector auditor, John Allen, has subsequently confirmed that there were no funds held by the Member in his trust account in relation to Mr. C at the time the undertaking was made.
28. The Member by providing the cheque on the trust conditions imposed, in exchange for the undertaking which he was not in a position to fulfill, mislead the Canada Revenue Agency and in doing so, induced the Canada Revenue Agency to discontinue enforcement proceedings against his client to its detriment.
29. The Canada Revenue Agency account for tax arrears was eventually paid directly to the Canada Revenue Agency by Mr. C within the context of the reinitiated collection proceedings, several months after the delivery of the August 9, 2006 letter from the Member.

### **Summary of Conduct**

30. In summary the foundation for the charges of conduct unbecoming set out in Counts #1 and #3 is as follows:
- a. On two separate occasions the Member provided written undertakings to members of the public which he was never in a position to fulfill;
  - b. In the first instance the Member provided a written undertaking to the Bank of Nova Scotia that all funds accruing due to Organization X1 would be paid to the Bank of Nova Scotia to cover all or any amount of overdraft

or line of credit owed by Organization X1 when the Member did not at any time have funds belonging to Organization X1 in his control and no control over whether or not the line of credit was ever paid by Organization X1.

- c. The Member provided the undertaking to the Bank of Nova Scotia in order to secure an increase in a line of credit used by Organization X1, a company established by Organization X but operated by Mr. C;
- d. The Member was never in a position to fulfill the undertaking provided to the Bank of Nova Scotia;
- e. The Ms. A of the Bank of Nova Scotia relied upon the undertaking of the Member to her detriment and increased the limit on the line of credit used by Organization X1, only to discover after the fact that the Member could not fulfill his undertaking;
- f. The Bank of Nova Scotia line of credit used by Organization X1 ultimately went delinquent causing a financial loss for the Bank of Nova Scotia;
- g. In the second instance the Member provided a written undertaking to the Canada Revenue Agency that he would ensure that sufficient funds would remain on deposit to negotiate a personal cheque of Mr. C when the Member had no funds belonging to Mr. C in his control and no control over the personal account of Mr. C;
- h. The Member provided the undertaking to the Canada Revenue Agency in order to cause them to discontinue enforcement proceedings against Mr. C for tax arrears;
- i. The Member was never in a position to fulfill the undertaking provided Canada Revenue Agency;
- j. The Ms. B of the Canada Revenue Agency was misled by the statements of the Member and relied on the undertaking of the Member to her detriment and discontinued all enforcement proceedings against Mr. C, only to discover after the fact that the Member was never in a position to fulfill his undertaking;

- k. Ultimately, the tax arrears were paid to the Canada Revenue Agency by way of a garnishee against Mr. C after new enforcement proceedings were commenced;

## **Conclusion**

31. The impacted parties in relation to both complaints provided statements to Counsel for the Law Society which included information in relation to how the Member's conduct affect each of them. It is clear that the perception of the legal profession was diminished to some extent by the Member's conduct. Ms. A of the Bank of Nova Scotia stated the following in relation to a question in relation to whether the Member's conduct affected her perception of the profession:

**“Absolutely, my decisions daily that involve a solicitor usually remind me of the past indigence [sic]. I, unfortunately lost the trust I once had for solicitors and will generally question them more than ever before to ensure I fully understand what is being asked.”**

32. Ms. B of the Canada Revenue Agency stated the following in her statement:

**“Prior to the member's conduct, I trusted unconditionally that when given a lawyer's undertaking, whatever promise was made would be kept. Now when I am given an undertaking, I find myself questioning it. Although my only experience with a broken undertaking was with this member, there is now always a slight bit of doubt in my mind about whether or not an undertaking will be honored. It only took this one breach to shake my faith in the value of an undertaking. Although the member's actions were the exception rather than the norm, I now pause to question the veracity of each undertaking I receive.”**

33. The conduct of the Member in providing undertakings which he was never in a position to fulfill appears to be rooted in his failure to appreciate the importance of the requirements set out in Chapter XVI, paragraph 10 of the Code of Professional Conduct as follows:

**The lawyer shall give no undertaking that cannot be fulfilled, shall fulfill every undertaking given, and shall scrupulously honour any trust condition once accepted. Undertakings and trust conditions shall be written or confirmed in writing and shall be absolutely unambiguous in their terms. If the lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given**

**is entitled to expect that the lawyer giving it will honour it personally. If the lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition shall be immediately returned to the person imposing the trust condition unless its terms can be forthwith amended, preferably in writing, on a mutually agreeable basis.**

34. The Member, in providing undertakings to members of the public which they relied upon to their detriment that he was never in a position to fulfill, failed to abide by the requirements noted above and is as such guilty of conduct unbecoming a lawyer in relation to Counts #1 and #3 of the Formal Complaint.

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