CANADA	**)**
	)
PROVINCE OF SASKATCHEWAN	**)**
	)
TO WIT:	**)**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF
Kim Alan Stinson of Regina, Saskatchewan A LAWYER

The Law Society of Saskatchewan
Discipline Decision 2008 SKLSS 07
Kim Alan Stinson of Regina, Saskatchewan

DECIDED: December 5, 2008

Timothy F. Huber on behalf of The Law Society of Saskatchewan
Kirk M. Rondeau on behalf of Kim Alan Stinson

Jurisdiction and Responsibility

1. The jurisdiction and authority of the Law Society of Saskatchewan to govern itself through the regulation and discipline of its members is reviewed extensively in the Benchers' decisions to disbar Susan Rault made the 18th of April, 2008 #08-02 and Michael Nolin made the 3rd of October, 2008 #08-04. As the Benchers stated in *Nolin*, the Law Society's responsibility for discipline is a serious one which must be exercised with great care in each case and with full regard for its public policy importance. It is well established that public confidence in the profession's ability to govern itself is a matter of public interest.

2. The exercise of the Bencher's discretionary powers is rooted in the public interest and is informed by the *Code of Professional Conduct* and the decisions of other Benchers. The responsibility of discipline demands a principled and judicious approach.

Procedural History

3. This matter initially proceeded before the Hearing Committee consisting of William Holliday, Chair, Ronald Kruzeniski, Q.C. and Janice Wall (the "Hearing Committee"). The Hearing Committee convened on November 19, 2008 by teleconference.

4. Counsel for Mr. Stinson was Kirk Rondeau. Counsel for the Law Society and Mr. McLean acknowledged that the Hearing Committee was properly constituted and had jurisdiction. There were no preliminary objections or other issues.

5. At the hearing, Mr. Stinson admitted to the facts contained in the Agreed Statement of Facts, including its attachments. Mr. Stinson admitted that the charges enumerated as numbers 1 and 3 of the Formal Complaint were well founded and did constitute conduct unbecoming. The Hearing Committee therefore found that Mr. Stinson:

> 1. Is guilty of conduct unbecoming a lawyer, in that he provided a written undertaking to [the Bank] that he was not in a position to fulfill;
>
> Reference Chapters IX and XVI of the *Code of Professional Conduct.*
>
> 3. Is guilty of conduct unbecoming a lawyer, in that he misled the Canada Revenue Agency, by providing to them a written undertaking that he was not in a position to fulfill, and in so doing induced them to discontinue enforcement proceedings against his client;

Reference Chapter I of the *Code of Professional Conduct.*

6. No further evidence was introduced. At the hearing counsel for the Law Society entered a stay of the charges enumerated as numbers 2 and 4 of the Formal Complaint.

7. Pursuant to s. 51 of *The Legal Profession Act, 1990* the Hearing Committee made no sentencing recommendation and referred the matter to the Benchers and this Discipline Committee of the Benchers sitting as a whole (the "Discipline Committee") in Regina on December 5, 2008. The entire record of evidence before the Hearing Committee was put into evidence before the Discipline Committee. Counsel for Mr. Stinson also filed in evidence two letters from the Saskatchewan Legal Aid Commission dated December 3, 2008 attesting to Mr. Stinson's performance and value as criminal defence counsel for the Saskatchewan Legal Aid Commission.

8. A quorum of Benchers was established at the hearing. There was no objection to the jurisdiction or composition of the Discipline Committee. There were no preliminary motions or other objections. Convictions were entered by the Discipline Committee on all charges as amended. The Discipline Committee received written submissions from Mr. Huber, written materials from Mr. Rondeau and oral submissions from both counsel as to sentencing. Mr. Stinson briefly addressed the Discipline Committee on the matter of penalty and the effective date of the penalty imposed.

9. The Discipline Committee deliberated and rendered an oral decision on December 5, 2008. The Chair indicated written reasons would follow. These are those reasons.

Charges and Facts

Charge #1 - Is guilty of conduct unbecoming a lawyer, in that he provided a written undertaking to [the Bank] that he was not in a position to fulfill;

Reference Chapters IX and XVI of the Code of Professional Conduct

Charge #1 - Facts

10. Mr. Stinson was the legal advisor from time to time to a common Board of Directors of two related entities described in the Agreed Statement of Facts as Organization X and Organization X1. Organization X1 made an application to the Bank to increase its line of credit from $30,000.00 to $60,000.00. In support of that application the Bank received two letters written by Mr. Stinson on his firm letterhead, which were directed to the manager of the Bank.

11. The first letter was dated the 17th of November, 2005. In this letter Mr. Stinson referred to prior conversations between representatives of Organization X1 and the Bank. He stated he would be receiving money from the Saskatchewan Housing Program on behalf of Organization X1. He stated:

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

12. The second letter was dated the 17th of January, 2008. In that letter, he reiterated his undertaking, and offered his further undertaking:

> 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] that all funds accruing due [Organization X1] will be paid to [the Bank] to cover all or any amount of overdraft or line of credit owed by [Organization X1]. With this assurance, I understand that [the Bank] will increase the line of credit on behalf of [Organization X1].

13. After receiving these letters the Bank did extend the limit on the line of credit to Organization X1 by $30,000.00 to $60,000.00. The Bank manager confirmed that the undertakings given by Mr. Stinson "impacted the decision to increase the limit on the line of credit". The manager was sufficiently confident with the undertakings given by Mr. Stinson that she approved the increase in financing outside of internal banking policy to enable the advance in circumstances she considered to be urgent.

14. The increase in the operating line was completed without a Board resolution to that effect and without the knowledge of the Board as a whole. At no time did Mr. Stinson have authority from the Board of Directors of either organization to request an increase in the line of credit. At no time did Mr. Stinson have control over any funds from the Saskatchewan Housing Corporation, or any other government program related to the organization's operation. Mr. Stinson was not involved in the application process relating to the receipt of any government funding. In Mr. Stinson's written response to the Law Society investigation he stated:

> 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] there was no indication given, nor do I believe any inference taken that I was assuming any legal liability on behalf of [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. He further stated that he was asked by representatives of Organization X to:

> contact [the Bank] to offer whatever assurances I could that [Organization X] was poised to enter into an agreement with the Sask Housing Corporation for funding...

16. At all material times, Mr. Stinson did not have any form of control over whether or not the line of credit would be paid by Organization X or Organization X1. Mr. Stinson was not a director or an officer of either organization. He provided written undertakings to the Bank that he was never in a position to fulfill. The Bank relied upon these undertakings to its detriment. The Bank advanced and ultimately wrote off funds under the increased line of credit.

17. The original complaint to the Law Society came from a member of the Board of Directors of the Organization. The Bank was rightfully aggrieved by Mr. Stinson's empty inducements.

Charge #3 - Is guilty of conduct unbecoming a lawyer, in that he misled the Canada Revenue Agency, by providing to them a written undertaking that he was not in a position to fulfill, and in so doing induced them to discontinue enforcement proceedings against his client; and

Reference Chapter I of the Code of Professional Conduct.

Charge #3 - Facts

18. This charge arose as a result of a complaint by Ms. B, a Canada Revenue Agency ("CRA") collections officer. The complaint stems from Mr. Stinson's involvement with a Mr. C, a friend of Mr. Stinson. Mr. C was the construction supervisor and manager of Organization X1 (referred to in relation to Charge #1 above). Mr. C had been previously convicted of fraud. There was no evidence Mr. Stinson and Mr. C were previously involved in any business dealings or that Mr. Stinson was aware of that prior conviction.

19. Mr. Stinson represented Mr. C in a collection proceeding initiated by CRA. During the course of his representation of Mr. C, Mr. Stinson wrote a letter to Ms. B of CRA dated August 9, 2006. In that letter Mr. Stinson provided a cheque drawn on Mr. C's personal chequing account payable to CRA in the amount of $13,167.19. Mr. Stinson purported to deliver that cheque to CRA 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.

20. In exchange for the imposition of these trust conditions Mr. Stinson then offered the following undertaking to Ms. B:

> We undertake as follows:
>
> > To ensure that sufficient funds remain on deposit to negotiate the offered and enclosed cheque.

21. Ms. B accepted Mr. Stinson's undertaking and accepted the cheque drawn on the personal account of Mr. C. Ms. B discontinued all collection and recovery proceedings against Mr. C according to the "trust conditions" imposed by him. At all material times Mr. Stinson had no control over the funds in Mr. C's personal account. The cheque to CRA could not be negotiated because sufficient funds did not exist in Mr.C.'s personal account. CRA was forced to initiate new proceedings in the form of a new Requirement to Pay directed to Mr. C.

22. When Ms. B first attempted to contact Mr. Stinson she was unable to obtain a response to her telephone messages. Approximately two weeks after these first calls, Mr. Stinson left a message stating that the account would be paid pursuant to the new Requirement to Pay issued by CRA.

23. On October 17, 2006 Ms. B left a voice mail to Mr. Stinson requesting an explanation in relation to how the cheque could be returned "NSF" when Mr. Stinson had provided an undertaking that funds would be available. Mr. Stinson did not respond to this inquiry. Ms. B again expressed concern to Mr. Stinson in this respect by letter dated January 18, 2007. When no response was received, Ms. B complained to the Law Society. Before any response from Mr. Stinson, he did contact Mr. C who assured Mr. Stinson he would promptly attend to payment of the outstanding settlement amount. The settlement amount was ultimately paid to CRA on December 11, 2006 as a result of a CRA garnishee of Mr. C's pension fund.

24. In responding to the complaint to the Law Society, Mr. Stinson stated in his letter of July 16, 2007:

> 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.

25. Mr. Stinson explained that the pension payout he expected to receive was delayed and did not pass through his firm's account. He stated:

> 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 [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 [*sic*] misconstrued, and for that I am responsible.

26. The Law Society's inspector auditor, John Allen, confirmed that Mr. Stinson did not hold any funds in his trust account for Mr. C at the time the undertaking was made.

27. As indicated, Mr. Stinson provided Mr. C's cheque to CRA on trust conditions imposed by him. To secure CRA's acceptance of those conditions he provided an undertaking he was not in a position to fulfill. In so doing, he misled and induced CRA to discontinue enforcement proceedings to its detriment.

28. As indicated above, the CRA debt was ultimately enforced through new collection proceedings, several months after Mr. Stinson's letter of August 9, 2006.

Conclusion re Charges #1 and #3

29. In the Agreed Statement of Facts Mr. Stinson admitted that: "It is clear that the perception of the legal profession was diminished to some extent by the Member's conduct". The Bank manager stated:

> Absolutely, my decisions daily that involve a solicitor usually remind me of the past indicence [*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.

30. Ms. B of CRA stated:

> 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.

The Duty of the Lawyer

31. Mr. Stinson's misconduct in the context of the lawyer's requisite duty involves two themes. Both charges involve a breach of an undertaking. While not a part of the charges themselves the misconduct in relation to each charge involves an attempt to mislead. Each of these themes will be reviewed separately.

32. Chapter XVI of the *Code of Professional Conduct* expresses the following rule:

> The lawyers conduct toward other lawyers should be characterized by courtesy and good faith.

33. In the commentary of guiding principles, paragraph 10 provides:

> 10. **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.[8] **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. [emphasis added]

34. As the Benchers stated in *Nolin*, this Rule underlies and is part of every other duty under the Code.

35. Where a lawyer accepts a trust condition or gives an undertaking, the lawyer is held out as a trustee who can be trusted to strictly carry out the terms of the trust and to keep his or her undertaking. In *Merchant*, the court characterized the use of trust conditions as an essential tool of commerce:

> [70] In *Witten, Vogel, Binder & Lyons v. Leung et al*,[24] McDonald J. made the following comments regarding the sanctity of trust conditions, comments that resound with equal force in the context of a lawyer's dealings with trust accounts:
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> > It is of overarching importance to the practice of law as an honourable profession that solicitors comply, without reservation or question, with the trust conditions upon which documents have been entrusted to them by other solicitors. **Unless the solicitors who have sent documents to other solicitors on trust conditions can rely with absolute confidence upon those trust conditions being observed, the edifice of trust between solicitors, upon which so much of the efficient service to the public depends, will crumble**. It is in the public interest that this confidence be maintained. This concern merits paramountcy over any effect that judicial measures taken to ensure maintenance of

> that confidence may have upon the legal or equitable rights and obligations of the solicitors' clients or those of other persons. [emphasis added]
>
> [71] As counsel for the Law Society compellingly argued, the legal profession must be held to rigorous account in these matters, for the consequences of non-compliance are grave. Institutions and individuals would have no confidence in the ability of the profession to act as an impartial stakeholder if the lawyer/trustee could become the self-appointed arbiter of competing trust claims and prefer the interests of one beneficiary over another.
>
> [72] **Where a solicitor has control of funds that belong to another, the essence of the trust obligation is to hold and distribute the funds for the beneficiary in strict compliance with the terms of the trust. The "even hand" of the trustee is irreconcilable with the helping hand of the advocate**. Stringent adherence to principle is essential to the integrity of trust relationships and the credibility of the legal profession. [emphasis added]

36. Members of the public are entitled to accept undertakings at face value and to expect that trust conditions will be strictly observed by lawyers. They are entitled to rely on undertakings and trust conditions to their detriment because these tools are an immutable measure of security[1].

37. Counsel for the Law Society referred us to the decision in *Law Society of British Columbia v. Hordal,*[2] where the Benchers recognized the critical importance of the lawyer's integrity as underlying the value of a lawyer's undertaking. At paragraph 49, the sentencing committee accepted these comments made by the Hearing Committee:

> Honesty, integrity and trustworthiness are fundamental values of the legal profession. They form the underpinning and *raison d'etre* of the profession. If a lawyer's word cannot be trusted, what is the point of hiring him or her? Therefore the Panel finds that the violation of the duty of honesty and a breach of undertaking amount to grave misconduct.

38. In *Hordal*, the Sentencing Committee referenced the value of the lawyer's integrity inherent in the critical public importance of undertakings by lawyers:

> ...cases involving breaches of undertaking and misleading are grave, as they damage and undermine the very structure of our society of which the legal profession is one of the pillars.

39. In *Hordal*, the Sentencing Committee said this:

> It has been variously observed that undertakings among solicitors form the basis upon which the commercial ventures of our clients are accomplished. They are at the heart of the value added to

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1 *Merchant v. Law Society of Saskatchewan*, 2009 SKCA 33, [2009] 5 W.W.P., 478 at para. 70.

2 [2004] L.S.D.D. No. 93, 2004 LSBC 36

> commercial transactions by the legal profession. Undertakings facilitate the efficient exchange of documents and funds.

40. In the *Law Society of British Columbia v. Kruse*,[3] the Benchers said this at paragraph 13 of the "penalty" section of its decision:

> 13. Undertakings are a vital part of the interaction among lawyers in their service of their clients. Breach of undertaking is serious; so serious that breach of undertaking is specifically referred to in our Professional Conduct Handbook as a type of misconduct that a lawyer must report to the Law Society.

In its analysis in *Kruse*, and at paragraph 18 of the "penalty" section of the decision, the Benchers regarded the member's breach of an undertaking as a "particularly egregious instance of professional misconduct".

41. Where the breach of an undertaking or trust condition by a lawyer is deliberate, and stems from an intention to deceive, the integrity of the individual lawyer may also be brought into question and the public's trust of the legal profession generally is further compromised. Where the breach is made deliberately, recklessly or because the lawyer has misconstrued his or her obligation, the public loses trust and confidence in the profession as a critical instrument of commerce.

Analysis

Charges #1 and #3

42. In weighing the seriousness of the member's misconduct in relation to all charges and the need for appropriate sanction we have considered the factors articulated in the *Law Society v. Ogilvie*,[4] and the Alberta Hearing Guide. We have also considered the jurisprudence involving similar cases referred to us by counsel.

43. It was not suggested to us by counsel for the Law Society, and we were unable to find any clear evidence suggesting that Mr. Stinson had given undertakings he did not intend to fulfill, or that he had otherwise deliberately misled the Bank or CRA. The charge itself does not allege a deliberate intention to mislead or to defraud. We are therefore unable to regard these charges as manifesting a lack of integrity on the part of Mr. Stinson.

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3 [2002] L.S.D.D. No. 24, 2001 LSBC 32

4 [1999] LSBC 17

44. It is clear that Mr. Stinson gave undertakings to members of the public in two separate matters when he had no control over whether these undertakings would be fulfilled. The Bank and CRA each relied on these undertakings to their ultimate detriment, as neither undertaking was fulfilled. Mr. Stinson's breach of an undertaking was described by counsel for the Law Society as "at the very least reckless". The Agreed Statement of Facts suggests his misconduct "appeared rooted" in his failure to recognize the importance of the rule of Chapter XVI of the Code.

45. From the perspective of the Bank and CRA, and the public generally, confidence in the legal profession generally is compromised where a lawyer does not fulfill an undertaking. Whether the breach of an undertaking is deliberate or reckless, the impact on the legal and financial interests of the individuals involved is the same. In the *Law Society of British Columbia v. Morrison*[5], the Hearing Panel concluded the Member had "misconstrued his obligations pursuant to his undertakings…" and "…appeared not to have appreciated [these obligations]". The Hearing Committee characterized this as a "deplorable failure to appreciate the nature of an undertaking".

46. By any objective measure, the breach of an undertaking given recklessly is a matter of misconduct requiring serious censure for specific and general deterrence purposes. The penalty to follow should reflect the harm resulting to the individuals involved, the public's confidence in the legal profession generally, and the need to denounce such misconduct generally and to remediate the Member's behaviour. In cases such as these, the sentencing objective is to promote high professional standards and to preserve public confidence in the legal profession by appropriate denunciation of this misconduct.

47. The range of sentencing outcomes in cases involving a breach of undertaking extends from a fine or reprimand at the low end to a significant suspension at the high end. Among the cases cited by counsel for the Law Society, we were referred to the decision of the *Law Society of British Columbia v. Hordal*[6]. In *Hordal*, there was a specific finding that the Member knowingly deceived opposing counsel in three different and successive ways. Given

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5 [2000] L.S.D.D. No. 28.

6 *Supra*, note 3.

the element of deceit and the Member's very recent and related history involving similar misconduct, the Benchers imposed a six month suspension, a reprimand and an order for costs.

48. In the *Law Society of British Columbia v. Kruse*[7], the lawyer gave his undertaking to pay money to third parties from sale proceeds. He gave an undertaking when he knew he could not fulfill the undertaking. By the time the matter came on for hearing the lawyer had ceased to become a Member of the Law Society for reasons unrelated to the proceeding. The Sentencing Committee imposed a fine of $12,000.00 in relation to the breach of undertaking. The Panel observed that, if the Member had still been engaged in active practice, the penalty would have included a suspension with conditions imposed on the lawyer's return to practice. At paragraph 18 of the penalty section of the decision, the Sentencing Committee stated with reference to the sentencing objective of maintaining the public's trust in the legal profession that the lawyer had:

> … chosen almost completely to ignore the accusations made against him. […] Such responses he has made are unworthy of a professional in whom the public should be able to put trust.

49. The day this matter came on for hearing before the Discipline Committee, the Discipline Committee imposed a penalty and sentence in *Law Society of Saskatchewan v. William Zion Brown*[8]. Mr. Brown was found guilty of conduct unbecoming for breach of an undertaking by releasing funds without first satisfying his undertaking and to provide a report according to that undertaking. There was no evidence of any improper motive or sharp practice. The complaint arose from a practice review by the Law Society and not because a client was impacted. Mr. Brown had no prior record, was remorseful and acknowledged his conduct was inappropriate. He was reprimanded and ordered to pay costs.

50. In determining the appropriate penalty, the Discipline Committee referred to the authorities referenced above (and otherwise) and the aggravating and mitigating factors brought to its attention by both counsel.

51. The aggravating factors consist of the following:

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7 *Supra*, note 4.

8 [2008] L.S.D.D. No. 6

(a) the misconduct raises concern about the ability of the legal profession to add value as an essential tool of commerce. Where the value of an undertaking or trust condition is compromised, the value and reputation of the profession suffers;

(b) the misconduct in this case occurred on two occasions in relation to two discrete matters;

(c) the level of intent in both cases was at least that of recklessness. But as indicated above, it is not the same as in *Hordal*, where the Member was keenly aware he could not fulfill the trust conditions and deceived those who relied upon them;

(d) Mr. Stinson has been a member of the bar since 2000 and should have been aware of the nature, meaning and importance of undertakings. In his written response to the Law Society investigation he demonstrated a surprisingly inadequate understanding of the nature and seriousness of an undertaking;

(e) in relation to Charge #1 Mr. Stinson acted without the authority of the Board, and without taking any steps to independently ensure he could fulfill these undertakings;

(f) in relation to Charge #3 he gave an undertaking regarding the personal account of a client when he knew, or ought to have known, he had no control over that account; and

(g) the financial risk in each case was significant. In relation to Charge #1, the Bank was induced by his undertaking to extend $30,000.00 in credit. In relation to Charge #3, CRA was compromised in its ability to collect $13,167.19. The Bank was required to write off its losses. While CRA did recover its losses by another means, this does not operate to mitigate the extent of the risk and prejudice it assumed in relying on Mr. Stinson's undertaking.

52. The mitigating factors are:

(a) Mr. Stinson did not receive any financial benefit by providing and later breaching these undertakings;

(b) Mr. Stinson was cooperative throughout the proceedings. He took responsibility for his misconduct at an early stage. The matter was concluded by way of Agreed Statement of Facts and an admission of conduct unbecoming;

(c) he has no prior record for conduct unbecoming;

(d) his counsel submitted he had a good faith belief the undertakings would be fulfilled; and

(e) Mr. Stinson himself was openly accepting of and remorseful for his misconduct.

Conclusion

53. The need for specific and general deterrence to preserve the public's confidence in the legal profession's ability to govern itself is the imperative sentencing objective. Having regard to the aggravating and mitigating factors, and the authorities referred to us by counsel, a suspension is required to maintain the public's confidence. The misconduct here supports a significant suspension closer to the low end than the high end of the range of cases referred to us. Practice conditions are required to ensure Mr. Stinson remediates his understanding and appreciation of the importance of trust conditions and undertakings.

54. There is nothing to mitigate against the general rule of ordering costs on a full indemnity basis.

Decision and Penalty

55. It is therefore the decision of this Discipline Committee that:

(a) Mr. Stinson is suspended from the practice of law for 60 days effective the 3rd of January, 2009;

(b) Mr. Stinson's resumption of practice will be conditional upon him working under the supervision of and with the cooperation of the Law Society Practice Advisor, or such other Practice Advisor as may be approved by the Law Society, and that he bear the cost of such Practice Advisor; and

(c) Mr. Stinson is ordered to pay costs in the amount of $4,508.50, within six months of December 5, 2008.

DATED at the City of Regina in the Province of Saskatchewan this 20th day of April, 2012.

Per: _____
Paul H.A. Korpan, Q.C.
Chair, Discipline Committee