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THE LAW SOCIETY OF MANITOBA and  
KEVIN ALLAN MacDONALD

!     REASONS

PANEL MEMBERS:                         B. Pauls (Chair)  
   J. Cooper, Q.C.  
   J. Wolfe

COUNSEL FOR THE LAW SOCIETY OF MANITOBA:  
   R. Kravetsky, Esq.

COUNSEL FOR THE MEMBER:  
   S. Vincent, Esq.

Hearing held at The Law Society of Manitoba,  
219 Kennedy Street, Winnipeg, Manitoba, November 2, 2016.

**FOUR SEASONS REPORTING**  
**91 Ashford Drive**  
**Winnipeg, Manitoba R2N 1K7**  
**(204) 256-2343**

**ORIGINAL**



1 property you acted contrary to Rule  
2 7.2-5 of the *Code of Professional*  
3 *Conduct* in that you failed to answer  
4 with reasonable promptness correspondence  
5 and communications from Allan Ludkiewicz,  
6 lawyer for the purchasers.

7 3. While acting for your clients NV  
8 and CV in respect of the sale of real  
9 property you acted contrary to Rule  
10 3.2-1 of the *Code of Professional*  
11 *Conduct* in that you failed to provide  
12 service that was competent, timely,  
13 conscientious, diligent and efficient.

14 4. In respect of your retainer by your  
15 clients NV and CV as to the sale of real  
16 property you acted contrary to Rule 5-34  
17 of the *Rules of The Law Society of*  
18 *Manitoba* and Rule 7.8-2 of the *Code of*  
19 *Professional Conduct* in that you failed  
20 to give prompt notice of a potential  
21 claim against you to the Chief Executive  
22 Officer of the Society and to your  
23 insurer.

24 5. After being retained in or about  
25 December 2004 by your clients MJP, DP,

1 AB, AO and JP, to obtain administration  
2 of the Estate of their late father SP,  
3 you acted contrary to Rule 3.2-1 of the  
4 *Code of Professional Conduct* in that you  
5 failed to provide courteous, thorough and  
6 prompt service to your clients,"  
7 and, therefore, you did commit professional misconduct.

8 Mr. MacDonald has entered a plea of guilty to  
9 the entirety of Counts 1, 2, 3, 4 and 5 of the citation  
10 after reviewing them. The facts set out in the statement  
11 of agreed facts are formal admissions. We therefore find  
12 that what was or has been described constitutes  
13 professional misconduct.

14 In doing so, we have considered the citation  
15 which was filed as Exhibit 1, and the signed statement of  
16 agreed facts and joint submission, which was filed as  
17 Exhibit 2.

18 We have further considered the oral submissions  
19 of each counsel, which were very useful, helpful and  
20 greatly appreciated, and we have considered the authorities  
21 that were jointly provided to us by counsel.

22 We were requested very carefully and fully by  
23 both counsel to follow the guidelines which ought to be  
24 utilized by tribunals such as ours with respect to a plea  
25 of guilty and a joint submission as to disposition.

1                   We note the recent decision of the Supreme  
2 Court of Canada in the case of Matthew John Anthony-Cook v.  
3 Her Majesty The Queen rendered October 21, 2016, as to  
4 guidelines and have attempted to follow them clearly,  
5 notwithstanding that they are directed towards trial  
6 judges.

7                   In that judgment the court sets out what it  
8 considers to be the proper test. Paragraph 32 of that  
9 judgment,

10                   "Under the public interest test, a trial  
11 judge should not depart from a joint  
12 submission on sentence unless the  
13 proposed sentence would bring the  
14 administration of justice into disrepute  
15 or is otherwise contrary to the  
16 public interest. But, what does this  
17 threshold mean? Two decisions from the  
18 Newfoundland and Labrador Court of Appeal  
19 are helpful in this regard.

20                   In *Druken*, at para. 29, the court held  
21 that a joint submission will bring the  
22 administration of justice into disrepute  
23 or be contrary to the public interest if,  
24 despite the public interest  
25 considerations that support imposing it,

1 it is so 'markedly out of line with the  
2 expectations of reasonable persons aware  
3 of the circumstances of the case that  
4 they would view it as a break down in the  
5 proper functioning of the criminal  
6 justice system'. And, as stated by the  
7 same court in *R. v. B.O.2*, 2010 NLCA 19,  
8 (CanLII), at para. 56, when assessing a  
9 joint submission, trial judges should  
10 'avoid rendering a decision that causes  
11 an informed and reasonable public to lose  
12 confidence in the institution of the  
13 courts'.

14 In my view, these powerful statements  
15 capture the essence of the public  
16 interest test developed by the Martin  
17 Committee. They emphasize that a joint  
18 submission should not be rejected  
19 lightly, a conclusion with which I agree.  
20 Rejection denotes a submission so  
21 unhinged from the circumstances of the  
22 offence and the offender that its  
23 acceptance would lead reasonable and  
24 informed persons, aware of all the  
25 relevant circumstances, including the

1 importance of promoting certainty in  
2 resolution discussions, to believe that  
3 the proper functioning of the justice  
4 system had broken down. This is an  
5 undeniably high threshold - and for good  
6 reason ..."

7 So this public interest test has more stringent  
8 onus than has formally applied to the deliberations of our  
9 committee, perhaps is being applied for the first time in a  
10 Law Society of Manitoba discipline process.

11 In doing so, we have concluded that we ought  
12 to accept the recommendations that are already set out. We  
13 have directed our attention to the comments of the learned  
14 author, Gavin MacKenzie, in his work, "Lawyers & Ethics:  
15 Professional Responsibility and Discipline", that the  
16 purposes of Law Society discipline proceedings are not to  
17 punish offenders and exact retribution, but rather to  
18 protect the public, maintain high professional standards,  
19 and preserve public confidence in the legal profession.  
20 Our own *Legal Profession Act* sets it out similarly.

21 We have noted that Mr. MacDonald,

22 (1) Has recognized responsibility, and has  
23 provided a genuine acceptance of his own wrongdoing,  
24 including an apology and a very, very sensitive approach to  
25 our committee today.

1                   (2) He is a lawyer of 30 years experience in  
2 active practice with no prior history of misconduct.

3                   (3) He appears clearly to be a person of good  
4 character.

5                   (4) He has expressed a willingness and an  
6 intention to discuss problems in his practice in the future  
7 with his partners more regularly, and he probably has  
8 already been doing so since these matters came to light.

9                   We find that no financial detriment has been  
10 sustained by any client of his in the matters before us.  
11 He seems, in fact, to have taken on the remediation costs  
12 such as they were himself.

13                   We therefore believe that the penalty agreed  
14 upon by joint determination of two able and experienced  
15 counsel meets the needs for which the disciplinary process  
16 exists.

17                   Our powers as to disposition under Section  
18 72(1) of the *Legal Profession Act* are broad once a finding  
19 of professional misconduct has been reached. Included in  
20 those powers are, (1) a reprimand; and, (2) payment of  
21 costs, and those are the dispositions which we deem to be  
22 appropriate in this matter.

23                   We were asked by counsel on both sides of the  
24 table to accept their joint submission. We note that it is  
25 well settled law that a tribunal should do so for the



1 reasons I have already given. We see no good cause, or in  
2 fact any cause to reject the joint submission, and,  
3 therefore, we are satisfied that what has been proposed is  
4 what we should decide to do.

5 We are mindful that the process exists largely  
6 in order to protect the public, and that it is our role to  
7 ensure that the public receives that protection.

8 We have noted that in these particular  
9 instances the specific members of the public directly  
10 affected, albeit they certainly were inconvenienced, were  
11 not otherwise obliged to suffer any financial detriment  
12 whatever.

13 We accept the commitment made by Mr. MacDonald  
14 without reservations that no recurrences can be expected,  
15 and, therefore, unanimously, as I have said, we find that  
16 the conduct of Kevin MacDonald as set out in the statement  
17 of agreed facts constitutes professional misconduct as  
18 alleged in the citation.

19 We order that he be reprimanded, and that he  
20 pay the sum of \$4,500 to The Law Society as a contribution  
21 to its costs. Thank you. Questions?

22 MR. KRAVETSKY: Nothing further from me, sir.

23 MR. VINCENT: Thank you.

24 MR. MacDONALD: Thank you.

25 THE CHAIRPERSON: Thank you. If nothing else,

1 then the proceeding is adjourned.

2 Gentlemen, thank you again for your assistance.

3 It certainly makes the tribunal's job a lot easier when  
4 counsel and client of counsel are here and being so helpful  
5 in what they provide to us, as basically our work was done  
6 90 percent before we got here. Thank you.

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(PROCEEDINGS CONCLUDED AT 11:37 A.M.)

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CERTIFICATE OF REPORTER

I, DON BARRETT, Court Reporter, do hereby certify that the foregoing pages, numbered 1 to 10, are a true and accurate transcript of the proceedings herein as recorded by me to the best of my skill and ability.



Don Barrett

Court Reporter

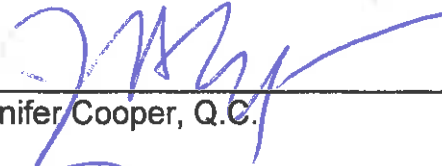
THE PRECEDING 11 PAGES CONSTITUTE  
THE DECISION AND REASONS FOR  
DECISION OF THE DISCIPLINE COMMITTEE  
OF THE LAW SOCIETY OF MANITOBA  
RENDERED THE 2<sup>nd</sup> DAY OF NOVEMBER,  
2016, IN THE MATTER OF:

**KEVIN ALLAN MACDONALD**



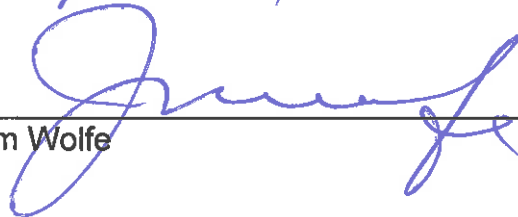
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Brian Pauls, Chair



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Jennifer Cooper, Q.C.



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Jim Wolfe