



**LAW SOCIETY TRIBUNAL
HEARING DIVISION**

Citation: *Kopyto v. Law Society of Upper Canada*, 2015 ONLSTH 29

Date: February 3, 2015

Tribunal File No.: PLC14/09

2015 ONLSTH 29 (CanLII)

BETWEEN:

Hersch Harry Kopyto

Applicant

- and -

The Law Society of Upper Canada

Respondent

Before: S. Margot Blight (chair)
Baljit Sikand
Michelle Tamlin

Heard: October 13 and 24, November 2, 11 and 22, 2011; January 3, 5, and 10, April 9 and 11, May 29 and 31, June 19 and 28, July 18, 20, 24 and 25, September 7, 14, 20, 27 and 28, October 9, November 6 and 7, 2012; January 7, 23, February 4, 11 and 21, March 8, 27, April 29, 30, May 16, 23, June 6, 19, November 12, 13, 26 and 27, 2013; February 10, 13, 18, March 4, April 17, May 29, July 9 and 10, 2014, in Toronto, Ontario

Appearances: Applicant, self-represented
Susan Heakes and Anne-Katherine Dionne, for the Respondent

Summary:

KOPYTO – Licensing – Good character – Application by Kopyto for a Class P1 licence – The Applicant was called to the bar in 1974 but was disbarred in 1989 for engaging in professional misconduct in connection with irregular legal aid billings – Thereafter, the Applicant provided services as an unregulated paralegal until October 2007, when he applied to the Society for a Class P1 licence as a grandparented candidate – In his application, the Applicant undertook to “obey the Rules of Professional Conduct for Paralegals and all other rules, by-laws, regulations, policies and requirements” of the Society, but he deliberately failed to provide information about his disbarment in his Paralegal Registration and Application form – The Applicant acknowledged that he had provided unauthorized legal services on hundreds of occasions since his disbarment, and on numerous occasions since giving the Undertaking – The Applicant’s record keeping had not improved, as he maintained no books of original entry for non-trust receipts and disbursements, no fees book and no bank statements – He had also failed to meet financial obligations to the CRA and to pay costs orders and had not co-operated with the Society’s investigation into his good character – The Applicant advised the panel that if granted a Class P1 licence, he intended to continue to disregard By-Law 4 insofar as it restricted the scope of paralegal practice – If a Class P1 licence were denied, he intended to disregard the law and continue to provide legal services – The Applicant was ungovernable – Good character required that an individual be ethically and morally trustworthy regarding his or her obligations as a member of the profession under the Society’s by-laws and the Paralegal Rules of Conduct, including the restrictions on paralegal practice, the record-keeping requirements, the obligation to comply with undertakings, and the duty to co-operate with the Society – The Applicant stated that he would not fulfil those obligations, and accordingly he could not be trusted to do so – The Applicant did not meet the good character requirement of the Act and his application for a Class P1 licence was dismissed.

REASONS FOR DECISION ON A LICENSING APPLICATION

- [1] S. Margot Blight (for the panel):– This is an application by Hersch Harry Kopyto, a “grandparented” paralegal, for the issuance of a Class P1 licence. Section 27(2) of the *Law Society Act*, R.S.O. 1990, c. L.8 requires that licences be issued only to applicants who are of good character. Section 27(4) requires that a hearing be held before an application for a licence may be refused.
- [2] After 11 days of pre-hearing motions by Mr. Kopyto, the hearing on the merits commenced on October 13, 2011 and concluded on July 10, 2014. The Society presented its evidence over 18 days with eight witnesses being called. Mr. Kopyto called 20 witnesses over 30 days. Several additional days were spent hearing more motions from Mr. Kopyto.
- [3] Over the course of these proceedings, the panel indulged and made allowances for Mr. Kopyto, whose general lack of organization gave rise to a number of delays,

including dates being vacated, late disclosure to the Society, insufficient copies of documents to be entered into evidence, and motions devoid of any merit or brought without proper notice. We granted these indulgences for the benefit of Mr. Kopyto and to provide him the opportunity to present the evidence he wished of his good character.

- [4] For the reasons that follow, we have concluded that Mr. Kopyto does not meet the good character requirement of the Act and should not be licensed.
- [5] We have reached this conclusion despite much evidence of the dedication Mr. Kopyto has shown to the causes of his clients. Those clients whom he called to testify expressed gratitude to him. We accept that he has sought, throughout his career, to improve the lives of the disenfranchised and the disadvantaged and has represented many clients without seeking any payment. Although this is evidence of good character, it is insufficient to meet the good character requirement of the Act, in view of the panel's many concerns, set out below, and in particular its conclusion that Mr. Kopyto is ungovernable.

BACKGROUND

- [6] Mr. Kopyto was called to the bar as a lawyer in 1974 and was disbarred after a hearing by Convocation in 1989. At that time, Mr. Kopyto acknowledged having committed acts of professional misconduct. He asserted that irregularities found in his billings to the Legal Aid Plan, which were the basis of the findings of professional misconduct, were the result of negligent record keeping, and asserted that all the services in issue had been performed, though not "as described" in his accounts. Convocation rejected Mr. Kopyto's explanations, and found that his conduct amounted to civil fraud. Convocation's decision was upheld on appeal by the Divisional Court (*Kopyto v. Law Society of Upper Canada*, [1993] O.J. No. 2550 (Div. Ct.)), and leave to appeal was denied by both the Court of Appeal for Ontario and the Supreme Court of Canada.
- [7] Mr. Kopyto then provided services as an unregulated paralegal until October 29, 2007, when he applied to the Society for a Class P1 licence as a grandparented candidate after the Law Society obtained jurisdiction to regulate paralegals. In his application, Mr. Kopyto undertook to "obey the Rules of Professional Conduct for Paralegals and all other rules, by-laws, regulations, policies and requirements of The Society of Upper Canada" (the "Undertaking").

FACTS

Incomplete Application

- [8] The Paralegal Registration and Application Form lists 16 questions related to good character, and Mr. Kopyto responded "yes" to seven of those. Where a candidate has answered "yes" to a question, the Form asks that details be attached. The

details provided by Mr. Kopyto in his application materials were less than complete. We take no issue with Mr. Kopyto's failure to provide supporting documents he claimed were unavailable to him. Similarly, there was a page missing in the Execution Certificate he provided with his application which Mr. Kopyto asserted was an administrative omission.

- [9] We have a more significant concern with Mr. Kopyto's failure to provide all the relevant information about his disbarment. When providing details in response to four of the form's questions, Mr. Kopyto stated, "see LSUC disbarment decision". Mr. Kopyto attached the Report and Decision of the Discipline Committee dated September 12, 1989, which recommended his disbarment to Convocation, and a Dissent by Mr. Carey from the Reasons for Decision of Convocation, dated November 14, 1989. Mr. Kopyto did not provide the Reasons for Decision of Convocation, dated November 10, 1989. Extraordinarily, in 1989 Convocation heard Mr. Kopyto's evidence for two days and provided detailed reasons for its decision to disbar Mr. Kopyto.
- [10] We have concluded that this omission was deliberate, and that it reflects Mr. Kopyto's unwillingness to accept the authority of the Society or follow rules, as shown in various other ways throughout this proceeding. Mr. Kopyto has not asserted that the omission of the Reasons for Decision of Convocation was accidental, though even if he had made such an assertion the panel would not likely have found it to be credible. Mr. Kopyto omitted to provide those same Reasons for Decision of Convocation on a previous occasion in 2002 when seeking leave to act as an agent in a domestic proceeding under the *Family Law Act* (*Roberts v. Senior*, [2003] O.J. No. 99 (O.C.J.)). The fact that the Society would likely have been aware of the Reasons for Decision of Convocation does not relieve Mr. Kopyto of his obligation to disclose it along with his application for a Class P1 licence, and his failure to do so reflects an unwillingness to fulfil the requirements of the Law Society.

Breach of Undertaking

- [11] Mr. Kopyto has not complied with the Undertaking, and he acknowledges that he has not done so. He asserted that he is not bound by the Undertaking because it was given under duress. He was compelled to give the Undertaking as a condition of continuing to provide legal services as a paralegal pending the consideration of his licensing application, after the paralegal licensing requirements came into force in 2007. The panel does not consider this to be duress or agree that it relieves Mr. Kopyto of his obligation to fulfil his Undertaking. Further, By-Law 4, s. 30 makes it a condition of providing legal services that a grandparented paralegal must comply with the *Paralegal Rules of Conduct*. As a result Mr. Kopyto was bound to follow those rules regardless of the Undertaking.

Failure to Co-operate

- [12] Mr. Kopyto has breached the Undertaking and the *Paralegal Rules of Conduct* by failing to co-operate with the Society's investigation into his good character.
- [13] Rule 9.01 of the *Paralegal Rules of Conduct* requires that "a paralegal shall reply promptly and completely to any communication from the Law Society and shall provide a complete response to any request from the Law Society". Section 49.3(1) of the *Law Society Act* permits investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee. In addition, by signing the Paralegal Registration and Application Form, Mr. Kopyto expressly authorized the Society to investigate anything mentioned in his responses to the questions about his good character, and to make inquiries and request more information about anything in his application.
- [14] An answer of "yes" to any of the 16 good character questions triggers an investigation, and therefore Society investigator Adrian Greenaway was assigned to conduct an investigation and present a recommendation to his superiors as to whether a good character hearing should be convened. At the time, there were also complaints on file from clients of Mr. Kopyto and members of the public that Mr. Greenaway was investigating in connection with his good character investigation.
- [15] Mr. Greenaway testified that, since Mr. Kopyto was a previously disbarred lawyer, he knew from the outset that he would be recommending that a good character hearing be convened. He did not tell Mr. Kopyto, though, and sought on several occasions to interview him in order to gather current information about Mr. Kopyto's character for his report.
- [16] Mr. Kopyto imposed conditions on his attending an interview, notably that full disclosure be provided of all complaints Mr. Greenaway was investigating, which condition Mr. Greenaway was unwilling to comply with. As a result, the interview never took place, which led Mr. Greenaway to conclude, justifiably, that Mr. Kopyto had failed to co-operate with his investigation.
- [17] Mr. Kopyto maintains that he was justified in his mistrust of Mr. Greenaway, because he is the victim of an ongoing campaign by the Society to discredit him professionally. This campaign, he asserts, began in the 1980s when he embarrassed the Society and other established social institutions through his political activism.
- [18] Indeed, Mr. Kopyto views his legal representation of clients as activism. During the 18 days of his evidence in chief, Mr. Kopyto presented his legacy. It is telling that the records he has retained are not his work product, but rather the press clippings

which refer to his work. Mr. Kopyto has always sought to fight his cases in the court of public opinion, a practice that has not always been considered as acceptable as it has now become. Mr. Kopyto's theory is that his legal work in the early 1980s and the publicity surrounding it, in particular his work exposing corrupt police practices and for lawyers' freedom of speech (most notably all of the circumstances which led to the decision by the Court of Appeal for Ontario in *R. v. Kopyto*, 1987 CanLII 176 (ON CA)) has embarrassed the legal establishment and caused him to be unfairly persecuted.

- [19] Mr. Kopyto's position before us paralleled the position he took in 1989, described as follows in the Report and Decision of the Discipline Committee, dated September 12, 1989:

30. Publicly and to the media, he alleged persecution of the Law Society, and selective persecution because he was anti-establishment and guilty of doing nothing more than any other member of the Society had done many times. His accounts were simply inaccurate. He was not "Chairman of the Society of Bookkeepers" and he was being punished not for what he had done but for who he was.

Conduct at the Hearing

- [20] Mr. Kopyto testified that his character is essentially unchanged since his teenaged years. He is unmistakably the same Harry Kopyto described in the 1989 Report and Decision of the Discipline Committee. We adopt the following comments from that Report, though we note that Mr. Kopyto was unrepresented before us, no longer represents recipients of legal aid, and there was no significant media presence at the good character hearing:

2. He would convey the belief that he has chosen to be champion of the poor and downtrodden: the unrepresented and the unrepresentably [sic]: - a constituency which in the words of the solicitor and his counsel "no one else will represent". "Cases where there are no remedies": - "people who are aggrieved about the legal system". On graduation he had resolved that "the only clients he would never act for were big business and organized crime". He represents persons principally on legal aid certificates, but where they do not qualify for a certificate or where legal aid will not support the litigation, he will nevertheless represent the client for no fee at all on a pure pro bono basis.

3. In his words he sees his role in trying "to find the flaw which will give expression to their rights", "to expand the rights of my client". He claims to represent a broad constituency composed of pensioners, criminals, labourers, homosexuals, women, the elderly, victims of the police, prisoners and generally clients who allegedly have been turned down by the legal

establishment. He claims to be a lawyer of last resort for clients who have been refused by 9 or 10 lawyers before they come to see him.

4. His presentation is histrionic, bombastic, obstructive, argumentative and aggressive. He is very quick to take offense or to be offensive on some occasions, perhaps unthinkingly. When apparently unobserved, he appears relaxed, friendly, gentle, communicative and with a rapid and keen sense of humour. He speaks like a machine gun, is repetitive, and undeniably committed to his cause.

5. He is manifestly admired even loved by a considerable following, many of whom attended every session of the hearings. These represented a broad cross-section of society, including what would be described as both “haves and have-nots”. In short, there was a substantial demonstration of good will toward Mr. Kopyto which could not go unnoticed.

...

32. During the hearing, much of the testimony of Mr. Kopyto and most of the arguments and all of the histrionics and rhetoric were addressed to the audience and the media. On many occasions, the statements were made even facing the audience and not the panel. It often seemed more important to Mr. Kopyto that the rhetoric be recorded by the persons to whom it was addressed than that any meaning be ascribed to the words by the panel.

- [21] Mr. Kopyto was admonished by the panel on more than one occasion that his painstakingly detailed evidence about events preceding his disbarment was, although possibly tangentially relevant to the issue of character, unhelpful to the panel. The panel repeatedly reminded Mr. Kopyto that our interest lies in his current character. He responded that the evidence was not principally intended for us, implying that he was creating an historical record.

Poor Record Keeping

- [22] Mr. Kopyto steadfastly maintains that his billing of Legal Aid in the 1980s suffered only from poor record keeping, and that he was set up for disbarment because of his civil rights activism.
- [23] With respect to the conduct that led to his disbarment, Mr. Kopyto expressed remorse only for his poor record keeping. We accept that Mr. Kopyto sincerely believes this to be the extent of the professional misconduct he committed prior to his disbarment. We have not considered his lack of remorse about the persistent dishonesty he was found to have engaged in by the Discipline Committee and by Convocation to be evidence of a lack of good character.

- [24] It is significant that Mr. Kopyto's record keeping has not improved. He maintains no financial records of his paralegal practice. He has no trust account, does not use retainer agreements and rarely renders accounts. He claims that retainer agreements protect lawyers (and presumably paralegals), not clients. Many of his clients pay him with cash, or give him "gifts" of cash to thank him for his services. Many clients pay him a block fee, up front, often cash, in advance of the work being performed. The evidence was that Mr. Kopyto provides a receipt if one is requested. He maintains no books of original entry for non-trust receipts and disbursements, no fees book and no bank statements as required under By-Law 9.
- [25] In addition to being a further breach of the Undertaking to comply with the Society's by-laws, this continued poor record keeping demonstrates a lack of rehabilitation, especially given the admissions Mr. Kopyto has made with respect to the misconduct which gave rise to his disbarment.

Failure to Meet Financial Obligations

- [26] Even though he maintains no financial records, Mr. Kopyto provides the Canada Revenue Agency ("CRA") an "estimate" of his income on his yearly tax return. He claims to ensure that these earnings are over-estimated, typically reporting \$150,000 to \$156,000 per year. CRA records filed in evidence demonstrate that he owes more than \$1.3m for income tax arrears. Mr. Kopyto does not pay taxes, except through garnishment by CRA of his old age pension. He blames the Law Society for his accumulation of tax arrears, which he attributes to financial difficulties caused by his disbarment. Although he acknowledges the importance of paying taxes, his conscience permits him an exception to this rule. His justification is that the money he would otherwise pay in taxes goes to subsidize the work he does providing access to justice at little or no charge to those clients who, he claims, would not otherwise be able to find legal representation.
- [27] Mr. Kopyto has also paid nothing towards various costs orders made against him by courts and tribunals over the years. The record shows eight costs orders made against him since 1995, the principal amounts of which total more than \$80,000. With respect to one of the costs orders, Mr. Kopyto testified that he was not ethically required to pay it since he felt that the tribunal that ordered the costs had acted improperly.
- [28] Generally, Mr. Kopyto claimed that his debt is too high to pay off, and implied that what money he had was put to a better use in the public interest. Whether Mr. Kopyto's financial resources were insufficient to satisfy these court orders is difficult for us to assess, because Mr. Kopyto maintains no financial records. He testified to a client base of 150 to 200 clients at any particular time in recent years, and based on income reported to the CRA (even if over-estimated), we see no reason why Mr. Kopyto could not have paid some of the costs ordered against him.

- [29] We find that Mr. Kopyto's failure to meet his financial obligations demonstrates a lack of good character.

Unauthorized Practice

- [30] Mr. Kopyto has breached the Undertaking by engaging in unauthorized practice. The rules under the Society's By-Law 4 restricting legal services that can be provided by non-lawyers are examples of the rules Mr. Kopyto has disregarded as a matter of conscience. He disregards these rules in order to provide access to justice to clients, who (he claims) would not otherwise be able to afford or face other barriers to obtaining legal representation. He claims that unauthorized practice in these circumstances shows courage, one of the badges of good character. He also has provided unauthorized legal services to at least one client who could have chosen and afforded to be represented by a lawyer, but preferred to be represented by Mr. Kopyto. His conscience permits unauthorized practice in such circumstances because these paying clients subsidize the work he does providing access to justice at little or no charge to those clients who, he claims, would not otherwise be able to find or afford legal representation.
- [31] Mr. Kopyto acknowledges having provided unauthorized legal services on hundreds of occasions since his disbarment, and on numerous occasions since giving the Undertaking. Typically this consisted of him preparing and filing pleadings in the Superior Court (which is not permitted for paralegals), or engaging in correspondence in respect of Superior Court matters, using his client's name. Sometimes the client's address was the address of record on these documents, but often Mr. Kopyto used his own address, telephone number and fax number. For official purposes, Mr. Kopyto's clients were self-represented, but in fact, he was fulfilling the role of representative using their names. He testified that he did not issue pleadings or sign correspondence in his own name because he did not want to make his involvement an issue. He would propose to conduct discoveries in writing. When this was opposed, he coached the client or arranged for a lawyer to conduct the discoveries. He either coached the client or arranged a lawyer for other court appearances.
- [32] These tactics have sometimes had the desired effect of avoiding Mr. Kopyto's involvement becoming an issue. However, they have given rise to problems in addition to the obvious breaches of the scope of paralegal practice rules. Those include misunderstandings with a client, Mr. Gauthier, over a Notice of Intention to Act in Person filed in a Superior Court matter that was signed by someone other than Mr. Gauthier without his knowledge. Mr. Gauthier also did not understand why Mr. Kopyto could not withdraw a factum from a Superior Court file which had been signed on Mr. Gauthier's behalf without his approval. Mr. Gauthier paid \$2,000 to Mr. Kopyto on the understanding that a lawyer's fee to appear in court was included. The relationship between Mr. Kopyto and Mr. Gauthier broke down over the referenced misunderstandings, and Mr. Gauthier was eventually

unrepresented in court and lost. He received no refund.

- [33] Mr. Kopyto does not acknowledge that the absence of professional liability insurance covering his unauthorized practice creates a problematic situation for the clients on whose behalf he is providing unauthorized services. To this suggestion, his reply was to state that his clients do not care about insurance.
- [34] Mr. Kopyto's unauthorized practice has also given rise to difficulties for Joseph Markin, a lawyer who has twice been disciplined for maintaining an association with Mr. Kopyto and has been required to pay costs to the Society. Mr. Markin was a lawyer frequently called upon by Mr. Kopyto to support his unauthorized practice by conducting discoveries and court appearances, which Mr. Markin would attend without becoming solicitor of record. The panel was left with the impression that Mr. Kopyto prepared most of the pleadings in these referral arrangements. Mr. Kopyto or the client paid Mr. Markin a modest fee for his services.
- [35] Mr. Markin also hired Mr. Kopyto's assistant to provide secretarial services from time to time at Mr. Kopyto's office. When he testified, Mr. Markin was presented with several documents in cases referred to him by Mr. Kopyto, emanating from Mr. Kopyto's office and purporting to bear his signature, which he did not recognize. Mr. Markin's ability to practise law has been limited over the past several years, in large part because of health issues. The fact that Mr. Kopyto continued his working arrangement with Mr. Markin after knowing that Mr. Markin had entered into an undertaking not to associate with Mr. Kopyto gives rise to concerns about Mr. Kopyto's good character. We do not agree with Mr. Kopyto that this was "Mr. Markin's problem" exclusively.
- [36] Mr. Kopyto agrees that paralegals should be regulated but argues vehemently that the Society should not be involved since it is dominated by lawyers. He claims that many of the restrictions on the paralegal scope of practice exist to protect lawyers' turf. He expresses anger and righteous indignation when lawyers complain to the Society about his unauthorized practice.
- [37] Mr. Kopyto pointed to the fact that only one of his former clients, Mr. Gauthier, testified on behalf of the Society, and that several clients testified on his behalf. Most of the witnesses against him were lawyers motivated, he claims, to get him off their turf. When engaged in unauthorized legal services, he insisted that his clients were better off receiving his services than not, and asserted that it is not immoral to help people in those circumstances. We accept that some of the clients for whom Mr. Kopyto performed unauthorized legal services would otherwise have gone unrepresented, and that some of those clients may have achieved a better result than otherwise as a result of Mr. Kopyto's involvement. We acknowledge that Mr. Kopyto's urge and inclination to help people is admirable. We do not accept that his custom of engaging in unauthorized practice to do so is evidence of good character.

SUMMARY AND CONCLUSIONS

- [38] The panel has considered the good character evidence on a balance of probabilities. We have exhaustively considered the applicable onus and burden of proof in two preliminary decisions (*Kopyto v. Law Society of Upper Canada*, 2011 ONLSHP 71; *Kopyto v. Law Society of Upper Canada*, 2011 ONLSHP 168), though in the end there are very few disputed facts. Mostly, the parties disagree as to the conclusions that ought to be drawn from undisputed facts.
- [39] Mr. Kopyto acknowledges that he is not rule-observant. As he explains this, he is governed by his conscience and refuses to obey the law when to do so would lead to an unjust result. He counsels his clients to obey the law unless a higher moral duty calls upon them to breach it. He testified that the public interest comes first, not his clients.
- [40] Mr. Kopyto asks us to stand up against the narrow ideology and sanctioned perceptions of the legal profession, and to disregard his breaches of the rules governing paralegals' scope of practice. He characterizes his unauthorized practice as political activism promoting access to justice, an area where, he claims, the Society has utterly failed to achieve its mandate. Working for free, he asserts, can only be immoral from the perspective of lawyers whose monopoly is at stake.
- [41] Mr. Kopyto encourages us to disregard his rule-disobedience when assessing his character and to focus instead on what he says are traditional ethical criteria: honesty, integrity, courage and candour, viewed from the perspective of the common person, not from a lawyer's perspective. He refers to rule breakers such as Rosa Parks, Mahatma Gandhi, Martin Luther King and Henry Morgentaler as great moral figures, and to the rule obedience of Nazi soldiers as profoundly immoral. He points to his empathetic qualities and asserts that true empathy, such as he displays by dedicating his life to others, is the pinnacle of moral responsibility and ethical maturity.
- [42] He urges us to part, even by an inch, the iron curtain that separates the Society from the rest of humanity by condoning his unauthorized practice. He urges us to find that unauthorized practice is not evidence of poor character when it promotes access to justice. He has referred to articles that suggest that unauthorized practice rules disproportionately disadvantage the poor.
- [43] Mr. Kopyto asserts that governability is not to be considered in a good character hearing, though he has provided no authority in support of this proposition.
- [44] The Society maintains that Mr. Kopyto is ungovernable by the Society. This is hardly surprising, since Mr. Kopyto affirms categorically that he is governed by his conscience. Near the conclusion of our lengthy hearing on the merits, he advised the panel that he will be retiring from active paralegal practice, but will continue to

help people who require his assistance. If granted a Class P1 licence, his stated intention is to continue to disregard By-Law 4 insofar as it restricts the scope of paralegal practice when his conscience so dictates. If a Class P1 licence is denied, he intends to disregard the law and continue to provide legal services when his help is required.

- [45] The panel has no difficulty finding that Mr. Kopyto is ungovernable and that this aspect of his character is inconsistent with a finding that he is presently of good character. A person who asserts he or she will not follow the rules of the paralegal profession they seek to enter is not of good character.
- [46] In *Armstrong v. Law Society of Upper Canada*, 2009 ONLSHP 29 (rev'd on other grounds, 2011 ONLSAP 1), the hearing panel examined definitions of good character in paras. 22 to 25 noting that:
- a) In a discipline proceeding, Convocation defined character to mean:

... that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which undoubtedly include, among others, integrity, candour, empathy and honesty. [1]
 - b) Justice Mary Southin of British Columbia wrote extra-judicially that: "[G]ood character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law...Character...comprises...at least these qualities:
 1. An appreciation of the difference between right and wrong;
 2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
 3. A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld. [2]

- [47] The panel does not understand Justice Southin to suggest that individuals of good character ought to be governed by their sense of what is right, without regard for the law and without regard to the rules and the by-laws of the Society, on a daily

¹ *Re Spicer*, Reasons of Convocation, dated May 1, 1994, at para. 15

² Madam Justice Mary Southin, *What is Good Character?* (1987), 35 *The Advocate* 129 at p. 129

basis. Rather, within a profession devoted to upholding the rule of law, it is expected that licensees will obey the law.

- [48] We have no difficulty concluding that Mr. Kopyto is sincerely devoted to pursuing his clients' causes, and that he has great empathy for them. He is generous, he is appreciated by his clients, and he is dedicated to them. And although these qualities denote good character, they do not justify permitting an individual to provide legal services who considers himself to be exempt from applicable laws and rules, including those regulating his profession, whenever his conscience finds it to be convenient.
- [49] Mr. Kopyto continues to be an enigma. He insists that he supports the rule of law, while asserting that he, and his clients, are entitled to disregard legal rules willy nilly when conscience so dictates. We must assess whether he presently has good character, in the context of the Society's licensing scheme. In that context, good character requires that an individual be ethically and morally trustworthy in regards to his or her obligations as a member of the profession under the Society's by-laws and the *Paralegal Rules of Conduct*, including the restrictions on paralegal practice, the record-keeping requirements, the obligation to comply with undertakings, and the duty to co-operate with the Society. Mr. Kopyto has stated that he will not fulfil those obligations, and accordingly he cannot be trusted to do so. This is our principal concern about Mr. Kopyto's character, though we have noted other significant concerns, including Mr. Kopyto's use of Mr. Markin in support of his unauthorized practice, and his failure to make any efforts to pay costs orders against him or to pay taxes.

DISPOSITION

- [50] As a result of the foregoing, the panel has concluded that Mr. Kopyto does not meet the good character requirement of the Act and his application for a Class P1 licence is dismissed.
- [51] The Law Society shall provide written submissions in support of any claim for costs within 28 days of the date of the Decision and Order in this matter. Mr. Kopyto shall have 14 days thereafter to deliver his responding submissions.