MINUTES OF SPECIAL CONVOCATION

Thursday, 28th September, 1989
9:45 a.m.

PRESENT:

The Acting Treasurer, (Mr. J. Ground), Ms. Bellamy, Messrs. Carey, Carter, Cullity, Epstein, Farquharson and Ferguson, Mrs. Graham, Ms. Harvey, Mr. Hickey, Ms. Kiteley, Mrs. Legge, Messrs. Lerner, Levy and Lyons, Ms. MacLeod, Messrs. McKinnon, Manes, Murphy, Noble and Pepper, Ms. Peters, Messrs. Rock, Shaffer, Somerville, Strosberg, Thom, Topp and Wardlaw, Mrs. Weaver and Mr. Yachetti.

.....

DISCIPLINE COMMITTEE

Re: HARRY KOPYTO, Toronto

Convocation was called to order at 9:45 a.m. with Mr. Jack Ground the Chair of Finance in the Chair, the Treasurer, Mr. Lee Ferrier having withdrawn.

The solicitor was present and represented by Mr. Charles Roach and Mr. Silvano Del Rio. Mr. Marrocco appeared for the Society.

Prior to the presentation of the Discipline Report regarding Mr. Kopyto preliminary objections were raised by his counsel in regard to the presence of certain Benchers on the panel. It was indicated by Mr. Ground that Messrs. Outerbridge, Howie and Bragagnolo the members of the panel which had heard the matter were not present and that neither was Mr. Lamek the Chair of Discipline who had presided at a meeting at which it was agreed that the matter would proceed by way of an Agreed Statement of Facts.

Mr. Roach also indicated that there were objections to Messrs. Ferguson and Lamont as they were currently hearing a matter involving an associate of Mr. Kopyto's, Ms. Codina and Mr. Kopyto was acting as Ms. Codina's counsel.

Mr. Marrocco on behalf of the Society indicated that merely because Messrs. Ferguson and Lamont were sitting on the Codina matter was not sufficient reason to disqualify them. He said the test was whether or not as a result of sitting on that matter they had become apprised of information that is not part of the Agreed Statement of Facts that would be before Convocation as part of the Report of the Discipline Committee in the Harry Kopyto matter. He was of the view that no such information had been disclosed in the Codina hearing.

Messrs. Lamont and Ferguson offered to withdraw and felt that the decision should lie with Convocation.

It was moved by Mr. Yachetti, seconded by Mr. Strosberg that Convocation accept the offer of Messrs. Ferguson and Lamont to withdraw.

Carried

Messrs. Ferguson and Lamont then withdrew.

Mr. Roach was then asked by the Chair as to whether or not he objected to the presence of those members of the Committee hearing an unrelated Discipline charge against Mr. Kopyto namely Mr. Epstein, Mrs. Weaver and Mrs. Graham.

Mr. Roach indicated that there was no objection to Mr. Epstein, Mrs. Weaver and Mrs. Graham participating in Convocation.

Mr. Carter then rose and indicated that he had acted for Mr. Kopyto in an earlier Discipline matter before the Society and that in that particular case his articling student was Mr. Manes.

Mr. Roach objected to the presence of Messrs. Carter and Manes and on the objection being made, Messrs. Carter and and Manes withdrew from Convocation.

Mr. Levy indicated that he had represented a solicitor Ms. Amita Sud a solicitor who had been employed by Ms. Codina.

Mr. Roach indicated that there was no objection to Mr. Levy participating in Convocation.

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Convocation had before it the Report of the Discipline Committee, dated 12th September 1989, together with an Affidavit of Service sworn 26th September 1989 by Dawna Robertson that she had effected service on the solicitor on 12th September 1989 (marked Exhibit 1). Copies of the Report having been sent to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Ian W. Outerbridge, Q.C. (Chair)
Rino C. Bragagnolo, Q.C.
Kenneth E. Howie, Q.C.

In the matter of
The Law Society Act

and in the matter of
HARRY KOPYTO
of the City
of Toronto
a barrister and solicitor

Frank Marrocco
for the Society

Charles Roach
for the solicitor

Heard: December 2, 1987
February 11, 1988
February 7, 1989
March 7, 1989
June 13, 1989
July 4,5 & 24, 1989
August 11 & 12, 1989

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE BEGS LEAVE TO REPORT:

REPORT

On September 10, 1987, Complaint D107/87 was issued against Harry Kopyto alleging that he was guilty of professional misconduct and during the course of the hearing this complaint was withdrawn and replaced with an amended Complaint D7/89, alleging that he was guilty of professional misconduct.

The matter was heard in public on December 2, 1987, February 11, 1988, February 7, 1989, March 7, 1989, June 13, 1989, July 4, 1989, July 5, 1989, July 24, 1989, August 11, 1989 and August 12, 1989, by this Committee composed of Ian W. Outerbridge, Q.C. as Chair, Kenneth E. Howie, Q.C. and Rino C. Bragagnolo, Q.C. Mr. Kopyto attended the hearing and was represented by Charles C. Roach. Frank N. Marrocco appeared as counsel for the Society.

DECISION

The Complaint

The following particular of professional misconduct was admitted and found established:

(Para. 2: Complaint D7/89)

"2(a) The Solicitor, Harry Kopyto, prepared accounts for services performed during 1984, 1985 and 1986, the amounts and details of which he knew to be inaccurate but which he nevertheless submitted to the Ontario Legal Aid Plan for payment. Particulars of some instances where this occurred are as follows:

(i) He billed the Ontario Legal Aid Plan for over 400 telephone calls allegedly made during 1984, 1985 and 1986 by Tom Tordoff, Stuart Rosenthal, Catherine Renzetti, Michelle Meakes and Bruce Manson, associate lawyers working under his direction from time to time, when in fact such calls had not been made;

(ii) He billed the Ontario Legal Aid Plan for over 160 telephone calls allegedly made during 1984, 1985 and 1986 from himself to Catherine Renzetti to others, when in fact such calls had not been made;

(iii) He billed the Ontario Legal Aid Plan for six calls to Joan Takahashi on behalf of his client, Mary Patai, during 1985 when in fact, such calls were not made;

(iv) During 1985 and 1986, he billed the Ontario Legal Aid Plan for approximately 59 calls made by Stuart Rosenthal, an associate lawyer or made to Stuart Rosenthal by the Solicitor at times when Stuart Rosenthal was not employed by the Solicitor;

(v) He billed the Ontario Legal Aid Plan for over 40 telephone calls to Reznick Services Ltd., an internal management company, when in fact these calls were never made;

(vi) He billed the Ontario Legal Aid Plan for a 45-minute conference with Bruce Manson on September 17, 1985 in relation to his client, Susan Mani, when in fact this conference did not occur;

(vii) He billed the Ontario Legal Aid Plan for services performed by Stuart Rosenthal in meeting with a client, William Dupont, on March 17, 1985, when in these services were not performed;

(viii) He billed the Ontario Legal Aid Plan for services performed by Catherine A. Renzetti on April 2, 1986, in drafting minutes of settlement on behalf of his client, Garcia, when in fact this service was not performed.

(ix) He billed the Ontario Legal Aid Plan on numerous occasions for performing more than one service on behalf of his legally-aided clients at the same time. In all, the Solicitor's accounts contained 75 days on which items were in conflict with one another, for a total of 85 hours and 50 minutes of overlapped time;

(x) He billed the Ontario Legal Aid Plan for services performed on days when he was appearing in Court for non-legally aided clients when such services could not have been performed at the time stated;

(xi) He billed the Ontario Legal Aid Plan for work done on February 8, 1985 and October 8, 1985 on behalf of clients with legal aid certificates, when in fact he was attending in the Divisional Court, on February 8, 1985 and in Toronto Small Claims Court on October 8, 1985 on behalf of his client, Ross Dowson, who had retained him privately in the matter of Dowson v. Chisholm and Yaworski;

(xii) He billed the Ontario Legal Aid Plan for work done on March 4, 1986 on behalf of clients who had legal aid certificates when in fact, he was attending at a Law Society Discipline Hearing on behalf of Stuart McKeown, Barrister and Solicitor, a client who had retained him privately;

(xiii) He billed the Ontario Legal Aid Plan for reviewing a statement of defence, for preparation for a trial and for reviewing relevant case law on behalf of his client, Parvaiz I. Chaudhary, from 9:05 to 10:00 a.m. on April 16, 1985, when in fact, on that date, he was in District Court, Toronto, representing one, James David John Hughes;

(xiv) During the period from 1984 to 1986, he billed the Ontario Legal Aid Plan for nine days spent at court, court offices, and government offices on Saturdays and Sundays, with none of his time being spent on Saturday appearances at bail hearings on criminal matters;

(xv) He inaccurately described services rendered for his legal aid clients, thus billing the Ontario Legal Aid Plan a higher rate than otherwise would have been allowed;

(xvi) He billed the Ontario Legal Aid Plan for appearing in court on Saturday October 26, 1985 and Sunday October 27, 1985 on behalf of one St. Laurent when such services were not performed. He billed the Ontario Legal Aid Plan for performing the same such services on Tuesday, November 26, 1985 and Wednesday November 27, 1985 with the result that the solicitor was paid twice for rendering these services;

(xvii) He billed the Ontario Legal Aid Plan on August 8, 1986 for personally attending at an examination for discovery on behalf of his client, Joseph Hargy, at the offices of Paul Rosenberger, Special Examiner, when in fact, the discoveries were attended by Bruce Manson, an associate lawyer working under the Solicitor's direction, whose hourly rate was lower than that of the Solicitor;

(xviii) He billed the Ontario Legal Aid Plan for a counsel fee for the attendance of Catherine Renzetti on a preliminary hearing for Edward Dingwall on June 19, 1985 at which time the matter was adjourned, a service for which a counsel fee was not allowed;

(xix) Excluding time billed for telephone calls, he invoiced the Ontario Legal Aid Plan for more than 24 billable hours on December 4, 1986;

(xx) Excluding time billed for telephone calls, he invoiced the Ontario Legal Aid Plan during the period between 1984 and 1986 for more than 12 billable hours per day on 87 separate days;

(xxi) He billed the Ontario Legal Aid Plan for an average of 2 hours and 40 minutes of telephone calls every day for each and every day during the three year period from 1984 to 1986.

DATED at Toronto, this 24th day of July, 1989."

Evidence

The entirety of the evidence before the Committee on the issue of misconduct was in the form of the following Agreed Statement of Fact:

"AGREED STATEMENT OF FACTS

Particular 2(A)

1. The Solicitor admits particular 2(a) of the Complaint D7/89, as amended.

The Solicitor, Harry Kopyto, carries on the practice of law with offices at 372 Bay Street in Toronto. His practice, largely comprises civil and criminal litigation matters and human rights cases, and the vast majority of his clients are legally-aided. The Solicitor also acts for clients on a pro bono basis. Further, on occasion, the Solicitor also accepts private retainers. The Solicitor was called to the bar in 1974.

2. For the period from 1984-1986, Mr. Kopyto submitted accounts for the payment to the Ontario Legal Aid Plan containing, in part, descriptions of services performed during 1984, 1985 and 1986.

3. The Solicitor agrees that he prepared accounts, the amounts and details of which he knew to be inaccurate but which he nevertheless submitted to the Ontario Legal Aid Plan for payment. During this period the Solicitor suspected that his billing practices could have resulted in overbilling of the Ontario Legal Aid Plan, but did not attempt to inform himself as to whether or not this was occurring. These accounts included services allegedly performed by himself and by other lawyers and junior lawyers working on his files under his supervision.

4. The Solicitor took sole responsibility for the preparation of his Legal Aid accounts, by dictating tapes of the account entries; the accounts were then typed by his secretary. In the years 1984 to 1986 the Solicitor was extremely busy taking on numerous clients. The Solicitor failed to keep accurate and complete dockets of the services he performed, especially with respect to telephone calls. One client who kept meticulous notes of relations with the Solicitor recorded services, telephone calls and meetings which the Solicitor failed to include on his accounts to the Ontario Legal Aid Plan.

The Solicitor adopted as a billing practice guessing at the services performed, estimating the time taken to perform those services and the times when those services were rendered, thereby creating inaccurate accounts.

5. From time to time, the Solicitor had junior lawyers assist him with his files. These junior lawyers provided the Solicitor with dockets showing time spent on his files. The Solicitor dictated the account entries for the junior lawyers; the junior lawyers were not consulted about the resulting legal aid accounts.

In virtually all of the 423 accounts examined, the Solicitor's billing practice resulted in accounts being rendered to the Ontario Legal Aid Plan for services which were not performed or were not performed as described. Examples of such services which were therefore inaccurately billed are as follows:

(i) The Solicitor billed the Ontario Legal Aid Plan for over 400 telephone calls allegedly made during 1984, 1985 and 1986 by Tom Tordoff, Stuart Rosenthal, Catherine Renzetti, Michelle Meakes and Bruce Manson, associate lawyers working under his direction from time to time, when in fact such calls had not been made;

(ii) The Solicitor billed the Ontario Legal Aid Plan for over 160 telephone calls allegedly made during 1984, 1985 and 1986 for himself to Catherine Renzetti, an associate lawyer or from Renzetti to others when in fact such calls had not bee made;

(iii) The Solicitor billed the Ontario Legal Aid Plan for six calls to Joan Takahashi on behalf of his client, Mary Patai, during 1985 when in fact, such calls were not made;

(iv) During 1985 and 1986, the Solicitor billed the Ontario Legal Aid Plan for approximately 50 calls made by Stuart Rosenthal, an associate lawyer or made to Stuart Rosenthal by the Solicitor at times when Stuart Rosenthal was not employed by the Solicitor;

(v) The Solicitor billed the Ontario Legal Aid Plan for over 40 telephone calls to Reznick Services Ltd., an internal management company, when in fact these calls were never made;

(vi) The Solicitor billed the Ontario Legal Aid Plan for a 45-minute conference with Bruce Manson on September 17, 1985 in relation to his client, Susan Mani, when in fact this conference did not occur;

(vii) The Solicitor billed the Ontario Legal Aid Plan for services performed by Stuart Rosenthal in meeting with a client, William Dupont, on march 17, 1985, when in fact these services were not performed;

(viii) The Solicitor billed the Ontario Legal Aid Plan for services performed by Catherine A. Renzetti on April 2, 1986, in drafting minutes of settlement on behalf of his client, Garcia, when in fact this service was not performed;

6. Further examples of incorrect billing to the Ontario Legal Aid Plan which resulted from the Solicitor's billing practices are as follows:

(i) The Solicitor billed the Ontario Legal Aid Plan on numerous occasions for performing more than one service on behalf of his legally-aided clients at the same time. In all, Mr. Kopyto's accounts contained 75 days on which items were in conflict with one another, for a total of 85 hours and 50 minutes of overlapped time.

(ii) The Solicitor also billed the Ontario Legal Aid Plan for services performed on days when he was appearing in Court for non-legally aided clients when services could not have been performed at the time stated. Four such instances are as follows:

(a) February 1985: The Solicitor was in the Divisional Court on the non-legal aid matters of Dowson v. Chisholm and Yaworski from 9:30 to 11:15 a.m. He billed the Ontario Legal Aid Plan for work done on behalf of four separate legal aid clients, ostensibly performed on that date, during the time period when he was appearing in the Divisional Court.

(b) October 8, 1985: The Solicitor spent a full day in the Toronto Small Claims Court on the matter of Dowson v. Chisholm and Yaworski. He also billed the Ontario Legal Aid Plan for work done on behalf of three separate legal aid clients, ostensibly performed on that date during the same time.

(c) March 4, 1986: The Solicitor spent a full day before a Discipline Panel of the Law Society defending Stuart McKeown. He also billed the Ontario Legal Aid Plan for work done on behalf of the four legal aid clients on that same day during the same time that he was appearing at the Law Society.

(d) April 16, 1985: The Solicitor billed the Ontario Legal Aid Plan for reviewing a statement of defence, for preparation for a trial and for reviewing relevant case law on behalf of his client, Parvaiz I. Chaudhary, from 9:05 to 10:00 a.m., when in fact, he was in District Court, Toronto, representing one, James David John Hughes; at a jury trial which commenced at 9:44 a.m. on that date.

(iii) During the period from 1984-1986, the Solicitor billed the Ontario Legal Aid Plan for nine days spent at court, court offices, and government offices on Saturdays and Sundays, with none of this time being spent on Saturday appearances at bail hearings on criminal matters. The Solicitor's billing practices caused him to then bill Legal Aid again for the Saturday and Sunday services as exemplified in the St. Laurent account. In this account, the Solicitor billed for court appearances on Saturday October 26, 1985 and Sunday October 27, 1985 with result that the solicitor was paid twice for rendering these services.

7. The Solicitor inaccurately described services rendered for his legal aid clients, thus billing the Ontario Legal Aid Plan a higher rate than otherwise would have been allowed; examples which are:

(i) The Solicitor billed the Ontario Legal Aid Plan on August 8, 1986 for personally attending at an examination for discovery on behalf of his client, Joseph Hargy, at the offices of Paul Rosenberger, Special Examiner, when in fact, the discoveries were attended by Bruce Manson, an associate lawyer working under the solicitor's direction, whose hourly rate was lower than that of the solicitor;

(ii) The Solicitor billed the Ontario Legal Aid Plan for a counsel fee for the attendance of Catherine Renzetti on a preliminary hearing for Edward Dingwall on June 19, 1985 at which time the matter was adjourned, a service for which a counsel fee was not allowed.

OVERALL PATTERN OF BILLING

8. The Solicitor billed the Ontario Legal Aid Plan for services performed over the three year period from 1984-1986 as follows:

1984	-	1,894
1985	-	3,596
1986	-	2,719
		8,209 hours

In 1986, a survey conducted by Clarkson Gordon for the Canadian Bar Association found the median number of billable hours by sole practitioners to be 1,100 billable hours per year.

A survey conducted by Price Waterhouse, found that the number of average annual billable hours for partners in firms of 5 to 15 lawyers, was 1,373 hours in 1984, 1341 hours in 1985 and 1,190 hours in 1986.

The totals billed by the Solicitor represent only hours billed to the Ontario Legal Aid Plan. They do not include private retainers, pro bono work, administrative and office practice time.

9. The Solicitor agrees that the inaccuracy of his billing practice resulted in the billing of over 2,000 hours to the Ontario Legal Aid Plan that should not have been billed. These hours are partially reflected in one day on which the Solicitor billed more than 24 hours to the Ontario Legal Aid Plan excluding telephone calls (December 4, 1986); two days on which the Solicitor billed more than 21 hours excluding telephone calls (September 21, 1985 and August 4, 1986); and 87 days for which the total time billed, excluding telephone calls, exceeded 12 hours. Further, these hours are partially are partially reflected in the fact that according to the Solicitor's accounts, he spent on average over the three year period, 1984 to 1986, 2 hours and 40 minutes of telephone calls per day for 365 days a year for three years.

10. During the period analyzed by Thorne Ernst & Whinney, who were Chartered Accountants retained in this matter to analyze Mr. Kopyto's billings, 423 accounts totalling $643,472.00 ($611,276.00 for fees and $32,196.00 for disbursements) - the majority of these accounts have been settled at the date of this Agreed Statement of Facts at an average of approximately two-thirds of the amount billed.

11. As a result of this investigation, payment for several dozen accounts were withheld including disbursements, which caused the Solicitor significant financial difficulty.

DATED at Toronto, this 24th day of July, 1989."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in Complaint D7/89.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Harry Kopyto be disbarred.

REASONS FOR RECOMMENDATION

1. Mr. Harry Kopyto is 42 years old. He lives in the City of Toronto. He has been practising law in the City of Toronto as a sole practitioner since 1974 and presently practises at Suite 1708, 372 Bay Street. He is married and has two children; a son, Mark, 14 years of age and a daughter, Erica, 11 years of age, as of August 8, 1989. Mr. Kopyto is a paradox. He wants to be a lawyer but abjures the law and particularly the legal process. He espouses rights for himself and his clients but would deny the process by which our society makes those rights realizable. He swears to tear down and smash the very process by which those rights are enforced, the very process which he has sworn on oath as a solicitor to uphold. Nor is he by any means insincere. He seems to believe every word he utters to be true.

2. He would convey the belief that he has chosen to be the champion of the poor and downtrodden; the unrepresented and the unrepresentably; - 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 quality 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 as 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 other 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 and 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.

6. While Mr. Roach appeared as co-counsel in these proceedings, he only appeared in the preliminary stages and for the portion of the hearing dealing with penalty.

7. These things are recorded here because they do provide some of the background to the hearing of the evidence and the argument and they do provide a context from which an understanding of this case and the solicitor does emerge.

8. The finding of professional misconduct was made on an Agreed Statement of Facts. On the issue of penalty Mr. Kopyto was examined under oath on his own behalf by Mr. Roach, his counsel. He reaffirmed the accuracy of the Agreed Statement and reaffirmed that he was not "withdrawing therefrom in any way".

9. Under oath he professed contrition and was "unqualifiedly" apologetic. He expressed his regret at having transgressed the rules of Legal Aid and stated that he had made many modifications to his practice, including the retaining of outside counsel, the employment of additional juniors and paralegals and the taking on of a partner to assume the administrative burdens. He assured the committee that these changes would render it unlikely that his problems of inaccuracy would recur.

10. It was urged on behalf of the solicitor that the proper penalty in these circumstances was a reprimand in Convocation. In weighing this suggestion in assessing other appropriate penalties, the committee considered carefully the submission of Mr. Roach.

11. On behalf of the solicitor, Mr. Roach urged the committee to take into consideration four principal factors:

First of all, the solicitor did not keep accurate records during this period.

He did not keep dockets of his time and lots of phone calls, lots of meetings went unrecorded. Under the pressure of trying to meet the needs of his clients, his record keeping suffered badly. While admittedly inaccurate and admittedly intentionally so, the offence was committed almost out of necessity because of the overwhelming pressures of his practice and the hopeless inadequacy of his record keeping.

The second argument advanced was that the hours in issue were incorrectly described and because of their incorrect description, they were not properly billed to Legal Aid. But it was said that they had in fact been expended on behalf of the particular clients and that the error was the error of description and if those hours had been properly described, they would have been properly chargeable and payable by Legal Aid.

It should be noted that this is an embellishment on the Agreed Statement of Facts which is not contained therein. It would require the Committee to accept an interpretation of the statements made in the Agreed Statement. It would be an interpretation substantially inconsistent with the main thrust of the statement. It would be a substantive defence to the charges of professional misconduct in that it asserts a lack of mens rea.

The third argument was that Mr. Kopyto's historical contribution to the legal profession and to society in general should perhaps in some way confer upon him some special status requiring a reduced burden of proof, or in other words to confer upon him the benefit of the doubt where doubt exists and perhaps ameliorate the penalty.

The fourth argument urged was that very serious consideration be given to the fact that Mr. Kopyto's practice serves and is particularly relevant to a very unique and particularly narrow constituency or segment of society which remains otherwise unserviced and would remain unserviced were Mr. Kopyto to be suspended or otherwise prevented from practising law.

12. Dealing first with argument number one and the other arguments seriatim, there is very little doubt that the solicitor's systems were inadequate. From the description offered by the solicitor himself, one would think that they might be described as "hopeless". The ineptitude of the Solicitor or his negligence, however, is not the issue. The Solicitor is bound by the Agreed Statement of Facts; particularly so, having regard to the undertaking of the Society's counsel obtained as a pre-condition of the agreed statement, namely that the Society's counsel would not make known to the panel any submission or position on the part of the Law Society as to penalty.

13. So stringently was the Law Society's counsel held to this undertaking that his providing the Committee of a xeroxed copy of the authority of Sansregret v. The Queen was the subject of comment by the Solicitor's counsel. Namely, that by making it available to the Committee, it might be interpreted by the panel as indicating on the part of the Society a signal to the panel of the Society's position on penalty.

14. The Committee is of the belief that the panel must accept at face value the statements of the Solicitor's counsel that the Agreed Statement was negotiated after hours and hours of intensive argument and discussion and each word was negotiated and resolved. Each word is therefore to be taken at full value, with no innuendo or inferential meaning to be attached to it or drawn from it. In short, the Agreed Statement should be construed strictly. None of the evidence of the Solicitor nor any of the remarks of counsel should be permitted to modify or alter the ordinary meaning of the words in the Agreed Statement of Facts.

15. That being so, it is useful to examine that statement. From it, the following facts seem very clear and determinative.

(1) "The Solicitor agrees that he prepared accounts, the amounts and details of which he knew to be inaccurate but which he nevertheless submitted to the Ontario Legal Aid Plan for payment. During this period the Solicitor suspected that his billing practises could have resulted in overbilling of the Ontario Legal Aid Plan, but did not attempt to inform himself as to whether or not this was occurring." (Paragraph 3, Agreed Statement of Facts).

(2) "The Solicitor adopted as a billing practice guessing at the services performed, estimating the time taken to perform those services and the times when those services were rendered, thereby creating inaccurate accounts." (Paragraph 4, Agreed Statement of Facts).

(3) "The Solicitor failed to keep accurate and complete dockets of the services he performed, especially with respect to telephone calls. One client who kept meticulous notes of relations with the Solicitor recorded services, telephone calls and meetings which the Solicitor failed to include in his accounts to the Ontario Legal Aid Plan." (Paragraph 4, Agreed Statement of Facts).

It should be noted that Mr. Roach on behalf of the Solicitor, caused to be introduced as an exhibit, as his evidence, over only the mildest protest, not even objection by the Law Society counsel, but certainly not on consent, the statement of B. Ross (Exhibit 18) from which I quote: "Mr. Kopyto's account" shows 27 conversations, 3 hours and 40 minutes, from January 3 to August 4. Brenda Ross kept notes of all her calls (Mr. Kopyto) called only 14 times." To be sure, Brenda Ross does mention a meeting on the 6th of September of which Kopyto has no record although Kopyto billed for a meeting on the 6th of June of which Ross had no record. "Mr. Kopyto claimed to have talked to the client's doctors 8 times, while the doctors deny ever having spoken to Kopyto."

(4) In virtually all of the 423 accounts examined, the Solicitor's billing practice resulted in accounts being rendered to the Ontario Legal Aid Plan for services which were not performed or not performed as described. (Paragraph 5, Agreed Statement of Facts).

(5) The Solicitor billed the Ontario Legal Aid Plan for 606 telephone calls allegedly made during 1984, 1985 and 1986 when in fact such calls had not been made (See Paragraphs 5(i), (ii), (iii) and (v)).

(6) The Solicitor billed the Ontario Legal Aid Plan for services performed over the three-year period for a total of 8,209 hours. (Paragraph 8 of the Agreed Statement of Facts). On the evidence, this represented approximately 90% of his chargeable time which would boost the number of chargeable hours in those three years to 9,000 hours charged and billed to clients without any allowance for time spent doing writing, lecturing, political organizing and pro bono work.

(7) The Solicitor agrees that the inaccuracy of his billing practice resulted in the billing of over 2,000 hours to the Ontario Legal Aid Plan that should not have been billed. (Paragraph 9, Agreed Statement of Facts).

16. All of the panel have experience in litigation and acknowledge readily the demands of such a practice. If the law is a jealous mistress, it is to the counsel who must prepare late into the night or early morning hours. Cases are called one upon the other. He is called to appear in more than one court at the same time. Then there are the statements and factums which must be meticulously prepared and filed within unrelenting deadlines and those weekends and holidays accompanied by the ubiquitous bulging briefcase if they are not otherwise without notice cancelled or postponed. In these areas the panel by their own experience are able to empathize with Mr. Kopyto's explanations.

17. All that being said, the inadequacy of the Solicitor's system or records is surely not a defence to an admitted misrepresentation of fact made knowingly and with the intention that the statements be relied upon by Legal Aid as true and with the intention that payment would be made to the Solicitor to the detriment of the Legal Aid Plan - put in those terms the Solicitor's dishonesty constitutes a fraud on Legal Aid, and to give credence to the defence of inadequate records and negligent and careless billing practices would be to make a virtue of ineptitude and incompetence.

18. Particularly is this so when one considers the wording of the Legal Aid Act in the relevant periods:

> R.S.O. 1970, Chapter 239 (January, 1978), Section 100/1
>
> "A solicitor who has provided services pursuant to a certificate and has completed such services or has ceased to act shall submit forthwith to the Legal Accounts Officer,
>
> (a) an account in duplicate of his fees and disbursements showing the date upon which each item of service was performed, one copy of which shall bear the following certificate signed by him: I certify that the legal aid herein was rendered by me or by such other named person as is specifically stated herein and that the disbursements set out herein were paid or liability therefore incurred and that they were necessary and proper.
>
> R.S.O. 1980, Chapter 234 (June, 1984), Section 103(1):
>
> "A solicitor who has provided services pursuant to a certificate and who has completed the services or who has ceased to act shall submit forthwith to the director:
>
> (a) an account certified by the solicitor of his fees and disbursements showing the date, duration and description of each item of service performed;
>
> R.S.O. 1980, Chapter 234 (April, 1986), Section 94(1):
>
> "A solicitor who has provided services pursuant to a certificate and who has completed the services or who has ceased to act shall submit forthwith to the director,
>
> (a) an account certified by the solicitor of his or her fees and disbursements showing the date, duration and description of each item of service performed;"

19. When one considers how much discussion among the profession there occurred at or about the change in the legislation in 1984, one cannot accept that the Solicitor was unaware of the change. He has been practising for ten years with a practice which was essentially of the same character and description, namely 90% Legal Aid. He must be deemed to have been very familiar with the Legal Aid billing process and the changes that had been effected by the legislation. Furthermore, one must have particular regard to the Agreed Statement and the admitted knowledge of the Solicitor and his failure to make inquiry or to make any change or correction in his methods during the period.

20. The Committee was assisted by the reasoning of the Supreme Court of Canada in Sansregret and The Queen, reported 1985, 18 CCC, 3rd at p.223, where there was a specific holding that where the accused becomes deliberately blind to the existing facts, he is fixed by law with actual knowledge and his belief in another state of facts is irrelevant.

> Page 223, Mr. Justice McIntyre for the court said: "The concept of recklessness as a basis for criminal liability has been the subject of much discussion. Negligence, the failure to take reasonable care, is a creature of the civil law and is not generally a concept having a place in determining criminal liability. Nevertheless, it is frequently confused with recklessness in the criminal sense and care should be taken to separate the two concepts. Negligence is tested by the objective standard of the reasonable man. a departure from his accustomed sober behavior by an act or omission which reveals less than reasonable care will involve liability at civil law but forms no basis for the imposition of criminal penalties. In accordance with well-established principles for the determination of criminal liability, recklessness, to form a part of the criminal mens rea, must have an element of the subjective. It is found in the attitude of one who, aware that there is danger that his conduct could bring about the result prohibited by the criminal law, nevertheless persists, despite the risk. It is, in other words, the conduct of one who sees the risk and who takes the chance. It is in this sense that the term "recklessness" is used in the criminal law and it is clearly distinct from the concept of civil negligence."

21. It is altogether too often forgotten that under the Legal Aid Plan there is recourse over against the client with respect to the legal fees where there is a demonstrated ability to pay. The percentage of the ultimate account paid by the client is determined by the Director and to the extent that the client pays or reimburses Legal Aid, the fraud of Mr. Kopyto is a fraud being perpetrated on his own clients.

22. The basic fundamental dishonesty admitted by the Solicitor prevents the Committee from giving any credence to the second argument urged by Mr. Roach. While we have no doubt that Mr. Kopyto believes in the truth of what he is saying, there is a fundamental problem, and that is, that the position is totally inconsistent with the Agreed Statement of Facts and the evidence of Ms. Ross which is relied upon, is exactly to the opposite effect. We simply do not believe Mr. Kopyto on this point and make an express finding that Mr. Kopyto was dishonest and was dishonest with the intention that he would profit from that dishonesty.

23. Mr. Kopyto's contribution to the "left" cannot be seriously disputed. he founded the Law Union of Ontario in 1970 and has been active in its affairs ever since. Today it is a 200 lawyer organization representing a distinctive viewpoint and segment of the profession. He is an active member of the Civil Liberties Union and a founder of the Socialist Rights Defence Fund. He has espoused many important and significant civil rights causes, has been an active speaker in our law schools and has published numerous legal articles dealing with the cases he has appeared in. We agree substantially with the proposition that he should be accorded the benefit of any doubt, and have tried to apply the burden to the facts and issues. Unfortunately, as we perceive the Agreed Statement of Facts, there is very little room for doubt and this case is not one in which those principles provide very much assistance to the Solicitor.

24. So far as the fourth argument is concerned, the Committee is not persuaded that the constituency served by the Solicitor was one which was exclusively serviced by him. There are others in the profession who do serve and will continue to service these people. Mr. Roach himself

is one of these and there are others certainly among the very membership of the Law Union which Mr. Kopyto founded. The Committee observed that the solicitor in his evidence attempted to convey an unusual sense of his own importance to society and an equally unusual deprecation of the contribution to society of his colleagues in the legal profession. He seemed completely in ignorance or intentionally discounted the tens of thousands of hours of pro bono work delivered annually by his colleagues in the public interest. He really seemed of the belief that he was the only lawyer in Ontario who wouldn't turn away people with difficult legal problems and that he stood alone as being willing to represent the impecunious at no fee.

25. If one believes this, one can understand the perception we believe Harry Kopyto has that he should be specially appreciated, and therefore exempted from the rules which govern other lesser mortals. This in itself may in small part explain Harry Kopyto and his actions.

26. The Committee was reminded of the Reid case back in the early 1970's where a suspension of two years resulted from the submission of counsel that the solicitor was not aware of the fact that he was overcharging Legal Aid and did not intend to do so. The argument in that case was that the overcharging was accidental and unintentional. This appears to have been accepted by Convocation and the disbarment was set aside. That is not this case.

27. In the opinion of the Committee, there is a clear distinction to be made between the taxation of a legal account where the lawyer overcharges for services which are accurately described and the situation as here where the services have not only been misdescribed but not even performed, albeit the charges were set at the regular Legal Aid tariff.

28. The Committee, all primarily litigators, know the significance of 3,000 chargeable hours per annum, (Let alone over 3,500 hours in 1985) and they know how much time would be left to eat and sleep, let alone do pro bono work, write, lecture and politically organize. while the Agreed Statement of Facts contained certain median levels of chargeable hours, the members of the Committee did not need this assistance to know that there is a real credibility problem if the Solicitor persisted as he did in the assertion that the hours stated were true and correct. The Committee simply did not believe Mr. Kopyto on this point.

29. It is part of the paradox that despite the circumstances of thee charges and their gravity, despite the depth and intensity of the Law Society's investigation, despite the damning admissions contained in the Agreed Statement of Facts, and despite the true character of his ultimate defence, Mr. Kopyto believed it necessary to be true to his revolutionary credo. Throughout these proceedings, right down to and including the final day, he persisted in a pattern of behavior and public utterances inconsistent with the position and testimony before the tribunal.

30. Publicly and to the media, he alleged persecution by the Law Society, and selective prosecution 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.

31. In his testimony and before the Committee, he and counsel on his behalf acknowledged that Legal Aid is an important public service that was deserving of respect by him. He acknowledged that his case involved a normal and ordinary spotcheck of high billings conducted in the ordinary course by Legal Aid and that Legal Aid was entirely justified in auditing his accounts. He acknowledged that the Law Society was perfectly proper in the intensity of its investigation and he had no complaint as to the manner in which it was conducted. He expressed his regret for his errors. He expressed his contrition and he made an apology without qualification "looking back with hindsight, I wish I hadn't submitted (the inaccurate accounts)".

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 to 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.

33. From these observations the Committee is persuaded that the Solicitor really has no respect whatsoever for the process or for the Law Society and very little respect for that matter for his colleagues in the legal profession. We doubt very much whether the Solicitor is sincere in his apology. We are firmly of the belief that the Solicitor will say and do whatever suits his purpose whenever it suits him and will repudiate himself with less difficulty and discomfort than is involved in changing his coat.

34. There is absolutely nothing in this case to suggest special consideration for the Solicitor, apart from the urgings of his counsel. There is no evidence to support the assertion that there was any absence of intent, indeed the Agreed Statement is very clear that the misrepresentation was intended.

35. There was no evidence that everyone else in the profession practised in the manner that the Solicitor did or that for that matter, any other solicitor in the profession had conducted himself in the manner described by Mr. Kopyto. His utterances publicly to this effect constitute a gross slander on the profession which, while not part of the complaint against the Solicitor, should not be overlooked.

36. The evidence is equally clear on the Solicitor's own admission that he was not singled out by either Legal Aid or the Law Society. In short, there is absolutely no substance to Mr. Kopyto's public and media posture of persecution,the evidence before the panel being to the contrary.

37. Your Committee regards it as significant that the Solicitor should go right down to the final day of hearing persisting in public utterances which he knew to be false, encouraging his loyal friends to believe a state of facts which he knew was simply not true. The Committee sees this as a continuing series of dishonest acts and in considering mitigation, there ought to have been some indication that the Solicitor has learned from the experience. There was no credible indication of such in this case.

38. The Committee cannot but also observe that the two prior occasions on which this Solicitor was disciplined involved dishonesty. The first occasion was cheating on his bar admission examinations and the second concerning false statements made to the court.

39. This complaint, then, is the third occasion on which the Solicitor has been accused of and found to have acted dishonestly.

40. This, accompanied by his public posture in these proceedings which is patently dishonest, does not augur well for his future honesty or integrity were he to be permitted to continue to practice by reason of a reprimand or a suspension.

41. The circumstances of this case by themselves justify disbarment but if there were any doubt, the Committee cannot believe that the public interest is served by permitting dishonest persons to practice law and further, are of the view that persons who demonstrate a pattern of persistent dishonesty should be removed from practice and disbarred.

42. This is so despite the otherwise commendable behavior of the individual. No amount of good deeds can displace the absolute mandatory requirements of integrity in the practice of law. The end can never be used to justify dishonesty in the practice of law. Honesty and integrity are the imperative upon which the whole fiduciary cornerstone of the legal profession is founded. It is for this reason the Solicitor must be disbarred. If for no other reason it is because he has been found to be a persistently dishonest person.

43. Throughout the hearings, there were repeated accusations by the Solicitor of bias on the part of the Committee and in particular on the part of the Chairman. There were several motions at various stages. The Committee was of the view that there was another forum for such arguments and that in any event no member of the Committee had a perception of bias with respect to the Solicitor, nor did they believe that there existed any evidence to support an apprehension of bias by the Committee panel or any of its members.

44. At the same time, the Committee panel was of the view that the Solicitor in his conduct before the Committee and his conduct before the media during the hearings and in his conduct and statements made and issued on his behalf during the hearings, was guilty of contempt both of the Committee and contempt in the face of the Committee and that this was so and persisted despite admonitions in that regard by the Committee.

45. The public are watching and others in the wings are also watching to see whether or not such behavior is standard or even acceptable or something which will be tolerated. It is imperative that it be shown to be something which will not be tolerated.

46. The profession, itself, needs a strong signal as to the seriousness with which discipline proceedings are to be viewed. The conduct of the Solicitor was in itself unprofessional and would or should in ordinary circumstances be the subject of discipline proceedings. In this case, such proceedings would be redundant.

47. There are a few members of the bar who subscribe in whole or in part to the type of strategies, behavior and conduct demonstrated by the Solicitor. This behavior is at times displayed in our courts and there exists an obligation on the Society to make a statement of disapproval.

48. The sworn duty of the Solicitor is to uphold the law and the judicial process. The members of our society need to be reminded that this is not just a casual courtesy, but a duty owed to the law, to the courts and to their profession at all times.

In all of the circumstances, therefore, the appropriate disposition would be for Mr. Kopyto to be disbarred.

Harry Kopyto was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 22nd day of March, 1974.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 12th day of September, 1989

"Ian A. Outerbridge"
Chair

No submissions were made with respect to the Report.

Convocation withdrew.

It was moved by Mr. Somerville, seconded by Mr. Lerner that the Report of the Discipline Committee dated 12th September 1989 be adopted.

Carried

Convocation returned.

Convocation was advised that the recommended penalty was disbarment. The solicitor did not waive the reading of the Recommendation as to Penalty made by the Committee and accordingly Mr. Somerville read the Recommendation as to Penalty.

On conclusion of the reading of the Recommendation as to Penalty, Mr. Kopyto was sworn as a witness and examined by Mr. Roach.

Mr. Marrocco objected to questions regarding the circumstances under which the Agreed Statement of Facts was signed and the negotiations surrounding the signing of the Agreed Statement of Facts.

Mr. Roach indicated that he was trying to establish through the questions to Mr. Kopyto that there was an additional agreement in regard to the presentation of evidence to be put before the Committee as well as the Agreed Statement of Facts.

Convocation adjourned to consider the matter.

It was moved by Mr. Strosberg, seconded by Ms. Peters that no discussions behind the Agreed Statement of Facts be admitted and that the Agreed Statement of Facts stands but that Mr. Kopyto be allowed to lead evidence by way of explanation or mitigation only.

Carried

Convocation reconvened at 12:15 p.m. At that time Mr. Farquharson withdrew as he was not able to stay until the contemplated completion of the proceedings.

Mr. Rock then gave Convocation's ruling on the issues before it and on the procedural matters adopted by Convocation. Mr. Rock indicated that it was Convocation's wish that evidence be led by counsel through questions and not in a narrative form by the witness. In regard to Mr. Kopyto acting as co-counsel it was indicated that there may only be one counsel in respect of each issue and Mr. Kopyto could only act as counsel on those issues in which he had not given evidence. In regard to the question of the Agreed Statement of Facts it was indicated that the solicitor had confirmed the acceptance of the Agreed Statement of Facts and Convocation would not receive evidence in regard to the negotiation or execution of that Agreed Statement of Facts in the absence of any allegation of duress or non est factum. Accordingly the Agreed Statement of Facts stood. The solicitor would be at liberty in speaking to the issue of penalty to lead evidence regarding the Agreed Statement of Facts by way of mitigation or explanation with a right of Law Society counsel to object on a question by question basis.

The examination-in-chief of Mr. Kopyto by Mr. Roach continued.

Convocation rose at 1:15 p.m. and reconvened at 2:15 p.m.

On resumption of Convocation at 2:15 p.m., Mr. Lyons withdrew as he was unable to stay to the completion of the matter. Those present at 2:15 p.m. were:

Acting Treasurer (Mr. J. Ground), Ms. Bellamy, Messrs. Carey, Cullity and Epstein, Mrs. Graham, Ms. Harvey, Mr. Hickey, Ms. Kiteley, Mrs. Legge, Messrs. Lerner and Levy, Ms. MacLeod, Messrs. McKinnon, Murphy and Noble, Ms. Peters, Messrs. Rock, Shaffer, Somerville, Strosberg, Thom, Topp and Wardlaw, Mrs. Weaver and Mr. Yachetti.

Mr. Kopyto continued his examination-in-chief by Mr. Roach.

Mr. Kopyto's examination-in-chief was interrupted to allow Mr. John Wong to give his testimony. Mr. Wong was sworn and examined in-chief by Mr. Del Rio on behalf of Mr. Roach. There was no cross-examination and the witness retired.

The examination-in-chief of Mr. Kopyto then resumed.

Convocation rose at 3:40 p.m. and reconvened at 4:00 p.m. with those listed above being present.

The examination-in-chief of Mr. Kopyto continued. A memorandum to file by "R.W." (Reginald Watson) dated the 28th of August, 1987 was filed. (marked Exhibit 2).

Convocation rose at 6:00 p.m. and reconvened at 7:20 p.m. with the following present:

Acting Treasurer (Mr. J. Ground), Ms. Bellamy, Messrs. Carey, Cullity and Epstein, Mrs. Graham, Ms. Harvey, Mr. Hickey, Ms. Kiteley, Mrs. Legge, Messrs. Lerner and Levy, Ms. MacLeod, Messrs. McKinnon, Murphy and Noble, Ms. Peters, Messrs. Rock, Shaffer, Somerville, Strosberg, Thom, Topp and Wardlaw, Mrs. Weaver and Mr. Yachetti.

Mr. Kopyto's examination-in-chief continued until 7:45 p.m.

Mr. Marrocco then cross-examined Mr. Kopyto.

On completion of Mr. Marrocco's cross-examination of Mr. Kopyto there were questions from the Bench to Mr. Kopyto.

Convocation rose at 9:00 a.m. and reconvened at 10:00 p.m. with those listed above being present.

There was then re-direct examination of Mr. Kopyto by Mr. Roach.

Mr. Stanley Ehrlich was sworn as a witness and examined in-chief by Mr. Del Rio.

Mr. Marrocco cross-examined Mr. Ehrlich. There was no re-direct and the witness retired.

Mr. Gordon Doctorow was sworn as a witness and examined in-chief by Mr. Roach. There was no cross-examination and the witness retired.

Mr. Morris Norman was sworn as a witness and examined in-chief by Mr. Del Rio.

Mr. Marrocco cross-examined Mr. Norman and there was no re-direct examination and the witness retired.

Joseph Stenbok was sworn as a witness and examined in-chief by Mr. Roach.

There was no cross-examination.

Questions were put to the witness by Mr. Carey and on completion of those questions the witness retired.

Ms. Tomczak was sworn as a witness and examined in chief by Mr. Roach.

There was no cross-examination by Mr. Marrocco nor any questions from the Bench and the witness retired.

CONVOCATION ADJOURNED AT 10:30 p.m.

Confirmed in Convocation this 27th day of October, 1989.

Treasurer