

*A section 47 Bencher review:  
see DCD 01/09 for a summary of the hearing panel decision.*

Kelowna, B.C.

Called to the Bar: May 10, 1977

**Bencher review:**

**Date:** April 6, 2001

**Panel:** (*Majority*) Richard S. Margetts, Q.C., Chair, Ralston S. Alexander, Q.C., Robert Crawford, Q.C., Robert W. Gourlay, Q.C., D. Peter Ramsay, Q.C., William J. Sullivan, Q.C. and Ross D. Tunnicliffe and (*Dissent*) Terence E. La Liberté, Q.C.,

**Report:** April 20, 2001 (*majority*) and April 27, 2001 (*dissent*)

Discipline hearing report indexed as [2001] LSBC 13

**Counsel:**

Todd Follett, for the Law Society

E. David Crossin, Q.C., for Mr. J

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**Summary**

On application by Mr. J, the Benchers reviewed the one-month suspension imposed on him by a discipline hearing panel for professional misconduct. The panel had found and Mr. J admitted that, during an adjournment of a criminal trial, he engaged in an inappropriate verbal exchange with opposing counsel, came into physical contact with her and did not immediately cease the contact when asked: *see DCD 01/09*. While it was clear that Mr. J did not intend to intimidate opposing counsel, he intentionally engaged in an unseemly display that resulted in physical contact. Whenever physical contact occurs between lawyers in a confrontational situation, it will be treated as aggravated and unjustified conduct. A majority of the Benchers confirmed the penalty of a one-month suspension and costs, but ordered that the suspension begin on **June 1, 2001**, rather than May 1, 2001.

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**Review of penalty**

On application by Mr. J, the Benchers reviewed the one-month suspension imposed on him by a discipline hearing panel for professional misconduct. Mr. J had admitted and the hearing panel had found that, during an adjournment in a criminal trial, Mr. J had engaged in an inappropriate verbal exchange with opposing counsel while standing in close proximity to her, came into physical contact by his chest touching her upper body and did not immediately cease the contact when asked by her to do so: *see DCD 01/09*.

The Benchers on review considered a number of arguments put forward on behalf of Mr.

J. His counsel submitted that the events in question had taken place four years earlier and were a last vestige of a drug problem for which Mr. J had undergone successful rehabilitation. The Benchers noted that, while Mr. J's addiction explained to some extent earlier conduct problems, no evidence was presented to link that addiction to his behaviour in this case. The Benchers found the rehabilitation undertaken by Mr. Johnston for his drug problem was laudable, but noted that that the seriousness of the conduct justified the penalty imposed.

The Benchers could not characterize Mr. J's behaviour as inadvertent as suggested by his counsel. While it was clear that he did not intend to intimidate opposing counsel, he intentionally engaged in an unseemly display that resulted in physical contact with her. Whenever physical contact occurs between lawyers in a confrontational situation, it will be treated by the Benchers as aggravated and unjustified conduct. There must be a clear message to the profession that this is serious conduct, however rare.

While the Benchers considered Mr. J's conduct record, including a previous citation and five conduct reviews, they were satisfied that, even without that record taken into account, the penalty was appropriate.

A majority of the Benchers on review accordingly confirmed the penalty of a one-month suspension and costs. At Mr. J's request, the Benchers ordered that his suspension begin **June 1, 2001**, rather than May 1, 2001.

### *Dissent*

Mr. La Liberté dissented from the majority of the Benchers on review, and would have imposed a reprimand and no order for costs. As the hearing panel had accepted that Mr. J's actions were unplanned and not intended to intimidate, this was a momentary lapse in which he lost control, and was without deliberation. The incident took place during the first, and most difficult, stage of Mr. J's rehabilitation from addiction. Significantly, he apologized almost immediately, recognizing his error. He has since admitted professional misconduct and expressed sincere remorse.

In Mr. La Liberté's view, Mr. J's addiction was inextricably bound to his aberrant behaviour. The Law Society must encourage lawyers to come forward and deal with difficult issues such as addiction and substance abuse in as open and frank a way as Mr. J. Failing to recognize the link between such behaviour and addiction, and treating a lawyer by simple punishment, may discourage other lawyers from seeking help. In this case, the intervening time and dramatic lifestyle changes of Mr. J must affect disposition of the matter. While his conduct record cannot be ignored, it must be considered in the context of his rehabilitation, education and increased self-awareness.

The principle of general deterrence was applied too rigidly. The Law Society's role is to regulate the profession in the public interest, which may require severe sanctions in some instances. But the Society must also lead, educate and direct the behaviour of lawyers so as to instill public confidence. A suspension has a profound impact on lawyers and, next to disbarment, is a last resort. In Mr. La Liberté's view, a reprimand was appropriate. The

community will be made aware of Mr. J's problems and seriousness of the conduct through publication.

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