

Kelowna, B.C.

Called to the Bar: May 10, 1977

Discipline hearing

Dates: June 6 and November 2, 2000

Panel: Peter J. Keighley, Q.C., Chair, Anita Olsen and G. Ronald Toews, Q.C.

Reports: July 14, 2000 and February 2, 2001

Indexed as [2000] LSBC 13

Counsel

Todd R. Follet, for the Law Society

Jatinder J. Rai (*facts and verdict*) and David Crossin, Q.C. (*penalty*), for Mr. Johnson

Summary

During an adjournment in a criminal trial in which he was defence counsel, Mr. Johnson lost his temper and had an inappropriate verbal exchange with Crown Counsel in the courtroom. While standing in close proximity to her, his chest came into contact with her upper body and he did not immediately cease contact when she asked him to back off. His actions were unplanned and not intended by him to intimidate her, although she perceived his actions that way. Mr. Johnson admitted, and the hearing panel found, that his conduct constituted professional misconduct. The panel ordered that Mr. Johnson be suspended for one month commencing May 1, 2001 and pay costs.

Facts

In 1997 Mr. Johnson represented two persons accused of assault causing bodily harm at their trial in Provincial Court. After a full day of trial, an evidentiary issue arose. Matters at the trial had been vigorously contested and there had been tension between Mr. Johnson and Crown Counsel (Ms. T). Court was adjourned so that counsel could discuss and resolve the evidentiary issue.

Mr. Johnson and Ms. T rose for the adjournment and remained standing. An inappropriate verbal exchange developed between them. Mr. Johnson lost his temper and, while standing in close proximity to Ms. T, his chest came into contact with her upper body. She asked him to back off, but he did not immediately do so. Ms. T asked a sheriff in the courtroom for assistance and, by the time the sheriff came forward, the contact had ceased. Mr. Johnson's actions were unplanned and not intended by him to intimidate Ms. T, although she perceived them that way.

After this incident, both counsel left the courtroom to meet and discuss the evidentiary issue. They resolved the issue and offered mutual apologies.

Decision

Mr. Johnson admitted, and the hearing panel found, that his conduct constituted professional misconduct.

Penalty

The hearing panel characterized Mr. Johnson's misconduct as serious. Physical contact of this nature in an atmosphere of acrimony and tension in a courtroom and in front of members of the public is to be condemned in the clearest and strongest of terms. The fact that this incident occurred while there was a tense atmosphere in a courtroom was an aggravating, not a mitigating, factor. It is precisely when tensions are high and a partisan audience is present that lawyers must keep their tempers and behave with professionalism and courtesy. To represent their clients effectively and to fulfil their duties as officers of the court, lawyers must not allow their clients' conflicts to swallow their own professionalism.

The panel took into account that Mr. Johnson's actions were unplanned and not intended to intimidate. If they had been deliberate, the panel would have viewed the matter more seriously.

The hearing panel considered Mr. Johnson's discipline record (specifically a previous hearing [*see Discipline Case Digest 98/08*] and three previous conduct reviews). The panel also considered submissions that Mr. Johnson was in rehabilitation for substance abuse at the time of the incident. This was not, however, a case in which the need to ensure rehabilitation outweighed the need for deterrence. Mr. Johnson had already taken, and was taking, significant steps in his rehabilitation, and had in fact assisted other people with addiction problems. In this case, the panel regarded general deterrence and ensuring public confidence in the integrity of the legal profession as of great significance.

The panel concluded that a reprimand or fine would not sufficiently address the importance of general deterrence and ensuring public confidence in the integrity of the legal profession. The panel ordered that Mr. Johnson:

1. be suspended for one month beginning May 1, 2001; and
2. pay costs of the discipline proceedings.

* * *

Mr. Johnson has applied to the Benchers for a review of the hearing panel decision on penalty.