

Martin Drew Johnson

Kelowna, BC

Called to the bar: May 10, 1977

Discipline hearing : October 17, 2013 and June 16, 2014

Panel : majority decision (facts and determination): Tony Wilson, Chair and Dan Goodleaf; concurring decision: Dale G. Sanderson, QC

Decision issued : February 24 (2014 LSBC 08) and November 3, 2014 (2014 LSBC 50)

Counsel : Larry R. Jackie, QC for the Law Society; Gregory P. Delbigio, QC for Martin Drew Johnson

FACTS

On March 9, 2011, in the course of representing his client at the courthouse, Martin Drew Johnson was involved in an altercation outside the courtroom with a police officer who was a potential witness.

The police officer had previously arrested Johnson's client for breach of recognizance when he went to his former matrimonial home at the request of his wife. Outside the courtroom, Johnson asked the police officer a question that was related to the breach of recognizance charge. The exchange between Johnson and the officer became heated and volatile, and they were reportedly "nose to nose." Johnson responded to some remarks made by the officer by saying "f*** you" to him.

The officer then told Johnson that he was under arrest and very quickly grabbed his left arm and tried to spin him. Johnson had artificial hip replacement surgery done the previous year and, as a result, was unable to spin around. The officer was substantially larger and younger than Johnson and, after a struggle, Johnson ended up being pinned against a glass wall. A court sheriff's officer immediately intervened to assist in the arrest. Johnson was placed in handcuffs and taken down the hallway in front of a number of people.

The officer sought to have charges laid against Johnson for assault; however, charges were ultimately not laid against Johnson for assault or any other offence.

DETERMINATION

Majority decision

In the majority's view, provocation is irrelevant to a finding of professional misconduct. The only issue to determine was whether or not Johnson's use of profanity as an insulting interjection, spoken in anger to a witness in a courthouse hallway, constituted professional misconduct.

The majority did not see the facts of this case as an over-aggressive police officer provoking a lawyer into uttering a verbal insult. Although the police officer might have taken more proactive steps to diffuse the situation, Johnson had a higher duty to avoid putting himself into the position where the police officer and Johnson were "nose to nose," leading to the expletive being angrily uttered by him.

The majority did not accept that there are any circumstances in which a lawyer in a courthouse could say "f*** you" in anger to a witness, to another lawyer or to any member of the public in a courthouse in an angry, insulting, hostile or belligerent manner. This type of behaviour was totally indefensible and was a marked departure from the standard of conduct that the Law Society expects of lawyers and, therefore, constituted professional misconduct.

Concurring decision

The concurring panel member took into consideration that Johnson's remark was overheard by Crown counsel, but no one else. The remark was made at the end of a quiet corridor. At issue was whether uttering an expletive to a witness in a proceeding within a courthouse corridor (whether that witness was a police officer or not) was excusable in the particular circumstances of provocation by the police officer.

In the view of the concurring panel member, the police officer's conduct was not so aggravating or severe to excuse Johnson's conduct. While Johnson's remarks were understandable, they were not excusable and were a marked departure from what the Law Society expects of lawyers. The concurring panel member found that Johnson's words constituted professional misconduct.

DISCIPLINARY ACTION

The panel found that Johnson's prior disciplinary record was a concern. This was the second time that Johnson had committed this type of reach. However, his previous misconduct and other infractions were, in part, fueled by substance abuse problems that had apparently been resolved.

The panel did not place significant weight on Johnson's letters of reference because some of the authors may not have been aware of all the factors of this case and may not represent a broad view of the profession.

Johnson testified that he immediately regretted his remark and recognized it was a mistake. He fully acknowledged and took responsibility for his inappropriate and unprofessional conduct.

The panel believed that the likelihood of Johnson repeating similar conduct was unlikely and that he had learned from this experience. Given the circumstances of his arrest by the officer, he had already paid a high price for his outburst.

The panel concluded that the breach was moderately serious because Johnson ought to have kept his temper despite the provocation. And it was serious because the incident occurred in a public area of the courthouse.

The panel ordered that Johnson:

1. be suspended for 30 days; and
2. pay \$10,503.05 in costs.

REVIEW