

2012 : No. 1

Robert Douglas Cole Malcolm

Vancouver, BC

Called to the bar: May 15, 1968

Retired membership: July 1, 2011; ceased membership: January 1, 2012

Discipline hearing : November 4, 2011

Panel : Joost Blom, QC, Chair, Don Amos and Alan M. Ross

Report issued : January 18, 2012 (2012 LSBC 04)

Counsel : Carolyn Gulabsingh for the Law Society and Robert Douglas Cole Malcolm appearing on his own behalf

Facts

Robert Douglas Cole Malcolm made a complaint to the Law Society about a lawyer who acted for beneficiaries of a client who was suing Malcolm. During the course of investigating the complaint, the Law Society required Malcolm to answer questions about his dealings with the client and the related financial transactions.

The Law Society wrote Malcolm in December 2009 and August 2010. He replied to each letter with only partial responses.

Malcolm invited the Law Society's representative to meet with him in January 2011. The Law Society obtained various documents from him.

After reviewing the documents, the Law Society sent another letter to Malcolm in May 2011 asking more detailed questions. Malcolm's email reply indicated that he needed time to respond. When the Law Society gave him a deadline, Malcolm replied that he did not have the resources to comply and stated that he was prepared to meet with the Law Society's representative again.

The Law Society reminded Malcolm that the answers to their inquiries were required in writing and that any failure to respond to questions and requests from the Law Society may be referred for disciplinary action.

No written response was received.

Determination

Malcolm's position was that he did not have the financial resources available to respond to the Law Society's inquiries. He said that he had done what he was financially and physically able to do, given that the information necessary to answer the inquiries was contained in numerous boxes of client files in his home.

Malcolm appeared to be of the view that it was the Law Society's responsibility to review the boxes of documents and determine the answers to the questions.

The panel found that Malcolm's claim of impecuniosity was not believable. Several of his statements about his financial situation seemed implausibly exaggerated. He did not introduce any information or evidence regarding his financial or health status to support his position.

He admitted that the documents containing most of the relevant information were in his possession. The Law Society's correspondence made it clear that he, not the Law Society, was responsible for sorting through the documents to obtain the information. He therefore did not provide a reasonable excuse for his failure to respond to the Law Society's inquiries.

The panel found that Malcolm's actions in failing to respond to the inquiries of the Law Society constituted professional misconduct.

Disciplinary Action

The Law Society submitted that it was an aggravating factor that Malcolm still had not provided a substantive response.

The panel ordered that Malcolm:

1. pay a \$2,000 fine;
2. pay \$2,000 in costs; and
3. provide complete answers to the Law Society's requests for -information.