

Date: 20010509
Docket: S.C. No. 00-A0289
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY
IN THE MATTER OF THE *HUMAN RIGHTS ACT*, S.Y. 1987, c. 3

BETWEEN:

FRANCIS MAZHERO

PETITIONER

AND:

SUPREME COURT OF THE

YUKON HUMAN RIGHTS COMMISSION

MAY 09 2001

RESPONDENT

YUKON TERRITORY

**REASONS FOR JUDGMENT OF
MR. JUSTICE R.P. MARCEAU**

PRELIMINARY NOTE

[1] The original amended petition to the court named the Yukon Human Rights Commission and Commissioners as respondents. A review of the *Human Rights Act*, S.Y. 1987, c. 3, convinced me that the proper respondent in this application is the Yukon Human Rights Commission and not the individual commissioners. In any event, the commissioners, if they were a proper party, should be named and served. There is no evidence that the individual commissioners appointed pursuant to the *Act* were served with any process.

NATURE OF THE PROCEEDINGS

[2] The petitioner seeks the following relief:

1. An order in the nature of prohibition prohibiting the Yukon Human Rights Commission ("the Commission") from continuing its investigation of the human rights complaint filed against the Yukon Department of Education by the Petitioner in November, 1999;
2. A declaration that the Yukon Human Rights Commissioners ("the Commissioners") and Commission have delayed unreasonably in processing the Petitioner's complaint;
3. Costs of this and the March 20, 2001 proceeding; and
4. Such further and other relief as this Honourable Court deems just.

PRELIMINARY ISSUE

[3] The petitioner, by Notice of Motion filed April 25, 2001, returnable before this court on April 30, 2001, sought production of certain records:

1. A copy of the investigation report of the Applicant's human rights complaint File #W.176-99, prepared by Molly Riordan; and
2. Notes, drafts and transcripts relating to interviews conducted by Molly Riordan as part of the investigation of the Applicant's human rights complaint referred to in the above paragraph of [13 named individuals.]

[4] Mr. Mazhero is not represented by counsel. Both Mr. Mazhero, the petitioner, and counsel for the Human Rights Commission, agreed that I should hear the motion for disclosure and the petition on the merits at the same time. One would usually expect that the parties would seek some time to prepare for the hearing on the merits after the

- May 4, 2000 Investigator writes to the Department of Education asking for more information and for clarification. The expectation (not specified) was that the response would be within 30 days. In fact, the response was made on June 23, 2000, which in the petitioner's view, was 19 days late
- July 20, 2000 The investigator had shared the PSC's response of June 23, 2000 with the petitioner. The petitioner responded with a new complaint that the PSC and the Department of Education were retaliating against him for filing complaints against them with the Yukon Human Rights Commission and the Office of the Ombudsman. The letter included 25 pages of supporting documentation.
- July 20, 2000 The petitioner writes a letter to the Staff Relations Advisor of the PSC accusing the Advisor of making false statements in the response (presumably of the 23rd of June 2000). This is copied to the investigator.
- July 20, 2000 The Director of Staff Relations (PSC) responds to Mr. Mazhero's letter with a copy to the Yukon Human Rights Commission.
- July 24, 2000 Letter from Mr. Mazhero to Ms. Riordan - Human Rights Commission, asking whether Ms. Duckhorn's letter of November 7, 1999 has any relevance or weight in his complaint against the Department of Education. (The reference to Ms. Duckhorn being asked by Department of Education officials whether or not she or her son "would have a problem with a person of colour -- because Dr. Mazhero is a negro from Zimbabwe".)
- July 24, 2000 Ms. Riordan writes a letter to the petitioner indicating that the Commission will be responding shortly to his inquiry of retaliation and that the allegations and letter from Ms. Duckhorn will be investigated as part of the complaint.
- August 12, 2000 Mr. Mazhero writes a letter to Anne-Marie Phillips, Director, Human Rights Commission. The essence of this letter is contained in the following paragraph:

Given that a *prima facie* case that the Department is discriminating against me on a prohibited ground by deliberately excluding me from employment in the Yukon education system, would the Yukon Human Rights Commission entertain an application by PSAC's attorneys for a summary determination of my human rights complaint?

This letter purports to be copied to the High Commissioner of Zimbabwe and the National President, PSAC (Public Service Alliance of Canada).

August 15, 2000

Anne-Marie Phillips, Director Human Rights Commission writes a letter to Mr. Mazhero. This letter was in response to Mr. Mazhero's August 12, 2000 letter.

August 30, 2000

Molly Riordan writes a letter to Francis Mazhero. This letter responds to the allegation of retaliation and gives Mr. Mazhero information that this is a *Summary Convictions Act* offence and not within the jurisdiction of the Commission.

September 5, 2000

Mr. Mazhero writes to Ms. Riordan attaching some letters from which he concludes that he will not be considered for employment in the Yukon Public Education system so long as his Ombudsman and Human Rights complaints remain unresolved. He then wishes to know the timeframe for resolving his complaint. Basically, the letter refers to a letter from the Hon. Dale Eftoda, Minister of Education, dated August 30, 2000 to Eric Fairclough, Education Critic, Office of the Official Opposition, in which the Minister states:

During the past year Mr. Mazhero has formalized his concerns with various Yukon government agencies via a number of processes: formal Access to Information and Privacy requests, Human Rights complaints, grievances and requests before the Ombudsman. Mr. Mazhero is currently having his concerns addressed through all the appropriate channels available to him. As a result, it would be inappropriate for me to meet with him at this time.

Mr. Mazhero also included a number of job postings from the Department of Education for which he claimed he was qualified.

September 8, 2000

Ms. Riordan commences interviews of the 13 witnesses selected by the Human Rights Commission as evidence relevant to the Commission's investigation. A transcript of each interview is prepared.

September 12, 2000

Ms. Riordan writes to Mr. Mazhero. This letter responds to the September 5, 2000 letter requesting information with respect to the job postings and advising as follows:

As to the time frame for resolving this complaint, I can't give you an actual time frame. That is dictated by our workload, the complexity of the case, number of witnesses etc. In this

particular complaint there is the added issue of ongoing allegations.

- September 12, 2000 Letter from Mr. Mazhero to Ms. Riordan. This responds to Ms. Riordan's letter.
- January 5, 2001 The last of the witnesses are interviewed and presumably someone commences preparation of a transcript of that interview.
- From time to time during this period, Mr. Mazhero meets with Ms. Riordan and is told, in brief, what the witnesses had to say. He is not given copies of the transcripts and claims that he only received the information in "snippets".
- December 2000 According to the affidavit of Mr. Mazhero sworn April 6, 2001, Ms. Riordan informed him that she had started preparing a draft investigation report in or about December 2000.
- October 3, 2000 to December 14, 2000 Numerous letters and information are provided by Mr. Mazhero to the Yukon Human Rights Commission, including an attempt to obtain the transcripts of the witnesses' interviews conducted by the Yukon Human Rights Commission via the Access to Information legislation. This legislation mandates responses within 30 days. I could not find a date for this request on the letter, but it seems to have been faxed to the Human Rights Commission on November 16, 2000.
- November 20, 2000 A territorial archivist refuses to pass on the request to the Yukon Human Rights Commission because the Human Rights Commission is not a public body under the *Yukon Access to Information and Protection of Privacy Act*.
- December 11, 2000 The Yukon Human Rights Commission responds to Mr. Mazhero's letters to them of November 24, 2000, October 19, 2000, October 6, 2000, October 4, 2000 and October 3, 2000. This letter is attached to Schedule 1 of these Reasons and is Exhibit 43 to the Affidavit of Ms. Riordan.
- I have attached the letter because the very tenor of the letter suggests that the Yukon Human Rights Commission was doing absolutely everything that it could to be fair to Mr. Mazhero, while also being fair to those he was attacking. The Commission went to great lengths to explain that it was the usual practice of the Commission not to share the actual

transcripts with anyone prior to the formal report being released.

December 14, 2000

Letter from Anne-Marie Phillips, Director, Yukon Human Rights Commission, to Mr. Mazhero. Letter reads as follows:

Dear Mr. Mazhero,

Re: Your Human Rights Complaint against PSAC/YEU

I am writing in response to your letters to Molly Riordan, dated November 23, 2000, and November 28, 2000.

First of all, in your letter dated November 23, 2000, you made reference to Molly Riordan not telling you the truth and not being "upfront" with respect to your complaint. I can tell you that Ms. Riordan conducts her work at the Commission with the utmost of professionalism and integrity. I would appreciate clarification on what, if anything, you are accusing her of when you made these statements and specifically, whether you are suggesting that she has lied to you.

I would like to clarify our procedure with respect to your complaint. As a consequence of the Yukon Human Rights Commission's decision in *Mazhero v. PSC* (dated August 23, 2000), the Commission's procedures have changed. The complaint is no longer provided to the respondent for a response until it has been reviewed under section 19(1) of the Yukon *Human Rights Act* (the "Act") to determine whether it should be summarily dismissed. Following this review, the respondent is then notified of the subject matter of the complaint. Your complaint is at the stage where it is being reviewed under section 19(1) of the *Act*.

Following the review under section 19(1), the complaint is either dismissed or referred on for further investigation. If the complaint is referred for further investigation, the complaint will be drafted based on the information you have provided. You will have an opportunity to review this draft and add any additional information at that time. If there is information that you have neglected to provide the Commission that you believe should be reviewed before a decision under section 19(1) is made, feel free to submit it to our office.

I apologize for the time it has taken to review your complaint. There are several issues with respect to the matter of jurisdiction that requires some time to review. We are a small organization with a large workload and few resources. However, I can assure you that your complaint is a priority.

I look forward to your reply.

I set out the detail of the letter because I am of the view that the procedure set out in that letter is the procedure mandated by the Yukon *Human Rights Act*. I also refer to the letter because it is consistent with Mr. Mazhero's pattern of threatening anyone who he perceives as not meeting his expectations even when his target is working to protect his rights.

January 12, 2001 to
February 16, 2001

There continues to be letters and information submitted by Mr. Mazhero to the Human Rights Commission.

February 16, 2001

Letter to the Human Rights Commission from Mr. Mazhero. This letter is attached as Schedule 2. The most important part of the letter is the last paragraph on page 2, which I quote:

In the circumstances, I request the Commissioners to terminate forthwith the Commission's investigation of my complaint which has for the past 15 months old followed, and I do not like using harsh words, a lethargic and listless course, and ask a board of adjudication to decide my complaint on an expedited basis. I expect the Commissioners to make the necessary arrangements to have my complete file transferred to a board of adjudication.

March 2, 2001

The petitioner in this action petitions in Supreme Court, Action 00-A0263 for the following relief (this is the petition heard by Vickers J. on March 2, 2001):

1. An order in the nature of certiorari quashing the decisions of the Respondent Commission to continue to investigate the human rights complaint filed against the Yukon Department of Education by the Petitioner in November 1999;
2. An order in the nature of mandamus requiring the Respondent Commission to refer the Petitioner's human rights complaint referred to in paragraph 1 above to a board of adjudication for disposition;
3. An order in the nature of prohibition prohibiting the Respondent Commission from continuing the investigation into the Petitioner's complaint referred to in paragraph 1 above;
4. Costs of this proceeding; and

5. Such further and other relief as this Honourable Court deems just.

March 7, 2001 Mr. Gower, a solicitor with Miller Thomson, writes a letter to Mr. Mazhero advising that he has been retained by the Yukon Human Rights Commission and asks that Mr. Mazhero refrain from direct communication with the Commissioner's office.

March 7, 2001 Letter from Francis Mazhero to the Yukon Human Rights Commission, copied to Mr. Gower, and I quote in part:

Please advise your solicitor that I am not a lawyer, and therefore am not bound by the rules of any law society. I see your lawyer's action as nothing more than a stalling tactic. If my issues are not addressed in a timely manner, I may report your lawyer to the Law Society of the Yukon.

In the meantime, I will continue to write to the Commission and the Commissioners as long as I have something to write about. Of course, it goes without saying that your lawyer is free to pursue whatever course he considers appropriate.

This letter illustrates Mr. Mazhero's immediate response to most contacts by taking the offensive in relation to the professional integrity of the person.

March 14, 2001 Letter of Miller Thomson (Mr. Gower) to Mr. Mazhero. I set out the body of the letter in full:

I have been retained by the Yukon Human Rights Commission (the "YHRC") to respond to your letter to Co-Chair, Laurie Henderson dated February 16th, 2001 ("your letter") relating to this matter.

I appreciate that your Petition filed March 2nd, 2001 in Supreme Court Action No. 00-A0263, seeks judicial review of the YHRC's involvement with this complaint. However, at the hearing of that Petition the YHRC may be limited by law to a restricted role in responding to your argument. Therefore, notwithstanding the fact that you have chosen to make your application for judicial review, the YHRC feels it is still appropriate to respond to the requests raised in your letter.

On page 2 of that letter you said:

"...I request the Commissioners to terminate forthwith the Commission's investigation of my complaint ...

and ask a board of adjudication to decide my complaint on an expedited basis.”

Pursuant to section 19(1)(c) of the *Yukon Human Rights Act* (the “Act”) the YHRC has jurisdiction to cease investigating a complaint where “the victim of the contravention asks that the investigation be stopped”. Thus, the YHRC will comply with the first part of your request and henceforth stops further investigation of your complaint.

Unfortunately however, the YHRC cannot comply with the second part of your request to refer your complaint to the board of adjudication for decision. That is because the YHRC lacks the jurisdiction to refer *any matter* to the Board of Adjudication until *after* the investigation has been completed.

Section 20(c) of the *Act* states:

“*After investigation*, the commission shall...ask a board of adjudication to decide the complaint.”
(emphasis added)

Section 7 of the *Human Rights Regulations* (the “*Regulations*”) also requires the completion of the investigation before a matter can be referred to the board of adjudication for decision. The relevant provisions are as follows:

“Section 7(1) The Director of Human Rights, the complainant, or the respondent may request the Commission to ask a board of adjudication to decide the complaint.

(2) *The decision to ask a board of adjudication to decide the complaint* may be made only by the Commission and *shall not be made until after the Commission has...*

(b) *considered any written or oral submissions by or on behalf of the complainant or the respondent and the report of the Director about the investigation of the complaint.*
(emphasis added)

It is implicit in section 7(2) that “the report of the Director about the investigation” cannot be completed until the investigation is completed.

Simply put, there is no provision in either the *Act* or the *Regulations* which would allow the YHRC to refer a complaint directly to the board of adjudication prior to the completion of the investigation.

In view of the YHRC's inability to comply with the second part of your request, you may wish to reconsider your request to stop the investigation. The YHRC assumes that you are reluctant to have it continue with the investigation as you have raised questions about its impartiality (your letter of February 16th, 2001), and the impartiality of the Director (your letter of February 5th, 2001).

While neither the YHRC nor the Director acknowledge that you have a reasonable apprehension of bias in the event they should continue to act on this complaint, the YHRC is prepared to explore the possibility of having another outside body or commission continue the investigation on its behalf. If this happens, you must understand that the other body or commission would still be acting as agent for the YHRC and that the disposition under section 20 of the *Act* would still be made by the YHRC. If such an outside body or commission cannot be found, then the YHRC is prepared to continue the investigation on your request.

In either event, further time would be required in order to complete the investigation. If the investigation is delegated, the amount of additional time required may be largely beyond the control of the YHRC. Thus, if you choose to have the YHRC complete the investigation, either by delegation or by itself, you must also understand that this will impact any future argument you may make about unreasonable delay. Obviously, if you continue to provide the YHRC with additional information relating to your complaint, the time required will increase.

Once again, and acknowledging your letter and fax of March 7th, 2001, I ask that as a matter of professional courtesy you address your replies to me rather than to my client directly.

March 20, 2001

Mr. Justice Vickers hears the petition and his findings are clear. (Excerpt from Docket S.C. No. 00-A0263, March 20, 2001:)

[7] Section 20 provides the Commission with three options: The Commission may either dismiss the complaint, try to settle the complaint, or ask a board of adjudication to decide the complaint. It is clear, however, that the

Commission is not able to select any one of those three options until after the investigation is complete.

[8] In my view, Regulation 7 must be read in a manner which is consistent with the clear direction provided the Commission in s. 20 of the *Act*. In my view, there is no jurisdiction in the Commission to ask a board of adjudication to decide the complaint until after the investigation is complete.

March 22, 2001

Letter of Miller Thomson (Mr. Gower) to Mr. Mazhero. I set out the body of the letter in full:

Dear Sir:

Re: Human Rights Complaint - #W.176-99

I have received copies of the letters you faxed to the Commission on March 20th and 21st, 2001 and the letter you faxed to Molly Riordan on March 21st, 2001. I have been instructed to reply to you on behalf of the Commission and Ms. Riordan. I will try to be brief and to the point:

1. Please understand that the Commission stopped its investigation of your complaint on March 14th, 2001, at your request. This was communicated to you in my letter of that date. This was also accepted as a fact by Mr. Justice Vickers in Chambers on March 20th and accordingly it was not necessary for the Court to order that the investigation be stopped. There is no investigation ongoing at this time.
2. As I also indicated in my letter of March 14th, the Commission is prepared to continue the investigation on your request. So far, you have not specifically requested the Commission to do so. Until you do, the investigation will not be re-started and the Commission will have no further involvement in your complaint. Accordingly, neither the Commission nor Commission staff will be responding to any further correspondence from you relating to this complaint.
3. Should you expressly request the Commission to re-start its investigation, it will do so. However, given the limited resources of the Office of the Commission at the present time, it will probably be necessary to forward the investigation to an outside body or commission for completion. If that is done, then it will be up to that outside agency to estimate how long it

may take to complete the investigation and produce an Investigation Report.

4. As a result of the foregoing, neither the Commission nor Molly Riordan are in a position to answer the questions raised in your letters of March 20th and 21st. Nor will the Commissioners meet with you as you requested. I repeat, at present, the Commission has no further dealings with your complaint. In any event (as expressed in Laurie Henderson's letter to you of February 1st, 2001), it would be entirely inappropriate for the Commissioners to meet with you privately on *any* complaint prior to making a disposition under section 20 of the *Human Rights Act*. Indeed, it could be a breach of natural justice for the Commissioners to meet with you privately at any time (outside of a hearing context) prior to your complaint being ultimately disposed of through the human rights process.

March 23, 2001	Mr. Mazhero files this petition.
April 4, 2001	Mr. Mazhero appeals Mr. Justice Vickers' dismissal of his petition to the Yukon Court of Appeal.
April 25, 2001	Mr. Mazhero files the Notice of Motion in this petition.
April 27, 2001	A letter from Mr. Mazhero to the Yukon Human Rights Commission, Exhibit 6 to the Affidavit of Mr. Mazhero, sworn April 27, 2001, attached as Schedule 3 of this judgment.
April 30, 2001	Amended petition is filed just before the commencement of the hearing.
April 30, 2001	The Notice of Motion and Petition in this action, S.C. No. 00-A0289 are heard.

DECISION RE: PRODUCTION OF DOCUMENTS

[5] The documents are not producible. The application is dismissed.

REASONS FOR DECISION

[6] Mr. Mazhero claimed in the application before Mr. Justice Vickers that the investigation was complete and therefore Justice Vickers had ordered the Commission

to proceed to an adjudication. Justice Vickers ruled that the process was not complete until the investigation was complete and the Commissioners had decided to proceed with the options open to the Commissioners by s. 20 of the *Act*.

[7] Mr. Mazhero claims that counsel for the Commission, when it advised Mr. Justice Vickers that the investigation was not complete, was lying to the court. If Mr. Justice Vickers was lied to, leading him to make a decision on false facts discovered by Mr. Mazhero after he had spoken to Ms. Riordan subsequent to the hearing before Justice Vickers, that is a matter that can be brought before the Court of Appeal as new evidence. I hasten to say that in my opinion the fact that the interviews may have been complete, and a preliminary report drafted (both of which depend upon Mr. Mazhero's recollection of the discussion with Ms. Riordan), does not alter the fact that I agree with the representation by counsel for the Commission before Justice Vickers that the investigation was not complete. It is clear to me that the Commission's investigation is complete when the Commission has done its work. It has done its work when it has released its final report and made a decision to proceed in one of the three ways set out in s. 20 of the Yukon *Human Rights Act*. Mr. Mazhero is trying indirectly to obtain, in these proceedings, fuel for his appeal from the order of Mr. Justice Vickers in the Yukon Court of Appeal. The allegation before me that Mr. Gower has lied to the Court is typical of Mr. Mazhero's paranoid frontal attack upon the integrity of all whom he perceives as inimical to his interests.

[8] The second ground for dismissing this application is that disclosure of the transcripts of the interviews with the 13 witnesses and disclosure of the draft report have no relevance to the issue of delay. The time and fact that such interviews were

conducted and transcripts were prepared may be relevant. The time of preparation of the draft report of the investigation may be relevant, but the actual contents of them is not. Therefore, a second reason for refusing the disclosure requested is irrelevance.

RELIEF REQUESTED

1. *An order in the nature of prohibition prohibiting the Yukon Human Rights Commission ("the Commission") from continuing its investigation of the human rights complaint filed against the Yukon Department of Education by the Petitioner in November, 1999.*

[9] I agree completely with what Mr. Gower, as counsel for the Human Rights Commission, wrote on March 14, 2001, where he interpreted the following passage from Mr. Mazhero's letter of February 16th as a request within the meaning of s. 19(1)(c) of the *Yukon Human Rights Act* as a situation where:

The victim of the contravention asks that the investigation be stopped.

[10] The words quoted from Mr. Mazhero's letter are:

In the circumstances, I request the Commissioners to terminate forthwith the Commission's investigation ... and ask a board of adjudication to decide my complaint on an expedited basis.

[11] Further, I find that Mr. Mazhero takes the position that the words "re-start the investigation" is simply an invitation to completely begin the process again as opposed to continuing the process from where it left off.

[12] A reading of the correspondence from Mr. Gower makes it clear that the Commission is prepared to continue the investigation and, if requested by Mr. Mazhero, have that continuation before an outside body or Commission:

[13] In any event, Mr. Mazhero has not responded positively to the invitation to continue the investigation. Therefore, he has stopped the investigation. Because the investigation is stopped, there is no necessity for an order of prohibition and the application for an order of prohibition is dismissed.

2. *A declaration that the Yukon Human Rights Commissioners ("the Commissioners") and Commission have delayed unreasonably in processing the Petitioner's complaint.*

[14] The evidence is overwhelming that the Commissioner, particularly through its investigator, Ms. Riordan, has proceeded with reasonable dispatch. Firstly, Mr. Mazhero argued that the identity of most of the witnesses was known to Ms. Riordan at the time or shortly after the complaint was filed. Therefore, these interviews should have been conducted at that time instead of waiting until September 2000.

[15] Secondly, Mr. Mazhero argued that nothing was done from June 23, 2000 until the commencement of the interview of witnesses on September 8, 2000. It is common ground and I take judicial notice of the fact that in the Yukon Territory those involved with the educational system are, for the most part, on holidays outside of the Yukon for the greater part of July and August. As the record shows, Mr. Mazhero kept up a barrage of correspondence, including continuous efforts at expanding the inquiry during that period of time. For the most part, all of Mr. Mazhero's inquiries were answered. It is also obvious to anyone that at some point, probably after June 23, 2000, that the arrangements for the questioning of witnesses had to be made. Since the complaint was against many members of the Yukon Department of Education and the Department itself, I cannot find any inordinate delay whatever during the period of June 23, 2000 to September 8, 2000.

[16] Finally, Mr. Mazhero argued that because the Commission was aware that a new school year was starting in September and that the resolution of his complaints against the Yukon Department of Education seemed in his perception, and in mine, to require resolution before he could become considered for employment, the Commission should have hastened the process. Mr. Mazhero does not seem to take into account that the allegations against the Yukon Department of Education and many of its personnel of human rights abuses and criminal offences, such as forgery, if proved, would likely have a very serious impact upon the professional standing of these people and ultimately to their ability to earn a livelihood.

[17] The Supreme Court of Canada dealt with the obligations of Human Rights Commissions in the case of *Blencoe v. British Columbia (Human Rights Commission)* 2000 S.C.C. 44. At para. 127 of the judgment of Mr. Justice Bastarache, he states:

The principles of natural justice also require that both sides be given an opportunity to participate in reviewing documents at various stages in the process and to review the investigation report. The parties therefore have a chance to make submissions before a referral is made to the Tribunal. These steps in the process take time. Indeed, the Commission was under a statutory obligation to proceed as it did. The process itself was not challenged in this case. True, the Commission took longer than is desirable to process these Complaints. I am not condoning that. Nevertheless, McEachern C.J.B.C. has exaggerated in stating that "a week at the outside would have sufficed" to investigate these Complaints (para. 51). While the case may not have been an extremely complicated one, these stages are necessary for the protection of the respondents in the context of the human rights complaints system.

[18] While Mr. Mazhero does not complain that the delay from September 8th to January 5th (the end of the Examination of Witnesses) was unreasonable (except that

he is unable to be employed during that period), I specifically make the finding that there is nothing inordinately long about employing that period of time to obtain the evidence of 13 witnesses.

[19] During the period from January 5, 2001 until February 16, 2001, when Mr. Mazhero stopped the investigation, it is obvious that Mr. Mazhero and the Commission were still corresponding and that work was still continuing. Even accepting Mr. Mazhero's contention that the last witness was interviewed on January 5, 2001 and that the interview of the witnesses was complete, I certainly would not find it unusual that a further period of one or two months would go by before the release of the preliminary report to both sides for comment.

[20] It is my view that any delay from and after February 16, 2001 is entirely a result of Mr. Mazhero's letter dated February 16, 2001, and his refusal to accept any reasonable offer to continue the investigation.

[21] I note that in *Blencoe, supra*, the court, while not countenancing the fact that nothing had happened with the investigation for a solid period of 5 months, did not find that such a delay *per se* amounted to an unreasonable delay warranting judicial interference. I also note the period in the *Blencoe, supra* case, from the laying of the complaint to the decision of the Commissioner to send the matter on for a hearing before the tribunal was a total of 23 months. In this case, Mr. Mazhero decided to end the investigation and seek judicial intervention 14 ½ months after the investigation had been launched.

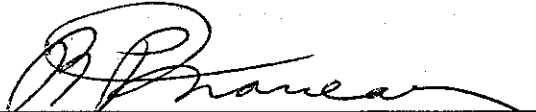
[22] Having regard to the onus upon the petitioner in this case to show that the delay in processing the complaints is one that would offend the community's sense of decency and fairness, I have reached the conclusion that far from finding inordinate delay, Mr. Mazhero has not established any delay which is not completely reasonable having regard to the nature of the proceedings and having regard, especially, to his totally unreasonable badgering of the Commission, its Director, its personnel, and the assigned investigator.

[23] In light of Mr. Mazhero's continuous efforts at expanding the ambit and the targets of the investigation, I am somewhat surprised that the Commission was able to accomplish as much as it did in the time that it dealt with this complaint.

[24] I find the application for a declaration that there has been unreasonable delay in processing the petitioner's complaint to be wholly without foundation. I therefore dismiss the application for a declaration to that effect as well.

[25] The Petition and the Notice of Motion are therefore dismissed in their entirety.

[26] The respondent is awarded costs of the motion and the petition to be taxed.

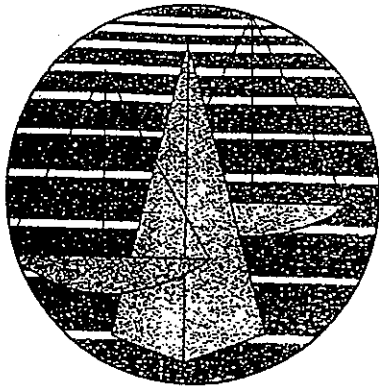

Marceau J.

Francis Mazhero

Unrepresented

Leigh F. Gower

Counsel for the Respondent



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Tthak Nihk'it Tr'igwindaii

December 11, 2000

Francis Mazhero
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Y1A 3M5

This is Exhibit ⁴³ "referred
to in the affidavit of
..... MOLLY R. JORDAN
sworn before at WHITEHORSE
this 16th day of MARCH, 2001
.....
A Notary Public in and for
the Yukon Territory

Dear Mr. Mazhero

The Yukon Human Rights Commission (the 'Commission') is in receipt of letters from yourself dated 24 November, 2000; 19 October, 2000; 6 October, 2000; 4 October, 2000; and 3 October, 2000. Please accept this as our response to the concerns raised in all of the referred to correspondence.

In your letters you raise issues that suggest that the complaints with the Commission by yourself will not be treated fairly. Before turning to the specific issues raised, the Commission wishes to reaffirm with you that it is fundamental tenet of our work to ensure fairness in investigating and in attempting to resolve complaints put before the Commission. All of our procedures and practices have been developed, and will be applied, to ensure that your rights of procedural fairness and natural justice will be respected.

Your correspondence raised two specific issues that we want to address. The first of these involves disclosure of information. The Commission is fully aware that all parties to a complaint must have the ability to know the case against them and to respond to that case. However, in our view, this does not mean that a complainant or a respondent has the right to review all information acquired by the Commission in the course of an investigation. Clearly not all of the information gathered will ultimately prove to be relevant to the matter at hand and given that the Commission has the responsibility of treating the information that it receives with the outmost respect and confidence it cannot simply hand over all information it gathers to a complainant or respondent. Determining the relevance of information gathered is the responsibility of our staff; a responsibility that the Commission believes is taken with a great deal of professionalism.

SCHEDULE 1

With respect to the information used in reviewing a complaint, it is the Commission's practice to consolidate the 'case' to be presented to the Commissioners in an Investigation Report. To ensure fairness to complainants and respondents, the Commission has instituted a system of checks and balances which enable both the complainant and respondent to learn of the information gathered by the Investigator that has been deemed relevant to the complaint and to respond to this material accordingly. To this end, a copy of the Investigation Report will be provided to you and the respondent for each of your filed complaints for your respective comment and, as appropriate, rebuttal. At that point in time, as well as at any point in the investigation, you may provide the Investigation Officer with any information you believe to be germane to the report. If you have any concerns about the information contained in the Investigation Report, the Commission asks that you express your concerns to us when you receive the Report.

For your information, it is only when the Investigation Report is complete and any response provided by yourself or the respondent that the matter will be placed before the Commission. The Commission will not go behind the Investigation Report and the responses provided by yourself and respondent on the Investigation Report in reviewing the matter for disposition purposes. Thus, it is imperative that if you have any concerns about the investigation conducted and the manner in which it is summarized in the Investigation Report that you articulate these concerns in your response to the Investigation Report.

On a related matter, in your letter dated October 4th, 2000 you requested that the Commission entertain an 'in camera affidavit' respecting File No. W.176-99. It is the view of the Commission that to receive information from you that is not provided to the Yukon Government would be prejudicial to the Yukon Government as they would not be provided the opportunity to know the full case against them and to respond accordingly. Again, our disposition of the matter will be based upon the Investigation Report. Any concerns you have about the information that may ultimately be detailed in the Investigation Report should be raised by yourself, with substantiation, in your response to the Investigation Report.

In closing, the Commission acknowledges the difficulties and challenges that inevitably fall to you and your family while your complaints are under investigation. Complaint W168-99 was put before the Commission at our December 8th disposition meeting and the results of our review will be conveyed to you under separate cover. As for your other complaints, we wish to remind you that although we have very dedicated and professional staff who work diligently to thoroughly and fairly review all complaints filed with the Commission, the Commission is not a large organization and we do not have a wealth of staff available to us. This said, please accept our assurance that we are endeavouring to complete the necessary investigation and analysis in a timely a fashion as possible.

Thank you for bringing your concerns to the Commission.

Yours truly,

On behalf of
The Commissioners
Yukon Human Rights Commission

Tel.: (867) 393-2488
Fax: (867) 393-2387

55 Teslin Road
Whitehorse, YT
Y1A 3M5

By Fax: (867) 667-2662

16th February, 2001

Yukon Human Rights Commission
201-211 Hawkins Street
Whitehorse, Yukon
Y1A 1X3

Attention: Ms. Laurie Henderson, Co-Chair

This is Exhibit "55" referred
to in the affidavit of
MOLLY RIORDAN
sworn before at WHITEHORSE
this 16th day of FEBRUARY, 2001.


A Notary Public in and for
the Yukon Territory

Dear Ms. Henderson:

Re: Your Letter Dated February 12, 2001

I refer to your above-captioned letter, for which I thank you.

As you know, this is not the first time I have requested a meeting with the Commissioners and have been turned down.

I decline the request of the Commissioners to document my concerns for the umpteenth time. I have already done that in several letters in the custody of the Human Rights Commission ("the Commission").

It is clear to me that my relationship with the Commissioners and the Commission has broken down. The events of the past several months as well as your recent letters, including the above-noted letter, confirm it.

Further, the decision of the Commission to refuse to grant me access to certain information gathered by the investigator assigned to my complaint raises serious question about the impartiality of the Commission and the integrity of the investigation itself.

More importantly, there has been unacceptable delay in the human rights process with regards to my complaint and as a result of the delay my family and I have suffered untold prejudice while the Commissioners and the Commission have looked the other way. It is as if the Commission is waiting for something to happen that will enable it to walk away from my complaint honourably.

No wonder it is difficult to understand why there has been no attempt at mediation in this matter. It appears to me that this is precisely the kind of case tailor made for a mediated resolution for which the *Human Rights Act* provides. In my view, because my livelihood has been threatened, this complaint should have been dealt with expeditiously so that my family and may get on with our lives.

The events which gave rise to the complaint have affected my life so deeply that I do not think it will ever recover its lustre. I have had a stellar academic career which has now been shattered. How can anyone compensate me for what I have lost? The Commission is aware of this, but has exacerbated my problems by excessive delay in processing my complaint.

Indeed, I will go as far as saying that the Commission's unreasonable delay in processing my complaint amounts to an abuse of process as well as a denial of natural justice and procedural fairness, and is contrary to section 7 of the *Canadian Charter of Rights and Freedoms*.

The Minister of Education, his department and the Public Service Commission have all asserted that I will not be considered for employment in the Yukon public education system as long as my human rights and Ombudsman complaints remain unresolved. The Commission is aware of this, but has not done anything about it.

Also, there is evidence that certain employees of the Territorial Government, including the Public Service Commissioner, are retaliating against me for filing a human rights complaint against the Department of Education. I have written to the Commission about this in the past, and the Commission has basically told me to go to hell against the background of a *Human Rights Act* which abhors retaliation and the filing of false reports in the human rights process.

In the circumstances, I request the Commissioners to terminate forthwith the Commission's investigation of my complaint which has for the past 15 months old followed, and I do not like using harsh words, a lethargic and listless course, and ask a board of adjudication to decide my complaint on an expedited basis. I expect the Commissioners to make the necessary arrangements to have my complete file transferred to a board of adjudication.

SCHEDULE 2

3

If the Commissioners deny my request, please be informed that I will seek appropriate relief from the Court as well as an award of costs against the Commissioners and the Commission. I trust that will not prove necessary.

Finally, please let me have your response by **Wednesday, February 21, 2001.**

Very respectfully yours,



Francis Mazhero.

55 Teslin Road
Whitehorse, YT
Y1A 3M5

By Fax: (867) 667-2662

27th April, 2001

Yukon Human Rights Commission
and Commissioners
201-211 Hawkins Street
Whitehorse, Yukon
Y1A 1X3

Attn: Yukon Human Rights Commissioners

This is Exhibit " 6 " referred to in
the affidavit of FRANCIS MURPHY
sworn before me at Whitehorse
in the Yukon Territory
this 27th day of April A.D. 2001
[Signature]
A Notary Public in and for
the Yukon Territory

Dear Sirs & Mesdames:

Re: S.C. Action No.: 00-A0289

Enclosed please find for service upon you a copy of my Amended Petition to the Court in the above-captioned matter.

I had hoped that the Commissioners would accede to my request for a meeting this morning to discuss the contents of counsel's letter of April 25, 2001, in the light of the transcript of the proceeding on March 20, 2001 as well as Molly Riordan's statement on April 2, 2001, that she started preparing the investigation report in respect of human rights complaint File #W176.99 in December, 2000. The meeting did not happen. I have no choice but to ask the Court to deal with this matter.

I am extremely concerned that the Yukon Human Rights Commission and Commissioners as well as their lawyer lied to Mr. Justice Vickers and myself on March 20, 2001, when counsel stated that the Commission's investigation of my complaint is incomplete and ongoing.

All of you knew at the time counsel made this statement that the investigation was complete and that Moly Riordan had prepared a report. That, to say the least, is unacceptable.

To make matters worse counsel has been pressuring me to ask the Commission to re-start its investigation of my complaint, and at the same

To make matters worse, counsel has been pressuring me to ask the Commission to re-start its investigation of my complaint, and at the same time, refusing to tell me what it is that the Commission still needs to do to complete its investigation. That too is unacceptable.

Finally, please be informed that I will be filing a further affidavit to support the allegations contained in this letter.

Very respectfully yours,



Francis Mazhero.

Encl.