

Date: 20010509
Docket: S.C. No. 00-A0196
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

IN THE MATTER OF THE ACCESS TO INFORMATION AND PROTECTION
OF PRIVACY ACT, S.Y. 1995, c. 1

AND IN THE MATTER OF THE ACCESS TO INFORMATION AND
PROTECTION OF PRIVACY (CONSEQUENTIAL AMENDMENTS) ACT,
S.Y. 1997, c. 4

AND IN THE MATTER OF THE OMBUDSMAN ACT, S.Y. 1995, c. 17

BETWEEN:

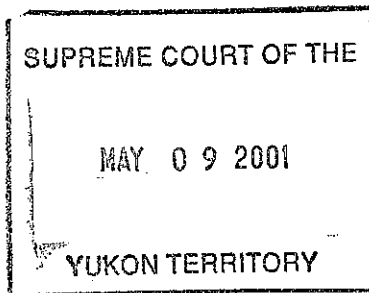
FRANCIS MAZHERO

PETITIONER

AND:

OMBUDSMAN & INFORMATION AND PRIVACY COMMISSIONER
OF YUKON TERRITORY

RESPONDENT



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

INTRODUCTION

[1] The petitioner, Mr. Mazhero, filed his petition on December 19, 2000. It was amended on March 15, 2001 and heard by me on May 1st and 2nd, 2001. The petitioner applies to the court for the following orders and declarations:

1. An order in the nature of certiorari quashing the Respondent Ombudsman's decisions not to step aside as Ombudsman and Information and Privacy Commissioner with respect to the Petitioner's complaints and outstanding requests for review under the *Ombudsman Act*, S.Y. 1995, c. 17, and the *Access to Information and Protection of Privacy Act*, S.Y. 1995, c. 1;
2. An order in the nature of mandamus requiring the Respondent Ombudsman to notify the Speaker of the Legislative Assembly about the recusal referred to in paragraph 1 above pursuant to section 48(5) of the *Access to Information and Protection of Privacy (Consequential Amendments) Act*, S.Y. 1997, c.4;
3. An order in the nature of prohibition prohibiting the Respondent Ombudsman from processing the Petitioner's complaints and requests for review under the *Ombudsman Act*, S.Y. 1995, c. 17, and the *Access to Information and Protection of Privacy Act*, S.Y. 1995, c. 1;
4. A declaration that the delay in processing the Petitioner's complaints and requests for review referred to in paragraph 1 above was not incurred in good faith;
5. A declaration that all the Commissioner's Reports After Review reports issued after November 3, 2000, by the Respondent Ombudsman in respect of the Petitioner's requests for review and complaints under the *Access to Information and Protection of Privacy Act*, S.Y. 1995, c. 1, are null and void;
6. Costs of this proceeding; and
7. Such further and other relief as this Honourable Court deems just.

ISSUE

[2] None of the relief claimed is available unless there has been an unreasonable delay in the processing of the petitioner's claims for and requests for review under the

Access to Information and Protection of Privacy Act ("ATIPP Act") or there are grounds to disqualify the Privacy Commissioner and Ombudsman for bias.

CLARIFICATION

[3] It is important to note that in the Yukon Territory the same person, Mr. Moorlag, is the Ombudsman appointed by the Yukon Legislative Assembly under the *Ombudsman Act*, S.Y. 1995, c. 17 and the Privacy Commissioner appointed under the provisions of the *Access to Information and Protection of Privacy Act*, S.Y. 1995, c. 1.

[4] The Yukon Territory has a population of approximately 30,000 people. It was the opinion of government that neither position was required to be full-time.

[5] In considering delay, I appreciate that evidence of bias or bad faith is relevant. In considering bias, I appreciate that evidence of delay, especially inordinate delay, or bad faith, may be relevant. The evidence as a whole must be considered.

[6] While there are complaints before the Ombudsman, the only aspect of delay attributed to the Ombudsman was his decision to deal with the *ATIPP Act* Requests for Review in priority to the complaints under the *Ombudsman Act* because the Requests for Review had a legislated mandatory response period, failing which the request would be deemed refused. (See *ATIPP Act*, s. 43(6)).

[7] A refusal is subject to an appeal to this court. (See *ATIPP Act*, s. 59).

HISTORY

[8] On May 1, 2000, Mr. Mazhero made a complaint under the *Ombudsman Act* against the Department of Education concerning his application for Yukon Teachers Certification, his application for employment, his consultancy at Selkirk Street Elementary School, irregularities in his time records and membership in the bargaining unit of the Yukon Teachers' Association.

[9] Section 42 of the *ATIPP Act* reads:

General powers of commissioner

42. In addition to the commissioner's powers and duties under Part 5 with respect to reviews, the commissioner is responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

- (a) inform the public about this Act; and
- (b) receive complaints or comments from the public concerning the administration of this Act, conduct investigations into those complaints, and report on those investigations; and
- (c) comment on the implications for access to information or for protection of privacy of existing or proposed legislative schemes or programs of public bodies;
- (d) authorize the collection of personal information from sources other than the individual the information is about; and
- (e) report to a Minister information and the commissioner's comments and recommendations about any instance of maladministration of the management or safekeeping of a record or information in the custody of or under the control of a public body.

[10] Under that section, between December 1999 and the filing of that petition, the petitioner filed 27 complaints. Section 48(1) of the ATIPP Act reads:

Right to ask commissioner for a review

48.(1) A person who makes a request under section 6 for access to a record may request the commissioner to review

- (a) a refusal by the public body or the archivist to grant access to the record; or
- (b) a decision by the public body or the archivist to separate or obliterate information from the record; or
- (c) a decision about an extension of time under section 12 for responding to a request for access to a record; [or]
- (d) a decision by a public body or the archivist to not waive a part or all of a fee imposed under this Act.

[11] During the 18-month period between September 13, 1999 and February 28, 2001, the petitioner filed 28 Requests for Review.

[12] On August 7, 2000 Mr. Mazhero filed a second complaint with the Ombudsman, registering a formal complaint against:

A lawyer for the Department of Justice, Yukon

A lawyer for the Department of Justice, Canada

A person employed by the Yukon Public Service Commission

A person employed by the Department of Education.

[13] Accompanying Mr. Mazhero's complaint was a short letter in which Mr. Mazhero stated:

I am an educationalist by training. The school year starts on September 5, 2000. Therefore, I request you to deal with this matter on an expedited basis.

[14] Mr. Moorlag wrote to Mr. Mazhero on August 8, 2000. I set out the body of that letter:

Dear Mr. Mazhero:

Re: Complaint to the Ombudsman
Our files 00-048 and 00-090

Thank you for your letter of August 7, 2000.

I have read the details of your complaint (our file 00-090) and have asked my Assistant, Catherine Buckler to conduct an analysis. This analysis is intended to examine all aspects of this complaint as well as your previous complaint (our file 00-048) made by letter, of May 1, 2000 with an addendum dated July 12, 2000. I would like to determine what, if any, elements of these complaints may be combined. As well, I need to determine whether there is jurisdiction for an Ombudsman investigation.

Your wishes to have these complaints dealt with on an expedited basis are acknowledged and understood. You must realize, however, that I have a commitment to others with complaints before me and I must therefore establish priorities for the allocation of the office's resources. You must be aware, as well, that Requests for Review brought to this office under the *Access to Information and Protection of Privacy Act* must be completed within legislated time frames and this has limited my ability to make progress on a considerable backlog of Ombudsman cases.

Nevertheless, I have recently been successful in obtaining additional resources to address this backlog. Beginning September 1, 2000 I will have an investigator dedicated solely to Ombudsman investigations.

It is expected that the analysis of your complaints can be completed prior to that time. I will advise you of my decision about what aspects of your complaint will be investigated, and a time frame for completion.

[15] Further correspondence occurred between Mr. Mazhero and Mr. Moorlag. Mr. Mazhero was pressing for a completion date and Mr. Moorlag pointed out to Mr. Mazhero that dealing with his extensive requests under both Acts, for which he was responsible, necessitated some delay.

[16] On September 15, 2000 Mr. Horton, a lawyer in the employ of the Government of the Yukon, applied on behalf of the Public Service Commission and the Department of Education for an authorization under s. 43 of the *ATIPP Act* for each of these bodies to ignore a request made by Mr. Mazhero.

[17] Section 43 of the *ATIPP Act* reads:

Powers to authorize a public body to disregard requests

43.(1) If a public body asks, the commissioner may authorize the public body to disregard requests under section 6 that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body.

(2) If the commissioner authorizes the public body to disregard the request and the public body does disregard the request, the applicant may appeal the public body's decision to the Supreme Court under sections 59 to 61 without first requesting a review by the commissioner under section 48.

[18] On October 5, 2000, in each case, the Commissioner granted Mr. Horton's requested authorization.

[19] Those specific requests were then ignored as authorized. That allowed an appeal to this court under section 43. Mr. Mazhero promptly did three things:

1. He appealed to this court (appeal pending).

2. He complained that Mr. Horton had relied upon material he was not entitled to rely upon.
3. He asked Mr. Moorlag to recuse himself from further considering his matters both as Ombudsman and Privacy Commissioner.

Mr. Moorlag refused to do so, hence this petition.

DECISION

a) Delay

[20] There is no delay in processing the petitioner's complaints which could be considered inordinate and therefore no reason to even consider delay as evidence of bias.

[21] Inundated by the requests for investigation, requests for review and the major expansion of the May 7, 2000 complaint by Mr. Mazhero's further complaint of August 7, 2000 under the *Ombudsman Act*, Mr. Moorlag could do nothing more than question his jurisdiction, seek extra staff and attempt to organize the work in some order of priority, all of which he communicated to Mr. Mazhero.

[22] Catherine Buckler, a full time employee of the Ombudsman, in her affidavit, deals with the workload. I can not find any basis in that affidavit to believe that, but for Mr. Mazhero's barrage of complaints and requests, the government caused institutional delay of an unacceptable nature. In fact, it authorized additional staff at Mr. Moorlag's request. Mr. Mazhero did not seriously argue that the delay could be attributed to

institutional delay and I find no evidence of delay caused by the inadequacy of government resources, although I am persuaded that their resources were taxed to the limit.

[23] With respect to the complaints under the *Ombudsman Act*, I cannot see how in a perfect system those complaints commenced May 7, 2000, expanded August 7, 2000, could possibly have been adequately and fairly dealt with by the Ombudsman before November 15, 2000, the date he was asked to recuse himself or December 19, 2000, the date the petition was filed.

[24] With respect to the investigations under s. 42 of the ATIPP Act, I am satisfied on the sworn evidence of Catherine Buckler they are being dealt with as expeditiously as possible. With respect to the Requests for Review, I note from the affidavit of Catherine Buckler that statute mandated time limits were observed.

[25] The petitioner's request for judicial review based on delay is rejected.

b) Bias

[26] I am mindful of the general law in this area which states that actual bias need not be shown, rather the test is whether there is an apprehension of bias.

[27] Mr. Mazhero claims Mr. Moorlag, as Privacy Commissioner, is in a conflict with him, at least an apprehended conflict, because Mr. Mazhero has appealed two rulings adverse to him made by the Privacy Commissioner.

[28] Mr. Mazhero advanced no legal authority for the proposition that launching an appeal from a tribunal by itself disqualifies the tribunal from adjudicating on any further rights of the appellant. Counsel for the respondent informed me that they were unable to find authority dealing with this point. I am satisfied no such authority exists because it is not the law. I reject this argument.

[29] Mr. Mazhero makes the following complaints about Mr. Horton's application to the Privacy Commissioner:

1. There was but one application for both the remedy sought by the Public Service Commission and the remedy sought by the Yukon Department of Education. The accompanying material was common to both applications, so that material irrelevant to one application could have been considered.
2. In addition to requests for access to records of the Public Service Commission and the Department of Education, Mr. Horton included requests for information directed by Mr. Mazhero to other departments.
3. Mr. Horton used personal information pertaining to Mr. Mazhero of a confidential nature from the personnel file of Mr. Mazhero, maintained by the Department of Education for a purpose other than the purpose for which it was created. That is a reference to the following passage from Mr. Horton's letter to the Privacy Commissioner of September 15, 2000 (Exhibit 16 to Mr. Mazhero's affidavit of December 19, 2000):

It is also relevant to note that Francis Mazhero has initiated other proceedings that have their own processes for

obtaining information, and much of the information that is, or might be, obtained by those processes in those proceedings is the same information that Francis Mazhero is seeking access to by his requests under *the Access to Information and Protection of Privacy Act*. Those other proceedings include:

- a complaint and subsequent investigation under the *Human Rights Act*;
- an application to the Yukon Teachers Staff Relations Board;
- allegations about the conduct of public officials that he has addressed to the RCMP with the request that they investigate with a view to laying criminal charges.

[30] In connection with these points, I make the following observations.

1. It is argued by Mr. Mazhero that he should not have had these records which were created in confidence and on the understanding they would not be used except for the purpose for which they were created. In his capacity as solicitor for the Public Service Commission and the Department of Education, it is doubtful that Mr. Horton should have had these documents. The lawfulness of possession and the propriety of using them in light of the fact that the archivist (the person to whom the request is made is an employee of the Department of Education) is a question for another day and another forum.
2. It is to be noted that the public officials who were the subject matter of a complaint to the police were officers of the Department of Education. It is doubtful that Mr. Horton should have been in possession of this information.

3. Requests for information are not documents which disclose much confidential information about the requests beyond his name, address and the fact that he wishes to access records of a public body.
4. A reference to the fact that Mr. Mazhero has initiated other proceedings which might allow him to obtain the same documents without any pejorative comment about the proceedings or Mr. Mazhero is of little moment.

[31] Most importantly, I can see no reason for concluding that there is an apprehension of bias and therefore a reason for recusal of the Privacy Commissioner, where the Privacy Commissioner has specifically, in each of his two decisions, not relied upon the extraneous material.

[32] At page 3 of the Commissioner's Decision (Exhibit 17 to the affidavit of Francis Mazhero filed December 19, 2000) regarding the Department of Education, the Commissioner writes:

Section 43(1) of the ATIPP Act requires a public body to demonstrate the repetitious or systematic nature of requests under section 6 of the Act, that would unreasonably interfere with the operations of the specific public body asking for the authorization. In my view, the Public Body cannot rely on the cumulative effect of an applicant's access requests, any reviews that result from those requests, requests for corrections or annotations, in relation to a number of public bodies. Similarly, I do not believe the Public Body can rely on how the handling of informal requests, outside of section 6 of the Act, has interfered with the operation of the Public Body, nor on what other proceedings the Applicant has initiated to obtain the same or similar information.

[33] At page 3 of the Commissioner's Decision (Exhibit 17 to the affidavit of Francis Mazhero filed December 19, 2000) regarding the Public Service Commission (Public Body), the Commissioner writes:

Section 43(1) of the ATIPP Act requires a public body to demonstrate the repetitious or systematic nature of requests under section 6 of the Act, that would unreasonably interfere with the operations of the specific public body asking for the authorization. In my view, the Public Body cannot rely on the cumulative effect of an applicant's access requests, or on any reviews that result from those requests, or on requests for corrections or annotations, or its *[sic]* effect on a number of public bodies. Similarly, I do not believe the Public Body can rely on what other proceedings the Applicant has initiated to obtain the same or similar information.

[34] I am satisfied that the materials which probably should not have been before the Privacy Commissioner would not tend to disparage Mr. Mazhero as a credible person of good character in the view of the Privacy Commissioner, and their inclusion in Mr. Horton's letter is not a proper ground for prohibiting the Privacy Commissioner from adjudicating or acting upon the petitioner's other applications before the Privacy Commission.

[35] The comments of Mr. Justice Gibbs at page 231 of his unanimous decision for the Court of Appeal of British Columbia in *Adams v. Workers Compensation Board* (1989), 42 B.C.L.R. (2d) 228 can appropriately be attributed to this case:

This case is an exemplification of what appears to have become general and common practice, that of accusing persons vested with the authority to decide rights of parties of bias or reasonable apprehension of it without any extrinsic evidence to support the allegation. It is a practice which, in my opinion, is to be discouraged. An accusation of that nature is an adverse imputation on the integrity of the person against whom it is made. The sting and the doubt about

integrity lingers even when the allegation is rejected. It is the kind of allegation easily made but impossible to refute except by a general denial. It ought not to be made unless supported by sufficient evidence to demonstrate that, to a reasonable person, there is a sound basis for apprehending that the person against whom it is made will not bring an impartial mind to bear upon the cause. As I have said earlier, and on other occasions, suspicion is not enough.

[36] Without a finding of delay or bias, no remedy claimed by the petitioner is available. Accordingly, I reject in its entirety the petitioner's application for judicial review.

[37] I note from the decision of Vickers J. of March 20, 2001 in *Mazhero v. Yukon Human Rights Commission and Commissioners*, S.C. No. 00-A0263, that Mr. Mazhero's application was dismissed as being premature, in that he requested that the Commission appoint a Board of Adjudication to decide the complaint prior to the Commission exercising its power under s. 20 of the *Human Rights Act*. Mr. Mazhero has appealed the decision of Vickers J. to the Yukon Court of Appeal.

[38] Mr. Mazhero then brought the matter of *Mazhero v. Yukon Human Rights Commission and Commissioners* (S.C. No. 00-A0289) before me on April 30, 2001, the decision of which is delivered concurrently with this decision. The subject matter of that application was the same complaint dealt with in the application before Vickers J. This time, however, Mr. Mazhero sought an order to prohibit the Human Rights Commission from continuing to investigate a complaint which they had already ceased to investigate at Mr. Mazhero's own request. Mr. Mazhero also brought a motion before me, at the beginning of that application, for production of documents in the possession of the

Commission which he stated would reveal that the Commission had misled Vickers J. and which he believed may have assisted him in his appeal of that matter.

[39] A search of the public record indicates that Mr. Mazhero has brought a multiplicity of proceedings, not only in this court, but also in the Yukon Court of Appeal and in the Federal Court of Canada. The matters revealed are as follows:

1. A total of 6 proceedings to the Supreme Court of Yukon to wit:

- 00-AP012 *Mazhero v. Information and Privacy Commissioner of the Yukon Territory, Yukon Public Service Commission, Department of Education*

Appeal from the decision of the Information and Privacy Commissioner under s. 43(1) to disregard an access request.

Within this appeal, Mr. Mazhero brought a motion for production of documents and records from the Information and Privacy Commissioner, the Yukon Department of Education, the Public Service Commission, the Alberta Lawyers Insurance Association, the Public Service Alliance of Canada, the Yukon Employees Union, the Yukon Human Rights Commission and the Yukon Teachers Association.

This motion was dismissed on March 8, 2001 by McIntyre J. The appeal itself has been adjourned *sine die* and a new hearing date has yet to be set.

- 00-AP013 This proceeding has been consolidated into proceeding 00-AP012 above.

- 00-A0263 *Mazhero v. Yukon Human Rights Commission and Commissioners*

This application was for an order in the nature of *certiorari* quashing decisions of the Yukon Human Rights Commission to continue its investigation of the complaint made against the Department of Education

November 23, 1999. Mr. Mazhero also sought an order in the nature of *mandamus* requiring the Commission to appoint a Board of Adjudication to decide the complaint on an expedited basis.

This application was dismissed by Vickers J. on March 20, 2001.

- 00-A0289

Mazhero v. Yukon Human Rights Commission and Commissioners

This application was for an order of prohibition to prohibit the Yukon Human Rights Commission from continuing investigation into Mr. Mazhero's complaint of November 23, 1999. He also sought a declaration that the Commissioners delayed unreasonably in processing Mr. Mazhero's complaint.

I dismissed this application concurrently with this judgment.

- 00-A0005

Mazhero v. Yukon Human Rights Commission and Commissioners

Mr. Mazhero seeks an order of *mandamus* requiring the Human Rights Commission to investigate complaints filed against the Information and Privacy Commissioner, the Ombudsman, Linda Johnson, the Yukon Teacher's Association and Paul Nordahl.

This matter is set to be heard on June 11, 2001 before Vertes J.

2. A total of 2 appeals from decisions of this court, to wit

- 01-YU-454

Mazhero v. Yukon Human Rights Commission and Commissioners

Mr. Mazhero seeks an appeal of the decision of Vickers J.

- 01-YU-455

Mazhero v. Information and Privacy Commissioner of the Yukon Territory, Yukon Public Service Commission, Department of Education

Mr. Mazhero seeks an appeal of the decision of McIntyre J.

3. A total of two proceedings before the Federal Court – Trial Division and one proceeding before the Federal Court – Appeal Division, to wit:

- 00-F0004 *Mazhero v. Canada Industrial Relations Board, Nycole Turmel and Patricia Daws*

This is an application for judicial review arising from the failure of the CIRB to give notice to the Public Service Alliance of Canada of a complaint made by Mr. Mazhero in a timely manner. In addition, Mr. Mazhero seeks an order of *mandamus* requiring the CIRB to refer the applicant's complaint against the PSAC for an expedited hearing.

- 01-F0001 *Mazhero v. Yukon Teacher's Staff Relations Board, Debra Fendrick, Mavis Fisher, Marguerite-Marie Galipeau, Chris Gonnet, Monica Leask, Paul Nordahl, Keith Parkkari, Valerie Stehelin, Siedo Tzoegoeff*

This is an application for judicial review of a decision of the Yukon Teachers Staff Relations Board, dated March 8, 2001, to refuse to process Mr. Mazhero's complaint against several individuals.

- 01-F0002 *Mazhero v. Yukon Public Service Staff Relations Board, Edith Bramwell, Patricia Daws, Dave Hobbis, Denise Norman*

This is an application for judicial review to the Federal Court of Appeal of a decision of the YPSSRB to refuse to consolidate Mr. Mazhero's complaint against Dave Hobbis, President of the Yukon Employees Union, dated March 12, 2001 with another complaint which was filed with the Yukon Teacher's Staff Relations Board on February 22, 2001.

[40] It is clear from reviewing the numerous matters instigated by Mr. Mazhero that he seeks to attack both the procedure of various public bodies designed to protect his

rights, as well as their members, employees and even counsel. It is also clear that all of the proceedings initiated in this court that have been adjudicated upon to this date have been found to be completely without merit.

[41] Due to the overly litigious nature of Mr. Mazhero, which, as noted above, has brought a total of 5 matters before this court, some with additional motions brought within the original proceeding, which have to date been completely without merit, it occurs to me this might be an appropriate situation in which to enjoin Mr. Mazhero from issuing further process in this court without first obtaining leave.

[42] I am mindful of the decision made by Maddison J. in *Presley v. Canada (Royal Canadian Mounted Police)*, [1999] Y.J. No. 20 (QL) (S.C.), in which a motion was brought by counsel for the RCMP to enjoin Mr. Presley from instituting further proceedings without leave. In that case, Maddison J. declined to make such an order on the basis that there is no legislated authority in the Yukon for the courts to do so, as is the case in British Columbia and Alberta, as well as other provinces across Canada. He decided that it is not within the inherent jurisdiction of the court to make such an order.

[43] It appears that Maddison J. was not made aware of the case of *Yorke v. Paskell-Mede*, [1996] Q.J. No. 5102 (QL) (Sup. Ct.), in which Lagacé J. decided that where the law is silent, a court may exercise its inherent jurisdiction to make an order enjoining a party from instituting further proceedings without leave.

Where the law is silent, the inherent jurisdiction of the Court may be exercised, in any given case, by summary process. This jurisdiction include [sic], "in the case of an abuse of process, (the power for the Court) to stay or dismiss the action or impose terms as it thinks fit". And "summary process does mean that the court adopts a method of procedure which is different from the ordinary trial procedure". (at para 36)

[44] And further:

Seeing that Plaintiffs are persistent and vexatious litigants and that their actions against Defendants and others appear groundless and constitute an abuse of process, dismissal of the present action will remedy only part of the problem.

It is also necessary to declare Plaintiffs persistent and vexatious litigants, and to adopt, for future Plaintiffs' proceedings and those already instituted by them in Superior Court, a method of procedure which is different from the ordinary trial procedure.

Therefore Plaintiffs will be ordered to refrain from instituting any further proceedings in Superior Court or from continuing those previously instituted by them in Superior Court, except by leave of the Chief Justice of the Superior Court of the Province of Québec or a Judge appointed by him. (paras 41-43)

[45] I agree with Lagacé J.'s interpretation of the inherent jurisdiction of the superior courts of Canada. In fact, the Supreme Court of Canada has reiterated the essential nature of the inherent jurisdiction of superior courts of general jurisdiction with respect to controlling its own process and preventing abuse of its process. In *MacMillan Blodel Ltd. v. Simpson*, [1995] S.C.J. No. 101 (QL), Chief Justice Lamer stated:

While there were three judgments in this case, none of my colleagues took issue with my statement of the law regarding the core jurisdiction of the superior courts. The superior courts have a core or inherent jurisdiction which is integral to their operations. The jurisdiction which forms this core cannot be removed from the superior courts by either level of government, without amending the Constitution. Without this

core jurisdiction, s. 96 could not be said either to ensure uniformity in the judicial system throughout the country or to protect the independence of the judiciary. Furthermore, the power of superior courts to fully control their own process is, in our system where the superior court of general jurisdiction is central, essential to the maintenance of the rule of law itself. (at para 15)

[46] And further, quoting approvingly from Jacob's article, "The Inherent Jurisdiction of the Court" (1970) 23 Current Legal Problems 23:

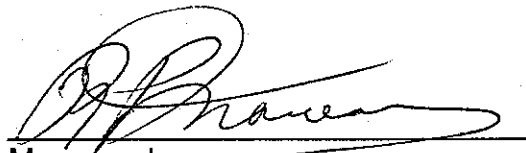
For the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed or abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. This jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law. (at para 30)

[47] As I hold that the inherent jurisdiction of this court specifically allows it to control its own process to prevent an abuse, I respectfully disagree with Maddison J. that an order enjoining a litigant, who abuses the process of this court, from instituting any further proceedings cannot be made in the Yukon. However, I endorse Maddison J.'s recommendation that the Yukon Territorial Legislature enact legislation similar to that of s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, in British Columbia or s. 24 of the *Judicature Act*, R.S.A. 1980, c. J-1, in Alberta so that no doubt remains about the jurisdiction of this court to make such an order.

[48] Obviously such an order must not be made without notice to Mr. Mazhero and without a hearing. I leave it to the Respondents in the various actions to initiate those proceedings if they are so advised.

[49] The Petition having been dismissed and the Notice of Motion having been dismissed orally at the hearing, costs of the motion and the petition are awarded to the respondent, same to be taxed.

[50] It is not necessary for Mr. Mazhero to approve the form of the order.



Marceau J.

Francis Mazhero

Unrepresented

Susan Dennehy

Counsel for the Ombudsman and the Information and
Privacy Commissioner