

Mazhero v. Yukon Human Rights Commission
2002 YKCA 5

Date: 20020529
Docket: 01-YU-454, 01-YU-455, 01-YU-460
Registry: Whitehorse

IN THE COURT OF APPEAL FOR THE YUKON TERRITORY

BETWEEN: 01-YU-454

FRANCIS MAZHERO

PETITIONER
(APPELLANT)

AND:

YUKON HUMAN RIGHTS COMMISSION and COMMISSIONERS

RESPONDENTS
(RESPONDENTS)

01-YU-455

AND BETWEEN:

FRANCIS MAZHERO

APPELLANT
(APPELLANT)

AND:

INFORMATION AND PRIVACY COMMISSIONER OF YUKON TERRITORY,
DEPARTMENT OF EDUCATION and PUBLIC SERVICE COMMISSION

RESPONDENTS
(RESPONDENTS)

AND:

ALBERTA LAWYERS INSURANCE ASSOCIATION, PUBLIC SERVICE ALLIANCE
OF CANADA, YUKON EMPLOYEES UNION, YUKON HUMAN RIGHTS
COMMISSION and YUKON TEACHERS' ASSOCIATION

THIRD PARTIES
(RESPONDENTS)

AND BETWEEN:

FRANCIS MAZHERO

PETITIONER
(APPELLANT)

AND:

YUKON HUMAN RIGHTS COMMISSION and COMMISSIONERS

RESPONDENTS
(RESPONDENTS)

**REASONS FOR JUDGMENT OF
MR. JUSTICE J.Z. VERTES**

[1] The appellant, Mr. Francis Mazhero, commenced these three appeals in April and May of 2001. They have not been materially advanced toward hearing and now the Yukon Human Rights Commission, a respondent in all three appeals, has moved for an order dismissing these appeals for delay in prosecution. Since these matters are related, I have decided to issue this one judgment.

[2] The Yukon Court of Appeal Rules (1974) contain several provisions relevant to these applications. Rule 5(1) provides that a single judge of the Court may dismiss an appeal for want of prosecution. Rule 17(1) requires the party appealing to file an appeal book within 60 days after filing of the Notice of Appeal. Rule 25(1) requires an appellant to file and serve a factum within five weeks after filing of the appeal book. Rule 32(1) states that if an appellant has not filed a factum within the time prescribed then the

respondent may move to dismiss the appeal. Finally, Rule 33 directs that the Registrar shall not accept a factum that does not comply substantially with the Rules.

[3] A brief procedural history of each appeal is required:

APPEAL NO. 01-YU-454

[4] This is an appeal of a judgment by Vickers J. issued on March 20, 2001. The subject-matter of the decision is not pertinent to this application; suffice it to say that all three appeals appear to emanate from numerous proceedings taken by the appellant as a result of complaints lodged by him with the Yukon Human Rights Commission against various government bodies.

[5] This appeal was filed on April 4, 2001. In addition, on June 25, 2001, the appellant filed a document entitled "Notice of Constitutional Question". While I need not decide anything specifically with respect to this document, it does seem to me to be misconceived. The appellant does not challenge the constitutionality of any specific statute. His "Notice" merely reiterates the relief he seeks in his Notice of Appeal. The only thing different is that he alleges a violation of his constitutional right to liberty and/or security of the person. This is something that could be argued within the context of the appeal itself. This is not the raising of a "constitutional question" (as that term is understood by the rules of procedure). Hence, I say it is misconceived and inappropriate.

[6] On this appeal, the appellant filed the appeal book on June 4, 2001, and his factum on July 9, 2001. The respondent filed its factum on July 30. Since then nothing has been done to prosecute the appeal. In August 2001, the appellant informed the

Registrar that he has moved to the Nunavut Territory. Since the appellant no longer had an address for service within the jurisdiction, an order was obtained by the respondent on August 22, 2001, providing for service by mail of anything that must be served on the appellant.

[7] On April 15, 2002, the appellant wrote to the Registrar (sent by fax) requesting that all appeals be stayed until the disposition of other matters undertaken by the appellant outside of this Court. The Registrar first telephoned and then wrote to the appellant informing him in both instances that proceedings cannot be stayed except by an order of this Court. She also informed him, in their telephone conversation, that these applications to dismiss would be brought on at this time. His response, as noted by the Registrar, was simply that he did not care, the respondent could do what it wanted, and that he had other courses of action to take.

APPEAL NO. 01-YU-455

[8] This is an appeal of a judgment by McIntyre J. issued on March 8, 2001. The Notice of Appeal was filed on April 9, 2001. The appeal book was filed but no factum has been filed by the appellant.

[9] The appellant forwarded a factum to the Registrar in August 2001, however, it was returned by the Registrar on August 24, 2001. The Registrar returned the factum for non-compliance with the Rules since the time for filing had expired. She advised the appellant that he would require an order to file the factum. No order has been sought. Since then, nothing further has been done. This appeal was included among the

matters that the appellant sought to stay in his correspondence of April 15, 2002, to the Registrar.

APPEAL NO. 01-YU-460

[10] This is an appeal of a judgment by Marceau J. issued on May 9, 2001. The Notice of Appeal was filed on May 11, 2001. Again, however, while an appeal book has been filed, the factum has not been filed. The Registrar returned the appellant's factum to him on August 24, 2001, for non-compliance. The appellant has taken no steps to resubmit it. He has taken no further steps to prosecute this appeal. Also, this proceeding was included in the matters that the appellant sought to stay.

[11] On these three applications, counsel for the respondent Commission obtained *ex parte* orders providing for service of notice on the appellant by registered mail. The Affidavit of Service sets out that the postal service tracking records show that the documents were mailed on May 2, 2002 and delivered on May 10, 2002. Therefore, there has been compliance in fact with the requirement for four clear days notice (as per Rule 39). Mr. Mazhero did not appear on this hearing, nor has he made contact either with counsel or with the Registrar.

[12] The respondent has represented himself throughout all of these proceedings, both in this Court and in the Supreme Court. Certainly it is his right to do so. Access to the courts is fundamental to our democratic society. Judges often adopt a very liberal and flexible approach when a litigant proceeds without counsel (particularly at the trial level). A litigant is often excused for immaterial non-compliance with procedural rules. But that does not mean that the rules of procedure are not to be complied with at all. All

litigation must be conducted in a manner that is fair to both sides. Procedural rules are intended to accomplish that aim. An appropriate balance must be struck to enable a personal litigant to proceed without prejudicing the other party's right to require that the rules of court be properly followed. Thus, while every court will take into account the lack of experience and professional training of the litigant, the litigant in turn must realize that implicit in the decision to act as his or her own counsel is the risk of the consequences that may flow from such lack of experience or training. This is particularly so where the litigant chooses to represent himself (as opposed to it being necessary due to an inability to obtain counsel).

[13] Here, the appellant has evidently familiarized himself with many of the necessary procedural requirements. He is capable enough to understand and follow them. Yet, when he encountered difficulties, such as his attempts to file facta that were not in compliance with the rules, he did nothing further. Even after being told by the Registrar what it was he had to do, he did not do it. So I do not think it is a question of inability to comply with the rules so much as an unwillingness to do so.

[14] I should also note that the local Registrar has gone far beyond what would normally be expected of administrative personnel. I think she is to be commended for going out of her way to advise the appellant and to communicate with him directly.

[15] Two further points are made clear from a review of these files.

[16] First, it is apparent that Mr. Mazhero is quite a vigorous litigator. In one of the judgments under appeal it was noted that the appellant has undertaken a multiplicity of proceedings, many of them covering the same ground: six actions in the Supreme

Court, four appeals in this Court, plus two actions and one appeal in the Federal Court of Canada. Many of the steps he has taken have been labeled in the past as unmeritorious, without legal foundation, irrelevant and repetitive. One judge below went so far as to consider enjoining the appellant from issuing further process in the Supreme Court without first obtaining leave.

[17] I make no ruling on these observations by other judges. They are not pertinent to the applications before me, but they do illustrate that the appellant engages in multiple litigation, much of which is speculative. In such circumstances one would expect an appellant, confronted with motions to dismiss, to aggressively defend the merits of the appeal, or at least provide an explanation for the delays. Mr. Mazhero's failure to appear at all may be an indication that he too considers these appeals superfluous. Or, at a minimum, it indicates that the appellant has no settled intention to proceed with these appeals.

[18] This point is supported by the fact that the appellant sought a stay of these appeals. This is further evidence of the appellant's apparent intention to either not proceed or to simply delay these appeals. If the appellant were serious about maintaining these appeals, but thought there were legitimate grounds for a stay, then he could have, and should have, brought a motion for that relief. He did nothing (despite receiving advice from the Registrar).

[19] The second point is that, while the courts must maintain accessibility for all members of the public, the courts also have a responsibility to protect parties from seemingly vexatious proceedings. The respondent Commission is a public body with a mandate to serve the public interest. The appellant has engaged in repetitive litigation

against it alleging things that to date have been held to be unfounded. Undoubtedly such litigation has the capacity of interfering with the Commission's work by the expenditure of time and resources. This then has the potential of detrimentally affecting other members of the public who are relying on the Commission to protect their rights. The Commission, just like any other litigant, is entitled to know that proceedings will come to an end and when.

[20] I have not gone into the question of the merits of these appeals. I have, however, reviewed the judgments on appeal and in my respectful opinion there is no apparent defect in the reasoning or conclusions recorded therein. My review of the Notices of Appeal in each case also leads me to conclude that what the appellant is seeking from this court is really nothing more than a rehearing of the initial proceedings.

[21] For these reasons, I am satisfied that there has been delay in the prosecution of these appeals and no reasonable prospect of having them heard in a timely fashion.

The applications are granted as follows:

- a) Appeal No. 01-YU-454 is dismissed. While it may be unnecessary to do so I should be specific and add that the dismissal also applies to the "Notice of Constitutional Question".
- b) Appeal No. 01-YU-455 is dismissed as against the respondent Commission. It was the only party to this appeal that brought a motion so it is the only one to benefit from this order. If the other parties wish similar relief they can bring their own applications.
- c) Appeal No. 01-YU-460 is dismissed.

[22] The respondent Commission did not claim costs in its various Notices of Motion nor did its counsel refer to costs at the hearing. Therefore, while the orders sought have been granted, there will be no costs awarded.

[23] While Mr. Mazhero is likely aware of this, I want to give him notice that he may of course appeal my rulings to a panel of the Court. I direct the Registrar to forward a copy of these reasons to Mr. Mazhero, by registered mail, to the address on file for him. I further direct that counsel for the Commission draw up the formal order for each appeal. He may file it without the necessity of obtaining the appellant's approval as to form and content.

Vertes J.A.

For the Petitioner (Appellant)

No one appearing

Counsel for the Respondent,
Yukon Human Rights Commission
and Commissioners

Leigh F. Gower