

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

FRANCIS MAZHERO

PETITIONER

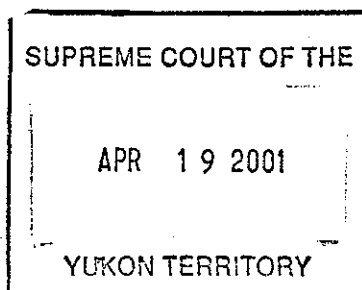
AND:

YUKON HUMAN RIGHTS COMMISSION  
AND COMMISSIONERS

RESPONDENTS

LEIGH GOWER

FRANCIS MAZHERO



For the Respondents

Appearing on his own behalf

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**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**

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[1] VICKERS J. (Oral): The petitioner filed a complaint with the Human Rights Commission on November 29, 1999. The investigation has been ongoing. He now says that there has been undue delay by the Commission in its investigation of his complaint and a reasonable apprehension of bias because of the Commission's refusal to disclose certain information obtained in the course of its investigation.

[2] He now seeks an order prohibiting the Commission from continuing its investigation and requiring the Commission to refer his complaint to a board of adjudication under the *Human Rights Act*, S.Y. 1987, c. 3. He also seeks an order for costs.

[3] Sections 19 and 20 of the *Act* read as follows:

**Complaints**

19.(1) Any person believing that there has been a contravention of this Act against him or her may complain to the commission who shall investigate the complaint unless

(a) the complaint is beyond the jurisdiction of the commission,

(b) the complaint is frivolous or vexatious, or

(c) the victim of the contravention asks that the investigation be stopped.

(2) A complaint must be made within six months of the alleged contravention.

**Disposition of complaints by commission**

20. After investigation, the commission shall

(a) dismiss the complaint, or

(b) try to settle the complaint on terms agreed to by the parties, or

(c) ask a board of adjudication to decide the complaint.

[4] By letter dated February 16, 2001, the petitioner directed the Commission to terminate its investigation. In that letter he complains of unacceptable delay in

the process. He says, in the final paragraph on page 2 of the letter, the following:

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 (sic) 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.

[5] In accordance with the request made by the petitioner, the Commission advised that the investigation was concluded in accordance with the provisions of s.19(1)(c) of the Act. Regulation 7, published pursuant to O.I.C. 1988/170, reads as follows:

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

(a) given the complainant and the respondent at least 30 days notice of when the Commission will consider whether to ask a board of adjudication to decide the complaint, and

(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.

[6] The petitioner says that Regulation 7 requires the Commission, upon his request, to seek a board of adjudication to decide his complaint. Regulation 7, however, goes on to say that the decision to ask a board of adjudication to decide the complaint may only be made upon certain terms. The Commission is also required to consider the report of the director about the investigation of the complaint.

[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.

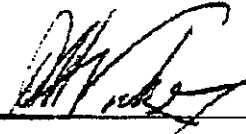
[8] In my view, Regulation 7 must be read in a manner which is consistent with the clear direction provided the Commission in s. 20 of the *Act*. In my view, there is no jurisdiction in the Commission to ask a board of adjudication to decide the complaint until after the investigation is complete.

[9] In these circumstances it is unnecessary for me to comment on the delay or make any finding of fact in that regard. I should say, however, that the record appears to be voluminous and there appear to be many reasons why it has taken such a long time to reach this particular point.

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[10] As there is no jurisdiction in the Commission to request adjudication until after the investigation is complete, the court is not able to order something which the Commission is not, by statute, able to do. Accordingly, the motion is dismissed.



VICKERS J.