

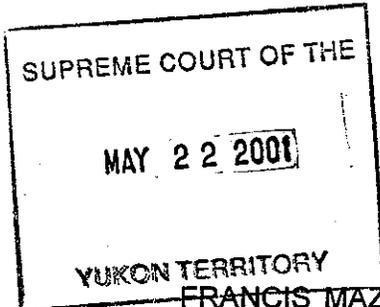
IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

FRANCIS MAZHERO

APPELLANT

AND:



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

RESPONDENTS

FRANCIS MAZHERO

Appearing on his own behalf

MONICA LEASK

For the Public Service Commission,
Department of Education,
Department of Justice Yukon, and
individually named Government of Yukon employees

SUSAN DENNEHY

For the Information and Privacy Commissioner

LEIGH GOWER

For the Yukon Human Rights Commission

DEBRA FENDRICK

For the Yukon Teachers' Association

GLEN THOMPSON

For the Public Service Alliance of Canada,
Yukon Government Employees Union,
Nycole Turmel, Jean-Claude Plamondon,
Jean Ouellette, and Denise Norman

GRANT MACDONALD

For the Alberta Lawyers Insurance Association

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] MCINTYRE J. (Oral): This application relates to the
production of documents relating to an appeal by Mr. Mazhero under the *Access
to Information and Protection of Privacy Act*, SY 1995, c. 1.

[2] Mr. Mazhero had made a request that has been identified as A-148, which request for information made its way to the Public Service Commission and the Department of Education. While that request was still pending, Mr. Mazhero made further requests: A-174 to the Public Service Commission and A-173 to the Department of Education. Those are both public bodies, and those public bodies went to the Information and Privacy Commissioner for the Yukon Territory. He held that 174 and 173 were repetitious and unnecessary requests, that they would unnecessarily interfere with the current review, and that they would unreasonably interfere with the operations of the public body. The public bodies then declined to respond to the requests on the basis of the commissioner's ruling, pursuant to s. 43 of what I will call the *Privacy Act*.

[3] Under s. 43,

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.

Subsection (2) provides that,

(2) If the commissioner authorizes the public body to disregard the request and the public body does disregard the request, --

which, I say parenthetically, has occurred here,

-- 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.

[4] It is, of course, a statutory appeal, and I agree with the suggestion that there is no *lis inter partes*, that is to say there is no question in litigation between these parties in the ordinary sense.

[5] Now, I should also say by way of parentheses that after Mr. Mazhero commenced the motions which are now before me, which are interlocutory motions relating to the production of documents prior to the appeal, that since that time the privacy commissioner has actually made decisions referring to what I have described as "prior request A-148." Those decisions are commissioner's Reports After Review; they are both dated February 27, 2001, and as I understand it, although I have not read them, the privacy commissioner has denied the applicant's original requests for information.

[6] The applicant had not received a copy of this report but did have an opportunity of looking at it over the lunch hour. I wanted him to do that because my question to him was whether he should not be focusing on an appeal from a denial of the original request, rather than an appeal of the finding, and the repetition by the public bodies that the second requests were repetitious and unnecessary in view of the first request, but Mr. Mazhero does not consider that to be appropriate at this time and maintains his request for information that is now before me.

[7] The provisions of the *Act* with respect to an appeal are set out in ss. 59 and following. With respect to the appeal, as I say, it is clear that this is an appeal from the decision of the public bodies, refusing access, having had the benefit of the commissioner's ruling. Section 60 provides that the Supreme Court may conduct a new hearing and consider any matter that the commissioner could have considered, and indeed, the Court may examine any record privately in order to determine the issue involved. In subsection (2),

60.(2) ...the...Court may, on an appeal, examine any record in the custody or under the [protection]...of a public body.

[8] Under s. 61,

61. ...the Supreme Court must decide whether the public body is required or authorized to refuse access and may

(a) order that the public body give the applicant access to all or part of the record, if the court determines that the public body is not authorized or required to refuse [that]...access; or

(b) confirm the public body's refusal to give access to all or part of the record....

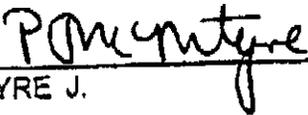
[9] In my view, the issue on the appeal in this case is a narrow issue, and it is whether the public bodies were correct in refusing access on the basis that the requests were repetitious and unnecessary. Mr. Mazhero has served a number of parties, including many who are not public bodies, and relies on Rule 26 of the

[10] In my view, it is unlikely that Rule 26 applies to this kind of application, but I do not intend to ultimately decide that issue today. I am not persuaded that anything that Mr. Mazhero has asked for is relevant to the narrow issue on the appeal that will be heard later. I consider that what Mr. Mazhero is engaged in is a fishing expedition with a very broad net: he seeks to get documents which, in my view, he has already been refused, and so I agree with the proposition that he is attempting to get indirectly what he cannot get directly, and as well, he is attempting to get documents which are obviously privileged.

[11] But those are not my main concerns. My main concern in this matter is that I have not been persuaded that any of the documents that Mr. Mazhero seeks at this time are relevant to the appeal, and I therefore dismiss your application, Mr. Mazhero, insofar as you are looking for documents prior to the appeal.

[12] In my view, this appeal can be decided on the basis of the information that, in fact, is already in affidavit form and forms part of the record.

[13] Those are my reasons for this decision.



McINTYRE J.