

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN: S.C. No. 00-A0174
TRANS NORTH TURBO AIR LIMITED
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN
DEFENDANTS

AND BETWEEN: S.C. No. 00-A0226
ROBERT BRIAN CAMERON
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN
DEFENDANTS

AND BETWEEN: S.C. No. 00-A0211
ALMON LANDAIR LTD.
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN
DEFENDANTS

AND BETWEEN: S.C. No. 00-A0212
SUMMIT AIR CHARTERS LTD.
PLAINTIFF

AND:
NORTH 60 PETRO LTD., PATRICK O'HAGAN AND BRIAN LARKIN

DEFENDANTS

R. PATRICK SAUL and
DARRYL G. PANKRATZ

Appearing for Trans North Turbo Air Limited
and Robert Brian Cameron

PETER CHOMICKI, Q.C.

Appearing for Almon Landair Ltd. and
Summit Air Charters Ltd.

RICK B. DAVISON, Q.C. and
BRUCE CHURCHILL-SMITH

Appearing for the defendants

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): Mr. Saul, on behalf of Trans North Turbo Air, wishes to exercise his right under Rule 40(17.2) to call Mr. O'Hagan, an adverse party, as his first witness.

[2] Rule 40(17.2) expressly requires no notice if the witness is present at the trial. Mr. Davison, counsel for North 60 Petro Ltd., was clearly taken by surprise and objects to the procedure. While I have sympathy for Mr. Davison, who was clearly taken by surprise because he expected Mr. Dean to be called, the rule is very clear that no notice need be given.

[3] Rule 40(20) also permits the cross-examination of Mr. O'Hagan by counsel for Trans North Turbo Air and limits cross-examine by counsel for Mr. O'Hagan to matters brought out in the examination in chief. There is very little case law with respect to Rule 40(17.2), which appears to me to have been enacted in 1997. In

Doman Industries Ltd. v. British Columbia (Superintendent of Brokers) (1996), B.C.J. No. 2631, B.C.C.A., Madam Justice Southin said, with respect to Rules 40(17) and 40(20) at paragraph 47, and I quote:

So far as I am aware, it has never been held that the Supreme Court Rules, insofar as they permit the calling of the opposite party and his cross-examination, are in any way a breach of the concept of procedural fairness.

[4] The unspoken issue here is that the solicitor for North 60 Petro may not have had the opportunity to prepare his client for the examination, which would likely have occurred if notice were given under Rule 40(17.1). However, Rule 40(17.2) expressly does not require notice where the adverse party is in attendance at the trial.

VEALE J.