A possible explanation for the decision to proceed at all and so long after the fact appears in the Plaintiff's Brief of Law (page 6):

> "Indeed, there is now a contemporary technological equivalent to the subconscious, and that is the vast crevasses of public media, including newspapers, television, and the internet, where defamatory comments, once made, may lurk for decades, impossible to delete from the public consciousness, and always capable of undermining the plaintiff, his employment prospects, relationships and reputation."

CONCLUSION:

It is almost impossible to believe that in Canada a matter could proceed to the highest Court levels and even to Judgment, without the knowledge of the defendant. If Laliberte's allegations are true, as I conclude that they are, his case presents a frightening reality. It would mean that, in effect, Laliberte was denied the opportunity of defending himself. Even if the outcome were to be the same in any event, there is the principle of allowing an individual a fair hearing, which has merit of its own.

Froese's duty to advise a client and take instructions is the central issue. From his lack of instructions there have flowed far reaching consequences including questions about his authority to make representations to the Court. Typically, a Judge should always be able to accept without question that the lawyer before the Court appears on behalf of one of the parties in the litigation. This is an axiom almost as obvious as the need to meet and consult with the client. The complainant now protests that Froese did not represent him. The Chief Justice would probably have appreciated knowing that before making crucial decisions about procedure.

It is difficult to find legal authority for the proposition that a lawyer should at least meet with or talk to the client, perhaps because it is so obvious. Despite this, it did not happen here. Whether it was enough that another lawyer in the same firm had discussed the matter with Laliberte some five years earlier will be for others to decide, although I think not.

In the Code of Conduct of the Law Society of Saskatchewan, Chapter II "Competence and Quality of Service" it is specified that a client should be kept "reasonably informed" of developments on his or her file. A lawyer is to determine a client's goals, entitlements and expectations and is to maintain a rapport and open communication with the client and give a competent opinion. That was not done in this case.

Acknowledging that Froese did make efforts by telephone to contact Laliberte, nevertheless where there has been a failure to connect by telephone or email or otherwise, it is common practice to write a letter asking a client to contact the lawyer. This is not taking instructions by mail, which Froese protests that he never does. In Laliberte's words: