

2001/04/25

PANEL: J. Grant Sinclair, Vice-Chairperson

[1] This Ruling deals with two applications, one by the Canadian Human Rights Commission under Rule 3(1) of the Tribunal Rules of Procedures to amend the complaint to include an allegation of retaliation under section 14.1 of the *Canadian Human Rights Act*. The second application is by the Canadian Association for Free Expression Inc. (CAFE) to be granted interested party status under section 50(1) of the *Act*.

[2] The issues in this complaint as defined by the parties are:

- 1) whether the respondents are responsible for the operation of the web-site;
- 2) whether the communication on the respondents' web-site constitutes a "telephonic communication";
- 3) whether the communication likely to expose a person or persons to hatred or contempt;
- 4) the constitutionality of section 13(1) of the *Act* in light of the guarantees provided in section 2 of the *Canadian Charter of Rights and Freedom*.

[3] As to the constitutionality issue, the respondents have not served any notice of constitutional question as required under section 57(1) of the *Federal Court Act*.

[4] Dealing first of all with the application of CAFE for interested party status, CAFE states that it is a non-profit educational organization dedicated to promoting and maximizing the *Charter* guarantees of freedom of speech, freedom of expression and freedom of assembly.

[5] CAFE also notes that it has been granted intervenor status on the constitutional issue before this Tribunal, in the case of *Citron and Toronto Mayors' Committee on Community and Police Relations, Canadian Human Rights Commission and Zundel*. It has also been granted intervenor status in proceedings before the British Columbia courts and the Human Rights Tribunal involving challenges to the constitutionality of section 7(1)(b) of the *British Columbia Human Rights Code*.

[6] I have reviewed the legal authorities cited by the Commission and by CAFE dealing with the principles to be applied in determining whether or not intervenor status should be granted. According to these cases the *onus* is on the applicant to demonstrate how its expertise would be of assistance in the determination of the issues before the Tribunal.

Interested party status will not be granted if it does not add significantly to the legal position of the parties representing a similar view point.

[7] I am satisfied from the materials submitted by CAFE that it should be granted interested party status with respect to the constitutionality issue. However, I can not find anything in CAFE's written submissions to show that it has an expertise that would be of significant assistance in the determination of the other issues before the Tribunal.

[8] Accordingly, CAFE is granted interested party status, but solely with respect to the issue of the constitutionality of section 13(1) of the *Act* in relation to section 2 of the *Charter*.

[9] CAFE has the right to present evidence, cross-examine and make submissions on this issue. Such evidence and submissions must be relevant and not overlap or repeat the evidence, cross-examination or submissions of the respondents.

[10] CAFE is to provide disclosure to the other parties of the evidence if any, it wishes to call with respect to the constitutionality issue no later than Friday, May 11, 2001.

[11] It should also be noted that if the required notice of constitutional question is not served under section 57 of the *Federal Court Act*, then the Tribunal will not be able to deal with the constitutional issue.

[12] With respect to the Commission's application to amend the complaint, the test as enunciated by this Tribunal is whether the nature of the allegations of retaliation are linked, at least by the complainant, to the allegations giving rise to the original complaint. (1) The fact that the proposed amendment involves a different section of the *Act* in issue in the original complaint does not deprive the Tribunal of jurisdiction to allow such an amendment. (2) There is a discretion in the Tribunal to amend the complaint to deal with additional allegations, provided that sufficient notice is given to the respondents to enable them to properly defend themselves. (3) The incidents which form the basis of allegations of retaliation in this case have occurred very recently, and there is no issue of prejudice arising from the passage of time.

[13] The respondents have objected to the Commission's application to amend the complaint. The basis of the respondents' objections are substantive and do not go to the procedural issue of whether or not the complaint can be amended. The respondents will have a full opportunity to make their case against these allegations at the hearing of the complaint.

[14] CAFE's application for interested party status in this matter is granted but only as to the issue of the constitutionality of section 13 of the *Act*.

[15] The complaint is hereby amended to include the allegation of retaliation pursuant to section 14.1 of the *Act*.

J. Grant Sinclair, Vice-Chairperson

OTTAWA, Ontario

April 25, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

TRIBUNAL FILE NO.: T594/5200 & T595/5300

STYLE OF CAUSE: Mark Schnell v. Machiavelli and Associates Emprize Inc. and John Micka

RULING OF THE TRIBUNAL DATED: April 25, 2001

APPEARANCES:

Mark Schnell On his own behalf

Eddie Taylor Counsel for the Canadian Human Rights Commission

John Micka For Machiavelli and Associates Emprize Inc. and on his own behalf

Paul Fromm For Canadian Association for Free Expression Inc.

1. *Kavanagh v. C.H.R.C. and C.S.C. et al.*, File No. T505/2298 dated May 31, 1999.
2. *Fowler v. Flicka Gymnastic Club*, [1998] D.C.H.R.T., No. 2
3. *Entrop v. Imperial Oil Limited*, (1994), 23 C.H.R.R., D/186.