

**Canadian Human Rights Tribunal Tribunal canadien des droits de la
personne**

BETWEEN:

RICHARD WARMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

FRED KYBURZ

Respondent

RULING ON AMENDMENT OF COMPLAINT

2003/02/13

MEMBER: Anne L. Mactavish

[1] Richard Warman has filed a human rights complaint against Fred Kyburz, alleging that Mr. Kyburz was discriminating against people on the basis of religion, race and national or ethnic origin by communicating messages over his Internet web-site. Mr. Warman alleges that these messages expose non-Christians, non-Caucasians and individuals of other races, religions and national or ethnic origins to hatred and/or contempt, contrary to the provisions of section 13 of the *Canadian Human Rights Act*.

[2] The Canadian Human Rights Commission and Mr. Warman have now brought a motion to amend the complaint to include an allegation of retaliation, pursuant to section 14.1 of the *Canadian Human Rights Act*. The moving parties allege that subsequent to the filing of Mr. Warman's complaint, Mr. Warman was harassed and threatened on numerous occasions by way of material published on the Internet by Mr. Kyburz.

[3] The Commission's Statement of Particulars disclosed the Commission's intention to seek an amendment to the complaint to deal with the issue of retaliation. The Statement of Particulars was evidently served on Mr. Kyburz on January 29, 2003. Further, a separate complaint dealing with the issue of retaliation was evidently filed with the Commission in October of 2002. The Commission says that Mr. Kyburz would have been made aware of the facts in issue in the retaliation complaint, although it is unclear from the material before me when this would have occurred.

[4] Mr. Kyburz has not responded to the Commission's motion within the time set by the Tribunal.

[5] A human rights complaint is not like a criminal indictment. There is discretion in the Tribunal to amend a complaint to deal with additional allegations, provided that sufficient notice is given to the respondent so as to enable him to properly defend himself. ⁽¹⁾ The hearing in this case is scheduled to commence on March 17, 2003. Mr. Kyburz will have been aware for at least a month and a half before the start of the hearing that an allegation of retaliation was in issue in this case. There is nothing before me to indicate that Mr. Kyburz would be prejudiced in any way in the preparation of his defense if leave to amend Mr. Warman's complaint is granted.

[6] Leave is hereby granted to the Canadian Human Rights Commission and to Mr. Warman to amend Mr. Warman's complaint to include the allegation of retaliation pursuant to Section 14.1 of the *Canadian Human Rights Act*. The Commission and Mr.

Warman shall have 10 days in which to serve and file an amended complaint form, together with an amended statement of issues and any necessary supplementary disclosure.

"Original signed by"

Anne L. Mactavish

OTTAWA, Ontario

February 13, 2003

**CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T726/3102

STYLE OF CAUSE: Richard Warman v. Fred Kyburz

RULING OF THE TRIBUNAL DATED: February 13, 2003

APPEARANCES:

Monette Maillet For the Canadian Human Rights Commission and Richard Warman

No one appearing for Fred Kyburz

1. ¹ *Canada (Attorney General) v. Robinson*, [1994] 3 F.C. 228 at para 39 (F.C.A.).