

CANADA / JUDGMENT

Zundel v. Citron

2001 FCT 151

COURT

Federal Court

DECIDED

19 March 2001

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Zundel v. Citron Court (s) Database Federal Court Decisions Date 2001-03-19 Neutral citation 2001 FCT 151 File numbers T-190-99 Decision Content Date: 20010319 Docket: T-190-99 Neutral citation: 2001 FCT 151 BETWEEN: ERNST ZÜNDEL Applicant

- and - SABINA CITRON, TORONTO MAYOR'S COMMITTEE ON COMMUNITY AND RACE RELATIONS, THE CANADIAN HUMAN RIGHTS COMMISSION, CANADIAN HOLOCAUST REMEMBRANCE ASSOCIATION, SIMON WIESENTHAL CENTRE, CANADIAN JEWISH CONGRESS, LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH, CANADIAN ASSOCIATION FOR FREE EXPRESSION Respondents ASSESSMENT OF COSTS - REASONS P. PACE Assessment Officer
- [1] This matter was instituted on February 10th, 1999 by Notice of Application for Judicial Review of the decision made by a panel of the Canadian Human Rights Tribunal dated the 21st of January, 1999.
- [2] Having heard the matter on its merits, the Court, on the 16th of December, 1999, dismissed the Application for Judicial Review and awarded costs to the Respondents with the exception of the Respondent, the Canadian Association for Free Expression.
- [3] Before me is an assessment, in writing, of the Bill of Costs of the Respondent Simon Wiesenthal Centre (Respondent). Preliminary Issue
- [4] By letter to counsel for the Respondent, dated the 3rd of November, 2000, counsel for the Applicant took the position that this assessment ought not to proceed until all appeals have been exhausted. Counsel sets out her position as follows: It is our position that costs should not be assessed until all appeals are exhausted in these cases. The application for leave to appeal to the Supreme Court of Canada in A-253-99 should be coming down shortly. If it is dismissed with costs, then the assessment can deal with all matters in one, final decision. If the application is allowed, then it raises the serious possibility that the order as to costs could be reversed or varied. With respect to A-190-99, our position is the same. We rely on the decision of Smith, Assessment Officer, in Zundel v. Canada (Canadian Human Rights Commission), [1999] F.C.J. No. 1239, which held that the assessment should not take place until all appeals had been resolved.

- [5] The reference to Court file A-190-99 I believe is in error and I take it to be a reference to this proceeding, which bears Court file number T-190-99.
- [6] Counsel for the Respondent did not put forward any written submissions regarding the deferral of this assessment. However, since the request for this assessment of costs has not been withdrawn, it is open for me to infer that it is Respondent's counsel's intention to proceed with this assessment as initially requested.
- [7] As noted above, in support of her position to defer the assessment, counsel for the Applicant makes reference to and relies on the decision of Assessment Officer Smith in the case of *Zündel v. Canada*.
- [8] I have reviewed the decision of Assessment Officer Smith as well as other relevant decisions both supporting and not supporting Applicant's position and I am of the view that, notwithstanding Assessment Officer Smith's cogent rational in that case, I am not bound by that decision in this assessment before me.
- [9] Furthermore, having had the opportunity to deal with this very same issue in the assessment of costs of the Respondent in *Suresh v. The Minister of Citizenship and Immigration*, Court No. IMM-1390-96, I maintain my views in that case and adopt them to the present case. Specifically, my reasoning found at page 4 of said Assessment Reasons, which read as follows:
- [6] I have considered the argument by counsel and reviewed the above mentioned jurisprudence as well as other relevant cases, and in the circumstances of this case, I am of the view that in order for an assessment officer to exercise his/her discretion to defer an assessment of costs awarded by the Court, compelling circumstances would have to exist. While I am not proposing that an outstanding appeal has no bearing or effect on this assessment, I am not, however, convinced that the existence of an appeal, by itself, is sufficient to compel me to defer the assessment. While I find the plaintiff's argument on this point to be articulate, it is my view that it is the kind of argument that should have been made to the Court on a motion for stay of the order. As an assessment officer I am not empowered to make such an order. No such stay was ordered nor was one sought. Consequently, what I have before me today is a valid Court order providing for an award of costs to the defendant. And, as the order provides, those costs are to be determined either by way of assessment or through the agreement of the parties. No agreement having been reached, I am bound by the order of the Court to assess costs.
- [10] As in the *Suresh* case, I cannot find any compelling reasons to defer this assessment of costs. Assessment Respondents Bill of Costs
- [11] It is to be noted that the Respondent did not file any written representations to support the number or propriety of the items claimed in the Bill of Costs. However, Respondent did file an affidavit of one, Deborah Angus in support of this assessment. Said affidavit purports to substantiate the existence of documents and related expenses.

- [12] Under item number 2, Respondent seeks five (5) units for preparation and filing of Respondent's Application Record materials. However, counsel makes no submission to support the number of units sought other than a reference to the existence and filing of a Respondent's Application Record in the affidavit of Deborah Angus.
- [13] Counsel for the Applicant in her written submissions filed January 4th, 2001 states as follows:
- (i) Item 2: In this case, the appellant filed a Memorandum of Fact and Law with two cases attached as appendices. The memo of law was 6 pages long. Together with the two cases, the document was 19 pages long. The appellant filed a further two cases in a supplementary document. It is submitted that the very short memo of law of the appellant and the few cases relied upon indicate that this judicial review raised a very narrow and straightforward issue of law, based upon the interpretation to be given to the words "sensitive to human rights." It is submitted that 4 units should be allowed for this item given the judicial review did not raise any issues of complexity or difficulty and that the principles of law to be applied were well-settled.
- [14] Having regard to the provisions of Rule 409 and the factors as set out under Rule 400(3) and in the absence of representations to the contrary, I agree with Applicant's submission on this item and will allow 4 units. Item 13(a) Counsel Fee: Preparation for Hearing
- [15] Respondent seeks four (4) units under this item, but makes no supporting comments. Applicant's counsel submits that based on the submissions made with regards to item 2, only two (2) units should be allowed under this item.
- [16] I am in agreement with Applicant's submission on this item and will allow two (2) units. Item 14(a) Trial or Hearing: Counsel Fee to First Counsel
- [17] Respondent claims four (4) hours at two (2) units per hour for a total of eight (8) units under this tariff item.
- [18] Neither side put forward submissions regarding this item. Having had the opportunity of reviewing the Court file on this proceeding, as I am entitled to do (*Grant v. Ministry of Indian & Northern Affairs*) [1991] 1 F.C. D.45, I noted that the hearing on the 16th of December 1999 did in fact take four (4) hours. Consequently, I will allow this item as claimed. Item 26: Assessment of Costs
- [19] Respondent seeks two units under this item. Neither side put forward submissions regarding this item, and in fact, as previously mentioned, Respondent did not put forward any submissions regarding this assessment. However, an affidavit in support of this assessment was in fact prepared and filed. I will allow the two (2) units as claimed. Disbursements

- [20] I have reviewed the disbursements as claimed and the supporting evidence as found in the affidavit of Deborah Angus. I am satisfied that the items as claimed are proper and proven. Consequently, I will allow all disbursements as claimed.
- [21] As a result of the foregoing I assess the Bill of Costs of the Respondent, Simon Wiesenthal Centre in the amount of \$1,600.00 for fees, \$339.10 for disbursements and \$135.75 for GST for a total of \$2,074.85.
- [22] A Certificate of Assessment will issue in the amount of \$2,074.85. "Peter Pace" Assessment Officer Toronto, Ontario March 19, 2001 FEDERAL COURT OF CANADA Names of Counsel and Solicitors of Record DOCKET: T-190-99 STYLE OF CAUSE: ERNST ZÜNDEL Applicant
- and - SABINA CITRON, TORONTO MAYOR'S COMMITTEE ON COMMUNITY AND RACE RELATIONS, THE CANADIAN HUMAN RIGHTS COMMISSION, CANADIAN HOLOCAUST REMEMBRANCE ASSOCIATION, SIMON WIESENTHAL CENTRE, CANADIAN JEWISH CONGRESS, LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH, CANADIAN ASSOCIATION FOR FREE EXPRESSION Respondents ASSESSMENT IN WRITING WITHOUT PERSONAL APPEARANCE OF PARTIES ASSESSMENT OF COSTS - REASONS BY: PETER PACE ASSESSMENT OFFICER DATED: MONDAY, MARCH 19, 2001 SOLICITORS OF RECORD: Douglas H. Christie Barrister & Solicitor 810 Courtney Street Victoria, British Columbia V8W 1C4 Barbara Kulaszka Barrister & Solicitor 41 Kingsley Avenue, P.O. Box 1635 Brighton, Ontario K0K 1H0 For the Applicant Ernst Zündel Bennett Jones Barristers & Solicitors 3400-1 First Canadian Place P.O. Box 130, Stn. 1st Can. Pl. Toronto, Ontario M5X 1A4 For the Respondent Simon Wiesenthal Centre FEDERAL COURT OF APPEAL Date: 20010321 Docket: T-190-99 BETWEEN: ERNST ZÜNDEL Applicant
 - and - SABINA CITRON, TORONTO MAYOR'S COMMITTEE ON COMMUNITY AND RACE RELATIONS, THE CANADIAN HUMAN RIGHTS COMMISSION, CANADIAN HOLOCAUST REMEMBRANCE ASSOCIATION, SIMON WIESENTHAL CENTRE, CANADIAN JEWISH CONGRESS, LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH, CANADIAN ASSOCIATION FOR FREE EXPRESSION Respondents ASSESSMENT OF COSTS - REASONS

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