Federal Court of Appeal | Cour d'appel fédérale

Date: 20230104

Docket: A-258-19

Citation: 2023 FCA 1

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
RIVOALEN J.A.
ROUSSEL J.A.

BETWEEN:

RENÉ SIMON, GÉRALD HERVIEUX, MARIELLE VACHON, DIANE RIVERIN AND RAYMOND ROUSSELOT

Appellants

and

JÉRÔME BACON ST-ONGE

Respondent

Heard by videoconference hosted by the registry on October 12, 2022.

Judgment delivered at Ottawa, Ontario, on January 4, 2023.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: RIVOALEN J.A.
ROUSSEL J.A.

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] The appellants are five of the seven people found in contempt of court on August 10, 2018, for non-compliance with a judgment of the Federal Court dated December 21, 2017. That judgment cancelled the election in which they had been elected members of the Conseil des Innus de Pessamit (the Council) and ordered that a new election be held on or about August 17,

2018, unless the 1994 customary election code of the Pessamit Innu Nation (the Nation) were duly amended before that date (2017 FC 1179).

[2] This appeal was heard at the same time as those in files A-285-18 (2022 FCA 171) and A-286-18 (2022 FCA 168), which involve two other Federal Court orders: one dated August 15, 2018, that, among other things, set the date of the next election for September 17, 2018, and the other dated August 10, 2018, that found the appellants in contempt of court for non-compliance with the 2017 judgment. Although the reasons for finding them in contempt were not issued until after the sentencing hearing, the appellants chose to appeal the contempt finding, which was issued orally on August 10, in a separate file. To avoid duplication, this Court considered all the arguments related to the contempt-of-court finding included in the appellants' memoranda of fact and law in files A-286-18 and A-258-19 before disposing of the appeal in file A-286-18 (2022 FCA 168 at para. 7).

[3] This appeal concerns a Federal Court order dated June 7, 2019 (the Decision) (2019 FC 794) that determined the sentences for the contempt of court. Chief Simon was fined $20,000, and each of the councillors was fined $10,000, payable within 90 days of the Decision.

I. Appellants' position

[4] The appellants allege that the Federal Court failed to appropriately apply the sentencing principles, including those of proportionality, individualization and uniformity in sentencing. They dispute the quantum of the fines, which they find to be excessive and inappropriate.

[5] More specifically, the appellants assert that the Federal Court did not consider all the mitigating factors that they had raised and failed to give sufficient weight to the Indigenous aspect or the context of Indigenous governance, which, in their opinion, were significant mitigating factors. In addition, they claim that the Federal Court erred in imposing the same fine on all the councillors without considering the fact that Raymond Rousselot and Diane Riverin had not been re-elected on September 17, 2018, and therefore had already suffered a loss. The Federal Court should also have considered the fact that, for his part, the respondent had been elected and had been receiving a councillor's salary since that date. Finally, they claim that the fines imposed depart significantly and unjustifiably from the sentencing range applicable to contempt of court.

II. Standards and principles

[6] The applicable standard in this case has been described several times by the Supreme Court of Canada, including in *R. v. L.M.*, 2008 SCC 31 at paragraphs 14 and 15. It is well established that an appellate court may not vary a sentence simply because it would have ordered a different one. Appellate courts must instead show great deference in reviewing decisions of trial courts where appeals against sentence are concerned. An appellate court must be convinced that the sentence is clearly not fit, that is, that it is clearly unreasonable.

[7] The Supreme Court also specified that, even when an appellate court's intervention is warranted in sentencing afresh, it must defer to the trial court's findings of fact or identification of aggravating and mitigating factors, to the extent that they are not affected by an error in principle. Furthermore, even if there is an error in principle, the appellate court may confirm the

sentence despite this error if the sentence chosen by the appellate court is the same as that imposed by the trial court (*R. v. Friesen*, 2020 SCC 9 at paras. 28–29 (*Friesen*)).

[8] The Supreme Court has repeatedly held that sentencing ranges, which are used in criminal matters in particular and are summaries of the minimum and maximum sentences imposed in the past for a specific offence, are neither averages nor straitjackets to the exercise of the sentencing court's discretion (*R. v. Lacasse*, 2015 SCC 64 at para. 57 (*Lacasse*); *Friesen* at paras. 36–37; *R. v. Parranto*, 2021 SCC 46 at para. 17 (*Parranto*)).

[9] Recently, in *Parranto* at paragraph 36, the Supreme Court stated the key principles for reviewing sentencing on appeal, unequivocally reiterating that sentencing ranges are merely tools or guidelines and that departure from or failure to refer to a range of sentence cannot be treated as an error in principle. The Court also underscored that these principles now settle the matter and put an end to any ambiguity that could arise from prior case law.

[10] That said, the Supreme Court noted that the sentencing judge's reasons and the record must allow the reviewing court to understand why the sentence is proportionate to the moral blameworthiness of the offender and the gravity of the offence despite a significant departure from the sentencing range. This applies indiscriminately, regardless of whether the reasons refer to the sentencing range or not. At the very least, the appellate court must be able to discern from the reasons and the record why the sentence is fit in the circumstances of the offence and the offender (*Parranto* at para. 40).

[11] In this Court's previous decisions dealing with sentencing for contempt of court, it has stated that the usual principles of sentencing that apply in criminal matters also apply in civil matters (*Canada (Human Rights Commission) v. Canadian Liberty Net (C.A.)*, [1996] 1 F.C. 787 at 801, 1996 CanLII 4021 (FCA), aff'd [1998] 1 S.C.R. 626, 1998 CanLII 818 (SCC)). It was therefore never disputed before the Federal Court in this matter that the proportionality principle is central in determining a fit sentence in the specific circumstances of the case (individualized process) (*Professional Institute of the Public Service of Canada v. Bremsak*, 2013 FCA 214 at paras. 33–34 (*Bremsak*)).

[12] Sentencing is an extremely delicate and difficult exercise, especially when, as in this case, the fines imposed for a given offence vary considerably. It should be noted that precedents in these types of cases are useful only when they relate to similar cases, that is, cases that have enough common characteristics. For example, a precedent would not be useful simply because it involved contempt of court. The circumstances surrounding the finding of contempt as well as the characteristics of the contemnors themselves and their situation must also be sufficiently similar.

III. Analysis

[13] Before the Federal Court, the respondent argued that, given the grave and flagrant nature of the contempt, it was appropriate to impose a prison sentence and to fine Chief Simon $50,000.00 and each of the councillors $30,000.00 (Appeal Book (A.B.), Vol. 3 at 797–98). According to the appellants, the applicable mitigating factors justify at most a suspended

sentence or a modest fine of $1,000.00 (A.B., Vol. 3, at 813, at paras. 63–64). The appellants suggested that a fine in a mere token amount was appropriate (A.B., Vol. 3, at 827, at para. 159).

[14] At paragraphs 75 to 77 of the Decision, the Federal Court reiterated the case law factors to be considered in sentencing. The appellants agree that the Federal Court correctly identified those factors. However, they dispute the weight given to each of the factors. Yet, the weighing of relevant factors and the balancing process are at the very heart of the discretion of the trial court, which in this case is the Federal Court. This Court must therefore be especially cautious so as not to unduly encroach on that discretion.

[15] This is especially true since it is well established that there is no single uniform approach to assessing whether a sentence is appropriate with regard to the particular circumstances of each case and that selecting the method of sentencing is within the discretion of the sentencing judge (*Parranto* at para. 34). This vast discretion and the highly individualized nature of the process are afforded a high level of deference (*Parranto* at para. 29).

[16] After carefully reviewing all the arguments submitted in relation to the mitigating factors to which the Federal Court allegedly did not give enough weight in sentencing, I am not persuaded that the Federal Court committed an error in principle that would warrant our intervention.

[17] As for Indigenous governance, the Federal Court noted that the appellants believed that they were acting in their community’s interest by not holding an election and that they wanted to

preserve the Nation's self-government, among other relevant mitigating factors (Decision at para. 87). It is therefore evident that the Court took this into consideration. This finding is supported by the Court's detailed description of the appellants' political position and their public statements regarding it in the first part of the Court's reasons (Decision at paras. 22, 26, 50, 65, 70–71). Therefore, there was no need to discuss this further at that stage.

[18] I understand that the Federal Court weighed this factor as well as the other mitigating factors identified at paragraph 87 against the aggravating factors that the Court retained, such as the objective and subjective gravity of the contempt and the fact that it was flagrant and repeated. Clearly, paragraphs 79 to 84 of the Decision must be read in the context of the entire reasons and in light of the detailed evidence and the Court's comments throughout its reasons.

[19] The Federal Court underscored that the purpose or effect of the 2017 judgment was not to strip the Nation of its right to self-determination, but rather to ensure compliance with the Nation's laws and electoral customs (Decision at para. 71). Justice St-Louis' reasons were clear in this regard, and that judgment was affirmed from the bench on appeal. The Federal Court noted that the rule of law and the concepts of democracy and procedural fairness apply to all, even elected officials of a First Nation (Decision at para. 68).

[20] Furthermore, the Federal Court duly considered the Indigenous aspect and the principles stated by the Supreme Court in *R. v. Gladue*, 1999 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13, to conclude that it was appropriate to fine the appellants since a prison sentence was not appropriate (Decision at paras. 88–90). On the basis of these principles, the Court explicitly

stated that it had considered the Canadian government's interference in the governance of Indigenous bands as a systemic and historical factor (Decision at para. 89).

[21] The appellants claim that the Federal Court's 2017 intervention is inconsistent with its recognition of the Canadian government's historical interference in Indigenous governance. While I find that this argument appears to be directed against the finding of contempt, it is nevertheless important to address it briefly since the appellants do not seem to fully grasp the difference between political interference and judicial review in a country governed by the rule of law.

[22] The decisions of all government authorities, be they federal, provincial, municipal or Indigenous, are subject to judicial review, and these authorities must comply with the legal principles that provide a framework for the exercise of their powers. In this case, the review was requested by a member of the Nation to enforce the Nation's laws and customs. As pointed out by the Federal Court, the rule of law is one of the fundamental principles of our Constitution, and without it, there can be neither peace, nor order nor good government (Decision at para. 54).

[23] Overall, the arguments that the appellants submit essentially involve challenging the Federal Court's findings of fact regarding the circumstances surrounding the finding of contempt. However, these findings are based on the assessment of the evidence by the trier of fact, which contains no reviewable error as we concluded in our decision on the finding of contempt.

[24] As I stated in our reasons (2022 FCA 168 at para. 8), I reviewed all the testimony relating to the comment made about Justice St-Louis during the assembly on June 18, 2018. In addition to Ms. Picard's and the respondent's testimony (Decision at paras. 30, 34), the Federal Court considered the explanation provided by Chief Simon (Decision at para. 81) and consequently the fact that the expression used could have several meanings. I am not satisfied that the Federal Court erred in concluding that the purpose of the comment was to undermine the Court's authority. Therefore, the Court did not commit a reviewable error in identifying this as an aggravating factor.

[25] According to the appellants, the Federal Court erred in not considering that the impact of the August 15, 2018 order, which they described as an interim sentence, went beyond the ordinary and inherent consequences of a finding of contempt (Decision at para. 86). When they filed their memorandum in April 2020, the appellants knew that the new Council, elected on September 17, 2018, of which they formed the majority, had agreed to compensate them for the period described in the August 15, 2018 order, to pay their lawyer's fees and to endorse their management actions between August 15 and September 17, 2018, as permitted by that order (Decision at para. 46; 2022 FCA 171 at paras. 4–5). However, they still maintain before us that the Federal Court should have taken those measures into consideration. I disagree. There is no error in this regard that could warrant our intervention.

[26] Similarly, the fact that two of the appellants were not re-elected on September 17, 2018, while the respondent was elected is merely a consequence of the illegality of the election cancelled by the 2017 judgment and of the will of the voters on that day. I note that

Raymond Rousselot was already ill in September 2018. We learned at the hearing that he had unfortunately passed away and that the lawyer who was representing him had not received instructions from his succession to continue the proceeding. In any case, Mr. Rousselot did not present any evidence before the Federal Court regarding his financial means nor did he suggest that they should be considered a mitigating factor. The Federal Court therefore did not err in not specifying that the result of the election was itself a mitigating factor in this case. As for Ms. Riverin, I will address her particular situation separately.

[27] In their written submissions on sentencing before the Federal Court, the parties included a few references to case law that they deemed relevant. In Appendix B of their submissions on sentencing, the appellants provided a table listing sentences imposed for contempt of court (Exhibits and Authorities, Submissions on Sentencing, Appendix B at 399–409). However, other than one paragraph and a footnote in their 30-page submissions (A.B., Vol. 3, at 813, at para. 64 and footnote 42), they in no way insisted on the fact that there was a range of fines imposed in comparable Indigenous cases. The only other mention of the level of applicable fines that I could identify is at paragraph 45 of their written submissions, where they indicate that [TRANSLATION] "the *Indigenous* aspect and the deference that the Court must demonstrate prevent the imposition of a prison sentence or a large fine on the defendants" (A.B., Vol. 3, at 808, at para. 45). However, the decision that they are referring to, *Gadwa v. Joly*, 2018 FC 568 at paragraph 30 (*Gadwa*), does not deal with the level of applicable fines. Rather, this is a decision on an application for interlocutory injunction.

[28] The vast majority of decisions listed in the table in Appendix B deal with failure to comply with Federal Court orders in tax matters where taxpayers have to produce documents following a request from the Canada Revenue Agency (Exhibits and Authorities, Submissions on Sentencing, Appendix B at 399–409). Furthermore, other than just one decision in *Wanderingspirit v. Marie*, 2006 FC 1420 (*Wanderingspirit*), none of the cases cited by the appellants in the table had "Indigenous aspects".

[29] Evidently, it would have been preferable if the Federal Court had discussed the case law before it in further detail; the same goes for the case law described in the table appended to this Court's decision in *Bremsak*. That table included the decision in *Manitoba Teachers' Society v. Chief, Fort Alexander Reserve*, 1984 CanLII 5304 (FC), [1984] 1 FC 1109 (*Manitoba Teachers' Society*), which I will be commenting on below. Nevertheless, it is appropriate to note that the Federal Court concluded that the amount requested by the respondent was disproportionate (Decision at para. 78), implicitly confirming that the Court had indeed reviewed the case law, as it is presumed to have done. This becomes all the more evident from paragraphs 75 and 76 of the Decision, in which the Federal Court draws on *Wanderingspirit* and *Bremsak* to describe the elements to be taken into consideration, as defined in the case law.

[30] Since the remainder of the case law that the parties cited as a basis for their arguments had few similarities with this case, the Federal Court did not consider it appropriate to review each of the decisions. Furthermore, as I have already underscored, failure to explicitly refer to fines imposed in the past does not in itself constitute an error in principle that would warrant this Court's intervention (*Parranto* at para. 36).

[31] I understand the Federal Court's reasoning in light of the reasons and the record. It shows that the Court prioritized the objectives of deterrence and denunciation in determining the appropriate sentence (Decision at para. 90), as it was entitled to do (*Parranto* at para. 45; *Friesen* at para. 26; *Lacasse* at paras. 54–55). The Federal Court concluded that there was no need to impose a prison sentence to achieve the objectives of deterrence, denunciation and reparation for undermining the Court's authority (Decision at para. 78). The order in which these objectives appear confirms that the Court prioritized the objective of deterrence given that an election was finally held following the finding of contempt on August 10, 2018. However, several of the respondents still maintained that their political position justified their refusal to comply with the 2017 judgment even though their apologies indicated that they regretted the fact that their political position may have offended the Court. I also understand that the Federal Court considered that the circumstances in this case commanded a significant fine given the flagrant and repeated contempt, the disparaging comment about Justice St-Louis and the importance of the rights that were at stake.

[32] Fines imposed by the Federal Courts in contempt-of-court cases vary considerably depending on context, ranging from $250.00 to hundreds of thousands of dollars. It is therefore especially important to ensure that there are a sufficient number of common characteristics with regard to the circumstances and the contemnors. In cases of contempt related to orders to produce tax documents, fines range from $500.00 to $5,000.00 (see *Bowdy's Tree Service Ltd. v. Theriault International Ltd.*, 2020 FC 146 at para. 12). In fact, this is the only subcategory of contempt where a particular range seems to have been established even though it is simply a guideline for determining a fit sentence.

[33] The appellants filed two comparative tables with this Court, in which they cited decisions where fines had been imposed following a finding of contempt of court. Comparative Table A is entitled [TRANSLATION] “Comparative Table of Fines Imposed on Indigenous Elected Officials for Contempt of Court”, while Comparative Table B lists fines imposed for contempt of court in general. As I have already stated, other than the decision in *Wanderingspirit*, the appellants had not included the decisions in Comparative Table A in the table found in Appendix B of their submissions on sentencing before the Federal Court.

[34] At the hearing, the appellants conceded that there was not really an established range for contempt in the particular context of Indigenous governance. I agree.

[35] Even though the Federal Courts have reviewed various decisions made by band councils and their members for many decades, there are very few cases where their decisions in these matters were not complied with. Generally speaking, Indigenous communities seem to understand that the Courts respect their rights and customs in these matters and have for years been engaged in a dialogue with the Indigenous Bar Association and the Aboriginal Law Bar to better understand the needs and concerns related to disputes involving Indigenous people.

[36] When a dispute is over, there is almost always one party that disagrees with the decision rendered. However, as I stated earlier, in a country founded on the rule of law, disagreement never justifies refusing to comply with a court order before it has been set aside or stayed. This is especially important during this difficult time, when democratic principles and the rule of law are often attacked for political reasons.

[37] That said, it is nevertheless useful to comment on three decisions cited by the appellants.

[38] In the first case cited in Comparative Table A, *Manitoba Teachers' Society*, the band council, its members and its chief refused to comply with an order from the Canada Industrial Relations Board (CIRB). The CIRB found that there had been interference in the representation of the applicant teachers as their employment had been terminated and ordered their return to work, setting the terms and conditions of the first collective agreement between the parties. Given their continued refusal to comply with this order, the Federal Court summoned the council, chief and councillors to appear before the Court to explain themselves. They refused. Their counsel indicated that they did not recognize the authority of the CIRB or the Federal Court. They announced at a press conference that their position was based on their right to self-determination.

[39] After noting that the Supreme Court and the Saskatchewan Court of Appeal had clearly established the CIRB's jurisdiction to act in this matter, the Federal Court stated that disobedience of these orders could not be tolerated, especially in matters of freedom of association and the right to free collective bargaining of the staff of a school board duly elected by band members.

[40] The Court ruled on the band council and its members' political position at page 1116:

> It is ironic that they suggest to this Court that one should have respect for freedom from social, political, religious and economic oppression, but in turn have failed to respect the will of the members of the Band who had previously elected a School Board; they have refused the free association of the teachers, a great number of whom are members of the Band; they will not recognize the freedom and the right to association and free collective bargaining.

[41] As a result, the Federal Court stated that it was satisfied, on the evidence before it, that there had been a clear violation of an order of the Court. The Court fined the council $15,000.00 (current value of $37,757.77, Inflation Calculator – Bank of Canada), the chief $5,000.00 (current value of $12,585.92), which was the maximum amount allowed under the *Federal Court Rules*, C.R.C., c. 663, in force at the time (that restriction has since been lifted), and each councillor $1,000.00 (current value of $2,517.18). I understand that, in the Federal Court's view, the political position adopted by the council had no place before the Court, and that First Nations need to instead address Parliament to obtain a political solution.

[42] What I have taken from this case is not the amount of the fine itself, but rather the fact that the Federal Court considered the respondents' behaviour under the circumstances as amounting to serious contempt that justified imposing the maximum fine allowed at that time under the *Federal Court Rules*.

[43] It is true that in *Wanderingspirit*, as the appellants highlighted, the Federal Court imposed on the two contemnors, Chief Marie and Councillor Starr, the modest fines of $2,000.00 (current value of $2,820.51) and $500.00 (current value of $705.13) respectively. However, it was the evidence presented in that case that justified imposing those fines. Indeed, the Federal Court did not consider whether the fines that it was imposing were within the sentencing range for similar cases. Instead, the Federal Court opted to impose these modest fines on the contemnors because of their inability to pay a large fine (*Wanderingspirit* at paras. 9–10 and *Bremsak* at para. 35).

[44] Although the evidence on each of the respondents' ability to pay or rather inability to pay was not described in detail in the decision, it is clear that this aspect played an important role in determining the amounts of the fines imposed in that case. Even the applicants recognized that the respondents did not have the financial means to pay the fines required, given the severity of the contempt, to deter them in future. That is why they asked the Federal Court to impose a prison sentence on the respondents (*Wanderingspirit* at paras. 6–7). In the case at bar, the appellants' ability to pay was never raised before the Federal Court as a mitigating factor. No evidence was presented to establish that this factor could be relevant in this case, except in the case of Ms. Riverin.

[45] As I have already stated, the decision in *Joly v. Gadwa*, 2019 FC 175 (*Joly*) was not brought to the attention of the Federal Court, since the decision was rendered after the parties' written submissions had been received. Once again, this is a decision that illustrates the importance of presenting detailed evidence regarding the contemnors' ability to pay so that the Court can individualize the sentence in the Indigenous context. I note that the Court imposed small fines on those who, in the Court's opinion, could not pay more.

[46] As part of its analysis, the Federal Court also described the sentences imposed for failure to comply with a consent order or sentences imposed for failure to provide tax information or documents (*Joly* at para. 50). In my view, it is far from clear that those cases have sufficient common characteristics to be relevant or comparable in order to be truly useful in determining a fit sentence in this decision.

[47] In this case, the appellants not only violated the right of their First Nation and caused it harm (Decision at para. 80), but also tried to undermine the rights of the member of the First Nation who had sought the Federal Court's intervention (Decision at para. 79).

[48] As we have already affirmed in the appeal of the finding of contempt, the Federal Court was correct to conclude that there had been flagrant and repeated contempt given that the appellants had had several opportunities to reflect on this issue, given that they had been repeatedly asked to act as soon as possible to give effect to the 2017 judgment following this Court's dismissal of their stay application on April 23, 2018.

[49] Chief Simon was well aware that he could lose before the Federal Court in 2017 and had a [TRANSLATION] "plan of action". He testified before the Federal Court that he was going to challenge any judgment rendered (A.B., Vol. 5 at 1377–78). This was therefore a thought-out approach, and the affidavits of each of the council members in support of the stay applications indicated that the chief and the other appellants had to have known that the 2017 judgment was binding unless they obtained a stay.

[50] Chief Simon was definitely the leader in making decisions following the 2017 judgment. As the Federal Court stated, he has considerable experience in managing Indigenous affairs, has a master's degree in economics and has held several management positions in councils for more than one Indigenous band (Decision at para. 38). His taking the position that the right to self-determination allowed him to violate a Federal Court order could influence other bands in the same way he influenced the other appellants. That position received media coverage and was

publicized on the Council's website. Under these circumstances and given the disparaging comments about Justice St-Louis, I cannot conclude that, although the fine was large, it was not fit.

[51] Similarly, it was not clearly inappropriate to establish the applicable fine for the other appellants at half the amount of the fine imposed on the chief. It took their level of accountability into consideration. The fine imposed highlighted the importance for all Indigenous elected officials to ensure that their positions are aligned with the rule of law when the rights of their First Nation are at stake.

i. Ms. Riverin

[52] As I have already mentioned, a contemnor's ability to pay is an important factor to consider especially in an Indigenous context. The culture of a First Nation can also influence how earned net income is managed. For example, income may be used to provide for several children or extended family, or it may be shared with other disadvantaged members of the community. Naturally, it is the Indigenous contemnor's responsibility to present any relevant evidence in relation to his or her ability to pay or the use of his or her income.

[53] Before presenting his evidence before the Federal Court, counsel for the appellants (defendants before the Federal Court) described Ms. Riverin as a somewhat unique case (A.B., Vol. 6 at 1663). During her brief and sometimes difficult-to-interpret testimony about her financial situation, she stated that she was retired and that her pre-retirement income was $34,000.00, except for the period when she was a councillor.

[54] She was represented before us by legal-aid counsel. In my opinion, there are exceptional circumstances warranting this Court's intervention, not to amend the amount of the fine imposed, but rather to offer her an alternative way to discharge the fine.

[55] On an exceptional basis, I consider that the Federal Court's comments on the appellants' second contempt of court charge (*Bacon St-Onge v. Conseil des Innus de Pessamit*, 2021 FC 217 at paras. 105−09) must be taken into account. It appears that Ms. Riverin did not pay the fine imposed in 2019 because she simply did not have the means to do so. Her new counsel had presented more comprehensive evidence in that regard. In 2021, the Federal Court noted that, even though the decision under appeal remained binding, it was appropriate to acquit Ms. Riverin of the second contempt-of-court charge since she had not participated in the scheme that had resulted in the other defendants' being found in contempt. This situation illustrates, once again, the importance for the parties to present any relevant information in relation to their ability to pay at the sentencing hearing.

[56] In this case, although the testimonial evidence on the record is tenuous, it shows that Ms. Riverin had raised a relevant element that differentiated her from the other appellants. According to her testimony, she worked as an organizer for Elders for about a decade. The well-being of the Elders was always her priority, and she continued to handle activities organized for them in August 2018, even though she ran the risk of not being paid.

[57] Given the objectives prioritized by the Federal Court and the scant evidence on the record, I do not find it appropriate to reduce the amount of the fine. Instead, I propose adding to

the appeal judgment that, in lieu of paying the $10,000.00 fine within the 90-day time limit, Ms. Riverin will be required to provide 120 hours of community service to the Elders of the Innu community of Pessamit. Given the amount of time that has already passed since the Federal Court judgment, the hours must be completed within three months of this decision.

ii. Costs

[58] At the hearing, we learned that the amounts submitted to the registry after the second contempt judgment had not yet been distributed to community organizations, as ordered in the judgment under appeal. I understand that the respondent has been working with the new Council and a new chief for several years. He has therefore had to deal with that role and his obligation to distribute the amounts immediately. However, the decision ordering that the sums be distributed was never stayed. The respondent was therefore required to comply with the decision, which we requested at the hearing that he do immediately.

[59] Under these circumstances, I find that there is no need to award costs on a solicitor-and-client basis. Given that the respondent has not submitted a memorandum in this case, the costs should be set at $1,000.00.

IV. Conclusion

[60] I therefore propose that the appeal be dismissed, except as regards Ms. Riverin, with costs fixed in the amount of $1,000.00, to be paid jointly and severally by the appellants, except for Ms. Riverin.

"Johanne Gauthier"
J.A.

"I agree.
Marianne Rivoalen J.A."

"I agree.
Sylvie E. Roussel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE LAFRENIÈRE DATED JUNE 7, 2019, DOCKET NO. T-2135-16

DOCKET:	A-258-19
STYLE OF CAUSE:	RENÉ SIMON, GÉRALD HERVIEUX, MARIELLE VACHON, DIANE RIVERIN AND RAYMOND ROUSSELOT v. JÉRÔME BACON ST-ONGE
PLACE OF HEARING:	BY ONLINE VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 12, 2022
REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	RIVOALEN J.A. ROUSSEL J.A.
DATED:	JANUARY 4, 2023

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