Federal Court Cour fédérale

Date: 20190607

Docket: T-2135-16

Citation: 2019 FC 794

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, June 7, 2019

PRESENT: Justice Lafrenière

BETWEEN:

JÉRÔME BACON ST-ONGE

Applicant

And

THE CONSEIL DES INNUS DE PESSAMIT, RENÉ SIMON, ÉRIC CANAPÉ, GÉRALD HERVIEUX, DIANE RIVERIN, JEAN-NOËL RIVERIN, RAYMOND ROUSSELOT AND MARIELLE VACHON

Respondents

ORDER AND REASONS

[1] The applicant, Jérôme Bacon St-Onge, is bringing a motion seeking a declaration that the respondents are guilty of contempt of court and to impose a deterrent and denunciatory sentence.

I. Overview

[2] On December 21, 2017, Madam Justice Martine St-Louis of this Court rendered a judgment in favour of Mr. Bacon St-Onge in *St-Onge v Conseil des Innus de Pessamit*, 2017 FC 1179 [Judgment], the disposition of which reads as follows:

> THIS COURT'S JUDGMENT is that:
>
> 1. The application for judicial review is allowed.
>
> 2. The application for an order of *certiorari* is allowed. The Council's resolution from March 8, 2016, is cancelled; the 2015 Code is declared invalid; the election held on August 17, 2016, is cancelled.
>
> 3. It is hereby declared that the 1994 Code remains in force.
>
> 4. However, the order of *certiorari* is hereby suspended until the next elections in order to allow the Pessamit Innu Nation to amend the 1994 Code, if such is the consensus, and that these amendments shall be implemented in accordance with the amendment requirements of the 1994 Code.
>
> 5. If the 1994 Code is not amended, the elections shall be held on the scheduled date, i.e., on or around August 17, 2018; if the 1994 Code is amended, then the elections shall be held on the date set out in the new Code.
>
> 6. The current Chief and Council shall continue to carry out their duties and administer the affairs of the Pessamit Innu Nation normally until the next elections.

[3] Mr. Bacon St-Onge criticizes the respondents, the Conseil des Innus de Pessamit [the Council], the Chief, René Simon, and six councillors, Éric Canapé, Gérald Hervieux, Diane Riverin, Jean-Noël Riverin, Raymond Rousselot and Marielle Vachon, for contrevening the Judgment by refusing to make changes to the "Betsiamites Elections Code" [1994 Code] or to clearly state their position with respect to holding the elections on the scheduled date, on or around August 17, 2018, in accordance with the 1994 Code.

[4] On July 6, 2018, on an *ex parte* motion by Mr. Bacon St-Onge, Justice George Locke issued an order under Rules 466 and 467 of the *Federal Courts Rules*, SOR/98-106 [the Rules], directing the respondents to appear before this Court to hear the evidence on the facts alleged against them, namely, the failure to comply with the Judgment, and raise defences to avoid a finding of contempt.

II. Chronology of events that led to the Judgment

[5] Mr. Bacon St-Onge is a member of the Pessamit Innu Nation. His motion for contempt arises from a dispute between the parties that can be briefly summarized as follows.

[6] In 1994, a written customary code was developed and presented to the community by the Council, then named the Betsiamites Band Council. The 1994 Code was adopted at the regular meeting of the Council on May 24, 1994. The 1994 Code provides that the elections shall be held around August 17 during an election year (section 3.4), that the Chief and councillors are elected for a two-year mandate (section 3.2) and that the Chief and the councillors assume their duties on the first month following the elections (section 3.3), i.e., on or about September 17 during the election year.

[7] Chapter 9 of the 1994 Code sets out its “internal amendment mechanism.” This mechanism provides that “if one or more electors” wants an amendment to be made, they must obtain the written support of half of the electors registered on the electoral list and present this support at a Council meeting at least six months before the elections.

[8] In 2014, the Council decided to reform the 1994 Code and initiated a process to develop a new customary code, the "Conseil des Innus de Pessamit Election Code" [2015 Code]. The 2015 Code provides for, among other things, a four-year term instead of a two-year term (section 6.2).

[9] On July 21, 2015, the Council passed a resolution to submit the following question to the electors by way of a referendum: "Êtes-vous d'accord avec le nouveau code électoral du Conseil des Innus de Pessamit, version 2015, et que celui-ci soit appliqué à partir des élections du 17 août 2016?" [Do you agree with the new 2015 version of the Conseil des Innus de Pessamit electoral code and that it be effective starting from the elections on August 17, 2016?].

[10] In the days following the referendum, the electoral officer prepared a statement referring to section 9.1(a) of the 1994 Code and found that [TRANSLATION] "the amendment to the electoral code is rejected because the required number has not been reached". On December 17, 2015, the secretary-registrar of the Council sent a memo to Council members noting that Council did not have the power to amend the 1994 Code without complying with Chapter 9.

[11] Nevertheless, on March 8, 2016, the Council adopted the 2015 Code by way of a resolution and confirmed its coming into force for future elections.

[12] On May 25, 2016, Mr. Bacon St-Onge learned that the 2015 Code had been adopted. With the help of some other members of the community, he addressed the Council to challenge the application of the 2015 Code. There were several exchanges between Mr. Bacon St-Onge and

Mr. Gauthier, counsel for the Council, who maintained that the 2015 Code was adopted legally and democratically and was representative of the will of the community.

[13] On July 8, 2016, Mr. Bacon St-Onge submitted his candidacy for councillor for the elections of August 17, 2016. The elections were held and the individual respondents were elected. Mr. Bacon St-Onge filed a a formal objection against the election held, to which Mr. Gauthier responded, on September 2, 2016, that the Council cannot act on his challenge as it was inadmissible under the 2015 Code.

[14] On December 9, 2016, M. Bacon St-Onge filed an application for judicial review of the Council's resolution from March 8, 2016, adopting the 2015 Code, the elections held on August 17, 2016, under the aegis of the 2015 Code and the decision by Mr. Gauthier dismissing his formal objection against the elections held on August 17, 2016.

[15] On April 18, 2017, by way of a resolution signed by Chief Simon and the six councillors, the Council stated that it would [TRANSLATION] "no longer accept, in any way whatsoever, the intervention of a third party (government, municipalities, regional organizations, Crown corporations, unions and others) in the exercise of its powers" and [TRANSLATION] "does not tolerate any actions, directives, orders, instructions or others in the exercise of its powers".

[16] In her Judgment, Justice St-Louis agrees with the applicant's position that the Council must respect the rule of law and democracy and follow the amending procedure provided for in the 1994 Code. She concludes that the Council does not have inherent powers, including the power to amend the 1994 Code by resolution, and that the amendments should have instead been

made in accordance with the amending process set out in the 1994 Code. Accordingly, Justice St-Louis allowed the application for judicial review. However, to avoid any uncertainty or unnecessary disruption of the administration of the Band, Justice St-Louis suspended the Judgment in order to allow an amendment to the 1994 Code in accordance with the process provided for in Chapter 9 of the 1994 Code. Otherwise, the elections shall be held on or about August 17, 2018.

[17] On June 28, 2018, realizing that the Council had no intention of calling the election and had not appointed an electoral officer, Mr. Bacon St-Onge brought his motion for contempt.

III. Evidence at the contempt hearing

[18] The hearing for contempt was held in Quebec on August 9 and 10, 2018. Kathy Picard testified first, followed by Priscilla Bacon and Mr. Bacon St-Onge. Ms. Vachon and Chief Simon testified on behalf of the defendants.

[19] The following facts are not in dispute.

[20] On January 22, 2018, the defendants appealed the Judgment and, on February 23, 2018, they applied to the Federal Court of Appeal to stay the Judgment pending the outcome of the appeal. In support of their motion, each defendant filed an affidavit. The defendants claimed that they were informed of the Judgment on December 21, 2017, and that they would suffer irreparable harm if the stay order was not made as elections would be called, and they were therefore at risk of losing their positions.

[21] On April 23, 2018, Justice Richard Boivin dismissed the motion on the grounds that the defendants had not established irreparable harm if the stay was not granted and that the balance of convenience favoured Mr. Bacon St-Onge.

[22] On April 30, 2018, a news article written by the communications councillor was published on the Council's website. The full text of this article is reproduced below:

> [TRANSLATION]
>
> "SETTING ASIDE OF THE PESSAMIT ELECTION
>
> We will not allow anyone to flout our Aboriginal rights.
>
> PESSAMIT, April 30, 2018: A member of the First Nation of Pessamit, Jérôme Bacon St-Onge, is currently seeking to set aside, before the Federal Court, the elections held in our community, on August 17, 2016. He bases his motion on the fact that the electoral code adopted in 2015 is invalid because it would not comply with the amendment procedures set out in the 1994 electoral code. It would be, according to him, inconsistent to grant the Council the powers to amend the Code by way of a resolution.
>
> Although he argued that [TRANSLATION] "the reserves do not form enclaves where the application of the rule of law is excluded", which means that, according to him, the Council did not have the [TRANSLATION] "right" to amend the electoral code, Mr. Bacon St-Onge did not however hesitate to show up (and be deafeated) during the very election whose legality he is challenging today. Unshaken by such a contradiction, Mr. Bacon St-Onge then went on to erode before the courts, the right of the Pessamit First Nation to self-government. On December 21, 2017, Justice Martine St-Louis of the Federal Court ruled in his favour and ordered the setting aside of the August 2016 election (see PDF #1: JUDGMENT and OTHER DOCUMENTS) and the holding of new elections on August 17, 2018.
>
> No turning back
>
> Soon after, the Innu Tshishe Utshimau of Pessamit announced its intention to appeal this decision. [TRANSLATION] "We will not tolerate a third party (court, government or other) proceeding with the application of a judgment deeply rooted in colonialist values

that do not in any way reflect the fundamental principles of respect for rights and Aboriginal governance" Chief René Simon stated at the time. [Emphasis added.]

An Aboriginal right

Outraged that one of its own members would engage in a no-holds barred attack against the recognition of the Aboriginal rights of the Aboriginal people guaranteed by subsection 35(1) of the *Constitution Act*, 1982, the elected council of Pessamit noted that in 2010 a senate committee recognized that the rights of Aboriginal people are pre-existing rights whose existence is not dependent on Canadian laws or the Constitution. First Nations and other expert witnesses heard by said committee maintained that the selection of leaders is an inherent right of self-government and thus protected under section 35 of the Constitution as an Aboriginal right.

Who does he think he is?

With his actions and the judgment he obtained, Mr. Bacon-St-Onge insulted the Pessamiulnut who exercised their right to vote on free conscience and opted for stability. Who is he to question a democratic exercise, he who the day following the election, stated on social media that he would respect the people's decision?

No support and no funding

Since one cannot purport to represent the people and fight on their behalf without benefitting from no support whatsoever in the population, Mr. Bacon-St-Onge attempted to garner popular and financial support by calling a general meeting. Given that he only managed to gather only about 10 people and raise about $100 for this event, he then tried to convince the courts that his was the proper course of action by filing an application for advance costs, albeit in vain (see PDF #2: Advance costs). With no support and no funding, he is presently suing the Council for $82,000 in legal fees and $145,000 in damages and interest for breach of confidentiality and damage to reputation (see PDF #3), and seeking that the lawsuit remain confidential (PDF #4). But what damages were suffered other than those he caused himself, and what interest are we talking about other than having all of the population of Pessamit bear the burden of his irresponsibility?

Political ambitions?

It is clear that Mr. Bacon-St-Onge is neither concerned about the popular choice, the democratic principles, or the self-goverment of Pessamiulnut. The steps he took are dangerous and irresponsible.

> They essentially serve only his own interests and political ambitions, which he openly discussed with the Baie-Comeau and Quebec media to whom he stated he wanted to run for councillor or chief during the election he attempted to provoke. Faced with such duplicity, Chief Rene Simon is committed to ensuring the population that the Council will not allow Mr. Bacon St-Onge to obtain the amounts of money mentioned, and that it acts as the guarantor of Aboriginal rights and governance." [Footnotes deleted.]

[23] On May 24, 2018, Mr. Bacon St-Onge sent a letter to the respondents asking them about their intentions regarding the appointment of an electoral officer and the election call. On May 29, 2018, the respondents relied on the ongoing proceedings as a response.

[24] On June 15, 2018, counsel for Mr. Bacon St-Onge sent a letter to counsel for the respondents reminding him that the respondents had to appoint an electoral officer no later than June 17, 2018, under section 3.12 of the 1994 Code so that the electoral process for the Council elections of August 17, 2018, could begin. Under said section, the first step to begin the electoral process is to appoint an electoral officer at least two months before the end of the Council's term, i.e., two months prior to August 17, 2018.

[25] On June 18, 2018, the Council held a general meeting to provide the 2012 to 2017 activities report of the Innu of Pessamit and to clarify the situation concerning the upcoming elections. The Chief and the councillors are all present, accompanied by Mr. Gauthier. The general meeting was broadcast live on a community radio station.

[26] A message entitled [TRANSLATION] "Word from the Chief" written by Chief Simon is on the first page of the report distributed to the community members present at the general meeting which reads, in parts, as follows:

> [TRANSLATION]
>
> "Consensus is that our coming to office in 2012 forced us to reflect on our governance and be more assertive on the political stage. This political posturing appeared necessary following third-party interventionism in the Council's administration. For the Council, the third parties' attitude is merely an extension of the colonial system that is taking an increasingly heavy toll on our own systems of governance, trying to confine us to a secondary role on issues directly involving our future.
>
> On the margins of Canada's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples, Pessamit intends to jump on this opportunity to assert its right to self-determination and act as a government with all the appropriate responsibilities and prerogatives.
>
> Among other things, and no longer tolerate the third-party intrusion attempts in matters involving the Council's powers and affairs, which are its exclusive responsibility. We acted this way with…and intend to act this way with anyone who attempts to usurp the Council's powers and who would act against the will of the Pessamiuilnut.
>
> The electoral code also runs along the same lines and has been raising questions since its adoption in 1994. Let us simply recall that it has never been the subject of consultation, or even received the approval of the people in a referendum.
>
> As regards its amendment in 2015, the work was carried in a transparent manner and voted on in a referendum (accepted by the majority). However, the only fly in the ointment is the reaction of one person who allows himself to challenge all the work on the code, the democratic exercise of the referendum, but most of all, the ultimate exercise in democracy of holding an election and thus defy the popular will.
>
> In doing so, he showed a total lack of respect for the population of Pessamit who exercised its democratic right in good faith, freely and knowingly. However, this person does not have any support

> and claiming to protect the interests of the Pessamiuilnut without plebiscite is dangerous…".

[27] On June 21, 2018, the respondents filed an application for leave to appeal to the Supreme Court of Canada from a judgment of Justice Boivin of the Federal Court of Appeal rendered on April 23, 2018.

[28] On July 4, 2018, Justice Boivin dismissed the respondents' application for reconsideration of his decision of April 23, 2018.

A. *Prosecution testimonies*

[29] Very briefly, the oral testimonies in support of Mr. Bacon St-Onge's motion reveal the following.

[30] Ms. Picard is a member of the Pessamit band. She was at the general meeting of June 18, 2018, and testified as to the conduct and information shared during this meeting. She estimated that about 75 to 100 people attended the meeting and noted that a number of community members challenged the Council's decision not to hold elections. According to her, Chief Simon replied that there would be no elections on August 17, 2018, and that it was the Council and the Chief who made the decision and not [TRANSLATION] "the young judge who did not know anything…about the Aboriginal community". On cross-examination, Ms. Picard confirmed that Chief Simon spoke in Innu and that she used the term "auassiu" [young] by referring to the judge.

[31] Ms. Bacon is also a member of the Pessamit Band. She arrived late to the general meeting of June 18. Before leaving the house, she heard Chief Simon say on the radio that [TRANSLATION] "there will not be an election this summer". Ms. Bacon spoke at the meeting to warn the Council of the consequences of not calling the election, such as the possibility of contempt of court, the legal gap for the Innu of Pessamit who would be without political representation, the delays caused by said gap and the unlawul use of the Council's funds for legal fees. Ms. Bacon also testified that Chief Simon stated that [TRANSLATION] "we are sovereign, we have our governance, a self-government…we are legitimate and no judge will interfere with our business".

[32] Mr. Bacon St-Onge stated, during his testimony, that the Council did not amend the 1994 Code. He added that he felt attacked because the Council wanted to put the blame and responsibility on him for the numerous legal proceedings he took to invalidate the 2015 Code.

[33] His testimony corroborates the testimony of his two witnesses. He confirms that at the general meeting of June 18, Chief Simon addressed the hearing by saying that there would not be any elections, that the Council was not required to comply with the judgments of the Federal Court and, also, that the Council did not have to comply with the Judgment of Justice St-Louis, which he referred to as a [TRANSLATION] "young judge who had no knowledge of Aboriginal law". According to Mr. Bacon St-Onge, the other councillors did not object to Chief Simon's words.

[34] Mr. Bacon St-Onge testified that he spoke during the intervention period to remind the Council that nobody was above the law and that the Council should hold an election. He also told

the Council that he did not appreciate being targeted for his interventions before the courts. He stated that the day after the meeting, a number of members of the Innu community of Pessamit were concerned and asked him questions to better understand the situation.

[35] Finally, several newspaper articles were adduced in evidence to establish the attention given by the media to the chaos within the community. On the whole of the evidence, it is clear that the articles in question provide an accurate version of the events and, more specifically, the words of Ms. Picard, Mr. Bacon St-Onge and Chief Simon. Furthermore, they are important sources of information by which the members of the community learned what was said about the elections during the meeting of June 18 and what the immediate outcome of said meeting was. Also, on June 19, 2018, Chief Simon indicated, during an interview with Radio-Canada, that there would be no elections in the summer of 2018, that he wanted to stay on another two years and that the Council would bring the matter before the Supreme Court if necessary.

B. *Defence testimonies*

[36] The respondents, in turn, called Ms. Vachon and Chief Simon for their defence.

[37] Ms. Vachon has been a councillor since 2002. She explained that the electors of the Band approved the 2015 Code during the referendum vote and, apart from Mr. Bacon St-Onge, no other member voiced discontent with the code. After learning about the content of the Judgment, the councillors appealed it as they had to [TRANSLATION] “defend themselves to be able to continue the mandate that the population had entrusted to them from 2016 to 2020”. Ms. Vachon noted that the Judgment created much uncertainty among the members of the Innu of Pessamit

who were concerned about the outcome of things. According to her, Mr. Bacon St-Onge raised concerns among members by threatening the possibility of an [TRANSLATION] "administrative receiver" resorting to cutting several community services. To address the community's concerns, the Council decided to hold a general meeting on June 18. Ms. Vachon stated that several members intervened during the meeting to ask the Council to hold elections. Throughout her testimony, Ms. Vachon maintained her belief that she was elected in 2016 and that she would stay in her position until 2020. She essentially agreed with Chief Simon's submissions found on the Council's website and in the report.

[38] Chief Simon testified that he has extensive experience in Aboriginal business administration. Holding a Bachelor's and Master's degree in economics, Chief Simon held a number of management positions within the Aboriginal Band Councils. When he was re-elected Chief in 2012, his mandate was to rectify the financial situation of the Innu of Pessamit and investigate the use of the Council's funds between 2002 and 2012. He also undertook numerous economic development projects for the community. He submits that the Judgment caused political instability that led to difficulties in the Council's economic projects, which justifies the Council's decision to remain in its position despite the Judgment.

[39] Moreover, Chief Simon submitted that the decision to adopt the 2015 Code was made by a consensus of the Council, as a two-year mandate was too short to accomplish the numerous projects that were underway. This code was developed in the spirit of advancing the self-government, governance and self-determination of Aboriginal councils, which explains why the Council appealed the Judgment that invalidated it. According to Chief Simon, following the principle of self-determination, electoral decisions, such as amending the electoral code, belongs

to the population of the Innu of Pessamit and not the courts. Given the belief that it was a question of self-determination, the councillors felt it was necessary to appeal the Judgment of Justice St-Louis and not call the election until they had a final judgment, as its execution would result in a loss of Aboriginal leaders. According to Chief Simon, this decision of the Council was supported by the community. He also claimed that the execution of the Judgment would prevent him from appealing it and that he was caught between his right to appeal and the execution of the Judgment.

[40] As regards the general meeting of June 18, Chief Simon confirmed that he publicly stated that the councillors would stay in their position until a final decision was rendered by the courts so as to reassure the Band members. He confirmed that he referred to Madam Justice St-Louis as "auassiu", an Innu word meaning [TRANSLATION] "young", to express that she was a young judge recently appointed to the Court. He also confirmed that the Council published the article of April 30, 2018, on its site to further reassure the Band members and respond to the provocative accusations that Mr. Bacon St-Onge made on social media.

IV. Conviction

[41] After having heard the overwhelming and uncontradicted evidence and the parties' submissions, I rendered a decision from the bench, with written reasons to follow.

[42] Rule 467 of the Rules provides the required procedure to find "a person" in contempt of Court. A natural person, acting in their own private capacity for their own private benefit, is

directly included within the definition of the word “person”. Proof of the constituent elements of contempt against the individual respondents leaves no room for reasonable doubt.

[43] Justice St-Louis concluded that it was appropriate to stay her order cancelling the election held on August 17, 2016, for a period of six months in order to allow the Pessamit Innu Nation to amend the 1994 Code, if such was the consensus, otherwise the elections had to be held on or around August 17, 2018. To this end, Chief Simon and the current councillors were authorized to stay in their position to continue to carry out their duties until the next elections and execute the Judgment. However, they clearly failed in their duties and responsibilities towards the Pessamit Innu Nation and essentially acted for themselves, in their own interest, and not in the interest of the community. The mere filing of an appeal does not suspend the implementation of the Judgment. In the absence of a suspension order, an appealed judgment must be implemented until the appeal is finally disposed of.

[44] As defined in section 2 of the Rules, the term “person” includes “a tribunal, an unincorporated association and a partnership”. It is well-established that a band council is a “federal board” within the meaning of section 18 of the *Federal Courts Act*, RSC 1985, c F-7, and that a band council is, in and out of itself, a separate entity for the purposes of contempt proceedings. Based on the evidence presented, there is no basis to find that the Council, as a separate entity, failed to commit an act required by the Judgment or to criticize the Council itself for being in breach of its obligations.

[45] I therefore acquitted the Council and found Chief Simon and the six councillors (henceforth "the respondents") in contempt of court. They were summoned to appear at a hearing on the following Friday in order to determine the appropriate sentence.

[46] On August 13, 2018, following the conviction, the respondents advised the Court of the call for the elections scheduled for September 17, 2018. At the request of the respondents, the sentencing procedure was postponed subject to a number of conditions, in particular that a transitional council, made up of the respondents, be put in place until the holding of the elections, that the transitional council have powers limited to the sole day-to-day operations of the business of the Pessamit Innu Band, that the members of the transitional council not have access to the funds and finances of the Pessamit Innu Council or Band for the purposes of Court proceedings related to this ongoing matter before the Federal Court of Appeal and the Supreme Court of Canada, and that the members of the transitional Council not receive any remuneration during the transition period unless it was granted by the new elected council.

V. Sentencing hearing

[47] The sentencing hearing was held on October 22 and 23, 2018. Mr. Bacon St-Onge adduced some evidence. Mr. Hervieux and Ms. Riverin testified on their own behalf and on behalf of the other defendants. It is important to note that Mr. Rousselot was unable to testify at the hearing owing to his precarious state of health.

[48] Mr. Bacon St-Onge made submissions as to the sentence and provided an update on the events that occurred since the contempt hearing. He stated as follows:

[TRANSLATION]

1. On August 23, 2018, Justice Brown of the Supreme Court of Canada dismissed the respondents' motion to stay the Judgment;

2. On September 17, 2018, Chief Simon was re-elected, as were councillors Bacon St-Onge, Suzanne Bacon-Charland, Marielle Vachon, Éric Canapé, Jean-Noël Riverin and Gérald Hervieux;

3. On September 30, 2018, those elected to the Council on September 17, 2018, were sworn in;

4. At the swearing-in ceremony of the officials elected on September 30, 2018, where several members were in attendance and which was broadcast on the Pessamit community radio, Chief Simon reiterated that he was still convinced that he had received a four-year mandate during the August 17, 2016, election.

[49] Mr. Bacon St-Onge produced a document that reflects the remuneration of elected officials, including travel expenses and other remuneration, for the fiscal year ending March 31, 2018, which can be broken down as follows:

A. Chief René Simon:	$167,656 (exempt from taxation)
B. Councillor Diane Riverin:	$104,540 (exempt from taxation)
C. Councillor Éric Canapé:	$103,626 exempt from taxation)
D. Councillor Gérald Hervieux :	$112,213 (exempt from taxation)
E. Councillor Jean-Noël Riverin :	$108,700 (exempt from taxation)
F. Councillor Marielle Vachon :	$108,430(exempt from taxation)
G. Councillor Raymond Rousselot :	$97,598 (exempt from taxation)

[50] During their testimonies, Mr. Hervieux and Ms. Riverin expressed regret that the Court was offended by their political position. To that end, they filed a joint statement expressing their regret for the perception raised by their political position which reads as follows:

[TRANSLATION]

We, the members of the Conseil des innus de la Première Nation de Pessamit elected in 2016, make the following statement:

1. We recognize that we did not follow the findings contained in the order of December 21, 2017;

> 2. Although this order was appealed and the stay of its execution was denied, we have made the decision not to call an election considering that the Supreme Court may stay the execution of this order;
>
> 3. This belief caused us not to call an election as ordered by the judgment of December 21, 2017;
>
> 4. We realized on August 10, 2018, that we should have called an election to comply with the order;
>
> 5. We apologize and regret that this belief and our actions and political perception may have offended the Court and the members of the Pessamit Innu First Nation;
>
> 6. We would also like to add that we take full responsibility for these actions and apologize to the Court once again for any consequences that may have resulted;
>
> 7. This statement is made in good faith without prejudice to our rights to appeal the contempt of court judgment and is intended to show our respect for the orders of the Federal Court and our respect for the members of the Pessamit First Nation.

[51] Mr. Hervieux and Ms. Riverin also added that the public criticisms of Mr. Bacon St-Onge caused significant harm to the Council, the community and themselves, in both their family and personal and professional life. During that period, the public interventions of Mr. Bacon St-Onge also affected all Council employees who voiced concerns to the respondents about their work and projects underway. The respondents' loved ones also had serious concerns about what Mr. Bacon St-Onge said in public as they were stigmatized as [TRANSLATION] "criminals" in the community.

[52] At the end of the hearing, I afforded the parties a right to make written submissions regarding their respective positions on sentencing.

[53] It should be noted that on November 1, 2018, the Supreme Court of Canada dismissed the application for leave to appeal the decision of Justice Boivin dated April 23, 2018. On January 23, 2019, the Federal Court of Appeal dismissed the respondents' appeal from the Judgment, with costs.

VI. Applicable law

[54] Contempt proceedings involve a very serious matter, given that they are quasi-criminal in their nature. The Supreme Court, in *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 901 [*United Nurses of Alberta*], explains the principle underlying the importance of complying with court decisions:

> Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

[55] The Canadian common law recognizes two forms of contempt of court: civil contempt and criminal contempt (*Carey v Laiken*, 2015 SCC 17 [*Carey*], at paragraph 31; *United Nurses of Alberta*, at paragraph 4). On the one hand, criminal contempt arises in situations where the element of public defiance of the court's process in a way calculated to lessen societal respect for the courts is added to the breach or brings the administration of justice into scorn. On the other hand, the one purpose of sentencing for civil contempt is punishment for breaching a court order. This is a case of civil contempt.

[56] In *Carey*, the Supreme Court of Canada mentions that civil contempt has three elements which must be established beyond a reasonable doubt.

[57] The first element is that the order alleged to have been breached must state clearly and unequivocally what should and should not be done. The second element is that the people alleged to have breached the order must have had actual knowledge of it. The third element is that the people alleged to have breached the order must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[58] The burden of proof in this case is the same as that in a criminal trial and it lies upon the moving party. The alleged contemnor need not present evidence to the Court (*Joly v Gadwa*, 2018 FC 746, at paragraphs 32 and 34).

VII. Analysis

A. *Service of the proceedings and exhibits*

[59] At the outset, the respondents submit that Mr. Bacon St-Onge delayed in serving the order of Justice Locke and the notice of hearing ordered by Chief Justice Crampton on July 30, 2018. Indeed, on August 3, 2018, Mr. Bacon St-Onge served the two orders on counsel for the respondents electronically accompanied by a copy of the record containing the evidence before Justice Locke. It was not until August 6, 2018, that Mr. Bacon St-Onge served them on the respondents in person.

[60] The respondents submit that service did not comply with sections 128(1) and 467(4) of the Rules, or the jurisprudential tests. In addition, they note that several pieces of evidence used by Mr. Bacon St-Onge are inadmissible as they were not disclosed within the prescribed time. According to the respondents, it was impossible to review the documents and analyze them in only ten days.

[61] It should be noted that the respondents were able to show up in Court with their counsel on very short notice. They did not request a postponement of the hearing. Furthermore, there is no evidence to suggest that they were taken by surprise or deprived of their right to make full answer and defence. In the absence of any prejudice, even minor, I find that the breach of the rules of procedure and procedural fairness argument is unfounded.

B. *If contempt is established beyond a reasonable doubt*

[62] To preface this, it is important to note that it has been established that Chief Simon and the six councillors were aware of the Judgment and clearly understood it. They were well aware that by refusing to take steps to call elections so that they could be held on or around August 17, 2018, they did not comply with the Judgment and thus committed contempt.

[63] Rather than admitting it at the contempt hearing, the respondents tried to justify and defend themselves by attacking the credibility of Mr. Bacon St-Onge and casting doubt on his intentions. Moreover, in their testimony at the contempt hearing, the respondents still remained defiant. It was entirely inappropriate and unjustified to force Mr. Bacon St-Onge to fight a long

and unnecessary, and certainly costly, legal battle not only in his own interests, but also in the interests of his community and the Court.

[64] The respondents argue that the Judgment is vague and ambiguous and that consequently, the doubt should benefit them. I agree that the orders in the Judgment could have been more detailed. However, it is necessary to take into account the context of the orders and how the parties understood them (*Salt River First Nation 195 (Councillors) v Salt River First Nation 195 (Chief)*, 2006 FC 837, at paragraph 18). Mr. Bacon St-Onge tried to invalidate the 2015 Code and the holding of new elections, which was approved by Justice St-Louis. Consequently, the 1994 Code remains valid and in force. Since no amendments were made to the 1994 Code, the elections should have been held on or around August 17, 2018. The respondents are responsible, as holders of the powers of the executive, to enforce existing laws and not avoid their application by undermining the Court's authority. They cannot argue otherwise.

[65] The evidence reveals that the respondents refused to hold the elections provided for in the Judgment, even following the order of Justice Boivin, as they believed that the Court could not interfere in the Band's electoral affairs. The respondents claim that they acted under the Council's sovereignty, which reflects the self-government of Aboriginal bands. According to the respondents, deference must always be shown when the Court is faced with First Nations decisions, especially in the electoral context. They also allege that they simply expressed their disagreement with the Judgment, which is permitted by the freedom of expression guaranteed by the *Charter of Rights and Freedoms*. Finally, they cite *Telus Mobility v Telecommunications Workers Union*, 2002 FCT 656 [*Telus*] to explain that the Judgment concerns the Council as a separate legal entity from the Chief and councillors who make it up, especially since the Chief

and councillors attempted to avoid the breach by appealing the Judgment and by seeking a stay of execution. They submit that they cannot, therefore, be found to be in contempt.

[66] I cannot accept the arguments put forward by the respondents.

[67] The line of jurisprudence and sections 392 (2) and 398 (1)(b) of the Rules state that a court order is enforceable notwithstanding the filing of a notice of appeal (*Professional Institute of the Public Service of Canada v Bremsak*, 2013 FCA 214 [*PIPSC*], at paragraph 40; *Robertson v Beauvais*, 2014 CF 208, at paragraph 126; *Halford v Seed Hawk Inc*., 2004 FC 1259, at paragraph 36) and that it must be considered to be valid until set aside by legal process (*Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892, at page 974 [*Taylor*]; *PIPSC*, at paragraph 39). If the respondents do not obtain a stay of execution, they cannot deflect. In *Taylor*, the Supreme Court states that even the ultimate invalidity of the order, or in this case the hope of an ultimate invalidity, was not a defence to the contempt citation. This principle is applied not to deprive the respondents of their right to appeal, but rather to avoid a legal vacuum and maintain the administration of justice and enforce compliance with the decisions of the courts.

[68] Moreover, there can be no dispute that the members of band councils must operate according to the rule of law, including the obligation to adhere to the notion of democracy and a commitment to respect the duty of procedural fairness in order to protect the interest of those they were elected to protect (*Balfour v Norway House Cree Nation*, 2006 FC 213, at paragraph 14). In *Long Lake Cree Nation v Canada (Minister of Indian and Northern Affairs)*, [1995] FCJ No 1020, at paragraph 31, Justice Rothstein explains this fundamental principle:

> On occasion, conflicts can become personal between individuals or groups on Council. But Councils must operate according to the rule of law whether that be the written law, custom law, the Indian Act or whatever other law may be applicable. Members of Council and/or members of the Band cannot take the law into their own hands. Otherwise, there is anarchy. The people entrust the Councillors to make decisions on their behalf and Councillors must carry out their responsibilities in a way that has regard for the people whose interest they have been elected to protect and represent. The fundamental point is that Councils must operate according to the rule of law.

[69] A councillor cannot be found to be in contempt of court simply because he or she is a member of the Council. In *Telus*, the Court notes that it is necessary that the councillor be complicit in the breach of the order, by either an aiding and abetting, a standing idly by, or a failure to take steps. The evidence reveals that none of the respondents expressed disagreement or attempted to dismiss or denounced the decision not to call the elections. The decision was publicly announced on numerous occasions by Chief Simon on behalf of the Council, particularly during the general meeting of June 18, through newspaper and news articles on the Council's website. Indeed, the respondents acknowledge that they participated in the decision-making process not to call the elections.

[70] To justify themselves, the respondents relied on the same argument raised before Justice St-Louis, stated at paragraphs 56 and 57 of the Judgment, that is, that the Council is sovereign and has the power to amend the 1994 Code by simple resolution, an argument considered and dismissed at paragraphs 79 to 81.

[71] Justice St-Louis carefully analyzed the issues in this case and made an informed and justified decision. The purpose of the Judgment is not to strip the Pessamit Innu Band of its

voting rights and self-determination, but rather to ensure the electoral customs of the Pessamit Band and the rule of law are observed. Finally, no one is above the law. The respondents had the responsibility to comply with the amendment process established by their own electoral code, that is, the 1994 Code, as well as the Judgment.

[72] Finally, I acknowledge the right of the councillors to express their disagreement with the Judgment. The Supreme Court however notes in *Prud'homme v Prud'homme*, 2002 SCC 85, that everything is based on circumstances. It is one thing to express disagreement with a decision; it is another to egregiously denigrate it and make a true mockery of the Court.

[73] I have carefully examined the evidence, both oral and documentary, presented by the five witnesses. As I stated at the end of the contempt hearing, I am of the view that Mr. Bacon St-Onge met his burden of showing that the individual respondents, having had knowledge of the Judgment, did not comply. Furthermore, in light of the overwhelming evidence, the respondents did not deny it and even admitted it.

[74] For the above-mentioned reasons, it is necessary to issue a conviction of civil contempt. An order with the appropriate sentence will be issued accordingly.

VIII. The appropriate sentence

[75] Rule 472 of the Rules provides the sentence orders that a judge may impose for contempt. In addition, a few principles were developed by the case law on the determination of the appropriate sentence in the context of civil contempt. In *Wanderingspirit v Marie*, 2006 FC

1420, at paragraph 4, Justice Snider summarized the elements to consider, as set out in the relevant case law, so as to guide the Court in determining the severity of the contempt sentence:

- the fine must not be a mere token amount, but must reflect the ability of the person found in contempt to pay the fine (*Desnoes & Geddes Ltd. v. Hart Breweries Ltd.*, 19 C.P.R. (4th) 346 at para. 7 (F.C.T.D.));

- whether the contempt offence is a first offence (*R. v. de L'Isle* (*1994*), 56 C.P.R. (3d) 371 at 373 (F.C.A.));

- whether the contemnor has a prior record of ignoring Court process (*Desnoes & Geddes*, above at para. 11);

- the presence of any mitigating factors such as good faith or apology (*Cutter* (*Canada*) *Ltd.*, above at 454);

- any apology and whether it was timely given (*N.M. Paterson & Sons Ltd. v. St. Lawrence Seaway Management Corp*., [2002] F.C.J. No. 1713 at para. 17 (F.C.T.D.));

- deterrence, to ensure that subsequent orders will not be breached (*Louis Vuitton S.A. v. Tokyo-Do Enterprises Inc.* (*1991*), 37 C.P.R. (3d) 8 at 13 (F.C.T.D.));

- any intention to wilfully ignore or disregard the order(s) of the Court (*James Fisher and Sons Plc v. Pegasus Lines Ltd. S.A.*, [2002] F.C.J. No. 865 at para. 17 (F.C.T.D.)); and

- whether the order has subsequently been found to be invalid (*Coca-Cola Ltd. v. Pardhan* (2000), 5 C.P.R. (4th) 333 at para. 6 (F.C.T.D.), aff'd (2003), 23 C.P.R. (4th) 173 (F.C.A.)).

[76] In *PIPSC*, at paragraph 35, the Federal Court of Appeal sets out other factors to complete Justice Snider's list.

- The trial judge should consider "the gravity of the contempt in the context of the particular circumstances of the case as they pertain to the administration of justice" (*Baxter Travenol Laboratories of Canada, Ltd. v. Cutter Canada, Ltd.*, [1987] 2 F.C. 557 at page 562 (C.A.) [*Baxter Travenol*]; *Lyons Partnership, L.P. v. MacGregor* (2000), 186 F.T.R. 241 at paragraph 21 (T.D.));

- Aggravating factors include the objective gravity of the contemptuous conduct, the subjective gravity of the conduct (*i.e.* whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness), and whether the offender has repeatedly breached orders of the Court (*Canada (Minister of National Revenue) v. Marshall*, 2006 FC 788 at paragraph 16 [*Marshall*]).

[77] This list of factors is not exhaustive, in the sense that has wide discretion when determining the appropriate sanction for civil contempt, based on the circumstances.

[78] Mr. Bacon St-Onge is seeking a sentence of imprisonment, considering the blatant contempt shown by the respondents. He is also seeking the imposition of a $100,000 fine on the Council, of $50,000 on Chief Simon, as the person holding primary responsibility for the contempt, and of $30,000 on each of the councillors, in addition to the costs on a solicitor-client basis. For the reasons that follow, I am not satisfied that a sentence of imprisonment would be appropriate and necessary to achieve the purpose of dissuasion, denunciation and repair of the depreciation of the authority of the Court. Also, the amount sought by Mr. Bacon St-Onge seems to be disproportionate to me in these circumstances.

A. *The objective and subjective gravity of the contempt*

[79] By refusing to call the elections provided in the Judgment, the respondents infringed a right belonging to the Band members, i.e., that to elect, according to their customs, their representatives. The respondents had a duty, as Chief and councillors, to act honestly, in good faith and in the best interest of the Band. This is especially true because the councillors, elected under an invalid code, were authorized by the Court to stay in their position for the specific

purpose of giving effect to the Judgment. Rather than begin the process, they attempted to oppress and criticize Mr. Bacon St-Onge for having sought recourse from the courts to resolve the dispute.

[80] This is a case that received much media attention, which disproportionately upset the tranquility of the community. In addition, owing to the respondents' refusal to hold the elections, they caused an instability that had a negative impact on the Band's economic development projects.

[81] I also note that Chief Simon used the term "auassiu" to describe Justice St-Louis. Ms. Vachon and Chief René Simon both testified that the word in Innu means [TRANSLATION] "young" or [TRANSLATION] "inexperienced". Again, this undermines the authority of the Court, which I consider to be a serious affront to the integrity of the administration of justice.

B. *The flagrant and repetitive nature of the contempt*

[82] The respondents showed flagrant and repetitive outrage. They refused to call the electoral process following the Judgment, even after the dismissal of their motion to stay.

[83] I would mention that at the contempt hearing, the respondents still clung to their belief that their term of office was for four years and that no election was necessary. This is another aggravating factor to consider.

[84] In short, the respondents' conduct was a flagrant and repetitive act with full knowledge of its unlawfulness.

C. *Mitigating factors*

[85] The respondents identified four [TRANSLATION] "sentences" that have caused them harm since the issuance of the contempt order. They are as follows: (1) Mr. Bacon St-Onge publicly exposed the contempt order issued against them; (2) he mentioned that the respondents [TRANSLATION] "were at risk of a criminal record", which stigmatized them with their family and friends and the community; (3) the interim award issued by the Court on August 15 had a significant impact on them and the Council's operations; and (4) finally, the re-election of the five respondents is challenged as they were found guilty of contempt. According to the respondents, this justifies a stay of the sentence imposed on them.

[86] I cannot accept that the respondents have already been punished, as they are merely ordinary and inherent consequences of a finding of contempt.

[87] It is, however, the respondents' first offence. Also, the respondents issued a joint statement expressing remorse. The evidence shows that the councillors all believed to have been acting in the Band's interest and wanted to preserve its self-government. Although this is not a valid defence, I take into account the respondents' efforts to rectify the Council's financial situation and improve the economic development of the Pessamit Innu in the past. I also note that the respondents had access to their counsel over the course of the events leading to the contempt order, but they do not appear to have received sound advice.

D. *Aboriginal aspect*

[88] As for the appropriate sentencing for Aboriginal people, the case law requires the evaluation of the Aboriginal aspect in light of *R v Gladue*, [1999] 1 SCR 688 [*Gladue*] and *R v Ipeelee*, 2012 SCC 13 [*Ipeelee*], as reiterated by Justice Southcott, to recognize the "systemic and background factors that have contributed to the over-incarceration of Aboriginal peoples in Canada and to what has been described as the estrangement of Aboriginal peoples from the Canadian justice system" (*Twins v Canada (Attorney General)*, 2016 FC 537, at paragraph 57). Moreover, in *Frontenac Ventures Corp v Ardoch Algonquin First Nation*, 2008 ONCA 534, at paragraph 54, the Ontario Court of Appeal confirmed that the principles articulated in *Gladue* are applicable when fashioning a sentence for civil or criminal contempt on the part of aboriginal contemnors. As set out in *Gladue*, at paragraph 50, the Court must impose a sentence by resorting to the restorative model of justice in sentencing aboriginal offenders and reducing the imposition of jail sentences where to do so would not sacrifice the traditional goals of sentencing.

[89] It is clear in this case that the imposition of a term of imprisonment is not appropriate to ensure compliance with the rule of law and the court's authority. Such a sentence would only create turmoil within the community as the members decided to re-elect five of the seven respondents to the position of councillor. While the parties provided little evidence taking into account the factors listed in paragraph 93 of *Gladue*, I note the systemic and background factors such as the Canadian government's interference in the governance of Aboriginal bands, the incarceration for non-payment of fines contributing significantly to the overrepresentation of Aboriginal people in prison and the fundamentally different world views of Aboriginal and non-

Aboriginal people "with respect to such elemental issues as the substantive content of justice and the process of achieving justice" (*Ipeelee*, at paragraph 74).

E. *Appropriate fine*

[90] In considering all of the factors identified above, I am of the view that the imposition of a fine is necessary to deter and denounce the contempt committed by the councillors and I order them to pay a fine of $10,000. Since Chief Simon was the respondents' spokesperson and the person mainly responsible for the contempt, I order him to pay a higher fine of $20,000.

[91] Mr. Bacon St- Onge is asking that the fines paid by the respondents be remitted to the community and recreational organizations in Pessamit. He recommends that payment of the fines be sent to the Court Registry, and that the amounts be then provided to non-profit organizations in the community of Pessamit to ensure that the respondents are not reimbursed by the Council and that there is no political capital gain on their part by remitting the amounts directly to these organizations. I agree with this recommendation. In *British Columbia Public School Employers Assn v British Columbia Teachers Federation*, 2005 BCSC 1490, at paragraph 24, Justice Brown expressed his agreement with the general principle that in ordering payment for civil contempt "the court may permit, by imposition of appropriate conditions, the contemnor to satisfy the fine in alternative ways, such as payment to a charity or the provision of free services to the persons harmed by the continuance of the contemptuous behaviour".

F. *Costs*

[92] With regard to costs, the normal rule is that when a private party successfully prosecutes a contempt charge, the Court will order the contemnor to pay that party's costs on a solicitor and client basis: *N M Paterson & Sons Ltd v St. Lawrence Seaway Management Corp.*, 2004 FCA 210, at paragraph 18. The policy underlying this line of cases is clear: a party who assists the Court in ensuring the orderly administration of justice should not have to suffer costs. I see no reason to deviate from this rule in the case at bar. Accordingly, the respondents shall pay to Mr. Bacon St-Onge his reasonable costs for the contempt proceedings before the Court.

[93] In the end, it is necessary to fix the costs on a solicitor and client basis in the amount of $35,000. This amount represents what the Court considers to be an appropriate award of costs for professional fees and disbursements incurred reasonably, without however placing an undue burden or additional sentence for the respondents.

ORDER in Docket T-2135-16

THE COURT:

1. **ACQUITS** the Conseil des Innus de Pessamit of contempt.

2. **FINDS** respondents René Simon, Éric Canapé, Gérald Hervieux, Diane Riverin, Jean-Noël Riverin, Raymond Rousselot and Marielle Vachon guilty of contempt for failing to comply with the judgment of Justice St-Louis dated December 21, 2017.

3. **ORDERS** respondents Éric Canapé, Gérald Hervieux, Diane Riverin, Jean-Noël Riverin, Raymond Rousselot and Marielle Vachon to each pay a fine in the amount of $10,000 within 90 days of the date of this order, to the Court Registry, which will then be remitted to counsel for the applicant for distribution in equal shares to non-profit organizations in the Pessamit community found in Annex C of the applicant's written submissions.

4. **ORDERS** respondent René Simon to pay a fine in the amount of $20,000 within 90 days of the date of this order, to the Court Registry, which will then be remitted to counsel for the applicant for distribution in equal shares to non-profit organizations in the Pessamit community found in Annex C of the applicant's written submissions.

5. **ORDERS** the respondents René Simon, Éric Canapé, Gérald Hervieux, Diane Riverin, Jean-Noël Riverin, Raymond Rousselot and Marielle Vachon to pay jointly to the applicant the amount of $35,000 in costs within 90 days of the date of this order.

6. **ORDERS** that the matter be referred to the undersigned judge in the event of the respondents' failure to comply with the order previously described in order to have judgment rendered accordingly.

"Roger R. Lafrenière"
Justice

Certified true translation
This 5th day of July, 2019.

Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2135-16
STYLE OF CAUSE:	JÉRÔME BACON ST-ONGE v LE CONSEIL DES INNUS DE PESSAMIT, RENÉ SIMON, ÉRIC CANAPÉ, GÉRALD HERVIEUX, DIANE RIVERIN, JEAN-NOËL RIVERIN, RAYMOND ROUSSELOT AND MARIELLE VACHON
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	AUGUST 9 AND 10, 2018 OCTOBER 22 AND 23, 2018
ORDER AND REASONS:	LAFRENIÈRE J.
DATED:	JUNE 7, 2019

APPEARANCES:

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