Federal Court  Cour fédérale

Date: 20210310

Docket: T-2135-16

Citation: 2021 FC 217

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, March 10, 2021

PRESENT: Mr. Justice Sebastien Grammond

BETWEEN:

JÉRÔME BACON ST-ONGE

Applicant

and

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

Respondents in the Underlying Application

and

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

Respondents

ORDER AND REASONS

I. Summary

[1] Respondents René Simon, Gérald Hervieux, Raymond Rousselot, Marielle Vachon and Diane Riverin must answer, for a second time, a charge of contempt of court. At the time of the alleged events, they were members of the Conseil des Innus de Pessamit [Council], of which Mr. Simon was the chief. Because they refused to comply with a judgment by my colleague Justice Martine St-Louis ordering that they hold an election, they were found guilty of contempt of court by my colleague Justice Roger R. Lafrenière. He ordered them to pay a fine to be distributed to non-profit organizations in the community.

[2] The respondent Council members appealed against the order of Justice Lafrenière. They also asked that the order be stayed, stating that in the event of a successful appeal, it would be difficult for them to recover the amount of the fine from the organizations to which it was to be paid. However, when the time limit granted by Justice Lafrenière to pay the fine expired, the Federal Court of Appeal had not yet decided the motion for a stay. The respondent Council members then decided to deposit the amount of the fine in the trust account of their counsel, Kenneth Gauthier, instead of paying this amount to the Court Registry as required by Justice Lafrenière's order. For this reason, the respondent Council members and their counsel are now charged with a second contempt of court.

[3] I find the respondents in contempt of court, with the exception of Ms. Riverin. The evidence shows beyond a reasonable doubt that they implemented a scheme to avoid complying

with Justice Lafrenière's order. They were fully aware of the scope of this order. They chose to disobey a court order because they wanted to protect their personal interests. In making this decision, they usurped the role of the Federal Court of Appeal and defied the authority of this Court.

[4] I reject the grounds of defence raised by the respondents. The scope of the order did not become unclear as a result of subsequent events, and paragraph 6 of the order was not intended to establish an alternative procedure or sanctions that would rule out contempt of court. The respondents failed to exercise due diligence and comply with the order. Rather, they sought to evade it. Their subsequent compliance does not result in an acquittal, but it may be a relevant factor upon sentencing.

[5] At the hearing, Mr. Gauthier sought to make "*amende honorable*," a concept akin to purging the contempt. Instead of admitting the unlawful nature of his conduct, however, he sought to justify it as being in the interests of his clients. The best interests of the client do not permit lawyers to disobey court orders or to help their clients to do so: *Carey v Laiken*, 2015 SCC 17, [2015] 2 SCR 79 [*Carey*].

[6] As for Ms. Riverin, she does not currently have the financial means to comply with the order of Justice Lafrenière. I am therefore exercising my discretion to find her not guilty.

II. Background

[7] To fully understand the circumstances giving rise to the charge and the various grounds of defence raised by the respondents, it is necessary to briefly describe the dispute relating to the governance of the Innu Nation of Pessamit, which gave rise to this proceeding. In doing so, I do not intend to revisit questions decided by my colleagues. In this regard, their judgments are final, subject to a decision of the Federal Court of Appeal.

[8] It is also evident that relations between the parties and their counsel are very acrimonious. They have given rise to various other proceedings on which I refrain from making comments. Mr. Gauthier has in fact wisely renounced to provide evidence in respect of some of these proceedings. Going down this path would have turned the hearing into a commission of inquiry into the governance of Pessamit, which is not the role of this Court.

[9] It should also be noted that in the style of cause, the persons accused of contempt of court are referred to as the respondents. These include the five Council members who are accused of disobeying Justice Lafrenière's order. They are named as respondents in the underlying application and, where clarification is required, I will designate them as the "respondent Council members". The respondents also include Mr. Gauthier, who is not a party to the underlying application.

A. *Governance of the Innu Nation of Pessamit*

[10] Until 1994, elections of the Innu Nation of Pessamit council were governed by the provisions of the *Indian Act*, RSC 1985, c I-5. In 1994, the Innu Nation of Pessamit adopted an electoral code providing, among other things, that elections be held every two years. The Minister then exempted the Innu Nation of Pessamit from the provisions of the *Indian Act*, which paved the way for the application of the electoral code.

B. *Attempted Amendment of Electoral Code and Justice St-Louis's Judgment*

[11] Mr. Simon was elected chief in 2012 and re-elected in 2014. Under his leadership, the Council undertook a major reform of the electoral code, in particular to increase the term of office of the chief and councillors to four years. Although a referendum was held in 2015 to approve the new code, the procedure set forth by the 1994 code for this purpose was not followed.

[12] Despite objections from Mr. Bacon St-Onge and others, the Council put the new code into effect and held elections governed by it in August 2016. The respondents in the underlying application, including Chief Simon, were elected. Mr. Bacon St-Onge, who had run for the position of councillor, was defeated.

[13] Mr. Bacon St-Onge then brought an application for judicial review seeking to invalidate the 2015 electoral code and the 2016 election. In December 2017, Justice St-Louis granted this application: *Bacon St-Onge v Conseil des Innus de Pessamit*, 2017 FC 1179. In essence, she

concluded that the Council did not have an inherent power to adopt a new electoral code without following the process provided for by the 1994 code and that the 2015 code did not reflect a "broad consensus" within the Nation, within the meaning given to that phrase by the case law of this Court. She stated that the 2015 code was invalid, that the 1994 code was still in effect and therefore that the August 2016 election was invalid. However, she suspended the effects of her declaration of invalidity in order to give the Council an opportunity to follow the amendment process provided for in the 1994 code. If the code could not be amended in accordance with its requirements, she ordered that the next election be held in August 2018.

C. *First Contempt of Court Motion and Justice Lafrenière's Order*

[14] The respondents in the underlying application did not accept Justice St-Louis' order. They appealed against it and asked a judge of the Federal Court of Appeal for a stay. On April 23, 2018, Justice Richard Boivin dismissed the motion.

[15] Subsequently, Chief Simon made various public statements announcing his intention not to hold an election in August 2018. On June 21, 2018, the respondents in the underlying application filed an application for leave to appeal to the Supreme Court of Canada against Justice Boivin's decision and requested a stay of it. At the same time, they asked Justice Boivin to reconsider his decision, a request that he rejected on July 4, 2018.

[16] Given that the date scheduled for the election was quickly approaching, Mr. Bacon St-Onge filed a motion for contempt of court. The respondents in the underlying application were summoned to a hearing before my colleague Justice Roger R. Lafrenière on August 9 and 10,

2018. After hearing the parties, Justice Lafrenière declared the individual respondents in the underlying application in contempt of court.

[17] A few days later, the respondents in the underlying application called an election for September 17, 2018. Messrs. Simon, Hervieux and Rousselot, Ms. Riverin and Ms. Vachon were re-elected, while Messrs. Canapé and Riverin were defeated. Mr. Bacon St-Onge was elected to the position of councillor.

[18] The sentencing hearing was held on October 22 and 23, 2018. Justice Lafrenière took the matter under reserve and, on June 7, 2019, issued the following order (*Bacon St-Onge v Conseil des Innus de Pessamit*, 2019 FC 794):

> 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.

[19] In imposing such penalties, Justice Lafrenière took into account the seriousness of the contempt committed by the respondents in the underlying application, its flagrant and repetitive nature, Chief Simon's unacceptable public statements about Justice St-Louis and the fact that the respondents in the underlying application acted with full knowledge of the facts and remained defiant during the contempt hearing. He also pointed out that the applications for a stay brought before the Federal Court of Appeal or the Supreme Court of Canada did not exempt the respondents in the underlying application from complying with Justice St-Louis' judgment so long as it had not been stayed by an appellate court of competent jurisdiction.

[20] Meanwhile, on August 23, 2018, Justice Russell Brown of the Supreme Court of Canada refused to stay the decision rendered by Justice Boivin on April 23, 2018. On November 1, 2018, the Supreme Court refused leave to appeal this decision. On January 23, 2019, the Federal Court of Appeal dismissed the appeal of Justice St-Louis' judgment: 2019 FCA 13.

D. *Events Giving Rise to this Motion for Contempt of Court*

[21] This motion for contempt of court is based on the steps taken by Messrs. Simon, Hervieux and Rousselot, Ms. Vachon and Ms. Riverin in order to avoid paying the fines and

costs provided for in Justice Lafrenière's order, and on the assistance that their counsel, Mr. Gauthier, provided them for that purpose. The main facts underlying the charges are not really in dispute and can be summarized as follows.

[22] Mr. Gauthier became aware of Justice Lafrenière's order on the day it was rendered. He brought it to the attention of his clients on the same day or in the following days. It was quickly decided to appeal and request a stay of the order. Two of the respondents in the underlying application, Messrs. Canapé and Riverin, however, indicated that they would dissociate themselves from this approach and that they intended to comply with the judgment.

[23] A notice of appeal was therefore filed on July 8, 2019. However, for various reasons, the respondents in the underlying application feared that they would be unable to recover the amount of the fines if they paid them and Justice Lafrenière's order was subsequently overturned on appeal. This is why a motion for a stay was filed on August 13, 2019.

[24] The deadline for paying fines and costs was set to expire on September 5, 2019. As that deadline approached, and as the Federal Court of Appeal had not yet ruled on the stay, Mr. Gauthier offered to keep the amount of the fines and costs in his trust account for his clients until a decision was made.

[25] Thus, Mr. Simon transferred $25,000, representing the fine and his share of the costs. Ms. Vachon transferred $15,000. Mr. Hervieux forwarded to Mr. Gauthier a series of post-dated cheques and immediately transferred $1,000. Despite Mr. Gauthier's efforts, Mr. Rousselot did

not transfer any amount. Ms. Riverin, for her part, stated from the start that she could not afford to pay the amounts owed. I will come back in more detail to the specific situations of Mr. Rousselot and Ms. Riverin.

[26] In the meantime, Messrs. Canapé and Riverin each paid the fine of $10,000 to the Court Registry and let it be known that they were no longer represented by Mr. Gauthier.

[27] These events were the subject of several exchanges of correspondence between the parties. On August 28, Mr. Bacon St-Onge's counsel wrote to Mr. Gauthier to remind him of the deadline, suggesting that the respondents in the underlying application would be in contempt of court if they did not pay all the amounts due. On September 2, Mr. Gauthier wrote to inform him of the amounts he was holding in his trust account. He continued as follows:

> [TRANSLATION]
> We will keep this amount in our trust account until the Federal Court of Appeal has ruled on the stay application and/or has given us directions during the proceeding.
>
> Please also be aware that any contempt of court proceedings and/or enforcement action will be strongly contested without prejudice to our client's rights to seek damages against your client and yourself for abuse and malice.

[28] There is no need to refer to the subsequent exchanges between the parties, except to mention that, on September 6, counsel for Mr. Bacon St-Onge wrote to Justice Lafrenière asking him to rule on the failure to comply with his order.

[29] On September 13, Justice Marianne Rivoalen of the Federal Court of Appeal dismissed the stay application.

[30] In the following days, after returning home from a vacation abroad and trying in vain to reach Mr. Rousselot, Mr. Gauthier made arrangements to pay the amounts he held in trust to the Court Registry, in respect of the fines, and directly to Mr. Bacon St-Onge, in respect of the costs. The amount of the fines was received at the Court Registry on September 24.

[31] On September 26, Justice Lafrenière held a hearing by telephone conference to hear submissions from the parties regarding the breach of his order. The hearing was a short one. Upon learning that the respondents in the underlying application had appealed against his order while refusing to comply with it, he suggested to Mr. Bacon St-Onge's counsel to take the necessary measures, without specifying what they might be, and announced that he was withdrawing from the file.

[32] At the hearing before me, counsel for Mr. Gauthier asserted that his client was denied a fair hearing on September 26. I must confess that I find it difficult to understand this argument. Justice Lafrenière made no decision that day, other than to withdraw from the case. I do not see anything improper with that decision. Having withdrawn, Justice Lafrenière no longer had to listen to the parties' counsel. As will be seen later, this situation has no bearing on the questions I have to decide.

[33] In the days that followed, Mr. Bacon St-Onge presented *ex parte* motions for contempt of court against Mr. Gauthier, on the one hand, and Messrs. Simon, Hervieux and Rousselot, Ms. Vachon and Ms. Riverin, on the other. On October 25, 2019, Associate Chief Justice Jocelyne

Gagné allowed those motions and ordered the respondents to appear before the Court to answer the following charges:

> [TRANSLATION]
> That the respondents René Simon, Gérald Hervieux, Marielle Vachon, Diane Riverin and Raymond Rousselot are guilty of a second count of contempt of court for failing to comply with the Lafrenière Judgment (Rule 466(b)); and
>
> That the respondent Kenneth Gauthier is guilty of contempt of court for having acted in such a way as to interfere with the orderly administration of justice or to impair the authority or dignity of the Court, by holding the amounts paid by René Simon, Marielle Vachon and Gérald Hervieux in his trust account (Rule 466(c));

[34] I subsequently dismissed Mr. Gauthier's motion for a separate trial: *Bacon St-Onge v Conseil des Innus de Pessamit*, 2020 FC 802.

III. Contempt of Court: Legal Principles

[35] Before reviewing the facts alleged against the respondents and their grounds of defence, it is appropriate to recall the basic principles underlying contempt of court, define the essential elements of the offence, outline the discretionary power of the judge ruling on a charge of contempt and clarify the impact of what is commonly known as "purging" contempt, in English, or "*amende honorable*," in French.

A. *Foundations*

[36] Our constitution is based on the rule of law. This principle provides that "the law is supreme over the acts of both government and private persons": *Reference re Secession of Quebec*, [1998] 2 SCR 217, at paragraph 71. However, disagreements will inevitably arise

concerning the scope of legal rules in specific situations. For the rule of law to fulfill its promise to ensure “a predictable and ordered society” (*ibid*., paragraph 70), an institution must be able to resolve these disagreements in a manner that is binding on everyone. This is the role of the courts. Therefore, there can be no rule of law if citizens do not comply with court decisions.

[37] Contempt of court is a process for the punishment of citizens who disobey court orders or who undermine their authority by any other means. In *Morasse v Nadeau-Dubois*, 2016 SCC 44 at paragraph 81, [2016] 2 SCR 232 [*Morasse*], Justice Richard Wagner, now Chief Justice of the Supreme Court of Canada, wrote that “convictions for contempt of court are one of the essential tools for ensuring the rule of law in a democratic society and for ensuring that social order prevails rather than chaos”.

[38] When implemented by courts of civil jurisdiction, the contempt of court procedure bears both civil and criminal aspects. Thus, according to rule 469 of *Federal Courts Rules*, SOR/98-106, proof of the essential elements of the offence must be made beyond a reasonable doubt. Rule 470(2) provides that the accused cannot be compelled to testify.

B. *Essential Elements of Contempt*

[39] Rule 466 defines the cases of contempt of court that are relevant to this matter:

466 Subject to rule 467, a person is guilty of contempt of Court who	**466** Sous réserve de la règle 467, est coupable d’outrage au tribunal quiconque :
. . .	. . .

(b) disobeys a process or order of the Court;	b) désobéit à un moyen de contrainte ou à une ordonnance de la Cour;
(c) acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the Court;	c) agit de façon à entraver la bonne administration de la justice ou à porter atteinte à l'autorité ou à la dignité de la Cour;
. . .	. . .

[40] When a person is charged with contempt of court for having disobeyed a court order, the Supreme Court of Canada defined the elements of the offence as follows, in *Carey*, at paragraphs 33 to 35:

> 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 party alleged to have breached the order must have had actual knowledge of it . . . .
>
> Finally, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels . . . .

[41] My colleague Justice James W. O'Reilly summarized the essential elements of contempt of court in a more succinct way in *Lifegear Inc v Urus Industrial Corp*, 2004 FC 21 at paragraph 24, aff'd 2005 FCA 63 [*Lifegear*]: "Knowledge of a court order, combined with failure to comply, equals contempt of court."

[42] In *Carey*, at paragraph 38, the Court clarified that the intention to disobey the order is not an essential element of the offence. To be found guilty, it is sufficient for the accused to have

intended to perform the act prohibited by the order. Therefore, neither an error of law nor acting upon legal advice is a defence: *Carey* at paragraphs 38 and 44.

[43] It should also be noted that a court order must be complied with until it has been overturned or stayed by a competent appellate court. Contempt of court cannot be excused by arguing that the order which was disobeyed should not have been rendered: *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 at 974 (Justice McLachlin, dissenting on other grounds) [*Taylor*]; *Professional Institute of the Public Service of Canada v Bremsak*, 2012 FCA 147 at paragraph 8 [*Bremsak*]. In other words, the judge ruling on a contempt of court motion does not sit in appeal from the order that the accused did not comply with.

[44] According to rule 466(b), only a person subject to an order can be convicted of disobeying it. However, a third party who aids a party in disobeying an injunction may be found guilty of contempt under rule 466(c). This is what emerged from the following excerpt from the Federal Court of Appeal's decision in *Valmet Oy v Beloit Canada Ltd*, (1988), 82 NR 235 (FCA):

> The only person who may disobey an order of a court is the party to whom that order is addressed. However, a third party who knowingly aided and abetted a party to disobey an injunction may be found guilty of contempt, not because he breached the injunction, but, rather, because he acted in a manner that interfered with the course of justice.

[45] In *Baxter Travenol Laboratories of Canada Ltd v Cutter (Canada) Ltd*, [1983] 2 SCR 388, the Supreme Court of Canada also recognized that a person who participated in the violation

of an injunction could be found in contempt of court, even if they were not named in the injunction. The Court declared, at 396-397:

> Contempt in relation to injunctions has always been broader than actual breaches of injunctions. . . . [In this case, the respondent] is not personally bound by the injunction and therefore could not personally be guilty of a breach. Nevertheless, Cattanach J. acknowledged he could still be found in contempt if he, with knowledge of its existence, contravened its terms. Although technically not a breach of an injunction, such an action would constitute contempt because it would tend to obstruct the course of justice . . . .

[46] When a charge is laid under rule 466(c), it is not necessary to prove an intention to disobey or an intention to interfere with the orderly administration of justice. The principles summarized by the Supreme Court in *Carey* also apply to this situation. The Federal Court of Appeal emphasized this in *Apotex Inc v Merck & Co, Inc*, 2003 FCA 234, at paragraph 60 [*Apotex*]:

> . . . the jurisprudence establishes that it is not necessary to show that the alleged contemnor intended, by doing the action, to "interfere with the orderly administration of justice or to impair the authority or dignity of the Court". This is too high a level of intent to require in civil contempt cases. Rather, it is sufficient to find that the Court's intention was clear and that the alleged contemnor knowingly committed the prohibited act.

C. *Discretion of Judges Ruling on Motions for Contempt of Court*

[47] It is often said that contempt of court is a measure of last resort, that it is a sanction that must be used sparingly and cannot be reduced to a mere means of enforcing judgments: *Carey*, at paragraph 36; *Videotron Ltée v Microlec Industries Produits Électroniques Inc.*, [1992] 2 SCR 1065 at 1078; *Morasse*, at paragraphs 19 and 21.

[48] To ensure respect for this principle of moderation, the case law recognizes that the judge entertaining a contempt motion "generally retains some discretion to decline to make a finding of contempt": *Carey*, at paragraph 37. There does not appear to be an exhaustive definition of the circumstances in which this power may be exercised. For example, the court could refuse to make a finding of contempt where the order in question is for the payment of a sum of money and the plaintiff has not resorted to the usual enforcement mechanisms: *ASICS Corporation v 9153-2267 Quebec inc.*, 2017 FC 5 at paragraph 35 [*ASICS*].

[49] This principle of moderation takes on a specific dimension in First Nations governance matters. This Court should not become a mere instrument of political debate. Nonetheless, the proper functioning of First Nations political institutions depends on respect for the rule of law. Decisive measures are sometimes necessary to prevent governance from descending into arbitrariness. A delicate balance must be struck between these various imperatives.

D. *Subsequent Compliance With Order and "Purging" of Contempt*

[50] In deciding contempt of court cases, judges often take into account whether the accused has since complied with the order they initially disobeyed, or has admitted wrongdoing. Before reviewing the effect of this factor on guilt or sentencing, it is necessary to clarify the meaning of the phrases "*amende honorable*" and "purge the contempt".

[51] The French phrase "*amende honorable*" originates from French law under the Ancien Régime. It referred to a shameful punishment, imposed on a person having committed a crime causing scandal, which entailed publicly acknowledging one's crime, very often before the

execution of another sentence: Claude-Joseph de Ferrière, *Dictionnaire de droit et de pratique*, Paris, Durand Neveu, 1771, p 78. Nowadays, the phrase has a more general meaning. According to larousse.fr, "*faire amende honorable*" simply means [TRANSLATION] "openly admit one's wrongdoings" or, according to the *Multidictionnaire de la langue française*, [TRANSLATION] "to ask for forgiveness, to recognize one's wrongdoings". In Canadian law, however, the French phrase "*amende honorable*" is often used to translate "purge the contempt", for example in *Carey*. This phrase has a more precise meaning and refers to the situation where a person puts an end to the situation of contempt of court or complies with an order after having disobeyed it. Thus, we must remain vigilant as to the double meaning of the French concept of *"amende honorable"*.

[52] If purging the contempt means acknowledging one's wrongdoings, it should come as no surprise that the process is mostly relevant at the sentencing stage. Indeed, there is some contradiction in admitting one's wrongs while pleading not guilty. A court can show leniency towards a person who, after being found guilty of contempt of court, recognizes that they have acted illegally and undertakes to change their conduct in the future.

[53] In addition, a person who purges the contempt by complying with their obligations within a certain time limit may receive a reduced sentence: see, for example, *Trans-High Corporation v Hightimes Smokeshop and Gifts Inc*, 2015 FC 919 at paragraphs 37 and 38; *CIT Financial Ltd v Western Waste Recyclers Inc*, 2008 CanLII 29104 (Ont SCJ) at paragraph 18. Moreover, one of the reasons for making sentencing a separate phase of contempt proceedings is to give the contemnor an opportunity to comply with the order: *Boily v Carleton Condominium Corporation*

145, 2014 ONCA 574 at paragraph 121; *Envacon Inc v 829693 Alberta Ltd*, 2018 ABCA 313 at paragraphs 65 and 66.

[54] Purging the contempt or *amende honorable*, in either sense of the phrase, does not, however, shield against conviction for contempt of court. Such a situation "does not negate the existence of essential elements of contempt": *Lifegear*, at paragraph 24; *Boily*, at paragraph 121. As the Ontario Superior Court rightly pointed out, "[a]lthough [the accused's] contempt may have been purged, that does not mean it never existed": *Andersson v Aquino*, 2019 ONSC 886 at paragraph 28. Otherwise, an accused could avoid conviction by complying with the court order at the very last minute. To tolerate such practices would undermine the rule of law.

IV. Analysis

[55] We can now begin to analyze the essential elements of the offence and the grounds of defence.

[56] During the show cause hearing, Mr. Gauthier was the main witness for the defence, and his counsel made detailed submissions seeking his acquittal. Messrs. Simon and Hervieux and Ms. Vachon did not testify. Their counsel essentially agreed with the submissions made by counsel for Mr. Gauthier. Ms. Riverin briefly testified about her inability to pay. Mr. Rousselot, for his part, did not appear at the hearing.

[57] I therefore propose to begin by analyzing issues common to all the respondents. I will then analyze the effect of Mr. Gauthier's "*amende honorable*" and, finally, deal with the specific situations of Ms. Riverin and Mr. Rousselot.

A. *Common Issues*

(1) Scope of Contempt Charge and Discretion

[58] At the outset, it is necessary to define the scope of the acts which, in the circumstances of the case, could reasonably result in a conviction for contempt of court. In this regard, one should bear in mind that contempt of court is a measure of last resort and that the usual measures for enforcing judgments must be taken first, in particular when it comes to enforcing a money judgment.

[59] Justice Lafrenière's order required the respondent Council members to pay amounts of money, either as fines or as costs. If the respondents had only been accused of simply failing to pay these amounts, I would have exercised my discretion to acquit them. Mr. Bacon St-Onge should have resorted to normal enforcement channels rather than bringing a motion for contempt of court. In fact, Mr. Bacon St-Onge subsequently obtained a writ of garnishment to seize amounts owed to Mr. Simon in order to ensure the payment of part of the costs.

[60] The respondents, however, are not merely accused of being in default of payment. Rather, they stand accused of plotting a scheme to keep the money out of reach, pending a decision by the Federal Court of Appeal on the stay motion, rather than pay it to the Court

Registry or to Mr. Bacon St-Onge, as the case may be. This scheme was part of a course of conduct by which the respondent Council members placed their own interests and their own view of things over the decisions of the courts. It was precisely this contempt for the rule of law and the authority of the courts that gave rise to the decisions rendered by Justice St-Louis and Justice Lafrenière. It is impossible for me to turn a blind eye to this persistent attitude.

[61] In these circumstances, I decline to exercise my discretion in favour of the respondents. It is therefore necessary to determine whether the respondents committed the essential elements of the offence and to assess their defences.

(2) Proof of Essential Elements of Offence

[62] The main facts constituting the essential elements of the offence have been proved beyond a reasonable doubt. Most of these facts are evidenced by pleadings or correspondence placed in the Court record. Mr. Gauthier testified in his defence and admitted these facts, citing instead various forms of excuses or justifications. His testimony is also evidence with respect to the other respondents.

[63] There is no doubt that the respondents were aware of Justice Lafrenière's order. Mr. Gauthier admitted having read it on the day it was rendered and testified that he brought it to the attention of the other respondents in the days that followed. As counsel for the other respondents, he also signed the notice of appeal and the motion to stay that order. The other respondents each signed an affidavit in support of the stay motion, which explicitly referred to Justice Lafrenière's order.

[64] There is no serious doubt as to the scope of Justice Lafrenière's order. In the affidavit they signed in support of the application for a stay, the respondent Council members described their understanding of the amounts they had to pay. There is no ambiguity on this subject. Moreover, Mr. Simon and Ms. Vachon transferred these amounts to Mr. Gauthier's trust account, while Mr. Hervieux prepared a series of post-dated cheques for the same amount.

[65] Even though this is not really in dispute, I would also point out that the respondents were perfectly aware of the fact that merely filing a motion for a stay did not relieve them of their obligation to comply with Justice Lafrenière's order until the Federal Court of Appeal had granted a stay. It was precisely this type of situation that resulted in the first conviction for contempt of court. Yet, in paragraph 67 of his reasons, Justice Lafrenière reminded the respondents that waiting for the result of the motion for a stay filed in the Supreme Court of Canada did not exempt them from holding an election at the time specified by Justice St-Louis.

[66] As for the third element of the offence, there is no doubt that the respondent Council members willfully failed to comply with Justice Lafrenière's order. They did not pay the fine to the Court Registry or the amount of costs to Mr. Bacon St-Onge before the expiry of the time limit granted by Justice Lafrenière to do so. Messrs. Simon and Hervieux and Ms. Vachon instead transferred these amounts to Mr. Gauthier's trust account, or took steps to that end. Mr. Rousselot and Ms. Riverin did not make any payments. Their case will be considered in detail later in these reasons.

[67] As for Mr. Gauthier, the third element of the offence is rather that he became an accomplice to the other respondents by providing them with the means to disobey Justice Lafrenière's order. Again, there is no room for doubt. Mr. Gauthier knew that the amounts he received in his trust account were part of the fines and costs his clients had to pay under the order no later than September 5, 2019. He knew that by doing so he was helping his clients contravene the order.

[68] No doubt was therefore raised as to the essential elements of the offence.

(3) Alleged Confusion

[69] The respondents attempted to justify their conduct by relying on the "confusion" that arose from certain aspects of Justice Lafrenière's order or from developments in the situation during the summer of 2019. I reject these arguments, which are more of an attempt by the respondents to justify themselves after the fact than a real problem preventing them from complying with the order.

[70] The first source of alleged confusion arises from the fact that the amount of the fines, after having been paid to the Court Registry, was then to be remitted to Mr. Bacon St-Onge to be distributed to certain charities within the community of Pessamit. Because these organizations are not endowed with juridical personality and have limited resources at their disposal, the respondents feared that it would be impossible to recover the fines if Justice Lafrenière's order were subsequently overturned on appeal. The respondents also relied on this reason in support of the motion for a stay brought before the Federal Court of Appeal.

[71] This situation is not a source of confusion. There was no ambiguity in Justice Lafrenière's order regarding the amounts to be paid or the identity of the organizations that were to benefit from them. In fact, what the respondents complained about is that immediate enforcement of the order could have made restitution impossible following an appeal. This may be a reason for asking an appellate court to stay its execution pending the decision of the appeal. This is not, however, a reason for refusing to comply with the order as long as it remains in force. The difficulties cited by the respondents do not retroactively make the order confusing. To accept the arguments of the respondents would disregard the teachings of *Taylor* and *Bremsak* and allow litigants to usurp the role of an appellate judge and decide for themselves whether it is appropriate to stay an order made against them.

[72] The second alleged source of confusion arises from the solidary nature of the costs awarded by Justice Lafrenière. In the days leading up to the September 5, 2019 deadline, Messrs. Canapé and Riverin allegedly spoke directly with Mr. Bacon St-Onge or his counsel with a view to complying with the order. They also paid the amount of the fine to the Court Registry and informed Mr. Gauthier that they were withdrawing his mandate to represent them.

[73] In this regard, the alleged difficulty arises from the refusal of Mr. Bacon St-Onge and his counsel to disclose to the respondents the nature of the agreement they were able to conclude with Messrs. Canapé and Riverin with respect to costs. Solidarity is defined in article 1523 of *Civil Code of Québec*, which provides in particular that "performance by a single debtor releases the others towards the creditor". Accordingly, if Messrs. Canapé and Riverin paid a certain amount to Mr. Bacon St-Onge in respect of costs, this amount correspondingly reduces the

solidary debt of the respondents. Similarly, if Mr. Bacon St-Onge released Messrs. Canapé and Riverin from their debts, article 1690 provides that this release benefits the respondents, “for the share of the co-debtor who has been discharged”. The respondents therefore state that they could not know, as of September 5, 2019, the amount they had to pay in costs. I would add that the testimony that Mr. Bacon St-Onge gave on this subject at the hearing was evasive—to say the least—and did not clear up the uncertainty surrounding this subject.

[74] I fully understand the nature of the difficulty alleged by the respondents. I note, however, that it did not have any impact on their behaviour at the time they took the actions of which they are accused. Messrs. Simon and Hervieux and Ms. Vachon chose to pay only $5,000 each in costs, which represents $35,000 divided equally between the seven solidary debtors. In doing so, these three respondents assumed that the other debtors, including Messrs. Canapé and Riverin, would also pay their share or be granted a release. In practice, they treated the solidary obligation as if it were only a joint obligation.

[75] If Messrs. Simon and Hervieux and Ms. Vachon are found guilty of contempt of court, it is for having paid $5,000 each into the trust account of Mr. Gauthier rather than to the Court Registry or, more precisely, in the case of Mr. Hervieux, for having provided a series of post-dated cheques for this amount. They are not being convicted of failing to pay an indeterminate higher amount. As for Mr. Gauthier, he is guilty of having kept this money, not an indefinite greater amount, in his trust account.

[76] Moreover, the argument of uncertainty in no way affects the amount of the fines. The respondents had no doubts as to the amount of the fines they had to pay. The contempt of court conviction could be based solely on setting up a scheme in relation to this amount.

[77] The argument of uncertainty or confusion therefore misses the mark. It is more of an excuse found *a posteriori* than a problem that the respondents were in fact facing at the time of the facts underlying the contempt charge. The respondents are accused of having employed a scheme to place the fines and costs out of reach while awaiting the decision of the Federal Court of Appeal. There is no doubt that the amounts deposited in Mr. Gauthier's trust account were amounts covered by Justice Lafrenière's order, even though they did not constitute all of it. In acting this way, Messrs. Simon and Hervieux and Ms. Vachon disobeyed Justice Lafrenière's order in a manner that did not merely constitute a money collection problem, and Mr. Gauthier interfered with the orderly administration of justice by helping them set up this scheme. The conviction in no way depends on whether additional amounts might have been owed.

(4) Paragraph 6 of Justice Lafrenière's Order

[78] The respondents also relied on paragraph 6 of Justice Lafrenière's order. For ease of reference, I will reproduce the text again:

> **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.

[79] Relying on this paragraph, the respondents allege that Justice Lafrenière ruled out contempt of court as a sanction for violating his order or that he established an alternative system

of sanctions or a procedure prior to imposing any sanction. These arguments, the logic of which is not always apparent, are unfounded. They seek to give paragraph 6 a meaning that neither its text nor its context allows. As the Quebec Court of Appeal pointed out in *Zhang v Chau,* 2003 CanLII 47974 at paragraph 32, 229 DLR (4th) 298, "a defendant cannot hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and of the administration of justice".

[80] Language similar to that of paragraph 6 is often found in Quebec contempt of court judgments. As Justice Chantal Châtelain explained, this is to ensure that the court retains jurisdiction over the case and to avoid the rule of *functus officio*: *Family Law - 182198*, 2018 QCCS 4405, at paragraph 9. If anything can be deduced from the use of such a formula, it is that Justice Lafrenière intended that any breach of his order be punished.

[81] Thus, the idea that paragraph 6 is somehow a promise of immunity from a subsequent charge of contempt of court borders on the absurd. It is difficult to imagine a judge making an order and at the same time authorizing its breach. It is true that Justice Lafrenière, at paragraph 88 of the reasons for his order, indicated why he did not impose a sentence of imprisonment. This does not preclude the possibility that the respondents could commit subsequent contempt by failing to comply with his order.

[82] There is also nothing to indicate that Justice Lafrenière intended to replace the procedure provided for in rules 466 and following with a procedure of his own. In providing that he would retain jurisdiction in the event of "failure" to comply, he in no way prescribed the procedural

vehicle by which the matter could be brought back before him. For example, in addition to a subsequent motion for contempt of court, other applications could have arisen from his order, such as a motion for directions or a writ of execution.

[83] At the hearing, counsel for Mr. Gauthier argued that Justice Lafrenière expected that there would be “failures” to comply with his order, that the respondents’ concerns regarding the payment of fines to community organizations constituted such “failures”, as well as the questions relating to the share of each solidary debtor, and that Justice Lafrenière should have ruled on those “failures” before any further action was taken. These arguments do not stand up to scrutiny. In fact, they put considerable weight on a single word.

[84] First of all, these arguments give an unusual meaning to the word “failure”. Disagreeing with a court order is not a “failure”, but at most a ground of appeal. When an obligation to pay an amount of money comes with a time limit, it is only at the expiration of the time limit that a failure or default can be found.

[85] Second, if I understood Mr. Gauthier’s argument correctly, paragraph 6 of the order contemplates a subsequent amendment to the order, possibly to accommodate the concerns of the respondents or to excuse a “failure”. However, that is not what paragraph 6 says. In fact, Quebec decisions, such as the one cited above, mainly use such a formula in the context of an order to perform compensatory community work. In any case, in *Carey*, at paragraphs 61 and 62, the Supreme Court reaffirmed the importance of the finality of contempt of court judgments and

stated that it was only in exceptional circumstances that a judge could revisit a finding of contempt.

[86] Finally, I note that at the material time, the respondents never acted on the interpretation of paragraph 6 that they are now putting forward. Throughout the summer of 2019, they never presented an application to Justice Lafrenière concerning a "failure". Instead, they asked the Federal Court of Appeal to stay the order. It was not until the afternoon of September 5 that Mr. Gauthier sent a letter to Justice Lafrenière asking him to grant the stay pending a decision from the Federal Court of Appeal. The arguments based on paragraph 6 therefore appear to have been concocted *a posteriori*.

(5) Due Diligence and Duration of Contempt

[87] The respondents also made submissions regarding the due diligence they allegedly exercised in order to comply with Justice Lafrenière's order.

[88] These arguments relate in part to the respondents' concerns about the consequences of complying with the order and the possibility of recovering the amount of the fines if they are successful on appeal. In reality, they are attempts to justify non-compliance with the order. A due diligence defence relates to efforts to comply with a court order, not efforts to circumvent or evade it.

[89] In any event, I am far from certain that the facts support the respondents' claim. Justice Lafrenière issued his order on June 7, 2019. Although he had given the respondents three months

to pay, they waited one month before filing their notice of appeal and another month before filing their motion for a stay. The respondents must have known that it could take several weeks for the Federal Court of Appeal to make its decision. Waiting two months before bringing the motion does not demonstrate due diligence.

[90] Another aspect of the respondents' claims relates to the steps taken to comply with Justice Lafrenière's order after the Federal Court of Appeal denied the stay application. The respondents then acted quickly to end the contempt, given Mr. Gauthier's return from vacation and the difficulty in reaching Mr. Rousselot. However, as I explained above in paragraph [54], this question has no bearing on guilt and does not change the fact that the respondents implemented a scheme to keep the fines and costs in Mr. Gauthier's trust account pending the decision of the Federal Court of Appeal. The short duration of the contempt is a factor that may be taken into account at sentencing.

[91] Messrs. Simon and Hervieux and Ms. Vachon argue that contempt of court should be assessed at the time of the hearing or, possibly, at the time of the conference call with Justice Lafrenière on September 26, 2019. This proposition is devoid of merit. It is equivalent to the proposition that I rejected in paragraph [54], namely that someone who has only temporarily disobeyed a Court order must be acquitted. Contempt is contempt even if it is limited in time. The fact that these three respondents complied with Justice Lafrenière's order as soon as the Federal Court of Appeal dismissed the application for a stay may be taken into account in passing sentence.

(6) Incomplete Disclosure

[92] The respondents also take issue with the incomplete disclosure of the facts in Mr. Bacon St-Onge's affidavits in support of the contempt of court motions presented to Associate Chief Justice Gagné. The first of these affidavits was signed on September 26, 2019, and contains the following statement:

> [TRANSLATION]
> To date, Mr. René Simon, Mr. Gérald Hervieux, Mr. Raymond Rousselot, Ms. Marielle Vachon and Ms. Diane Riverin have still not complied with the judgment of Mr. Justice Lafrenière, dated June 7, 2019.

[93] A very similar affidavit was signed on October 3, 2019. Yet, from September 26 onward, Mr. Bacon St-Onge could hardly have been unaware that the amounts deposited in Mr. Gauthier's trust account had been paid to the Court Registry with respect to fines, or had been paid directly to him with respect to costs. Indeed, Mr. Gauthier informed Mr. Bacon St-Onge's counsel of these payments by email as of September 23.

[94] Thus, the assertion in Mr. Bacon St-Onge's affidavit is not false, but it does not tell the whole truth. Mr. Bacon St-Onge failed to mention the fact that at that time, he had received $10,000 in costs, Mr. Simon and Ms. Vachon had paid their fines in full and Mr. Hervieux had paid a first instalment.

[95] A person making an *ex parte* application is bound by an obligation of full disclosure, that is, they must disclose to the Court all the relevant facts, whether they favour their cause or that of the adversary: *Ruby v Canada (Solicitor General)*, 2002 SCC 75 at paragraph 27, [2002] 4 SCR

3; *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37 at paragraphs 101 and 102, [2014] 2 SCR 33.

[96] This reluctance is compounded by Mr. Bacon St-Onge's refusal, during the hearing, to reveal the nature of the agreements made with Messrs. Canapé and Riverin. Feigning ignorance on this subject, he also refused to inquire with his counsel, despite the Court's request.

[97] Whatever doubt these incidents cast on Mr. Bacon St-Onge's sincerity, it does not affect my decision. As I explained above, neither the short duration of the contempt, nor the uncertainty as to the amount of costs to be paid is a defence. Mr. Bacon St-Onge's failure to comply with his obligation to make full disclosure may be taken into account when awarding costs in this motion.

B. *Respondent Gauthier's Situation*

[98] I now turn to the analysis of a specific defence presented by Mr. Gauthier. In his testimony, he made a statement which he presented as an "*amende honorable*" or "purging" of the contempt. He asserted that he had never intended to disrespect the Court, that there was significant animosity between the parties and their counsel, that he had never experienced such a situation in his 30-year career and that he had always acted in the best interests of his clients. He believed that the fines imposed could represent a life's savings, and he wanted to reach a negotiated solution that would take into account the concerns of his clients. He added that he represents a First Nation that [TRANSLATION] "has its own way of looking at things" and that he must bridge the gap between it and the legal system. He stated that he apologized if he had acted against Justice Lafrenière's order, but he wanted to protect the interests of his clients.

[99] In the present case, Mr. Gauthier's "*amende honorable*" did not aim at "purging" the contempt (in the English sense) resulting from non-compliance with Justice Lafrenière's order; this was already accomplished by the end of September 2019. If I understand correctly, it is more a question of openly admitting one's wrongs. But is that what he did?

[100] In reality, Mr. Gauthier did not recognize the illegality of his conduct. He pleaded not guilty to the contempt charge. He added that in the event that he had breached Justice Lafrenière's order, he offered his apologies, but he always sought to justify himself by invoking the interests of his clients.

[101] It is true that a lawyer has a duty of loyalty to his clients. However, this duty is subordinated to the lawyer's duty to respect the law, the rule of law principle and the authority of the courts. Even though, in ruling on a contempt of court motion, the Court is not bound by the ethical rules of the legal profession, these rules can nevertheless shed useful light. The *Code of Professional Conduct of Lawyers*, CQLR, c B-1, r 3.1, in its preamble, provides that "compliance with legal provisions and preservation of the rule of law" is the first value on which the profession is founded. Section 12 obliges the lawyer to support "respect for the rule of law", and section 14 states that the lawyer must not "help or, through encouragement or advice, facilitate conduct by a client that the lawyer knows or should know is unlawful or fraudulent". Section 23 subordinates the duty of loyalty to compliance with legal rules. Chapter III of the *Code* sets out the lawyer's duties towards the administration of justice and provides the following in section 118: "A lawyer must not, directly or indirectly, act in such a manner that allows a person to avoid a tribunal's order." Indeed, the rule of law would be brought to naught if a person could

disobey court orders by invoking their own interests or those of their clients. In *Carey*, the Supreme Court rejected the defence of a lawyer who essentially claimed to have acted in the interests of his client.

[102] Mr. Gauthier's statement that he did not want to disrespect the Court cannot constitute a defence either. The intent to interfere with the administration of justice is not an essential element of the offence: *Carey*, at paragraph 38; *Apotex*, at paragraph 60. In any case, this statement is difficult to reconcile with the scheme put in place by Mr. Gauthier to avoid his clients having to comply with Justice Lafrenière's order.

[103] Mr. Gauthier also mentioned that he had to [TRANSLATION] "build a bridge" between his clients and the Canadian legal system, without specifying further the difficulties that this could entail. However, the evidence allows me to glimpse at what it is. I can easily see that representing clients who say publicly that they will not respect a Court judgment can put a lawyer in a difficult position. There is no doubt that the dilemma was particularly acute for Mr. Gauthier, whose work largely comes from the Innu Nation of Pessamit. Nevertheless, such situations do not exempt a lawyer from the obligation to obey the law or from the prohibition against helping clients evade a court order.

[104] In short, Mr. Gauthier's statement is not truly an "*amende honorable*" or purge of contempt, nor a ground of defence against the contempt of court charge.

C. *Respondent Riverin's Specific Situation*

[105] Ms. Riverin testified in her defence. She admits that she did not comply with Justice Lafrenière's order. She claims, however, that she simply does not have the financial means to pay the amounts she owes.

[106] Ms. Riverin explained that before her election to the Council in 2016, she worked in paid jobs with wages of around $16 per hour. When she was elected, she believed she would hold a four-year term. As a councillor, she received an annual salary of approximately $80,000. She explained that during the first two years of her term, she had intended to spend most of her salary and then save for retirement in the next two years. She stated that between 2016 and 2018, she provided financial support to family members and other community members in need, in particular, students. She therefore did not accumulate savings during this period, before being defeated in the 2018 election. I have no difficulty believing Ms. Riverin, who, indeed, was not cross-examined on this matter. She acted in accordance with an ethic of sharing that permeates Innu society.

[107] At present, Ms. Riverin receives only Old Age Security benefits, for an annual amount of approximately $16,000. Although she owns a house on Pessamit's territory, she says that because of the house allocation policy and other factors, it would be impossible for her to liquidate this asset without depriving herself of housing. This assertion has not been contradicted.

[108] In principle, Ms. Riverin should have brought these facts into evidence before Justice Lafrenière at the sentencing hearing, which took place after her electoral defeat. She did not do so. She cannot ask me to review Justice Lafrenière's order.

[109] Nevertheless, I am of the opinion that I can exercise my discretion to acquit Ms. Riverin of the contempt of court charge. I believe that, because of her financial situation, Ms. Riverin was unable to comply with Justice Lafrenière's order. I also note that Ms. Riverin did not participate in the trust account scheme. I wish to emphasize that in making this finding, I am not modifying Justice Lafrenière's order, which still imposes on Ms. Riverin the obligation to pay a fine of $10,000 as well as her share of the costs.

D. *Respondent Rousselot's Specific Case*

[110] Mr. Rousselot was not present at the hearing and was not represented by counsel. A few days before the hearing, the lawyer who had appeared for Mr. Rousselot sought permission to stop representing him, since he had never returned his calls. I granted that motion, which was served in person on Mr. Rousselot. The parties' counsel relayed information that Mr. Rousselot was hospitalized and had to undergo major surgery. Moreover, in the affidavit that he signed in support of the motion for a stay in the Federal Court of Appeal, Mr. Rousselot claims to be 67 years old and to have serious health problems.

[111] I decided to continue the proceedings with regard to Mr. Rousselot despite his absence. This Court has repeatedly stated that it can find a person in contempt of court even if that person does not appear in court to justify their conduct: *James Fisher & Sons PLC v Pegasus Lines Ltd*,

2002 FCT 650, at paragraph 24; *Louis Vuitton Malletier, SA v Bags O'Fun Inc.*, 2003 FC 1335 at paragraph 39; *Canada (Minister of National Revenue) v Wigemyr*, 2004 FC 930; *Bowdy's Tree Service Ltd v Theriault International Ltd*, 2020 FC 146, at paragraph 15. Facts that were revealed to me during the hearing provided additional justification for my decision.

[112] Mr. Gauthier testified that in August 2019, he came to an agreement not only with Messrs. Simon and Hervieux and Ms. Vachon, but also with Mr. Rousselot, to have them pay the fines and costs into his trust account. Mr. Rousselot sent him a cheque, but then asked him not to cash it because he was not sure that he had the necessary funds in his account. Mr. Gauthier did not cash the cheque. In the following days, Mr. Rousselot sent a cheque for $1,000, which his bank refused to honour. After the Federal Court of Appeal refused the stay and Mr. Gauthier made arrangements to pay the fines to the Court Registry, he had significant difficulties contacting Mr. Rousselot, who no longer returned his calls. In the end, Mr. Rousselot paid nothing.

[113] Furthermore, Mr. Bacon St-Onge testified that Mr. Rousselot owns a bar and a snow removal and excavation business and that these businesses are still in operation.

[114] These facts convince me, beyond a reasonable doubt, that Mr. Rousselot committed the offence with which he was charged. Unlike Ms. Riverin, his failure to comply with Justice Lafrenière's order was not the result of an inability to pay or a lack of financial resources.

[115] Moreover, despite the sympathy that one may feel for Mr. Rousselot because of his state of health, everything seems to indicate that he has been determined, for a year and a half, to evade the authority of the Court, to the point of refusing to speak to his own lawyer. In these circumstances, I do not consider it appropriate to exercise my residual discretion in favour of Mr. Rousselot. I therefore find him in contempt of court.

V. Conclusion

[116] For these reasons, I find René Simon, Gérald Hervieux, Raymond Rousselot, Marielle Vachon and Kenneth Gauthier guilty of contempt of court, while Diane Riverin is acquitted. A new hearing will be convened to determine the appropriate sentence.

[117] I am aware that this judgment alone will not end the conflict that is tearing the community apart. Respect for the rule of law, guaranteed by recourse to the courts, is a necessary, but not sufficient, condition for the restoration of harmony. Above all, all parties concerned must establish a respectful dialogue. This is a difficult but unavoidable undertaking that no injunction can impose.

ORDER IN T-2135-16

THIS COURT ORDERS as follows:

1. René Simon, Marielle Vachon, Gérald Hervieux and Raymond Rousselot are found guilty of contempt of court, according to rule 466(b) of the *Federal Courts Rules*.
2. Kenneth Gauthier is found guilty of contempt of court, according to rule 466(c) of the *Federal Courts Rules*.
3. Diane Riverin is acquitted of the contempt of court charge.
4. The matter is referred to the Judicial Administrator, who will set a date for the sentencing hearing.

"Sébastien Grammond"
Judge

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, JEAN-NOËL RIVERIN, RAYMOND ROUSSELOT, MARIELLE VACHON, DIANE RIVERIN AND KENNETH GAUTHIER
PLACE OF HEARING:	BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, MONTRÉAL, QUEBEC, QUÉBEC, QUEBEC, AND BAIE-COMEAU, QUEBEC
DATE OF HEARING:	FEBRUARY 8, 2021
ORDER AND REASONS:	GRAMMOND J.
DATED:	MARCH 10, 2021

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