

Federal Court



Cour fédérale

Date: 20211018

Docket: T-2135-16

Citation: 2021 FC 1093

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, October 18, 2021

PRESENT: Mr. Justice Sébastien 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

and

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

Respondents

ORDER AND REASONS

I. Summary

[1] Mr. Simon, Mr. Hervieux and Ms. Vachon were found in contempt of court for failing to pay a fine to the Court Registry within the prescribed time. Their lawyer, Mr. Gauthier, was also found in contempt of court for having kept the amount of the fines in his trust account, rather than paying it into the Court Registry.

[2] For the following reasons, I am imposing a fine of \$2,000 on Mr. Hervieux, Ms. Vachon and Mr. Gauthier and a fine of \$5,000 on Mr. Simon. In addition, there will be no award of costs.

II. Background

[3] This case arises from a controversy relating to the elections of the Conseil des Innus de Pessamit [Council]. My colleague Justice Martine St-Louis ordered the respondents to hold an election in August 2018: *Bacon St-Onge v Conseil des Innus de Pessamit*, 2017 FC 1179, aff'd 2019 FCA 13. Since the respondents refused to comply with Justice St-Louis's judgment, my colleague Justice Roger R. Lafrenière found some of them, including Mr. Simon, Mr. Hervieux and Ms. Vachon, in contempt of court: *Bacon St-Onge v Conseil des Innus de Pessamit*, 2019 FC 794. He ordered them to pay a fine of \$10,000 each, and \$20,000 in the case of Mr. Simon, to the Court Registry within 90 days.

[4] Instead of paying these fines to the Registry within the prescribed time, Mr. Simon, Mr. Hervieux and Ms. Vachon paid them into the trust account of their lawyer, Mr. Gauthier, pending the Federal Court of Appeal's decision on their request for a stay of Justice Lafrenière's decision. Shortly thereafter, however, the Federal Court of Appeal denied this request. Mr. Gauthier then promptly forwarded the money to the Court Registry.

[5] I found Mr. Simon, Mr. Hervieux and Ms. Vachon in further contempt of court for disobeying Justice Lafrenière's order. I also found Mr. Gauthier in contempt of court for assisting his clients in disobeying a court order: *Bacon St-Onge v Conseil des Innus de Pessamit*, 2021 FC 217 [the reasons for conviction]. This decision contains a more detailed description of the facts.

[6] The sentence to be imposed on Mr. Simon, Mr. Hervieux, Ms. Vachon and Mr. Gauthier must now be determined.

[7] In my reasons for conviction, I had also found another respondent, Mr. Rousselot, in contempt of court on the basis of the same facts. However, at the hearing, the parties informed me that Mr. Rousselot had recently died. His death terminates the proceedings against him, and I will not impose any penalty on him.

III. Sentencing for Contempt of Court

[8] Rule 472 of the *Federal Courts Rules*, SOR/98-106 [Rules], sets out the penalties the Court may impose for contempt of court:

472 Where a person is found to be in contempt, a judge may order that	472 Lorsqu'une personne est reconnue coupable d'outrage au tribunal, le juge peut ordonner :
(a) the person be imprisoned for a period of less than five years or until the person complies with the order;	a) qu'elle soit incarcérée pour une période de moins de cinq ans ou jusqu'à ce qu'elle se conforme à l'ordonnance;
(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;	b) qu'elle soit incarcérée pour une période de moins de cinq ans si elle ne se conforme pas à l'ordonnance;
(c) the person pay a fine;	c) qu'elle paie une amende;
(d) the person do or refrain from doing any act;	d) qu'elle accomplisse un acte ou s'abstienne de l'accomplir;
(e) in respect of a person referred to in rule 429, the person's property be sequestered; and	e) que les biens de la personne soient mis sous séquestre, dans le cas visé à la règle 429;
(f) the person pay costs.	f) qu'elle soit condamnée aux dépens.

[9] The Rules do not specify principles for determining an appropriate sentence. Reference is usually made to the principles governing sentencing in criminal law: *Professional Institute of the Public Service of Canada v Bremsak*, 2013 FCA 214 at paragraph 29 [*Bremsak*]; *Tremaine v Canada (Canadian Human Rights Commission)*, 2014 FCA 192 at paragraph 19 [*Tremaine*]. Summarized in sections 718 to 718.2 of the *Criminal Code*, RSC 1985, c C-46, these principles include the purposes of sentencing, as well as a methodology to guide the exercise of judicial discretion.

[10] As with criminal penalties, the purposes of a sentence for contempt include denunciation and deterrence, as provided in section 718 of the *Criminal Code*. However, in contempt cases, the purpose of the sentence is often coercive, that is, to compel the recalcitrant respondent to comply with a court order: *Carey v Laiken*, 2015 SCC 17 at paragraph 31, [2015] 2 SCR 79; *Canada (National Revenue) v Marshall*, 2006 FC 788 at paragraph 16. Rule 472(a) illustrates this purpose: a term of imprisonment may be imposed until the offender complies with the order.

[11] Sentencing is based primarily on the principle of proportionality. According to section 718.1 of the *Criminal Code*, “[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.” The application of this principle leads the court to assess the aggravating and mitigating circumstances that may affect the degree of responsibility or help assess the seriousness of the offence.

[12] The seriousness of the offence can be assessed from both an objective and a subjective point of view: *Tremaine*, at paragraph 23. An objective assessment focuses on the nature of the act committed, its effects, or its duration. Subjectively, the intent of the offender becomes relevant. Did he or she act knowingly, or did he or she rely on professional advice?

[13] Aggravating circumstances may include the fact that the offender is a repeat offender or that the offender refuses to comply with the court’s order, even after being convicted: *Tremaine*, at paragraph 25; *Bell Canada v Red Rhino Entertainment Inc*, 2021 FC 895 at paragraph 13 [*Bell Canada*].

[14] Mitigating circumstances may include the offender's remorse or apology, or efforts to comply with the order: *Tremaine*, at paragraph 24; *Bell Canada*, at paragraph 13. In my reasons for conviction, at paragraphs 50-54, I noted that the term "*amende honorable*" (often translated by "purging the contempt") was often used to describe such mitigating factors.

[15] The case law also confirms that sentencing for contempt of court is a largely discretionary exercise: *Bremsak*, at paragraph 36; *Tremaine*, at paragraph 26. In this regard, discretion is not synonymous with arbitrariness. It simply means that the sentencing judge, while bound by the approach outlined above, has considerable latitude in the weight to be given to the various relevant factors.

IV. Admissibility of Evidence

[16] The applicant served a direction to attend on Céline Picard, the Council's Director of Finance, to disclose all documents related to legal professional fees incurred by the Council between 2012 and 2021, more specifically in this proceeding and in appeals related to this proceeding. The Council has moved to set aside this direction.

[17] At the hearing, I set aside the direction to attend for the following reasons.

[18] First, I find that the documents sought are subject to solicitor-client privilege. In *Maranda v Richer*, 2003 SCC 67, [2003] 3 SCR 193, the Supreme Court held that the amount of a lawyer's fees was prima facie privileged information. I am not persuaded that an exception to this principle can be made. Unlike the Quebec Court of Appeal's decision in *Kalogerakis v*

Commission scolaire des Patriotes, 2017 QCCA 1253, the present dispute does not arise from an access to information request. The applicant has not demonstrated to me that the federal legislation governing the administration of First Nations circumscribes the scope of solicitor-client privilege.

[19] Second, I find that the evidence sought is not relevant. It is true that ability to pay and profit derived from contempt may be relevant factors in sentencing. However, I am of the view that the evidence sought will not shed light on this issue. The legal fees incurred by the Council over a period of almost ten years, even assuming that they were paid primarily to Mr. Gauthier, are not evidence of his current income. As for the concept of profit, the applicant has not demonstrated to me how the fees paid by the Council over a period of ten years would be related to a profit made as a result of a narrowly defined contempt of court situation. In my view, Ms. Picard's summoning is more akin to a fishing expedition.

[20] At the hearing, the parties attempted to introduce evidence of a number of proceedings related to the governance of the Innu Nation of Pessamit. However, in my reasons for conviction, at paragraph 8, I emphasized that my role is not to hold a commission of inquiry on this matter, but rather to rule on a specific charge of contempt of court. For the most part, I have refused to admit such evidence, except where it relates to events contemporaneous to the contempt committed by the respondents, thereby shedding light on the respondents' state of mind.

[21] I am disappointed that, in their post-hearing written submissions, the parties continued to make all kinds of accusations against each other, with no apparent purpose other than to smear each other's reputations. I will return to this issue later.

V. Parties' Submissions

[22] The applicant, Mr. Bacon St-Onge, is asking for very severe penalties. He insists mainly on the fact that, for Mr. Simon, Mr. Hervieux and Ms. Vachon, this is a second conviction for contempt of court. This would justify the imposition of sentences that would be double those imposed by Justice Lafrenière. Mr. Bacon St-Onge also questions the credibility of the respondents' testimony and the sincerity of the apologies or explanations they offered. In addition, he places great emphasis on the financial means of the respondents, particularly those of Mr. Gauthier. He therefore seeks fines of \$20,000 against Mr. Hervieux and Ms. Vachon, \$40,000 against Mr. Simon and \$100,000 against Mr. Gauthier.

[23] Mr. Hervieux testified at the hearing. He stated that by paying the fine into Mr. Gauthier's trust account, he thought he was complying with Justice Lafrenière's order. He apologized for the situation and said that if he had known better, he would have acted otherwise. Ms. Vachon was also present at the hearing. In order to shorten the proceedings, it was agreed that, if questioned, she would give the same answers as Mr. Hervieux. Mr. Simon did not appear at the hearing, alleging health problems. He did not seek to provide a statement to the Court.

[24] Based on these facts, Mr. Simon, Mr. Hervieux and Ms. Vachon seek a suspended sentence, as was the case in *Algonquins de la bande du lac Barrière v Canada (Attorney*

General), [1996] FCJ No 666. In the alternative, they suggest community service or a fine not exceeding \$5,000.

[25] Mr. Gauthier testified at the hearing. He described the atmosphere of animosity between the parties between the time Justice Lafrenière rendered his decision and the deadline for paying the fines. He stated that he sincerely believed in the interpretation of Justice Lafrenière's order that he put forward at the contempt hearing, even though I subsequently rejected that interpretation. He also reiterated the reasons why he felt that it was not in the best interests of his clients to pay the fines into the Court Registry. He stated that his judgment was affected by the intense pressure he felt at the time and that, in retrospect, he should not have acted in that way. He also noted the impact of the contempt conviction on his practice and reputation within the legal community.

[26] Characterizing the situation as one of technical contempt, and insisting that the contempt lasted only 18 days and did not cause harm to anyone, Mr. Gauthier suggests that a fine of \$1,000 be imposed. He also offers community service as an alternative.

VI. Analysis

[27] In this case, determining the appropriate sentence is a difficult task. The range of sentences that this Court has imposed in contempt cases is very broad. Fines in the range of \$500 to \$3,000 have been imposed for refusing to comply with an order to produce documents to the tax authorities: see the summary in *Bowdy's Tree Service Ltd v Theriault International Ltd*, 2020

FC 146 at paragraph 12. In contrast, in *Bremsak*, a fine of \$250,000 was imposed on a union that for several years had ignored an order to reinstate the complainant to an elected position.

[28] Moreover, the parties have not drawn my attention to a decision dealing with a similar case. It is therefore difficult to establish a point of comparison.

[29] I therefore propose to begin by analyzing certain factors common to all respondents, including the seriousness of the offence. I will then consider their individual circumstances. Finally, I will deal with the issue of costs.

A. *Common Considerations*

[30] The starting point for the analysis is the inherent seriousness of contempt. As I noted in my reasons for conviction at paragraphs 36 and 37, contempt of court undermines the authority of the courts and threatens the rule of law. Nonetheless, in order to determine a just sentence, a scale of seriousness must be established: not all contempt situations are of equal seriousness, and they do not deserve the same punishment.

[31] In this case, the objective seriousness of the contempt of court is low. The contempt situation lasted barely three weeks: reasons for conviction, at paragraph 90. Although Mr. Simon, Mr. Hervieux and Ms. Vachon disobeyed Justice Lafrenière's order, they nevertheless made the amount of the fines available to their counsel, which allowed him to pay it promptly to the Court Registry when a decision was made.

[32] Mr. Bacon St-Onge emphasized that the present contempt of court followed on the heels of a first such incident, which was the subject of the conviction entered by Justice Lafrenière. Its recurring nature makes it all the more serious. While it is true that it was a repeat offence with respect to Mr. Simon, Mr. Hervieux and Ms. Vachon, a comparison of the two offences shows that the first was much more serious, since it directly affected the democratic process of the Innu Nation of Pessamit. One must not forget that Mr. Simon, Mr. Hervieux and Ms. Vachon were found guilty because they refused to hold an election, as ordered by Justice St-Louis. Their conduct deprived all members of the community of their democratic right to elect their leaders. In this case, the failure to pay the fine in a timely manner had no direct impact on the community members.

[33] In the first contempt case, it was only after having been convicted by Justice Lafrenière that Mr. Simon, Mr. Hervieux and Ms. Vachon agreed to comply with Justice St-Louis's judgment and to hold an election. In this case, they themselves decided to pay the fine, before Mr. Bacon St-Onge filed the motion for contempt of court.

[34] Finally, Justice Lafrenière noted that the illegal conduct of Mr. Simon, Mr. Hervieux and Ms. Vachon had persisted over time and that they had shown open defiance of the Court's authority, even going so far as to make public disparaging remarks about Justice St-Louis. In contrast, the contempt in the present case was not public and was short-lived.

[35] In short, there is no common ground between the two contempt of court offences committed by Mr. Simon, Mr. Hervieux and Ms. Vachon. Even though this case constitutes a

form of recidivism, the situation is much less serious than the one before Justice Lafrenière. Imposing fines of twice the amount would ignore the relevant circumstances and substitute abstract mathematical logic.

[36] I also note that to the extent that a coercive purpose is sometimes attributed to contempt of court, that purpose is not relevant in this case since the respondents have long complied with Justice Lafrenière's order.

[37] I would add that beyond the contempt for the administration of justice, the respondents' actions did not harm anyone. Unlike in *Carey*, the money in question did not disappear. Although it was deposited in the Court Registry three weeks late, no prejudice was caused, because the money remains there to this day. For reasons he has not explained, Mr. Bacon St-Onge has not yet withdrawn the money for distribution to community organizations. Nor is there any evidence that the respondents benefited financially in any way from the situation. There is no comparison with cases where the accused made a profit by selling counterfeit goods when they were prohibited from doing so by an injunction.

[38] In short, taking all the circumstances into account, I find that the contempt committed in this case is close to the lower end of the scale. While any comparison is flawed, I am of the view that the objective seriousness of the contempt committed by the respondents in this case is of a degree similar to that of situations where, as in *Bowdy*, a taxpayer refused to disclose documents in order to delay an investigation by the tax authorities.

[39] I wish to emphasize that such a finding does not amount to a trivialization of the breach of a Court order. The situation in this case cannot be characterized as one of technical contempt, as Mr. Gauthier claims. His testimony clearly establishes that the respondents wanted to avoid complying with Justice Lafrenière's order at all costs. This contempt of court deserves to be denounced and punished; however, leniency is apposite in respect of the sentence.

B. *Mr. Gauthier*

[40] As I mentioned above, Mr. Gauthier is asking for a lenient sentence because of the minor nature and short duration of the contempt. He also cites, as mitigating circumstances, the pressure he felt at the time, his alleged misinterpretation of Justice Lafrenière's order, his lack of prior conviction for contempt of court, and the particular consequences of contempt for a lawyer.

[41] At the outset, however, it should be noted that Mr. Gauthier's status as a lawyer is an aggravating factor. As I recalled at paragraph 101 of my reasons for conviction, the *Code of ethics of advocates*, RLRQ, c B-1, r 3.1, requires that advocates respect the law and avoid advising illegal conduct and causing a person to evade a court order. By entering the profession, Mr. Gauthier solemnly undertook to respect these principles.

[42] I accept that at the time of the contempt, Mr. Gauthier was under intense pressure due to the animosity and multiple proceedings between the parties. In particular, Mr. Gauthier was being sued personally for damages by Mr. Bacon St-Onge and the trial was to take place shortly thereafter. He testified that his decisions were affected by this atmosphere and that in retrospect he should have acted differently. This, in my view, is a relevant mitigating factor.

[43] Mr. Gauthier again raises the issue of the alleged confusion as the deadline for paying the fines approached and the alleged ambiguity as to the meaning of paragraph 6 of Justice Lafrenière's order. I have already dealt with these issues in my reasons for conviction, at paragraphs 69 to 86, and it is not necessary to revisit them. I find that these arguments are ill-founded and do not explain the respondents' conduct. They do not, therefore, constitute a mitigating factor.

[44] The fact that an offender apologizes, shows remorse or accepts responsibility may constitute a mitigating factor. During his testimony, Mr. Gauthier explained at length the circumstances that led him to offer to keep the fines in his trust account rather than paying them into the Court Registry. The breadth of these explanations may have suggested that Mr. Gauthier was seeking to justify his conduct rather than accept responsibility for his contempt of court. At the end of these explanations, Mr. Gauthier nevertheless stated that he saw things differently today, that he should not have acted the way he did and that he should have paid the fines to the Court Registry. He also said that this would not happen again. In my view, this amounts to a form of acknowledgement of responsibility.

[45] However, Mr. Bacon St-Onge argues that Mr. Gauthier's apologies or explanations are not sincere and are contradicted by the complaint he filed with the Barreau du Québec against Mr. Boulianne, Mr. Bacon St-Onge's attorney. I do not understand how the complaint that Mr. Gauthier filed with the Barreau contradicts the testimony he gave at the hearing. This complaint was filed after the contempt hearing, but before the decision was rendered. In essence, Mr. Gauthier complains that Mr. Boulianne used affidavits from Mr. Bacon St-Onge that

contained false statements in order to obtain a show cause order pursuant to rule 467. However, in my reasons for conviction, at paragraphs 92 to 97, I concluded that Mr. Bacon St-Onge had breached his duty of full disclosure by failing to mention certain facts in his affidavits.

Denouncing this situation is not inconsistent with the position taken by Mr. Gauthier at the hearing regarding his reasons for committing the acts for which he was convicted and the fact that, in hindsight, he should not have done what he did.

[46] Taking all of these factors into account, I believe that a modest fine of \$2,000 is appropriate.

C. *Mr. Hervieux and Ms. Vachon*

[47] Mr. Hervieux and Ms. Vachon are still members of the Council. Their suggestion of a suspended sentence is based on their apology and their assertion that they did not voluntarily violate Justice Lafrenière's order. I reject this explanation, however. Because of their training, professional background and experience as members of the Council, it is not plausible that Mr. Hervieux and Ms. Vachon could have believed that a payment to their lawyer was equivalent to a payment to the Court Registry. In this regard, it bears repeating that they benefited from Mr. Gauthier's advice. I therefore find that a suspended sentence is not appropriate.

[48] However, given the level of seriousness and short duration of the contempt and the apology they offered, I believe a fine of \$2,000 for each of them is appropriate.

D. *Mr. Simon*

[49] Mr. Simon did not appear at either the contempt hearing or the sentencing hearing. He lost his position as Chief, having been defeated in the 2020 election. I have no evidence of his current income, if any, or assets.

[50] In the absence of any evidence about him individually, I must therefore determine the sentence solely on the basis of the objective seriousness of the contempt and his failure to apologize to the Court. I find that a fine of \$5,000 is appropriate in his case.

E. *Other Factors*

[51] The parties have raised a variety of other factors that may affect sentencing. Since I am imposing modest fines, it is not necessary for me to address these factors.

[52] The respondents suggest that some of these factors may constitute additional mitigating circumstances, including the Indigenous status of Mr. Simon, Mr. Hervieux and Ms. Vachon and the significant coverage that the contempt conviction received in the social and regional media. Applying these factors to the present situation would likely raise difficult and complex issues. There is no benefit in resolving them.

[53] Similarly, Mr. Gauthier raised the fact that he could be the subject of a complaint to the Disciplinary Council of the Barreau du Québec. Mr. Gauthier stated that the syndic was awaiting the outcome of this proceeding before making a decision in this regard. Given the uncertainty as

to the sanctions that may result from that process, it is difficult for me to draw any conclusions from it as to sentencing.

[54] Finally, Mr. Bacon St-Onge placed considerable emphasis on the ability of the respondents, particularly Mr. Gauthier, to pay. Given the amount of the fines I am imposing, there is simply no need to dwell on this issue.

F. *Costs*

[55] Mr. Bacon St-Onge seeks costs on a solicitor-client basis; in other words, he wants the respondents to compensate him in full for the legal costs he incurred in obtaining their contempt of court conviction, including submissions regarding sentence.

[56] Courts often award costs on a solicitor-client basis in contempt cases: *N M Paterson & Sons Ltd v The St. Lawrence Seaway Management Corporation*, 2004 FCA 210 at paragraph 18; *Lari v Canadian Copyright Licensing Agency*, 2007 FCA 127 at paragraphs 38–39; *Bell Canada*, at paragraph 74. This is not, however, an absolute rule: see, for example, *Bremsak*, at paragraph 94.

[57] The reason for awarding increased costs is that the private party bringing a contempt motion is not acting in their own interest, but rather in the interest of the administration of justice. In order to deserve such compensation, the applicant must have behaved in a manner that served the administration of justice. In this respect, the role of the applicant is similar to that of the Crown prosecutor in criminal matters, which is not to obtain a conviction at any cost, but to

present all the available evidence in a fair and balanced manner: *Boucher v The Queen*, [1955] SCR 16 at 23–24.

[58] I am of the view that Mr. Bacon St-Onge is not primarily motivated by the interests of the administration of justice. I have already expressed some concerns in this regard in my reasons for conviction. His testimony at the sentencing hearing only reinforced these concerns. In addition, some grossly exaggerated statements in his post-hearing written submissions were entirely improper.

[59] In my reasons for conviction, at paragraphs 92 to 97, I pointed out that Mr. Bacon St-Onge had failed to disclose certain material facts in his affidavit in support of his motion for a show cause order pursuant to rule 467. He thus breached the duty of full disclosure incumbent on the party seeking an *ex parte* order.

[60] In my reasons for conviction, at paragraph 96, I also noted that Mr. Bacon St-Onge was evasive in answering questions about the agreement with two of the respondents, Mr. Canapé and Mr. Riverin, regarding the payment of costs. Despite my remarks, Mr. Bacon St-Onge did not inquire about this before the sentencing hearing. During his testimony, he repeated that he was still unaware of the nature of any agreements that his counsel may have made with Mr. Canapé and Mr. Riverin. Either Mr. Bacon St-Onge is not telling the truth, or he is completely oblivious to the concerns raised by the Court. Furthermore, he stated that he did not know whether the respondents had paid the fines into the Registry and whether the money was still there. Such a statement is completely implausible, given that the fines were to be paid to Mr.

Bacon St-Onge for distribution to various community organizations. If Mr. Bacon St-Onge is telling the truth, he is not interested in the mission that Justice Lafrenière has entrusted to him. In short, his attitude is not that of someone who acts in the interests of the administration of justice.

[61] Mr. Bacon St-Onge completely disregarded the objectivity expected of a prosecutor when, in his written submissions, he falsely accused the respondents of committing several criminal acts. For example, he accuses all the respondents of stealing money intended for community organizations in the community, and Mr. Gauthier of having advised the commission of this theft. Furthermore, he claims that Mr. Gauthier committed perjury at the guilt hearing by stating that he was apologizing to Justice Lafrenière, when a few days later he filed a complaint with the Barreau du Québec against Mr. Bacon St-Onge's lawyer, alleging that he should never have been cited for contempt of court. Such accusations are totally unfounded.

[62] Let us begin with the issue of theft. Every lawyer should know that failure to pay a debt does not constitute theft. The payment of debts is a civil matter, not a criminal matter. Someone who fails to pay a sum of money remains the owner of that sum. When a debt becomes due, the amount owed does not automatically become the property of the creditor. By keeping the money they had to pay, the respondents were not appropriating the property of others, since the money still belonged to them. The contempt of court in this case simply does not constitute theft or any other form of crime. In fact, although it borrows from the criminal law in terms of procedure and punishment, the *Federal Courts Rules* considers contempt of court a civil proceeding.

[63] As for the charge of perjury, it assumes that Mr. Gauthier made a false statement under oath. However, as I mentioned in paragraph [45], there is no contradiction between his testimony at the hearing and the complaint he filed with the Barreau du Québec. There is simply no evidence that Mr. Gauthier could have made a false statement. It was totally irresponsible for Mr. Bacon St-Onge and his counsel to make such unfounded accusations.

[64] In short, Mr. Bacon St-Onge's conduct suggests that he is not so much interested in assisting the administration of justice as in serving his own ends. Of course, this does not excuse or justify the respondents' contempt of court. However, I find that this is sufficient reason for not awarding costs.

VII. Conclusion

[65] In summary, Mr. Gauthier is fined \$2,000; Mr. Hervieux and Ms. Vachon are each fined \$2,000; Mr. Simon is fined \$5,000.

[66] The respondents will have 90 days to pay the fine. In the circumstances, I do not find it necessary to provide for the distribution of this money to community organizations. Nor is it necessary to provide at this time for the imprisonment of the respondents in the event of non-payment. The parties remain free to reapply to the Court in the event of default or to avail themselves of the remedies under rules 423 to 457.

[67] The outcome of this proceeding will undoubtedly not satisfy any of the parties. However, each party should remember not only that it is imperative that court orders be respected, but also

that the indiscriminate multiplication of legal proceedings does not serve the interests of the community.

ORDER in T-2135-16

THE COURT ORDERS as follows:

1. The respondents are ordered to pay the following fines to the Court Registry within 90 days of the date of this judgment:
 - a) Mr. René Simon: \$5,000
 - b) Mr. Gérald Hervieux: \$2,000
 - c) Ms. Marielle Vachon: \$2,000
 - d) Mr. Kenneth Gauthier: \$2,000

2. There shall be no award of costs.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2135-16

STYLE OF CAUSE: JÉRÔME BACON ST-ONGE v THE 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: VIA VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 14, 2021

ORDER AND REASONS: GRAMMOND J.

DATED: OCTOBER 18, 2021

APPEARANCES:

François Boulianne	FOR THE APPLICANT
Sophie Noël	FOR THE RESPONDENT (KENNETH GAUTHIER)
Cynthia Labrie	FOR THE RESPONDENTS (RENÉ SIMON, GÉRALD HERVIEUX AND MARIELLE VACHON)

SOLICITORS OF RECORD:

François Boulianne Québec, Quebec	FOR THE APPLICANT
Noël et Gauron avocats Québec, Quebec	FOR THE RESPONDENT (KENNETH GAUTHIER)
Avocats Baie-Comeau Baie-Comeau, Quebec	FOR THE RESPONDENTS (RENÉ SIMON, GÉRALD HERVIEUX AND MARIELLE VACHON)