



EDITOR'S NOTE: This document is subject to editorial revision before its reproduction in final form in the *Federal Courts Reports*.

PRACTICE

CONTEMPT OF COURT

Sentencing — Appeal from Federal Court order (2019 FC 794) sentencing five appellants for contempt of court — Appellants five of seven persons convicted of contempt of court for failing to comply with Federal Court judgment (2017 FC 1179) — Judgment cancelling election by which appellants elected members of council of Pessamit Innu Nation (Nation), ordering new election unless Nation's 1994 custom election code duly amended before certain date — Chief Simon sentenced to fine of \$20,000.00, each councillor fined \$10,000.00, payable within 90 days of decision — Appellants criticizing Federal Court for not properly applying principles of sentencing, particularly principles of proportionality, individualization, parity in sentencing — Appellants contesting quantum of fines, considering fines excessive, inappropriate — More specifically, appellants insisting Federal Court failed to consider all mitigating factors raised or give sufficient weight to Indigenous aspect or context of Indigenous governance, an important mitigating factor in appellants' view — Before Federal Court, respondent arguing term of imprisonment as well as fines of \$50,000.00 for Chief Simon, \$30,000.00 for each councillor, appropriate considering serious, flagrant nature of contempt — Whether Federal Court correctly determined sentence imposed on five appellants for contempt of court — Is settled law that court of appeal cannot vary sentence simply because court would have ordered different one — Appellate courts must instead show great deference when reviewing trial court decisions where appeal against sentence concerned — In decision, Federal Court noted case law factors to consider with regard to sentencing — Review of arguments submitted regarding mitigating factors Federal Court allegedly did not give sufficient weight to in sentencing not establishing Federal Court committed error in principle warranting intervention — As for context of Indigenous governance, Federal Court noted appellants believed themselves acting in interest of community in not holding election, wanted to preserve Nation's self-government — Federal Court emphasized objective or effect of 2017 judgment not intended to strip Nation of right to self-determination, but to enforce laws, customs of Nation with regard to elections — Moreover, Federal Court duly considered Indigenous aspect, principles set out by Supreme Court in *R. v. Gladue*, [1999] 1 S.C.R. 688, *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, before concluding appellants should be fined because sentence of imprisonment inappropriate — Regarding political interference, judicial review under rule of law, decisions of all government authorities subject to judicial review, must comply with rules of law governing exercise of authorities' powers — On whole, appellants' arguments essentially called into question Federal Court's findings of fact regarding circumstances of contempt — However, findings fell within purview of trier of fact's assessment of evidence, contained no reviewable errors — Federal Court's reasoning suggested Federal Court prioritized objectives of deterrence, denunciation in determining appropriate sentence, as Federal Court entitled to do — Fines imposed by Federal Courts in cases of contempt of court vary enormously depending on context — At end of a proceeding, one party will always disagree with decision rendered — But in state founded on rule of law, disagreement with court order never justifying refusal to comply with order before order quashed or stayed — In case at hand, appellants not only broke law of appellants' First Nation and

caused Nation harm, but also tried to undermine members of Nation seeking Federal Court's intervention — Federal Court correct in finding flagrant, repeated contempt because appellants had had multiple opportunities to think issue over — Chief Simon well aware could lose in Federal Court in 2017, had [TRANSLATION] “plan of action” — Chief Simon definitely directing mind in decision making after 2017 judgment — Given Chief Simon's position holding that right to self-determination allowed contravening Federal Court judgment, position could influence other bands as well as appellants, fine against chief, although steep, not unjust — Similarly, not clearly inappropriate to set fine applicable to other appellants at amount equal to half of fine imposed on chief — Fine took into account other appellants' level of responsibility — As for one appellant in present case, exceptional circumstances justified Court's intervention to offer alternative way to pay fine, which alternative offered — Appeal dismissed with exception of one appellant.

SIMON V. BACON ST-ONGE (A-258-19, 2023 FCA 1, Gauthier J.A., judgment dated January 4, 2023, 22 pp.)