Federal Court Cour fédérale

Date: 20220411

Docket: T-1624-19

Citation: 2022 FC 521

Ottawa, Ontario, April 11, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JEREMY KING

Plaintiff

and

FEDERATION OF NEWFOUNDLAND INDIANS INC. (FNI) and HER MAJESTY THE QUEEN (CANADA)

Defendants

and

COURTS ADMINISTRATION SERVICE

Defendant/Moving Party

ORDER AND REASONS

I. Background

[1] In a decision dated November 26, 2021, after a show cause hearing, I found Mr. King in contempt of court (see *King v Federation of Newfoundland Indians Inc*, 2021 FC 1312). Specifically, I found that contrary to the Order of the Chief Justice dated December 18, 2020, ordering Mr. King to comply with certain protocols respecting his interactions with the Court and Registry staff:

> a) Mr. King verbally communicated with the Court and Registry staff many times, including on January 8, 2021, January 11, 2021, January 18, 2021, January 27, 2021, February 2, 2021, February 11, 2021, and February 15, 2021;
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> b) Mr. King refused or otherwise failed to communicate with the Court and Registry staff only in writing; and
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> c) Mr. King used abusive, insulting, profane, or otherwise offensive language in his written communications to the Court and Registry staff on January 13, 2021, and February 15, 2021.

[2] A separate sentencing hearing was held on March 2, 2022. In attendance were Mr. King, and counsel for The Federation of Newfoundland Indians Inc., Her Majesty the Queen in Right of Canada [Canada], and the Courts Administrative Service [CAS]. Submissions were received only from Mr. King and CAS. On July 14, 2021, CAS had been granted standing to conduct the contempt hearing.

II. Principles for Sentencing for Civil Contempt

[3] Justice Norris in *Bell Canada v Red Rhino Entertainment Inc*, 2021 FC 895, recently summarized the relevant principles relating to civil contempt. They are accurate and need not be improved upon. I reproduce paragraphs 6 to 13 which are applicable to the matter before this Court:

> [6] Contempt of court is a serious matter. It is "a challenge to the judicial authority whose credibility and efficiency it undermines as well as those of the administration of justice" (*9038-3746 Quebec Inc. v Microsoft Corporation*, 2010 FCA 151 at para 18). Punishing contempt is an exercise of the court's power to uphold its dignity and process. It re-affirms the court's authority when a party has cast that authority into doubt by acting in contempt of one of its orders.
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> [7] As McLachlin J (as she then was) explained in *United Nurses of Alberta v Alberta (Attorney General)*, [1992] 1 SCR 90, the rule of law, which is at the heart of our society, "is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect" (at 931). With civil contempt, where (unlike criminal contempt) there is no element of public defiance in the conduct giving rise to the contempt finding, "the matter is generally seen primarily as coercive rather than punitive" (*Carey v Laiken*, 2015 SCC 17 at para 31, internal quotation marks and citation omitted). That is to say, generally the court seeks to bring the offending party into compliance with its legal obligations. Nevertheless, "one purpose of sentencing for civil contempt is punishment for breaching a court order" (*ibid.*). Accordingly, courts "sometimes impose substantial fines to match the gravity of the contempt, to deter the contemnor's continuing conduct and to deter others from comparable conduct" (*ibid.*).
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> [8] Rule 472 of the *Federal Courts Rules*, SOR/98-106 provides as follows:

Penalty	**Peine**
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] A judge has wide discretion to determine the appropriate sanction for civil contempt (*Tremaine v Canada (Human Rights Commission)*, 2014 FCA 192 at para 26). Apart from setting the maximum period of imprisonment and providing what is presumably an exhaustive list of the kinds of thing the sentencing judge may order, Rule 472 itself imposes no constraints on the sentencing judge's discretion. As a result, courts have looked elsewhere for principles to guide sentencing for civil contempt. Helpful guidance is found in the principles of sentencing developed in the criminal law (*Tremaine* at paras 19-26).

[10] The fundamental principle of criminal sentencing is that the sentence "must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (*Criminal Code*, RSC, 1985, c C-46, section 718.1). This is equally applicable to civil contempt. Here, the gravity of the offence is measured primarily by its impact on the administration of justice. This includes "both the objective gravity of the contemptuous conduct and the subjective gravity of the conduct (*i.e.* whether the conduct was a technical breach or a flagrant act with full knowledge of its unlawfulness)" (*Tremaine* at para 23, internal quotation marks and citation omitted).

[11] One important objective of sentencing is to denounce the unlawful conduct (*c.f. Criminal Code*, paragraph 718(a)).

[12] Further, the sentencing judge must consider the need for specific and general deterrence. In the civil contempt context, these objectives serve to protect the administration of justice. The measures adopted to achieve them must be consistent with the principle of proportionality (*Tremaine* at para 22). As well, these and other objectives of sentencing must be pursued with the principle of restraint in mind – namely, that an offender should not be deprived of liberty if less restrictive sanctions may be

> appropriate in the circumstances (*Criminal Code*, paragraph 718.2(d)). The sentencing judge must also consider the principle of parity: "similar offenders who commit similar offences in similar circumstances should receive similar sentences" (*R v Friesen*, 2020 SCC 9 at para 31; see also *R v Lacasse*, 2015 SCC 64 at paras 56-60; and *Criminal Cod*e, paragraph 718.2(b)). Thus, the sentencing judge must consider the range of sentences for similar offences and tailor the sentence in light of the objectives of sentencing and any aggravating or mitigating circumstances that are present (*Tremaine* at para 21; see also *Professional Institute of the Public Service of Canada v Bremsak*, 2013 FCA 214 at para 35 and *Criminal Code*, paragraph 718.2(a)).
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> [13] Aggravating circumstances can include whether the offending conduct was a prolonged course of conduct as opposed to an isolated incident, the scope or scale of the offending conduct, whether the offending conduct continued even after it was found to constitute contempt, the offender's motivation, and whether the offender has previously been found guilty of contempt. Consistent with criminal law principles, unless they are admitted, any aggravating circumstances relied on by the moving party must be established beyond a reasonable doubt: see *R v Gardiner*, [1982] 2 SCR 368 at 413-17; see also *Criminal Code*, paragraph 724(3)(e). Mitigating circumstances can include a genuine expression of remorse by the offender, acceptance of responsibility, taking steps towards rehabilitation, and good faith efforts to comply with the order in question (*Tremaine* at para 24). They can also include personal circumstances such as youthfulness or addiction that reduce the offender's degree of responsibility for the wrongful conduct. If disputed, mitigating circumstances must be established on a balance of probabilities (*c.f. Criminal Code*, paragraph 724(3)(d)).

III. Submissions of the Parties

[4] Immediately prior to the sentencing hearing, Mr. King emailed a number of documents to the Court and parties, which he spoke to at the hearing. None were filed in accordance with the Court's processes.

[5] Mr. King informed the Court that he was attending the hearing under protest and that the Court had no jurisdiction in the matter before it. His submissions, in brief, were (1) that Supreme Pontiff Francis dissolved the governments of North America and the Bar Societies, (2) that the Court must order consultation to proceed further, as he is a without Treaty non-status Indian, over whom the Court has no jurisdiction, (3) that the Gladue principles applied, and (4) that he is a "flesh-and-blood sentient living soul" who has not given his prior consent to attachments by any legal entity.

[6] As was pointed out to Mr. King by the Court, he is before this Court as a result of a Statement of Claim he filed on October 4, 2019, seeking the rescission of the Supplemental Agreement Dated July 4, 2013, entered into between The Federation of Newfoundland Indians Inc. and Canada, and corollary and supplemental relief. Accordingly, he has attorned to this Court's jurisdiction.

[7] The principle of consultation, as enunciated by the Supreme Court of Canada in *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, and others, is that the principle of the honour of the Crown requires that the government has a duty to consult with Aboriginal peoples and accommodate their interests. This Court is not the government of Canada, nor does the principle of consultation apply to individual Aboriginal persons.

[8] The Gladue principles arise from the decision of the Supreme Court of Canada in *R v Gladue*, [1999] 1 SCR 688, which addresses the sentencing principles that are outlined under section 718.2 of the *Criminal Code*. It relates to sentencing for convictions under the *Criminal*

Code. Paragraph 718.2(e) requires a judge sentencing a person for a criminal conviction to consider all available sanctions other than imprisonment and to pay particular attention to the circumstances of Aboriginal offenders. It is said that this provision is remedial and is designed to ameliorate the serious problem of overrepresentation of Aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing.

[9] Counsel for CAS noted that this Court referenced and applied the Gladue principles in civil contempt matters in *Bacon St-Onge v Conseil des Innus de Pessamit*, 2019 FC 794 at paragraphs 88 and 89:

> [88] As for the appropriate sentencing for Aboriginal people, the case law requires the evaluation of the Aboriginal aspect in light of *R v Gladue*, [1999] 1 SCR 688 [*Gladue*] and *R v Ipeelee*, 2012 SCC 13 [I*peelee*], as reiterated by Justice Southcott, to recognize the "systemic and background factors that have contributed to the over-incarceration of Aboriginal peoples in Canada and to what has been described as the estrangement of Aboriginal peoples from the Canadian justice system" (*Twins v Canada (Attorney General)*, 2016 FC 537, at paragraph 57). Moreover, in *Frontenac Ventures Corp v Ardoch Algonquin First Nation*, 2008 ONCA 534, at paragraph 54, the Ontario Court of Appeal confirmed that the principles articulated in *Gladue* are applicable when fashioning a sentence for civil or criminal contempt on the part of aboriginal contemnors. As set out in *Gladue*, at paragraph 50, the Court must impose a sentence by resorting to the restorative model of justice in sentencing aboriginal offenders and reducing the imposition of jail sentences where to do so would not sacrifice the traditional goals of sentencing.
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> [89] It is clear in this case that the imposition of a term of imprisonment is not appropriate to ensure compliance with the rule of law and the court's authority. Such a sentence would only create turmoil within the community as the members decided to re-elect five of the seven respondents to the position of councillor. While the parties provided little evidence taking into account the factors listed in paragraph 93 of *Gladue*, I note the systemic and background factors such as the Canadian government's interference in the governance of Aboriginal bands, the incarceration for non-payment of fines contributing significantly to the

> overrepresentation of Aboriginal people in prison and the fundamentally different world views of Aboriginal and non-Aboriginal people "with respect to such elemental issues as the substantive content of justice and the process of achieving justice" (*Ipeelee*, at paragraph 74).

[10] I am prepared to accept that if imprisonment were a likely option here, then I should apply the Gladue principles. However, it is not a realistic penalty here and was not one supported by CAS. Other than referencing the Gladue principles, Mr. King made no material submissions on how they ought to be applied to his situation.

[11] The other objections raised by Mr. King are fanciful, and completely without legal merit or support. Mr. King made no submissions as to appropriate penalty and expressed no contrition.

[12] CAS submitted that the appropriate penalty would be a fine and/or a requirement that Mr. King enrol in an anger management course, coupled with continuing the restrictions imposed on Mr. King's interactions with Court Registry staff imposed by the Chief Justice in his Order, as well as a clear indication to Mr. King that further breaches would be dealt with by more severe sanctions.

IV. Findings on Penalty

[13] I agree that a fine is appropriate. Fines imposed by this Court against individuals for first findings of contempt must be reasonable, having regard to the particular circumstances of the case. CAS proposed that a $1,000 fine met that criteria, and I agree. While I agree that that Mr.

King might benefit from anger management training, I question its value if it is Court ordered rather than voluntarily accepted by the individual as it was in *Hunt v Canada*, 2016 FC 226.

[14] I also agree that it is critical that the conditions imposed by the Chief Justice continue and that Mr. King be told in no uncertain terms that any further breach will result in more severe consequences. His conduct with Registry staff to date has been deplorable and inexcusable. They are public servants doing their best to maintain an efficient and effective court registry. They deal with thousands of matters and litigants in a courteous and professional manner. They are entitled to be treated with respect regardless of the frustrations individual litigants may feel. I find it telling that Mr. King has offered no apology for his behaviour.

[15] None of the parties requested an Order in costs, and so none will be ordered.

ORDER IN T-1624-19

THIS COURT ORDER that

1. A fine in the amount of $1000 is hereby imposed on Mr. King, payable by certified cheque or bank draft to CAS within 60 days of this Order;

2. If the fine is not paid in full within the time stipulated, CAS may move for an Order citing Mr. King for contempt of this Order;

3. The terms of the Order of the Chief Justice dated December 18, 2020 are continued; specifically, as follows:

3.1. The Plaintiff, Jeremy King, shall cease and desist verbally communicating with the Court and Registry staff.

3.2. Subject to further direction or Order by the Case Management Judge in this proceeding, Mr. King shall communicate with Registry staff and the Court only in writing.

3.3. In his written communications with the Court and Registry staff, Mr. King is prohibited from using abusive, insulting, profane or otherwise offensive language.

3.4. Failure to comply with this Order may lead to proceedings for contempt of court. Pursuant to Rule 472 of the *Federal Courts Rules*, SOR/98-106, the consequences of a finding of contempt of court include an Order that:

(a) the person be imprisoned for a period of less than five years or until the person complies with the order;

(b) the person be imprisoned for a period of less than five years if the person fails to comply with the order;

(c) the person pay a fine;

(d) the person do or refrain from doing any act;

(e) in respect of a person referred to in rule 429, the person’s property be sequestered; and

(f) the person pay costs.

4. Any breach of this Order, including the terms immediately above, shall on motion by CAS, result in Mr. King being required to attend a hearing to show cause why he should not be held in contempt.

5. No costs are ordered.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1624-19
STYLE OF CAUSE:	JEREMY KING v FEDERATION OF NEWFOUNDLAND INDIANS INC (FNI) ET AL
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 2, 2022
ORDER AND REASONS:	ZINN J.
DATED:	APRIL 11, 2022

APPEARANCES:

Jeremy King	APPLICANT (ON HIS OWN BEHALF)
Roger Horst	FOR THE DEFENDANT (FNI)
Christopher Rupar Gail Soonarane	FOR THE DEFENDANT (HMTQ - CANADA)
Mannu Chowdhury	FOR THE DEFENDANT/MOVING PARTY (CAS)

SOLICITORS OF RECORD:

- Nil -	SELF-REPRESENTED APPLICANT
Blaney McMurtryToronto, Ontario	FOR THE DEFENDANT(FNI)
Attorney General of Canada Department of Justice Toronto and Ottawa, Ontario	FOR THE DEFENDANT (HER MAJESTY THE QUEEN - CANADA)
Borden Ladner Gervais Toronto, Ontario	FOR THE DEFENDANT (COURTS ADMINISTRATION SERVICE -CAS)