



**SUPREME COURT OF CANADA**

**CITATION:** Morasse v. Nadeau-Dubois, 2016  
SCC 44

**APPEAL HEARD:** April 22, 2016  
**JUDGMENT RENDERED:** October 27, 2016  
**DOCKET:** 36351

**BETWEEN:**

**Jean-François Morasse**  
Appellant

and

**Gabriel Nadeau-Dubois**  
Respondent

- and -

**Canadian Civil Liberties Association,  
Alberta Public Interest Research Group and  
Amnistie internationale, Section Canada francophone**  
Interveners

**OFFICIAL ENGLISH TRANSLATION:** Reasons of Wagner J.

**CORAM:** McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner,  
Gascon, Côté and Brown JJ.

**JOINT REASONS FOR JUDGMENT:** Abella and Gascon JJ. (McLachlin C.J. and Cromwell and  
(paras. 1 to 45) Karakatsanis JJ. concurring)

**CONCURRING REASONS:** Moldaver J.  
(paras. 46 to 52)

**DISSENTING REASONS:** Wagner J. (Côté and Brown JJ. concurring)  
(paras. 53 to 133)

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MORASSE v. NADEAU-DUBOIS

**Jean-François Morasse**

*Appellant*

v.

**Gabriel Nadeau-Dubois**

*Respondent*

and

**Canadian Civil Liberties Association,  
Alberta Public Interest Research Group and  
Amnistie internationale, Section Canada francophone**

*Interveners*

**Indexed as: Morasse v. Nadeau-Dubois**

**2016 SCC 44**

File No.: 36351.

2016: April 22; 2016: October 27.

Present: McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner,  
Gascon, Côté and Brown JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

*Civil procedure — Contempt of court — Required knowledge and intent — Statutory provision creating offence of contempt of court for anyone who disobeys any process or order of court or judge, or acts in such way as to interfere with orderly administration of justice or to impair authority or dignity of court — Student organization holding protests and forming picket lines at university — Student obtaining provisional interlocutory injunction mandating free access to university facilities and classes — Spokesperson of student organization commenting on injunctions and picket lines in interview — Whether spokesperson guilty of contempt — Code of Civil Procedure, CQLR, c. C-25, art. 50 para. 1.*

N-D was the spokesperson for a student organization that held protests and formed picket lines in Quebec's various post-secondary institutions over proposed increases in university tuition fees. M, a student, obtained a provisional interlocutory injunction that mandated free access to the facilities in which classes for M's program were held. In a television interview he gave with another student leader, N-D stated that such attempts to force students back to class do not work, that a minority of students use the courts to circumvent the majority's collective decision to go on strike, and that picket lines are an entirely legitimate means to ensure respect of the vote to strike. M filed a motion for contempt against N-D for his comments in the interview. N-D was found guilty of contempt of court under art. 50 para. 1 of the *Code of Civil Procedure* and sentenced to 120 hours of community service to be completed within six months under the supervision of a probation officer. The Court of Appeal set the conviction and sentence aside and entered an acquittal.

*Held* (Wagner, Côté and Brown JJ. dissenting): The appeal should be dismissed.

*Per* McLachlin C.J. and **Abella**, Cromwell, Karakatsanis and **Gascon** JJ.:

What is at issue is whether a contempt charge brought by a private citizen against another individual, meets the strict procedural and substantive safeguards required by law to ensure that the liberty interests of those accused of contempt are fully protected. The power to find an individual guilty of contempt of court is an exceptional one. It is an enforcement power of last resort and the only civil proceeding in Quebec that may result in a penalty of imprisonment. Because of the potential impact on an individual's liberty, the formalities for contempt proceedings must be strictly complied with. Clear, precise and unambiguous notice of the specific contempt offence must be given to the accused, and the elements required for a conviction must be proven beyond a reasonable doubt. A conviction for contempt should only be entered where it is genuinely necessary to safeguard the administration of justice.

At the time M instituted private proceedings against N-D, the offence of contempt of court existed in two separate provisions of the *Code*, now consolidated in art. 58 of the new *Code*. Article 50 para. 1 established the courts' general ability to hold someone in contempt. Article 761 created an offence for contempt of court that related specifically to breaching injunctions. Both provisions have been interpreted harmoniously with the common law. The offence of contempt of court at art. 50

para. 1 has two branches. Where a particular court order or process is at issue, both branches require actual or inferred knowledge of it. The first branch relates to disobeying any process or order of the court or of a judge. The person accused of contempt must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. Under the second branch, the *actus reus* is made out where a person “acts in such a way as to interfere with the orderly administration of justice” or “to impair the authority or dignity of the court”. The acts done, or the words complained of must either succeed in doing so, or create a serious or substantial risk of having this effect. The *mens rea* for this form of contempt is an intention to vilify the administration of justice, to destroy public confidence therein, or to excite disaffection against it. Good faith criticism of judicial institutions and their decisions falls short of this threshold.

The only allegations raised by M against N-D related to an alleged violation of one paragraph in an injunction order in the form of comments N-D made in an interview. N-D was not given notice as to which specific branch of art. 50 para. 1, if any, he was being charged under. With respect to the first branch, there was no evidence that N-D had knowledge, either actual or inferred, of the order. The fact that there were other injunctions does not prove that N-D knew of this particular order. Nor can knowledge be imputed to N-D on the basis of his comments during the interview, the question he was asked, or the statements of the other student leader interviewed with him. Nor did his endorsement of students picketing in general amount to an encouragement to use picket lines to block access to classes, since the

order did not prohibit picketing altogether. M's failure to prove N-D's actual or inferred knowledge of the order is dispositive of the second branch. If N-D did not know about the order, he cannot have intended to interfere with it, or encourage others to do so.

*Per Moldaver J.:* In responding as he did in the television interview, N-D intended to incite students at large to breach any and all court orders which enjoined the use of picket lines to block access to classes. Had the case proceeded on that basis, his call to disobey at large would necessarily have included the interlocutory injunction obtained by M, regardless of whether he had specific knowledge of it or not. However, the issue at trial was whether N-D breached this particular order. The Quebec Court of Appeal therefore found correctly that the evidence did not support a finding that N-D had specific knowledge of the order, and that this was fatal to the contempt finding. Given the way the case was argued at trial, it would be both unfair and prejudicial to allow M to change the theory of the case at this level of the proceedings. The appeal should be dismissed for this reason alone.

*Per Wagner, Côté and Brown JJ. (dissenting):* The purpose of convictions for contempt of court, whether in a civil or a criminal context, is to maintain public confidence in the administration of justice and ensure the smooth functioning of the courts. This power is exceptional and must be exercised only as a last resort. Exercising it is nonetheless justified where a contempt conviction is necessary to protect the integrity of the justice system and to ensure that system's

credibility in the eyes of the public. Strict conditions, including the criminal law standard of proof, apply when a contempt order is made. But this does not mean that the use of the power must be so arduous that, in practice, it can no longer be exercised.

In this case, N-D knew full well that the contempt charge he had to answer had been laid under both art. 761 and art. 50 para. 1 of the *Code of Civil Procedure*, as can be seen from the statements made by counsel for M at the appearance, from the special rule ordering N-D to appear, which expressly referred to both provisions, from the acts alleged by M against N-D in his motion and the description of the allegations against N-D, and from the submissions made by N-D at trial. It was therefore appropriate for the trial judge to determine whether N-D was guilty under the final portion of art. 50 para. 1 of the *Code*.

Specific knowledge of an order is not essential for the purposes of the final portion of art. 50 para. 1 of the *Code*. The offence it establishes is broader than the simple breach of an order. A contempt conviction is possible under this provision even where the underlying order has not yet taken effect. Actual personal knowledge of a court order, a requirement that flows from the case law, can always be inferred from circumstantial evidence. The inference must be reasonable given the evidence or the absence of evidence, assessed logically, and in light of common sense and human experience. The evidence must establish that the person accused of inciting others to breach an order knew of the existence of one or more orders that were in effect at the

time of the offence and was also in a position to know that his or her acts or words were contrary to those orders.

In this case, a contextual analysis of N-D's words can lead to only one reasonable inference. When considered in the context of the entire interview, those words show beyond a reasonable doubt that he knew of the existence, content and scope of the orders, and that he incited students to breach them.

The trial judge's conclusion with respect to the *actus reus* is entitled to deference. The *actus reus* under the first portion of art. 50 para. 1 of the *Code* is disobeying any process or order of a court. By contrast, the *actus reus* contemplated by the final portion of that provision consists of any action that interferes or tends to interfere with the orderly administration of justice, or that impairs or tends to impair the authority or dignity of the court. When assessed in the context of the entire interview, N-D's words were an incitement to breach the order in question as well as the other orders that had been made to ensure that students would have access to their classes.

It would not be appropriate to interfere with the trial judge's finding as regards the *mens rea*. An intention to interfere with the administration of justice or to impair the authority or dignity of the court is not an essential element of the offence of contempt; recklessness as to this consequence is enough. Given the context in which N-D made his remarks, he knew that his act of defiance would be public and it

may be inferred that he was at least reckless as to whether the authority of the court would be impaired.

The importance of freedom of expression and of the protection of that freedom in a democratic society can never be overstated. But one may not use the exercise of one's freedom of expression as a pretext for inciting people to breach a court order. Ensuring compliance with orders made by the courts, and thereby maintaining the authority and credibility of the courts, has the effect of reinforcing the rule of law and, by extension, the fundamental freedoms, including freedom of expression.

The sentence imposed by the trial judge was neither unreasonable nor disproportionate. The trial judge correctly applied the rules dealing with the admissibility of evidence at the sentencing stage. N-D's argument that at the time the sentence was imposed, the need to prevent orders from being contravened no longer existed as a result of a legislative measure disregards the objective of denunciation in the case of contempt. The sentence that was imposed is not an unreasonable departure from the penalties imposed in similar cases in which the contempt was public in nature.

### **Cases Cited**

By Abella and Gascon JJ.

**Referred to:** *Morasse v. Université Laval*, 2012 QCCS 1565; *Morasse v. Université Laval*, 2012 QCCS 1859; *Lavoie v. Collège de Rosemont*, 2012 QCCS 1685; *Goudreault v. Collège de Rosemont*, 2012 QCCS 2017; *Caron v. Paul Albert Chevrolet Buick Cadillac inc.*, 2016 QCCA 564; *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79; *Centre commercial Les Rivières ltée v. Jean bleu inc.*, 2012 QCCA 1663; *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065; *Guay v. Lebel*, 2016 QCCA 1555; *Droit de la famille — 122875*, 2012 QCCA 1855, 29 R.F.L. (7th) 137; *Javanmardi v. Collège des médecins du Québec*, 2013 QCCA 306, [2013] R.J.Q. 328; *Godin v. Godin*, 2012 NSCA 54, 317 N.S.R. (2d) 204; *Imperial Oil Ltd. v. Tanguay*, [1971] C.A. 109; *Constructions Louisbourg ltée v. Société Radio-Canada*, 2014 QCCA 155; *Trudel v. Foucher*, 2015 QCCA 691; *Chamandy v. Chartier*, 2015 QCCA 1142; *Montréal (Ville de) v. Syndicat des cols bleus regroupés de Montréal (SCFP), section locale 301*, 2006 QCCS 5273; *Gougoux v. Richard*, 2005 CanLII 37770; *Estrada v. Young*, 2005 QCCA 493; *Zhang v. Chau* (2003), 229 D.L.R. (4th) 298; *R. v. Kopyto* (1987), 62 O.R. (2d) 449; *Attorney-General v. Times Newspapers Ltd.*, [1973] 3 All E.R. 54; *Boucher v. The King*, [1951] S.C.R. 265; *Re Ouellet (No. 1)* (1976), 28 C.C.C. (2d) 338; *Prud'homme v. Prud'homme*, 1997 CanLII 8253; *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8, [2002] 1 S.C.R. 156.

By Moldaver J.

**Referred to:** *Newcastle Recycling Ltd. v. Clarington (Municipality)*, 2010 ONCA 314, 261 O.A.C. 373; *R. v. Vaillancourt* (1995), 105 C.C.C. (3d) 552; *R. v. Tran*, 2016 ONCA 48; *Wexler v. The King*, [1939] S.C.R. 350.

By Wagner J. (dissenting)

*Morasse v. Université Laval*, 2012 QCCS 1565; *Morasse v. Université Laval*, 2012 QCCS 1859; *Zhang v. Chau* (2003), 229 D.L.R. (4th) 298, leave to appeal refused, [2003] 3 S.C.R. v; *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901; *Baxter Travenol Laboratories of Canada Ltd. v. Cutter (Canada), Ltd.*, [1983] 2 S.C.R. 388; *Centre commercial Les Rivières ltée v. Jean bleu inc.*, 2012 QCCA 1663; *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 R.C.S. 1065; *R. v. Bridges* (1989), 61 D.L.R. (4th) 154, aff'd (1990), 54 B.C.L.R. (2d) 273; *MacMillan Bloedel Ltd. v. Simpson* (1994), 92 B.C.L.R. (2d) 1; *R. v. Krawczyk*, 2009 BCCA 250, 275 B.C.A.C. 6, leave to appeal refused, [2010] 1 S.C.R. xi; *Canada Metal Co. v. Canadian Broadcasting Corp. (No. 2)* (1974), 4 O.R. (2d) 585, aff'd (1975), 11 O.R. (2d) 167; *Constructions Louisbourg ltée v. Société Radio-Canada*, 2014 QCCA 155; *Echostar Satellite Corp. v. Lis*, 2004 CanLII 2156; *Procom Immobilier Inc. v. Commission des valeurs mobilières du Québec*, [1992] R.D.J. 561; *Cotroni v. Quebec Police Commission*, [1978] 1 S.C.R. 1048; *Re Awada* (1970), 13 C.R.N.S. 127; *Droit de la famille — 122875*, 2012 QCCA 1855, 29 R.F.L. (7th) 137; *Iron Ore Co. of Canada v. United Steel Workers of America, Local 5795* (1979), 20 Nfld. & P.E.I.R. 27, leave to appeal

refused, [1979] 1 S.C.R. viii; *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217; *Canadian Broadcasting Corp. v. Quebec Police Commission*, [1979] 2 S.C.R. 618; *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79; *College of Optometrists (Ont.) v. SHS Optical Ltd.*, 2008 ONCA 685, 241 O.A.C. 225; *Estrada v. Young*, 2005 QCCA 493; *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1001; *Re Tilco Plastics Ltd. v. Skurjat*, [1966] 2 O.R. 547, aff'd [1967] 2 C.C.C. 196, leave to appeal refused, [1966] S.C.R. vii; *Avery v. Andrews* (1882), 51 L.J. Ch. 414; *Ex parte Langley* (1879), 13 Ch. D. 110; *R. v. Griffin*, 2009 SCC 28, [2009] 2 S.C.R. 42; *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214; *Attorney-General of Quebec v. Hebert*, [1967] 2 C.C.C. 111; *Attorney-General v. Times Newspapers Ltd.*, [1973] 3 All E.R. 54; *R. v. Kopyto* (1987), 62 O.R. (2d) 449; *Attorney-General of Quebec v. Charbonneau* (1972), 13 C.C.C. (2d) 226; *Boon-Strachan Coal Co. v. Campbell*, [1981] C.S. 923; *Re Ouellet (No. 1)* (1976), 28 C.C.C. (2d) 338, aff'd [1976] C.A. 788; *Daigle v. Corporation municipale de la Paroisse de St-Gabriel de Brandon*, [1991] R.D.J. 249; *Godin v. Godin*, 2012 NSCA 54, 317 N.S.R. (2d) 204; *Poje v. Attorney General for British Columbia*, [1953] 1 S.C.R. 516; *Canadian Transport Co. v. Alsbury* (1952), 6 W.W.R. (N.S.) 473, aff'd [1953] 1 D.L.R. 385, aff'd [1953] 1 R.C.S. 516; *R. v. Gardiner*, [1982] 2 S.C.R. 368; *Westfair Foods Ltd. v. Naherny* (1990), 63 Man. R. (2d) 238; *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089; *Agence nationale d'encadrement du secteur financier v. Coopérative de producteurs de bois précieux Québec Forestales*, 2005 CanLII 11614; *Peter Kiewit Sons Co. v. Perry*, 2007 BCSC 305.

## Statutes and Regulations Cited

*Act to enable students to receive instruction from the postsecondary institutions they attend*, S.Q. 2012, c. 12, ss. 10, 11, 13, 14, 32.

*By-law amending the By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property*, May 18, 2012, Ville de Montréal, by-law 12-024, s. 1.

*By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property*, R.B.C.M., c. P-6, s. 2.1 [ad. 2012, by-law 12-024, s. 1].

*Canadian Charter of Rights and Freedoms*, preamble, s. 2(b).

*Charter of human rights and freedoms*, CQLR, c. C-12, s. 3.

*Code of Civil Procedure*, CQLR, c. C-25 [repl. 2014, c. 1, s. 833], arts. 1, 50, 51 para. 1, 53, 53.1, 761.

*Code of Civil Procedure*, CQLR, c. C-25.01, arts. 58, 62.

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Popovici, Adrian. *L’outrage au tribunal*. Montréal: Thémis, 1977.

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APPEAL from a judgment of the Quebec Court of Appeal (Bich, Giroux and Dufresne JJ.A.), 2015 QCCA 78, [2015] AZ-51142714, [2015] J.Q. n° 158 (QL), 2015 CarswellQue 284 (WL Can.), setting aside a conviction and sentence for contempt of court by Jacques J., 2012 QCCS 5438, [2012] R.J.Q. 2174, [2012] AZ-50907942, [2012] J.Q. n° 11705 (QL), 2012 CarswellQue 11446 (WL Can.), and 2012 QCCS 6101, [2012] R.J.Q. 2279, [2012] AZ-50918771, [2012] J.Q. n° 14670 (QL), 2012 CarswellQue 12900 (WL Can.), and entering an acquittal. Appeal dismissed, Wagner, Côté and Brown JJ. dissenting.

*Maxime Roy, Vincent Rochette and Ariane Gagnon-Rocque*, for the appellant.

*Giuseppe Sciortino, Sibel Ataogul and Félix-Antoine Michaud*, for the respondent.

Written submissions only by *Julius H. Grey*, for the intervener the Canadian Civil Liberties Association.

*Ranjan K. Agarwal, Faiz M. Lalani and Avnish Nanda*, for the intervener the Alberta Public Interest Research Group.

*François Larocque and Maxine Vincelette*, for the intervener Amnistie internationale, Section Canada francophone.

The judgment of McLachlin C.J. and Abella, Cromwell, Karakatsanis and Gascon JJ. was delivered by

ABELLA AND GASCON JJ. —

[1] In the spring of 2012, massive and sustained student protests took place in the province of Quebec over the issue of proposed increases in university tuition fees. The increases were announced as part of the budget introduced by the provincial government. Several student organizations which were opposed to the increases organized responsive protests.

[2] The protests paralyzed several post-secondary institutions. Classes at several institutions were cancelled. Student organizations held votes declaring themselves to be “on strike”. Picket lines were formed at several universities and CEGEPs.<sup>1</sup> Students and teachers were prevented from entering the buildings in which classes were to be held. As a result, several injunctions were sought to restrict these blockages and help ensure the continuation of the school year.

[3] The underlying events in the spring of 2012 were deeply disruptive, and caused massive dislocation and frustration for many. That, however, is not the subject of this appeal. We must be wary of addressing issues and evidence that were not raised or scrutinized at trial. What we are required to determine is whether a contempt charge brought by a private citizen against another individual, meets the strict

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<sup>1</sup> *Collège d’enseignement général et professionnel*, Quebec’s post-secondary and pre-university educational institutions.

procedural and substantive safeguards required by law to ensure that the liberty interests of those accused of contempt are fully protected. In our view, it did not.

[4] At the time, Gabriel Nadeau-Dubois was the spokesperson for the Coalition large de l'Association pour une solidarité syndicale étudiante (CLASSE). As one of the most active student organizations in the province, the CLASSE organized protests and picket lines in various post-secondary institutions.

[5] At the height of the protests, Jean-François Morasse was a student in his final year at Université Laval's Faculty of Planning, Architecture, Arts and Design, completing a certificate in visual arts (*arts plastiques*). The Association des étudiants en arts plastiques de l'Université Laval (ASETAP), the organization representing students in that program, held a strike vote and organized protests. On February 29, 2012, picket lines were erected to block the entrance to the building where Mr. Morasse's classes were held.

[6] In the context of civil proceedings that he instituted against Université Laval, ASETAP and another student organization, Mr. Morasse obtained a provisional interlocutory injunction on April 12, 2012 for a 10-day period.<sup>2</sup> The injunction mandated free access to the facilities in which classes for the visual arts program were held. It also ordered all persons who were then boycotting classes to refrain from obstructing or otherwise blocking access to classes by way of intimidation or through other actions likely to have this effect.

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<sup>2</sup> *Morasse v. Université Laval*, 2012 QCCS 1565.

[7] On April 26, 2012, Mr. Morasse brought an application to renew the injunction. On May 2, 2012, Émond J. renewed the injunction through a safeguard order valid until September 14, 2012.<sup>3</sup> His order reaffirmed the prohibition to obstruct or otherwise prevent access to classes, but made no specific reference to picketing generally:

[TRANSLATION]

**ORDERS** Université Laval, the Association des étudiants en arts plastiques [ASETAP] and any person informed of this order to give free access to the classrooms of Université Laval in which classes leading to the visual arts certificate are conducted so that those classes may be conducted in accordance with the schedule established for the winter 2012 session;

**ORDERS** all students and other persons currently boycotting classes to refrain from obstructing or impeding access to classes by means of intimidation or from taking any action that could prevent or adversely affect access to the classes in question;

**CONFERS** on Université Laval the responsibility for service, without delay, of this order in the manner provided for in the *Code of Civil Procedure* and for making the order known to any person it deems advisable so that it may, as the owner and authority responsible for the premises, ensure the proper execution of this order;

**DECLARES** that this order will remain in effect until September 14, 2012; [Underlining added; paras. 59-62 (CanLII).]

[8] Eleven days later, on May 13, 2012, Mr. Nadeau-Dubois was interviewed by RDI, CBC's French television news network,<sup>4</sup> after one CEGEP, the Collège de Rosemont, resumed its regular schedule of classes upon being ordered to do so by the

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<sup>3</sup> *Morasse v. Université Laval*, 2012 QCCS 1859.

<sup>4</sup> Réseau de l'information, a service of the Canadian Broadcasting Corporation.

Superior Court.<sup>5</sup> Appearing with him was Léo Bureau-Blouin, head of the Fédération étudiante collégiale du Québec, a coalition representing student unions in Quebec's CEGEPs and private colleges. The interview was broadcast live throughout the province. The relevant portions are as follows:

[TRANSLATION]

RDI Interviewer: Let's talk in concrete terms about what's happening on the ground, Léo Bureau-Blouin, so tomorrow, we see that at the Rosemont CEGEP, students are being encouraged to return to class. You, for your part, are you still urging strikers to set up picket lines to prevent students from entering... Lionel-Groulx as well... there are injunctions all over the place in some CEGEPs... ?

Léo Bureau-Blouin: There're no demonstrations organized directly by the federation, but every time there are forced returns to class like this, of course it leads to picket lines that go up right in front of the college. We have of course urged students, for example, to comply with the injunctions, you know, when there are specific court orders, not to block the path of certain students, I think it's important to comply with them, but it's sure that the decision made by Rosemont College, I think it's a dangerous decision that could potentially cause tension because, first of all, the vote by the students was a democratic one after all, so this creates some uneasiness for teachers in actually crossing the picket lines there or going to give classes despite the vote, but it also causes tension above all because there're students who want to go to class and there're others who don't want classes to resume, and this leads to heated exchanges and potentially to fights, whereas at this point we're in fact trying to calm the dispute, and it's working, as the situation's been a bit calmer in Montréal the last few days.

RDI Interviewer: As for CLASSE, Gabriel Nadeau-Dubois, what's the reaction to the return to class tomorrow, are you, well, are you still encouraging picketing to prevent, um... ?

Gabriel Nadeau-Dubois: What's clear is that such decisions, such attempts to force students back to class, they never work because the students who've been on strike for 13 weeks are standing together, they respect, and I'm speaking generally here, respect the democratic will

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<sup>5</sup> *Lavoie v. Collège de Rosemont*, 2012 QCCS 1685; *Goudreault v. Collège de Rosemont*, 2012 QCCS 2017.

expressed through the strike vote, and I think it's perfectly legitimate for students to take action to uphold the democratic choice that was made to go on strike. It's quite unfortunate that there's really a minority of students who're using the courts to circumvent the collective decision that was made. So we find it perfectly legitimate for people to do what they have to do to enforce the strike vote, and if that takes picket lines, we think it's a perfectly legitimate way to do it.

(R.F., at para. 62)

[9] On May 15, 2012, Mr. Morasse, acting under art. 53 of the *Code of Civil Procedure*,<sup>6</sup> filed a motion for contempt against Mr. Nadeau-Dubois for his comments in the interview. In this motion filed in his pending proceedings against Université Laval and ASETAP, Mr. Morasse claimed that Mr. Nadeau-Dubois' comments violated the following paragraph in Émond J.'s May 2nd order:

**ORDERS** all students and other persons currently boycotting classes to refrain from obstructing or impeding access to classes by means of intimidation or from taking any action that could prevent or adversely affect access to the classes in question; [para. 60]

[10] The motion alleged only a violation of art. 761 of the *Code*, which stated:

**761.** Any person named or described in an order of injunction, who infringes or refuses to obey it, and any person not described therein who

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<sup>6</sup>CQLR, c. C-25 (repealed):

**53.** No one may be condemned for contempt of court committed out of the presence of the judge, unless he has been served with a special rule ordering him to appear before the court, on the day and at the hour fixed, to hear proof of the acts with which he is charged and to urge any grounds of defence that he may have.

The judge may issue the rule *ex officio* or on application. Service of this rule is not required; it may be presented before a judge of the district where the contempt was committed.

The rule must be served personally, unless for valid reasons another mode of service is authorized by the judge.

knowingly contravenes it, is guilty of contempt of court and may be condemned to a fine not exceeding \$50,000, with or without imprisonment for a period up to one year, and without prejudice to the right to recover damages. Such penalties may be repeatedly inflicted until the contravening party obeys the injunction.

The court may also order the destruction or removal of anything done in contravention of the injunction, if there is reason to do so.

[11] On May 17, 2012,<sup>7</sup> Jacques J. ordered Mr. Nadeau-Dubois to appear before the court on May 29, 2012, to respond to the allegations and evidence raised in Mr. Morasse's motion for contempt. In this "special rule" order that he issued pursuant to art. 53 of the *Code*, Jacques J. described the allegations made against Mr. Nadeau-Dubois as follows: [TRANSLATION] "did, on the air on the RDI television network, publicly incite people to contravene the order [the order of Émond J., that is] by preventing students, including the plaintiff [Mr. Morasse], from having access to their classes" (para. 3 (CanLII)).

[12] On his own initiative, Jacques J. also referred to the first paragraph of art. 50 of the *Code* in the reasons for the order (only the first paragraph is relevant to this appeal):

**50.** Anyone is guilty of contempt of court who disobeys any process or order of the court or of a judge thereof, or who acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the court.

The special rule did not indicate, however, which part of art. 50 para. 1 was at issue.

Nor did it refer to any other injunction besides the May 2nd order of Émond J.

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<sup>7</sup> *Morasse v. Nadeau-Dubois*, 2012 QCCS 2141.

[13] The minutes and the transcript of the May 29, 2012 hearing at which the evidence against Mr. Nadeau-Dubois was disclosed, made it clear that the parties agreed that Mr. Nadeau-Dubois was only being charged with having actually violated para. 60 of the specific May 2, 2012 injunction by committing an action susceptible of preventing or of negatively affecting access to the classes.

[14] On the merits of the contempt motion, Jacques J. concluded that because Émond J.'s order had not been served on Mr. Nadeau-Dubois, he could not be found guilty of contempt of court under art. 761. However, he found him guilty under that part of art. 50 para. 1, which creates the offence of contempt for acts that interfere with the authority or dignity of the court. Jacques J. concluded that Mr. Nadeau-Dubois' knowledge of the injunction could be inferred from the fact that ASETAP, which was served with the order, was a member of CLASSE at the time of its issuance. Since Mr. Nadeau-Dubois was CLASSE's spokesperson at the time, his knowledge could be inferred. Knowledge could also be inferred from his words in the interview, and from his assumed knowledge of other unspecified injunctions that had been issued by other courts around the same time. His statements reflected an intention to obstruct justice or undermine judicial authority. And by encouraging the contravention of injunctions generally, his words had the *effect* of encouraging the contravention of Émond J.'s injunction.<sup>8</sup>

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<sup>8</sup> [2012] R.J.Q. 2174.

[15] Mr. Nadeau-Dubois was sentenced to 120 hours of community service, to be completed within six months under the supervision of a probation officer.<sup>9</sup>

[16] The Quebec Court of Appeal unanimously allowed the appeal.<sup>10</sup> Dufresne J.A., writing for the court, concluded that the statements made during the television interview fell short of establishing that Mr. Nadeau-Dubois knew of the existence and content of Émond J.'s order. The question to which Mr. Nadeau-Dubois was responding in the interview dealt with an injunction granted against a CEGEP, not with the order issued on May 2nd by Émond J. against the Université Laval. Nor was it appropriate to infer knowledge of that specific order from Mr. Nadeau-Dubois' general reference to [TRANSLATION] "such attempts to force students back to class".

[17] The Court of Appeal agreed with Jacques J. that art. 761 did not apply because Mr. Nadeau-Dubois was neither named nor designated in the injunction. The only issue, therefore, was whether Mr. Nadeau-Dubois was guilty under art. 50 para. 1. The court concluded that the *mens rea* was not met because it was not proven beyond a reasonable doubt that Mr. Nadeau-Dubois knew of the May 2nd injunction. In those circumstances, it would be improper to impute an intention to Mr. Nadeau-Dubois to encourage others to breach an order of which he had no knowledge. As for the *actus reus*, the court found that in any event, the words spoken were ambiguous, and that it could not therefore conclude beyond a reasonable doubt that these words

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<sup>9</sup> [2012] R.J.Q. 2279.

<sup>10</sup> 2015 QCCA 78.

incited or encouraged persons to violate the injunction. The conviction and sentence were consequently set aside and an acquittal entered.

[18] We agree with the conclusions of the Court of Appeal. Jacques J. made both legal and palpable and overriding errors that justified the Court of Appeal's intervention. For the following reasons, we would dismiss the appeal.

### Analysis

[19] In Quebec, the power to find an individual guilty of contempt of court is an exceptional one. Courts have consistently discouraged its routine use to obtain compliance with court orders. It is, in short, an enforcement power of last resort: *Caron v. Paul Albert Chevrolet Buick Cadillac inc.*, 2016 QCCA 564, at paras. 25-26 (Can LII), citing *Carey v. Laiken*, [2015] 2 S.C.R. 79, at para. 36; *Centre commercial Les Rivières ltée c. Jean bleu inc.*, 2012 QCCA 1663, at paras. 7-8 (CanLII).

[20] Contempt of court is the only civil proceeding that may result in a penalty of imprisonment in Quebec: *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065, at p. 1076; art. 1 of the *Code of Civil Procedure*; art. 62 of the new *Code of Civil Procedure*, CQLR, c. C-25.01, which came into force on January 1, 2016. Because of the potential impact on an individual's liberty, the formalities for contempt proceedings must be strictly complied with — clear, precise and unambiguous notice of the specific contempt offence for which he or she is being charged must be given to the accused, and the

elements required for a conviction must be proven beyond a reasonable doubt: *Guay v. Lebel*, 2016 QCCA 1555, at para. 8; *Droit de la famille — 122875* (2012), 29 R.F.L. (7th) 137 (Que. C.A.), at paras. 24 and 30, and *Javanmardi v. Collège des médecins du Québec*, [2013] R.J.Q. 328 (C.A.), at para. 26, both citing *Godin v. Godin* (2012), N.S.R. (2d) 204 (C.A.), at para. 47; art. 53.1 of the *Code of Civil Procedure*; Céline Gervais, *L'injonction* (2nd ed. 2005), at p. 125; *Vidéotron*, at p. 1077, citing *Imperial Oil Ltd. v. Tanguay*, [1971] C.A. 109. This insistence on formalism is especially important in the exceptional context of contempt proceedings brought by private parties.

[21] In all cases of contempt, it is crucial that courts stay alert to the exceptional nature of their contempt powers, using it only as a measure of last resort. A conviction for contempt should only be entered where it is genuinely necessary to safeguard the administration of justice: *Centre commercial Les Rivières*, at paras. 7 and 65-66; *Constructions Louisbourg ltée v. Société Radio-Canada*, 2014 QCCA 155, at para. 26 (CanLII).

[22] At the time Mr. Morasse instituted proceedings against Mr. Nadeau-Dubois, the offence of contempt of court existed in two separate provisions of the *Code of Civil Procedure*, arts. 50 and 761.<sup>11</sup> Article 50 para. 1, which fell within the

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<sup>11</sup> Quebec's new *Code of Civil Procedure* contains only one provision setting out an offence for contempt of court, effectively consolidating the separate provisions of the old *Code*. Art. 58 of the new *Code* states:

section of the *Code* that laid out the powers of the courts and judges, established the courts' *general* ability to hold someone in contempt:

**50.** Anyone is guilty of contempt of court who disobeys any process or order of the court or of a judge thereof, or who acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the court.

[23] Article 761 was part of the section of the *Code of Civil Procedure* that dealt with injunctions. It created an offence for contempt of court that related specifically to breaching injunctions:

**761.** Any person named or described in an order of injunction, who infringes or refuses to obey it, and any person not described therein who knowingly contravenes it, is guilty of contempt of court and may be condemned to a fine not exceeding \$50,000, with or without imprisonment for a period up to one year, and without prejudice to the right to recover damages. Such penalties may be repeatedly inflicted until the contravening party obeys the injunction.

The court may also order the destruction or removal of anything done in contravention of the injunction, if there is reason to do so.

[24] Both arts. 50 and 761 have been interpreted harmoniously with the common law: see, e.g., *Vidéotron*, at p. 1078; *Trudel v. Foucher*, 2015 QCCA 691, at para. 31 (CanLII); *Chamandy v. Chartier*, 2015 QCCA 1142, at paras. 26 and 31 (CanLII); *Montréal (Ville de) v. Syndicat des cols bleus regroupés de Montréal*

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**58.** A person who disobeys a court order *or* injunction *or* acts in such a way as to interfere with the orderly administration of justice or undermine the authority or dignity of the court is guilty of contempt of court.

A person not named in an injunction who disobeys that injunction is guilty of contempt of court only if the person does so knowingly.

(SCFP), *section locale 301*, 2006 QCCS 5273, at para. 117 (CanLII); *Gougoux v. Richard*, 2005 CanLII 37770 (Que. S.C.), at paras. 28-31.

[25] The offence of contempt of court at art. 50 para. 1 has two branches. Where a particular court order or process is at issue, both branches require actual or inferred knowledge of it. Actual knowledge may be shown by evidence that a court order was personally served on the person accused of contempt, or it can be inferred from the surrounding circumstances or from the individual's conduct: *Estrada v. Young*, 2005 QCCA 493, at para. 11 (CanLII); *Zhang v. Chau* (2003), 229 D.L.R. (4<sup>th</sup>) 298 (Que. C.A.), at paras. 30-31. But actual knowledge cannot be inferred from the conduct of others or from service of the court order on persons other than the accused: *Syndicat des cols bleus regroupés de Montréal*, at para. 128 (CanLII). Moreover, where a court order is alleged to have been breached, it must state clearly and unequivocally what is required or prohibited. This ensures that an individual will not be convicted of contempt if the court order is vague: *Paul Albert Chevrolet*, at para. 26; *Carey*, at para. 33.

[26] The first branch relates to disobeying any process or order of the court or of a judge. The person accused of contempt must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels: *Carey*, at para. 35.

[27] The second branch of art. 50 para. 1 is different. The *actus reus* is made out where a person "acts in such a way as to interfere with the orderly administration

of justice” or “to impair the authority or dignity of the court”. The acts done, or the words complained of must either succeed in doing so, or create a serious or substantial risk of having this effect: Adrian Popovici, *L’outrage au tribunal* (1977), at p. 41; *R. v. Kopyto* (1987), 62 O.R. (2d) 449 (C.A.), at p. 512, citing *Attorney-General v. Times Newspapers Ltd.*, [1973] 3 All E.R. 54 (H.L.), at pp. 66-67, per Lord Morris of Borth-y-Gest. Encouraging third parties to breach a court order is just one example of what may constitute the *actus reus* for this branch of civil contempt: Denis Ferland, “La Cour suprême et l’outrage au tribunal en matière d’injonction: Baxter Travenol Laboratories of Canada Ltd. c. Cutter (Canada Ltd.)” (1985), 45 *R. du B.* 462, at p. 464; *Borrie & Lowe: The Law of Contempt* (4th ed. 2010), at p. 145.

[28] The *mens rea* for this form of contempt, at common law and in the law of Quebec, is an intention to “vilify the administration of justice”, to “destroy public confidence therein”, or to “excite disaffection against it”: *Kopyto*, at p. 514, citing *Boucher v. The King*, [1951] S.C.R. 265, at p. 344; *Re Ouellet (No. 1)* (1976), 28 C.C.C. (2d) 338 (Que. S.C.), at pp. 356-57; *Gougoux*, at para. 30. Good faith criticism of judicial institutions and their decisions, even where vigorous and outspoken, falls short of this threshold: *Kopyto*, at p. 502, per Dubin J.A., dissenting in part; *Prud’homme v. Prud’homme*, 1997 CanLII 8253 (Que. S.C.), at paras. 8-9.

### Application

[29] In our view, the appeal should be dismissed.

[30] Mr. Nadeau-Dubois was ordered by Jacques J. to appear to answer charges under both arts. 50 para. 1 and 761 of the *Code of Civil Procedure*, notwithstanding that Mr. Morasse only brought charges under art. 761. As noted, the accused in a contempt proceeding must be made aware of the precise nature of the charges laid against him or her: *Droit de la famille*, at paras. 26-27. To protect the rights of the accused, any doubt or ambiguity in this regard must enure to his or her benefit. The only allegations raised here by Mr. Morasse against Mr. Nadeau-Dubois related to an alleged violation of para. 60 of Émond J.'s order through the comments made in the interview. No other court order besides that of Émond J. was raised in the special rule. This was made very clear at the May 29, 2012 hearing. Even Jacques J.'s reasons acknowledged that it was imperative that he be convinced beyond a reasonable doubt that Mr. Nadeau-Dubois knew the content of that order specifically (paras. 2, 49, 51(2) and 67).

[31] Since Mr. Nadeau-Dubois was neither named nor described in the injunction issued by Émond J. on May 2, 2012, both prior courts concluded that a conviction for contempt under art. 761 of the *Code* could not be entered against him. This was not argued further by Mr. Morasse before us.

[32] Turning to art. 50 para. 1, while it contains two branches, Mr. Nadeau-Dubois was however not given notice as to which specific part, if any, he was being charged under. Instead, the special rule simply referred to the whole paragraph. Absent other precision, this meant that the only offence against which Mr. Nadeau-

Dubois was required to defend himself was with regard to what Mr. Morasse detailed in the allegations of his motion for contempt.

[33] As previously noted, to have Mr. Nadeau-Dubois convicted under the first branch of art. 50 para. 1, Mr. Morasse had the onus of proving beyond a reasonable doubt that Émond J.'s order was clear, that Mr. Nadeau-Dubois had knowledge of it and that he intentionally did what the order prohibited. Yet, there was no evidence that Mr. Nadeau-Dubois had knowledge, either actual or inferred, of the May 2nd injunction. Mr. Nadeau-Dubois was not personally served with a copy of the injunction. Marie-Pierre Bocquet, who was President of ASETAP at the time the injunction was issued, acknowledged that she had been served with a copy of the May 2nd order, but testified that she had not given a copy of it to CLASSE or to Mr. Nadeau-Dubois, and was not aware of anyone else doing so. Service to persons other than Mr. Nadeau-Dubois is, on its own, insufficient to ground *his* knowledge of the order beyond a reasonable doubt: *Syndicat des cols bleus regroupés de Montréal*, at para. 128.

[34] Contrary to the conclusion reached by Jacques J., the fact that at the time of the interview there were other injunctions that had been issued in the context of the student protests, does not prove that Mr. Nadeau-Dubois knew of the particular injunction issued by Émond J. As the Court of Appeal correctly stated, inferring that Mr. Nadeau-Dubois knew of the specific order by *assuming* he had knowledge of other, potentially similar orders, none of which were entered in evidence or referred

to in the contempt proceedings, amounts to a reversal of the burden of proof; it is a palpable and overriding error.

[35] Nor do we agree that knowledge can be imputed to Mr. Nadeau-Dubois on the basis of the answer he gave to the question posed to him during the interview, or, more tangentially, by relying on any of the statements made by the other person interviewed, Mr. Bureau-Blouin. Neither the interviewer's question to, nor the statements of, Mr. Bureau-Blouin, made any reference to any injunction applying to the Université Laval or, in fact, to any other university. Mr. Bureau-Blouin only addressed injunctions that applied to Quebec CEGEPs. And the interviewer's question to Mr. Nadeau-Dubois makes no mention of any injunction at all. There is nothing in the context of the interview that proves that Émond J.'s order was being referred to even obliquely, such that Mr. Nadeau-Dubois' knowledge of it could be assumed.

[36] As for Mr. Nadeau-Dubois' statement in the interview that [TRANSLATION] "a minority of students [were] using the courts to circumvent the collective decision that was made [to go on strike]", it is at best ambiguous. It cannot, on its own, provide a sufficient basis for concluding that he knew the details even of the CEGEP injunctions referred to by the interviewer and Mr. Bureau-Blouin, much less of Émond J.'s order specifically.

[37] In any event, whatever the content of the interviewer's question, or of Mr. Bureau-Blouin's own response, none of their words can be used in a way that

attributes knowledge of Émond J.'s order to Mr. Nadeau-Dubois. Doing so opens the door to punishing individuals vicariously for the speech of *others*.

[38] Given that it is only conjecture to impute to Mr. Nadeau-Dubois knowledge of the court order of May 2nd, let alone its contents, it would be untenable to attribute to Mr. Nadeau-Dubois an intention to breach it through the words he used in the interview.

[39] In addition, Jacques J. inferred in the circumstances that Mr. Nadeau-Dubois' endorsement of students picketing in general amounted to an encouragement to use picket lines to block access to classes. Still, Émond J.'s May 2nd injunction did not prohibit picketing *per se*. It only proscribed conduct that would have the effect of impeding access to classes; picketing that fell short of blocking this access was permitted. Mr. Nadeau-Dubois did not refer to obstructing and preventing access to classes in his comments. His general statement about picket lines was at the very least compatible with encouraging the continued use of picket lines in a way that is permitted under the injunction. At most, merely saying that picketing was legitimate, even if understood as equivalent to barring access, fell far short of encouraging others to engage in unlawful conduct.

[40] Even though there were other reasonable and logical inferences to draw from the words used by Mr. Nadeau-Dubois, nowhere in his reasons did Jacques J. consider these alternative possibilities. His cursory analysis of the actual words spoken by Mr. Nadeau-Dubois failed to distinguish between legal and prohibited

picket lines, resulting in his inference that Mr. Nadeau-Dubois [TRANSLATION] “was . . . promoting anarchy and encouraging civil disobedience” (para. 95). The Court of Appeal was right to conclude that Jacques J.’s apparent association of picketing generally with blocking access to university classrooms specifically was mistaken (reasons of Jacques J., at paras. 84, 94 and 103; Court of Appeal reasons, at para. 77). This Court has established that picketing is a legitimate form of expression and of exercising the freedom of assembly; it is not by itself an illegal practice: *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, at paras. 27 and 30-31; see also *Paul Albert Chevrolet*, at paras. 27 and 30.

[41] Since Émond J.’s order does not prohibit picketing altogether, Jacques J. was wrong to simply assume, without any real consideration of alternative possibilities, that Mr. Nadeau-Dubois was discussing a prohibited act, when he did not actually refer to blocking access to classes, but only to picketing generally. Similarly, in the absence of any direct language to that effect, it was improper for Jacques J. to equate Mr. Nadeau-Dubois’ statement that it was legitimate to respect the vote to strike with encouraging others to engage in unlawful conduct.

[42] The final question is whether Mr. Nadeau-Dubois could be found guilty of contempt under the second branch of art. 50 para. 1, that is, whether his words or acts “interfere[d] with the orderly administration of justice” or “impair[ed] the authority or dignity of the court” in the context of the charges identified in the special rule. For Mr. Nadeau-Dubois to be convicted under the second branch of art. 50 para.

1, given the specific allegations of the motion for contempt, the special rule and the disclosure, Mr. Morasse had to prove beyond a reasonable doubt that Mr. Nadeau-Dubois interfered with the orderly administration of justice or impaired the dignity of the court by encouraging others to breach para. 60 of the specific order issued by Émond J. on May 2nd. To do so, Mr. Morasse had to prove that Mr. Nadeau-Dubois knew of the order, and that he intended his words to “vilify the administration of justice” or to “excite disaffection against it”, or was at least reckless as to whether they would do so.

[43] As under the first branch of art. 50 para. 1, Mr. Morasse’s failure to prove Mr. Nadeau-Dubois’ actual or inferred knowledge of the May 2nd order is dispositive. If Mr. Nadeau-Dubois did not know about the order, he cannot have intended to interfere with it, or encourage others to do so.

[44] The events that unfolded in the spring of 2012 led to several judicial proceedings, of which the present case was but one. The role of the courts was to deal with particular and specific legal issues. This appeal is limited to determining whether the charges brought by Mr. Morasse against Mr. Nadeau-Dubois met the strict rules governing contempt of court. To consider that anything broader was at play in the contempt proceedings of Mr. Morasse would, in our view, go beyond the actual legal issues, and risk punishing the accused for who he was rather than what he was charged with.

[45] We would dismiss the appeal, with costs in favour of Mr. Nadeau-Dubois.

The following are the reasons delivered by

MOLDAVER J. —

[46] I have had the benefit of reading the reasons of my colleagues Justices Abella and Gascon and those of Justice Wagner. Unfortunately, I am unable to agree with either set of reasons. As I will explain, had the case been presented at trial in the manner I have outlined below, I would have granted the appeal and upheld the finding of contempt against the respondent, Gabriel Nadeau-Dubois. However, because of the way it proceeded at trial, procedural fairness concerns prevent me from doing so. Accordingly, I must dismiss the appeal.

[47] On my reading of the record, there can be no doubt that in responding as he did in the television interview, the respondent intended to incite students at large to breach any and all court orders which enjoined the use of picket lines as a means of preventing students who wished to access their classes from doing so. In other words, his statement was a blanket call to disobey all court orders, regardless of the individual judge who may have made the order or the specific institution to which it applied.

[48] In my respectful view, had the case proceeded on that basis, the fact that the allegation against the respondent referred specifically to a breach of Émond J.'s "safeguard order" of May 2, 2012 (2012 QCCS 1859), would not have been fatal to his being found in contempt of court. This is because the respondent's call to disobey at large would necessarily have included Émond J.'s order, regardless of whether he had specific knowledge of it or not.

[49] Viewed that way, the respondent's blanket call to disobey would clearly have amounted to contempt of court under the last part of art. 50, para. 1 of the *Code of Civil Procedure*, CQLR, c. C-25 (now repealed), namely: acting in a way as to impair the authority and dignity of the court. Indeed, it would have been an egregious case of contempt.

[50] But that is not the way the case proceeded. At trial, the matter was fought out on the basis that the respondent had specific knowledge of Émond J.'s order and that he incited students to breach it by setting up picket lines as a means of preventing students studying visual arts (*arts plastiques*) at Université Laval from accessing their classes.

[51] In allowing the appeal from Jacques J.'s order finding the respondent in contempt of court (2012 QCCS 5438, [2012] R.J.Q. 2174), the Quebec Court of Appeal found, correctly in my view, that the evidence did not support a finding that the respondent had specific knowledge of Émond J.'s order, as particularized in the allegation against him, and that this was fatal to the contempt finding (2015 QCCA

78). I agree with this conclusion, but I do so because that is the way the case was presented at trial and that is the case the respondent was called upon to meet.

[52] Had the case been presented on the basis I have outlined above, namely, a blanket call to disobey, such a finding — that the respondent had specific knowledge of Émond J.'s order — would not have been necessary to make out a case of contempt against him. But the case was not argued that way at trial, and in my view, it would be both unfair and prejudicial to allow the appellant, Jean-François Morasse, to change the theory of the case at this level (*Newcastle Recycling Ltd. v. Clarington (Municipality)*, 2010 ONCA 314, 261 O.A.C. 373; *R. v. Vaillancourt* (1995), 105 C.C.C. (3d) 552 (Que. C.A.); *R. v. Tran*, 2016 ONCA 48; *Wexler v. The King*, [1939] S.C.R. 350). For this reason — and this reason alone — I would dismiss the appeal with costs.

English version of the reasons of Wagner, Côté and Brown JJ. delivered by

WAGNER J. —

## I. Overview

[53] The power to punish for contempt of court must be exercised only as a last resort, with caution and showing good judgment. That being said, an order for contempt must be made where doing so is necessary to protect the rule of law,

freedom of expression and democracy, which are to a large extent dependent on the credibility of the judiciary and the justice system in the eyes of the public.

[54] This appeal raises the question of the level of knowledge required of a person who is charged with contempt of court for infringing art. 50 of the *Code of Civil Procedure*, CQLR, c. C-25 (“*C.C.P.*”),<sup>12</sup> which was in force at the relevant time, in a context involving extensive media coverage.

[55] The Superior Court convicted the respondent, Gabriel Nadeau-Dubois, of contempt under that article on the basis that he had, in a television interview, incited people to contravene an order of injunction made by one of its judges. The Court of Appeal reversed the Superior Court’s judgment, essentially on the basis that the required level of knowledge and the *actus reus* had not been established beyond a reasonable doubt.

[56] With respect, I find that the Court of Appeal erred in reversing the Superior Court’s decision. Unlike the Court of Appeal, I am of the opinion that proof of specific knowledge of the order of injunction was not required. Further, in the absence of an error in the trial court’s judgment, it was not open to the Court of Appeal to substitute its own opinion concerning the *actus reus*. I would therefore allow the appeal.

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<sup>12</sup> On January 1, 2016, the *C.C.P.* was replaced by the new *Code of Civil Procedure*, CQLR, c. C-25.01.

## II. Context

### A. *Background*

[57] The appeal concerns a period of social unrest that was without precedent in the history of Quebec, [TRANSLATION] “the biggest student ‘strike’ in its history”. It was a conflict that is now known and described as the “Maple Spring” by analogy with the “Arab Spring” that had monopolized media attention internationally in 2011. The conflict began in response to a proposal made by the Quebec government in 2012 to raise tuition fees. Some students who disagreed with the tuition fee increase called for a “boycott” of classes as a pressure tactic (judgment of the Court of Appeal, 2015 QCCA 78, at para. 12 (CanLII)). A number of student associations, including the Coalition large de l’Association pour une solidarité syndicale étudiante (“CLASSE”), promoted the boycott. At all relevant times, the respondent was the chief spokesperson for CLASSE. He and Léo Bureau-Blouin, the president of the Fédération étudiante collégiale du Québec, became the “standard bearers” for the movement and the “key figures” in the student protest (sentencing decision, 2012 QCCS 6101, [2012] R.J.Q. 2279, at paras. 6 and 15). In addition, while the conflict lasted, they were recognized as the “leaders of the movement”, were the main protagonists in the public’s eyes, and “were seen regularly in the media”.

[58] Picket lines were set up in front of many post-secondary institutions to support the call for a boycott of classes (*Morassee v. Université Laval*, 2012 QCCS 1565, at para. 4 (CanLII), per Lemelin J.). As a result, classes were [TRANSLATION]

“disrupted” and a number of institutions were “paralyzed”, because professors and other officials could not do their work (judgment of the Court of Appeal, at para. 12). Of all the dramatic actions carried out by the student associations, shutting down classes and setting up picket lines to prevent students from getting to their classrooms were without question the most controversial.

[59] The movement, which originally involved only students, gradually spread, gaining support from unions and pressure groups that were advocating for all kinds of causes that had little to do with the initial demands. That period of [TRANSLATION] “great agitation” in the province was marked by “numerous [public] demonstrations” on a daily basis, and the demonstrations often ended in acts of violence and clashes with the police (judgment of the Court of Appeal, at para. 12).

[60] In early May 2012, [TRANSLATION] “[d]uring this period of class boycotts and disruption”, the appellant, Jean-François Morasse, was a student enrolled in the visual arts (*arts plastiques*) program at Université Laval. He wanted to finish his studies, he objected to the action to shut classes down, and he wanted to be able to get to his classrooms. Université Laval’s Association des étudiants en arts plastiques (“ASÉTAP”) had been a member of CLASSE since April 2012 and was officially acting on behalf of all students in the program. It supported the shutdown of classes and, starting on February 29, 2012, it set up picket lines in front of Université Laval to prevent students from attending their classes (2012 QCCS 1565, at para. 4).

[61] To gain access to the classrooms, the appellant sought and obtained an order for a provisional interlocutory injunction from Lemelin J. on April 12, 2012. On May 2, 2012, that order was renewed in the form of a safeguard order, which remained in effect until September 14, 2012 (*Morassee v. Université Laval*, 2012 QCCS 1859 (the “Safeguard Order”). It is that second order, made by Émond J. (as he then was), that gave rise to this appeal. Its relevant conclusions were worded as follows:

[TRANSLATION] **ORDERS** Université Laval, the Association des étudiants en arts plastiques and any person informed of this order to give free access to the classrooms of Université Laval in which classes leading to the visual arts certificate are conducted so that those classes may be conducted in accordance with the schedule established for the winter 2012 session;

**ORDERS** all students and other persons currently boycotting classes to refrain from obstructing or impeding access to classes by means of intimidation or from taking any action that could prevent or adversely affect access to the classes in question; [Bold in original; paras. 59-60 (CanLII).]

[62] After that, there was a [TRANSLATION] “multiplication of [similar] injunctions” in Quebec (judgment of the Court of Appeal, at para. 13; judgment at trial, 2012 QCCS 5438, [2012] R.J.Q. 2174, at paras. 81-82, per Jacques J.; sentencing decision, at para. 32). In all cases, the goal was the same: to give students free access to their classes so that they could complete the academic year (judgment at trial, at paras. 15 and 23).

[63] Although some called the action a “strike”, no labour law principles were applied anywhere in the impugned judgment. Indeed, in the judgment extending the earlier order of injunction (the Safeguard Order), Émond J. rejected arguments to that effect in the following terms:

[TRANSLATION] ASETAP is confusing the monopoly on representation, if there is one, with the monopoly on work that results from the anti-strikebreaking provisions of the *Labour Code*, which prohibit employers from utilizing the services of an employee who is a member of a bargaining unit that is on strike.

Unlike the *Labour Code*, the *Act respecting the accreditation and financing of students’ associations* contains no provision authorizing associations to force students to boycott their classes against their will and to make them bear the consequences of doing so.

References to the *Labour Code* are not only unsound and inappropriate, but also confirm the interpretation of those who, like Lemelin J., are of the view that the laws of Quebec give students no real right to strike. [Emphasis added; footnotes omitted; paras. 30-32.]

[64] Émond J. also summarized the position of the appellant as follows:

[TRANSLATION] The purpose of Mr. Morasse’s application is not to prohibit students from demonstrating, but only to prevent them from acting unlawfully by blocking access to rooms where classes are conducted.

...

But as we mentioned above, the *Act respecting the accreditation and financing of students’ associations* contains no provision authorizing student associations to force students to boycott their classes against their will. [paras. 44-46]

These observations supplemented, to some extent, the conclusions of Lemelin J., who had said the following in making the first order for a provisional injunction:

[TRANSLATION] The Court is not debating the right of individual students to support and participate in the boycott by refusing to attend classes, but their refusal does not give them the right to impair and even negate the right of other students to attend their classes so that they can finish their session.

Students who boycott classes must assume the risks of doing so alone. They have no right to impose such risks on those who want to attend their classes. [paras. 14-15]

[65] Furthermore, boycotting classes is a personal choice, and many students therefore disputed the legitimacy, and even the legality, of such a pressure tactic, as can be seen from the orders discussed below.

[66] Despite the many injunctions that were ordered, the situation deteriorated, acts of violence and intimidation followed one another, and officials from educational institutions were unable to safely ensure compliance with the orders when they were present at [TRANSLATION] “heated exchanges” and “fights” (judgment of the Court of Appeal, at para. 15, quoting an interview with Mr. Bureau-Blouin). A crisis of legitimacy and civil disobedience thus took hold in Quebec, poisoning the social climate.

[67] To resolve the impasse, the Quebec National Assembly enacted special legislation on May 18, 2012 (*An Act to enable students to receive instruction from the*

*postsecondary institutions they attend*, S.Q. 2012, c. 12 (“*Law 12*”), which provided, *inter alia*, as follows:

**13.** No one may, by an act or omission, deny students their right to receive instruction from the institution they attend or prevent or impede the resumption or maintenance of an institution’s instructional services or the performance by employees of work related to such services, or directly or indirectly contribute to slowing down, degrading or delaying the resumption or maintenance of such services or the performance of such work.

[68] This special Act also provided that no one may “deny a person access to a place if the person has the right or a duty to be there in order to obtain services from or perform functions for an institution” (s. 14). Finally, the Act required that members of an institution’s personnel, including professors, report for work and perform all their usual duties (ss. 10 and 11).

[69] At the same time, the City of Montréal passed a new by-law (*By-law amending the By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property*, By-Law 12-024, May 18, 2012), which required those organizing demonstrations to give authorities, in advance, the location and itinerary chosen by the demonstrators (adding art. 2.1 to R.B.C.M., c. P-6).

[70] After the injunctions were ordered, the respondent and Mr. Bureau-Blouin granted the RDI news network (a French-language television network of the Canadian Broadcasting Corporation) a television interview on May 13,

2012 to discuss the student conflict. The two leaders [TRANSLATION] “took the opportunity . . . to speak to their members and supporters as well as to the people of Quebec” (judgment at trial, at para. 24).

[71] During the interview, which took place at the height of the conflict, the journalist brought up with the two student leaders the fact that Collège de Rosemont was encouraging students to return to class, and then asked Mr. Bureau-Blouin the following question:

[TRANSLATION] You, for your part, are you still urging strikers to set up picket lines to prevent students from entering . . . Lionel-Groulx [college] as well . . . there are injunctions all over the place in some CEGEPs . . . ?

(Judgment of the Court of Appeal, at para. 15)

[72] Being aware of the nature and scope of the injunctions that had already been ordered, as his remarks show, Mr. Bureau-Blouin advised those watching to comply with the court orders:

[TRANSLATION] There're no demonstrations organized directly by the federation, but every time there are forced returns to class like this, of course it leads to picket lines that go up right in front of the college. We have of course urged students, for example, to comply with the injunctions, you know, when there are specific court orders, not to block the path of certain students, I think it's important to comply with them, but it's sure that the decision made by Rosemont College, I think it's a dangerous decision that could potentially cause tension because, first of all, the vote by the students was a democratic one after all, so this creates some uneasiness for teachers in actually crossing the picket lines there or going to give classes despite the vote, but it also causes tension above all because there're students who want to go to class and there're others who don't want classes to resume, and this leads to heated exchanges and

potentially to fights, whereas at this point we're in fact trying to calm the dispute, and it's working, as the situation's been a bit calmer in Montréal the last few days. [Emphasis added.]

(Judgment of the Court of Appeal, at para. 15)

[73] The respondent took a completely different approach. After listening to Mr. Bureau-Blouin's answer, the journalist asked the respondent a similar question: [TRANSLATION] “. . . what's the reaction to the return to class tomorrow, are you, well, are you still encouraging picketing to prevent [students from entering]?” The respondent gave the following answer:

[TRANSLATION] What's clear is that such decisions, such attempts to force students back to class, they never work because the students who've been on strike for 13 weeks are standing together, they respect, and I'm speaking generally here, respect the democratic will expressed through the strike vote, and I think it's perfectly legitimate for students to take action to uphold the democratic choice that was made to go on strike. It's quite unfortunate that there's really a minority of students who're using the courts to circumvent the collective decision that was made. So we find it perfectly legitimate for people to do what they have to do to enforce the strike vote, and if that takes picket lines, we think it's a perfectly legitimate way to do it. [Emphasis added.]

(Judgment of the Court of Appeal, at para. 15)

#### B. *Judgments at Issue in This Appeal*

[74] Two days after the interview, the appellant presented a motion under art. 53 *C.C.P.* for an order summoning the respondent to appear to answer a charge of contempt of court. Citing art. 761 *C.C.P.*, he submitted that the respondent had

contravened the Safeguard Order in his comments in the television interview.

Article 761 read as follows:

**761.** Any person named or described in an order of injunction, who infringes or refuses to obey it, and any person not described therein who knowingly contravenes it, is guilty of contempt of court and may be condemned to a fine not exceeding \$50,000, with or without imprisonment for a period up to one year, and without prejudice to the right to recover damages. Such penalties may be repeatedly inflicted until the contravening party obeys the injunction.

The court may also order the destruction or removal of anything done in contravention of the injunction, if there is reason to do so.

[75] On May 17, 2012, Jacques J. of the Superior Court ordered the respondent to appear (2012 QCCS 2141). In the reasons for his order, Jacques J. reproduced art. 761 para. 1 *C.C.P.* as well as art. 50 para. 1 *C.C.P.*, which read as follows:

**50.** Anyone is guilty of contempt of court who disobeys any process or order of the court or of a judge thereof, or who acts in such a way as to interfere with the orderly administration of justice, or to impair the authority or dignity of the court.

The judge described the appellant's arguments as follows:

[TRANSLATION] . . . the plaintiff[, Jean-François Morasse,] alleges that the defendant, Gabriel Nadeau-Dubois, . . . did, on the air on the RDI television network, publicly incite people to contravene the order [of Émond J.] by preventing students, including the plaintiff, from having access to their classes. . . . [Emphasis added; para. 3 (CanLII).]

[76] At trial, the respondent — who did not testify, as was his prerogative — raised arguments based both on the final portion of art. 50 para. 1 *C.C.P.* and on art. 761 para. 1 *C.C.P.* The trial judge nevertheless convicted him of contempt of court under the final portion of art. 50 para. 1 *C.C.P.*, since he was of the view, beyond a reasonable doubt, that the respondent had been well aware of the nature of the orders of injunction, including the Safeguard Order, that his statements had incited non-compliance with those orders and that he had intentionally acted in such a way as to impair the authority of the court. The trial judge also stated that art. 761 para. 1 *C.C.P.* was not applicable in this case, because the Safeguard Order did not apply directly or specifically to the respondent. Finally, he sentenced the respondent to 120 hours of community service, noting in passing that, by inciting people to contravene a court order, the respondent [TRANSLATION] “broke a fundamental rule of our society based on the rule of law” (sentencing decision, at para. 65).

[77] The Court of Appeal reversed the judgment, finding that *specific* knowledge of the Safeguard Order was required and that such knowledge, like knowledge of the *actus reus*, had not been established beyond a reasonable doubt.

[78] With respect, I find that the Court of Appeal erred in reversing the trial judge’s decision. Because the trial judge’s conclusion that art. 761 *C.C.P.* did not apply was not challenged in the Court of Appeal or in this Court, this appeal essentially concerns art. 50 para. 1 *C.C.P.* In my view, proof of *specific* knowledge of the order is not required where the allegation of contempt of court is based on the final portion

of that paragraph. In such a case, it is enough for the plaintiff to establish beyond a reasonable doubt that the defendant knew that orders existed and that they contained, as did the Safeguard Order, the very terms that the defendant incited people to breach. With regard to the *actus reus*, it is my view that the Court of Appeal erred in substituting its own assessment of the respondent's words for that of the trial judge. Finally, I am of the opinion that the trial judge's conclusion on the proof of *mens rea* was consistent with the applicable legal rule. I would allow the appeal and restore the respondent's conviction for contempt of court. I would not vary the sentence imposed by the trial judge.

### III. Analysis

#### A. *Principles*

[79] In a contempt of court case, the circumstances in which the order was made must be examined carefully (*Zhang v. Chau* (2003), 229 D.L.R. (4th) 298 (Que. C.A.), at para. 31, leave to appeal refused, [2003] 3 S.C.R. v). In the instant case, the judgments of the Superior Court and the Court of Appeal show that the situation in Quebec was explosive, many court orders were being breached and public demonstrations, which were initially peaceful, were escalating every day.

[80] It will be helpful to recall the essential connection between punishment for contempt of court and preservation of the rule of law. McLachlin J. (as she then

was) made the following comment in this regard in *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901, at p. 931:

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

[81] In other words, 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 (C. Gervais, *L'injonction* (2nd ed. 2005), at p. 123). It is well established that the purpose of the contempt proceeding, whether in a civil or a criminal context, is to maintain public confidence in the administration of justice and ensure the smooth functioning of the courts (A. Popovici, *L'outrage au tribunal* (1977), at pp. 98-99; *Baxter Travenol Laboratories of Canada Ltd. v. Cutter (Canada), Ltd.*, [1983] 2 S.C.R. 388). All forms of contempt thus involve interference with the orderly administration of justice that strikes at the very heart of the rule of law (*Centre commercial Les Rivières Ltée v. Jean bleu inc.*, 2012 QCCA 1663, at para. 65 (CanLII), quoting *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065).

[82] It is therefore essential that all members of a “democratic” civil society adhere to this ideal and that the courts remain vigilant and ensure that the orders they make are complied with. Such vigilance is especially crucial in a period of social crisis or unrest like the one in Quebec during the “Maple Spring”. In such a climate,

incitement to disobey court orders will cause disorder and jeopardize fundamental freedoms. “The fragility of the rule of law is such that none of us who seek to enjoy its benefits can be permitted the occasional anarchical holiday from its mandate, no matter how compelling or how persuasive may be the cause that such anarchy seeks to advance” (*R. v. Bridges* (1989), 61 D.L.R. (4th) 154 (B.C.S.C.), at p. 157, per Wood J., aff’d (1990), 54 B.C.L.R. (2d) 273 (C.A.), quoted with approval in *MacMillan Bloedel Ltd. v. Simpson* (1994), 92 B.C.L.R. (2d) 1 (C.A.), at para. 6, and in *R. v. Krawczyk*, 2009 BCCA 250, 275 B.C.A.C. 6, at para. 32, leave to appeal refused, [2010] 1 S.C.R. xi; see also *Canada Metal Co. v. Canadian Broadcasting Corp. (No. 2)* (1974), 4 O.R. (2d) 585 (H.C.J.), at p. 613, aff’d (1975), 11 O.R. (2d) 167 (C.A.)).

[83] Thus, in a contempt proceeding, the real legal issue, respect for the authority of the courts, must not be reduced to a simple question of procedure and burden of proof, as a fair and just resolution of the case must be based on the circumstances and consequences of the alleged acts.

[84] This being said, the power to punish for contempt of court is obviously exceptional and must be exercised only as a last resort (*Jean bleu*, at para. 7; *Constructions Louisbourg ltée v. Société Radio-Canada*, 2014 QCCA 155, at para. 26 (CanLII)). Exercising this power is nonetheless justified where a contempt conviction is necessary to protect the integrity of the justice system and to ensure that system’s credibility in the eyes of the public (*Echostar Satellite Corp. v. Lis*, 2004 CanLII

2156 (Que. Sup. Ct.), at para. 21). However, because of the nature of such an order, strict conditions, including the criminal law standard of proof beyond a reasonable doubt, apply when one is made (art. 53.1 para. 1 *C.C.P.*). But this does not mean that the use of the power must be so arduous that, in practice, it can no longer be exercised.

[85] It is clear, as the Quebec Court of Appeal noted in *Procom Immobilier Inc. v. Commission des valeurs mobilières du Québec*, [1992] R.D.J. 561, quoted in *Zhang*, that while it is true that the procedural rules on contempt of court must be applied strictly, that they are *strictissimi juris*, this does not mean that a court must tolerate breaches of contempt orders or allow people to ignore injunctions, or worse yet, to incite others to defy them, in the name of an excessive artificial formalism. See also Gervais, at pp. 125-26.

B. *Notice Under the Final Portion of Art. 50 Para. 1 C.C.P.*

[86] I agree with the Court of Appeal that, in the instant case, there is no doubt the respondent knew full well that the contempt charge he had to answer had been laid both under art. 761 *C.C.P.* and under the whole of art. 50 para. 1 *C.C.P.*

[87] I acknowledge that the appellant's motion requesting that the respondent be ordered to appear for contempt of court referred specifically only to art. 761 *C.C.P.* At the appearance, counsel for the appellant stated that the appellant was also submitting that the respondent had breached para. 60 of the Safeguard Order by

taking [TRANSLATION] “any action that could prevent or adversely affect access to the classes in question”. That argument was based on the essential elements of art. 761 *C.C.P.* and the first portion of art. 50 para. 1 *C.C.P.*, both of which apply to offences based on a breach by a defendant of an order made by the Superior Court.

[88] The special rule ordering the respondent to appear, with which he was served, expressly referred to arts. 50 and 761 *C.C.P.* Because that rule did not refer to only one portion of art. 50 para. 1 *C.C.P.*, it can be concluded that both articles are central to the case. In addition, the acts alleged against the respondent by the appellant in his motion, and the description of the allegations against the respondent in the special rule — including that he had [TRANSLATION] “publicly incite[d] people to contravene” the Safeguard Order — fall within the final portion of art. 50 para. 1 *C.C.P.* (see judgment at trial, at paras. 61-62; judgment of the Court of Appeal, at para. 44). Finally, the respondent made submissions related to that provision at trial, maintaining [TRANSLATION] “that he did not act in such a way as to interfere with the due course of justice or to impair the authority or dignity of the court” (judgment at trial, at para. 32). With respect for those who disagree, it is reasonable to say that the respondent knew he also had to answer allegations of contempt based on the final portion of art. 50 para. 1 *C.C.P.*

[89] Accordingly, having regard to all the circumstances, I am of the view that the respondent was given sufficiently clear and specific notice of the contempt charge based on a breach of art. 50 para. 1 *C.C.P.* The charge laid against the respondent was

specific, as the exact words that had led to the charge and the relevant articles of the *C.C.P.* were reproduced (*Cotroni v. Quebec Police Commission*, [1978] 1 S.C.R. 1048; *Re Awada* (1970), 13 C.R.N.S. 127 (Que. C.A.)). He knew the nature of the charge and had been told everything he needed to know (*Droit de la famille — 122875*, 2012 QCCA 1855, 29 R.F.L. (7th) 137, at para. 27). He was fully aware of the charge against him and had an opportunity to answer it (*Iron Ore Co. of Canada v. United Steel Workers of America, Local 5795* (1979), 20 Nfld. & P.E.I.R. 27 (Nfld. C.A.), at para. 45, per Gushue J.A., leave to appeal refused, [1979] 1 S.C.R. viii). An [TRANSLATION] “excessive artificial formalism” would not have been appropriate (*Procom*, at p. 563). It was therefore appropriate for the trial judge, in assessing the evidence of the facts, to determine whether the respondent had — by inciting others to breach the Safeguard Order, as he was alleged to have done — acted in such a way as to interfere with the course of justice or to impair the authority or dignity of the court within the meaning of the final portion of art. 50 para. 1 *C.C.P.* (para. 64).

### C. *Knowledge of the Order*

[90] In my view, it was not essential that the respondent have specific knowledge of the order he allegedly incited others to breach in order to be convicted of contempt of court under the final portion of art. 50 para. 1 *C.C.P.*

[91] This is not a case in which the respondent himself disobeyed an order. Rather, the respondent was charged with contravening an order — one among several

similar orders — by inciting other students to disobey it. Thus, the contempt alleged in this case does not really involve a breach of the Safeguard Order itself (the first portion of art. 50 para. 1 *C.C.P.*); rather, it involves conduct that impaired the authority of the court (the final portion of art. 50 para. 1 *C.C.P.*). The second of these offences is broader than the simple breach of an order. This is why a contempt conviction is possible under the final portion of art. 50 para. 1 *C.C.P.* even where the underlying order has not yet taken effect. Dickson J. (as he then was), writing for the Court in *Baxter*, stated the following in this regard, at pp. 396-97:

The general purpose of the court's contempt power is to ensure the smooth functioning of the judicial process. Contempt extends well beyond breach of court orders. . . .

Contempt in relation to injunctions has always been broader than actual breaches of injunctions. Cattnach J. recognized this in the present case. Thomas Maxwell is named in the show cause order as having committed contempt in his personal capacity although he is not a party to the action. He is not personally bound by the injunction and therefore could not personally be guilty of a breach. Nevertheless, Cattnach 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; *Kerr on Injunctions*, 6th ed 1927, at p. 675; *Poje v. Attorney General for British Columbia*, [1953] 1 S.C.R. 516. [Emphasis added.]

[92] A judge must therefore assess the nature and extent of the defendant's knowledge of the order in question so as to determine whether the defendant is guilty beyond a reasonable doubt of contempt of court under the final portion of art. 50 para. 1 *C.C.P.* for inciting others to disobey the order.

[93] It is true that this Court stated in *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217, at p. 225, that the evidence must show “actual personal knowledge of a court order [on the part of the defendant]”. The Quebec law on contempt of court has its source in the common law, whose rules apply unless they have been expressly excluded (*Vidéotron*, per Gonthier J.; *Canadian Broadcasting Corporation v. Quebec Police Commission*, [1979] 2 S.C.R. 618, at p. 644, per Beetz J.; D. Ferland and B. Emery, *Précis de procédure civile du Québec* (5th ed. 2015), vol. 1, at pp. 302-3).

[94] However, *Bhatnager* and other leading cases on the subject do not specify what is meant by “actual personal” knowledge, nor do they state that such knowledge must be specific. See, for example, *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79, at para. 34; and *College of Optometrists (Ont.) v. SHS Optical Ltd.*, 2008 ONCA 685, 241 O.A.C. 225, at para. 71. What is clear is that the defendant need not have been served with the order. Knowledge can always be inferred from circumstantial evidence (*Bhatnager*, at p. 226; *Estrada v. Young*, 2005 QCCA 493, at para. 11 (CanLII)). The inference must be reasonable given the evidence or the absence of evidence, assessed logically, and in light of common sense and human experience (*R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1001, at para. 36).

[95] A relevant case on the question of inferred knowledge is *Re Tilco Plastics Ltd. v. Skurjat*, [1966] 2 O.R. 547 (H.C.J.), aff’d [1967] 2 C.C.C. 196 (C.A.), leave to appeal refused, [1966] S.C.R. vii, in which it was alleged that demonstrators had

breached an order limiting picketing around a place of work. Most of the demonstrators were not named in the order and were not parties to the action in which the order had been made. However, the court assessed the circumstantial evidence, including the facts that the local media had informed the public of the existence and substance of the order and that a number of signs carried by certain demonstrators while picketing referred generally to injunctions. The court found that it had been shown beyond a reasonable doubt that the demonstrators had knowledge of the nature and substance of the order, and convicted them of contempt of court: “. . . it is most unlikely, in view of the other proven circumstances, that the other respondents did not receive notice of the order through the media of radio and television, and from the general reputation in the community on the subject” (*Tilco Plastics*, at p. 570).

[96] In *Avery v. Andrews* (1882), 51 L.J. Ch. 414, a case referred to in *Bhatnager*, the court found that some of the defendants, who were new trustees of a society, had sufficient knowledge of the content of an injunction that applied to and named only the former trustees, even though the defendants in question claimed never to have seen the order or a copy of it. The court held that the defendants were “aware of the effect of the order”, given that they had attended a meeting at which a letter advising the society to consent to the injunction had been read, and that a local newspaper had published a full account of the proceeding in which the order had been made (pp. 415-16).

[97] The question of knowledge therefore requires that the context be assessed. In *Bhatnager*, at p. 225, this Court quoted with approval the following comments of Thesiger L.J. in *Ex parte Langley* (1879), 13 Ch. D. 110 (C.A.), at p. 119:

... the question in each case, and depending upon the particular circumstances of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which had been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt. [Emphasis added.]

[98] Baudouin J.A. of the Quebec Court of Appeal commented as follows on this subject in *Zhang*: “Courts should, on the one hand, examine the context in which the order was issued, and evaluate it according to the specific and particular circumstances of the case and, on the other hand, ask themselves whether or not the defendant could have reasonably been aware that his acts or omissions fall under the order” (para. 31 (emphasis added)).

[99] Thus, where the contempt charge alleges that the defendant incited others to breach an order, contrary to the final portion of art. 50 para. 1 *C.C.P.*, it is my view that the evidence must establish beyond a reasonable doubt that the defendant knew of the existence of the order in question or of similar orders containing the same terms that the defendant urged other people to breach. In other words, the evidence must establish that the defendant knew of the existence of one or more orders that

were in effect at the time of the offence and was also in a position to know that his or her acts or words were contrary to those orders.

[100] In the instant case, a contextual analysis of the respondent's words can lead to only one reasonable inference (*Villaroman*, at para. 30; *R. v. Griffin*, 2009 SCC 28, [2009] 2 S.C.R. 42, at para. 33, per Charron J. for the majority), that is, that the respondent had the required knowledge of the nature and scope of the orders.

[101] Because knowledge of the orders is a question of fact, the trial court's finding on this point is entitled to deference. Although the Court of Appeal took issue with some of the facts found by the trial judge that depended on knowledge, and with the inferences the judge drew from those facts, its concerns related primarily to proof of specific knowledge of the Safeguard Order, which, as I explained above, is not necessary.

[102] In my opinion, both the approach adopted by the Court of Appeal and the one proposed by the respondent at the hearing in this Court are incorrect. If the evidence of knowledge is circumstantial, then all the circumstances must be considered. The Court of Appeal stated that the analysis of the respondent's knowledge should focus on the answer given by the respondent in the interview rather than on the journalist's questions (para. 56). And the respondent suggests that Mr. Bureau-Blouin's remarks on the same subject, which were broadcast just before his own, should be disregarded. Such an approach is surprising, and puzzling. How can there be a genuine assessment of the context and circumstances if evidence of

certain circumstances is accepted while certain other circumstances are disregarded? With respect, I believe that such an analysis is insufficient and incomplete.

[103] When considered in the context of the entire interview, as the trial judge did, the respondent's words show beyond a reasonable doubt that he knew of the existence, content and scope of the orders — that is, the obligation to allow students to have free access to their classes.

[104] As the trial judge noted, the respondent [TRANSLATION] “himself referred directly to the orders made by the courts that required that students be given free access to their classes” (para. 81). In the television interview, the respondent said that it was [TRANSLATION] “quite unfortunate that there's really a minority of students who're using the courts to circumvent the collective decision” to boycott classes (judgment of the Court of Appeal, at para. 15 (emphasis added)). These remarks by the respondent came after the answer given by Mr. Bureau-Blouin, who had stated that there were [TRANSLATION] “injunctions”, “specific court orders, not to block the path of certain students” (*ibid.*). The respondent's remarks came after he had heard Mr. Bureau-Blouin's answer.

[105] To claim that the respondent did not know there were orders whose relevant terms prohibited blocking students' access to their classes is to totally disregard the contextual evidence before the trial judge. Even if this were in theory a possible interpretation of the facts, it was not open to the trier of fact to act on the basis of interpretations that he considered unreasonable (*Villaroman*, at para. 42). The

Safeguard Order was one of the measures of whose content the respondent was well aware. As the trial judge observed at para. 82, [TRANSLATION] “[i]n this context, the [respondent] cannot claim that . . . he was referring to all the other orders the courts had made to protect students’ access to their classes but not the one made by Émond J.” Moreover, as the trial judge concluded — and this was the essence of his reasoning — the respondent was aware of the content of the orders, and in the course of the television interview, he incited students to breach them.

D. *Actus Reus*

[106] In my view, the trial judge’s conclusion with respect to the *actus reus* is entitled to deference. With respect, the Court of Appeal found no palpable and overriding error in the trial judge’s reasoning on the nature and knowledge of the *actus reus*. It simply characterized the same facts differently.

[107] The *actus reus* under the first portion of art. 50 para. 1 *C.C.P.* is disobeying any process or order of a court or of a judge thereof. By contrast, the *actus reus* contemplated by the final portion of that provision consists of any action that interferes or tends to interfere with the orderly administration of justice, or that impairs or tends to impair the authority or dignity of the court (*Baxter*, at p. 396; *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214, per Dickson C.J.; *Attorney-General of Quebec v. Hebert*, [1967] 2 C.C.C. 111 (Que. Q.B.), at p. 131, per Tremblay C.J.Q). The danger of prejudice to the administration of justice or to the authority of the court must be serious, real or substantial (*Attorney-General v.*

*Times Newspapers Ltd.*, [1973] 3 All E.R. 54 (H.L.), at pp. 66-67, quoted in *R. v. Kopyto* (1987), 62 O.R. (2d) 449 (C.A.), at p. 512, per Dubin J.A., dissenting in part). Inciting and encouraging others to disobey any process or order can constitute the *actus reus* of the offence defined in the final portion of art. 50 para. 1 *C.C.P.* (*Attorney-General of Quebec v. Charbonneau* (1972), 13 C.C.C. (2d) 226 (Que. C.A.); *Boon-Strachan Coal Co. v. Campbell*, [1981] C.S. 923; P.-A. Gendreau et al., *L'injonction* (1998), at p. 356).

[108] In light of these principles, I can find no error in the trial judge's conclusion concerning the nature of the *actus reus* or in the reasoning that led him to that conclusion. He did not [TRANSLATION] "impute intentions" to the respondent (judgment of the Court of Appeal, at para. 71). He engaged in a reasoned contextual analysis, whereas the Court of Appeal instead conducted a piecemeal analysis of the evidence. Further, it is the trial judge who was in the best position to undertake that analysis.

[109] When assessed in the context of the entire interview, the respondent's words show beyond a reasonable doubt that he was doing more than merely expressing disagreement with the judicialization of the student conflict. The respondent — who was the spokesperson for CLASSE and one of the leaders of the student movement — stated in the television interview on the conflict then under way in Quebec, in which students had sought the courts' assistance to gain access to their classrooms, that he believed it was [TRANSLATION] "perfectly legitimate" for students

to do “what they have to do to enforce the strike vote”, even “if that [took] picket lines” (judgment of the Court of Appeal, at para. 15 (emphasis added)). The respondent made these remarks after Mr. Bureau-Blouin had in his comments urged students to comply with the orders of injunction, and immediately after the journalist had asked him whether he was “still encouraging picketing to prevent [students from entering]” (*ibid.* (emphasis added)).

[110] In the trial judge’s view, there was no doubt that, in these circumstances, [TRANSLATION] “enforce the strike vote” or “uphold the democratic choice that was made to go on strike” meant “prevent students from gaining access to their classes, even by picketing, despite the injunctions, in order to enforce the students’ vote in favour of the boycott” (paras. 94 and 96-97). In the circumstances, no other reasonable and logical inference could be drawn from those words. As well, the respondent’s statement that it was “legitimate” to do “what they have to do” for that purpose, which he made after being asked whether he was “still encouraging picketing to prevent [students from entering]”, amounted to incitement. There was therefore no doubt that the respondent’s words were an incitement to breach the terms of the Safeguard Order as well as those of the other orders that had been made to ensure that students would have access to their classes. The Safeguard Order prohibited anyone boycotting classes [TRANSLATION] “from obstructing or impeding access to classes by means of intimidation or from taking any action that could prevent or adversely affect access to the classes in question” (para. 60). The other orders imposed the same restrictions.

[111] The Court of Appeal's conclusion that [TRANSLATION] "[t]here is no basis for finding that the 'pressure tactics' [the respondent] referred to were anything other than legal tactics" and that, in any event, his words "contained an unresolvable ambiguity" is surprising (paras. 71-72). To reach that conclusion, it is necessary to give the respondent's words a latitudinarian meaning that is neither logical nor reasonable. To what can the words "do what they have to do to enforce the strike vote" refer if not actions to prevent access to classes, contrary to the terms of the Safeguard Order? With respect, the Court of Appeal's conclusion disregards the context and reflects an excessive artificial formalism, as it permits the respondent to "hide behind a restrictive and literal interpretation to circumvent the order and make a mockery of it and of the administration of justice" (*Zhang*, at para. 32).

[112] The trial judge had concluded that the respondent, in his comments, [TRANSLATION] "was . . . promoting anarchy and encouraging civil disobedience" (para. 95). He added that the respondent's incitement to breach the orders, including the one the appellant had obtained, seriously impaired the authority of the courts (para. 109). I agree. In a television interview that was broadcast to a large audience, the respondent publicly incited others to breach the court orders at the height of the conflict. He made the remarks in question as a spokesperson for CLASSE, which added to the risk of impairing the authority and undermining the credibility of the courts (*Re Ouellet (No. 1)* (1976), 28 C.C.C. (2d) 338 (Que. Sup. Ct.), varied on other grounds [1976] C.A. 788). With this in mind, the danger of prejudice to the authority

of the court was sufficiently serious and substantial to justify the trial judge's exercising his discretion and convicting the respondent.

E. *Mens Rea*

[113] I would not interfere with the trial judge's finding that the respondent had the *mens rea* required to be convicted of contempt of court under the final portion of art. 50 para. 1 *C.C.P.* The Court of Appeal did not consider this question because of its conclusions on the knowledge and *actus reus* issues.

[114] The trial judge found that it was clear from the specific context of the television interview that the respondent had incited and intended to incite people to breach orders made by the courts. He therefore found that the appellant had discharged his burden of proving the *mens rea* beyond a reasonable doubt, even on the basis of a degree of intent that seems higher than necessary.

[115] In *Daigle v. Corporation municipale de la Paroisse de St-Gabriel de Brandon*, [1991] R.D.J. 249 (C.A.), the Court of Appeal described the *mens rea* required for the application of art. 50 para. 1 *C.C.P.* as follows:

[TRANSLATION] In the specific context of article 50 *C.C.P.*, the *mens rea*, which is an essential element of the respondent's conduct, may take one of two forms: either the attitude of the debtor of the obligation imposed by the judgment shows a clear intention not to perform the obligation; or the debtor acted on the obligation in a manner which is not only unsatisfactory but also shows gross carelessness as to compliance, if

not with the letter of the obligation, at least with the spirit in which it was imposed on him or her. [Emphasis added; p. 253.]

[116] However, that description related to the breach of an order and therefore to the first portion of art. 50 para. 1 *C.C.P.* In *Carey*, a recent decision on this subject in the context of the common law, this Court held that establishing the elements of civil contempt does not require that the defendant be found to have breached an injunction with intent to disobey the order or to interfere with the administration of justice. All that is required for the plaintiff to establish civil contempt is proof beyond a reasonable doubt of an intentional act — or omission — by the defendant that was in breach of a clear order of which the defendant had notice. As a result, only acts that are spontaneous or accidental will not meet the intent requirement (the Honourable R. J. Sharpe, *Injunctions and Specific Performance* (loose-leaf), at p. 6-18).

[117] The situation is not as clear for third parties, that is, persons to whom an order does not specifically apply. Sharpe, who is a judge of the Ontario Court of Appeal, states that it is settled law in England and Australia that an intention to interfere with the administration of justice must be proved in the case of a third party to whom the injunction in question does not specifically apply (p. 6-26). This Court commented on but did not decide this point in *Carey* (paras. 45-46). The existing Canadian case law seems to say that an intention to interfere with the administration of justice or to impair the authority or dignity of the court is not an essential element of the offence of civil contempt where an order is breached. See, for example, *B.C.G.E.U.*; and *Droit de la famille*, at para. 30, where Dalphond J.A. adopted the

words of Saunders J.A. of the Nova Scotia Court of Appeal in *Godin v. Godin*, 2012 NSCA 54, 317 N.S.R. (2d) 204, at para. 47.

[118] Even in criminal contempt cases, an intention to knowingly depreciate the authority of the court is not required; recklessness as to this consequence is enough. The appellant argues that, as was held in *United Nurses*, it must be proved that the accused acted “with . . . knowledge or recklessness” as to the fact that his or her actions or words would “tend to depreciate the authority of the court” (p. 933). This argument is reasonable in view of the twofold character — civil and criminal — of the offence of contempt of court, and of the fact that, by focusing on the public’s interest in protecting the administration of justice, the final portion of art. 50 para. 1 *C.C.P.* implies that contempt is quasi-criminal in nature (*Poje v. Attorney General for British Columbia*, [1953] 1 S.C.R. 516). Indeed, the concept of *mens rea* as argued in the instant case is similar to the one outlined in *Daigle* without being attached to an intention to breach an order on the part of the defendant him or herself.

[119] Even if the higher *mens rea* requirement for criminal contempt applies in the instant case, which I will not decide here, the evidence shows beyond a reasonable doubt that the respondent had that *mens rea*.

[120] In *United Nurses*, McLachlin J., writing for the majority, explained that recklessness may be inferred from the public quality of the act giving rise to the alleged contempt:

An open and public defiance of a court order will tend to depreciate the authority of the court. Therefore when it is clear the accused must have known his or her act of defiance will be public, it may be inferred that he or she was at least reckless as to whether the authority of the court would be brought into contempt. [p. 933]

[121] Given the context in which the respondent made his remarks — in a television interview broadcast to a large audience in Quebec — he knew that his act of defiance would be public and, in the words of McLachlin J. in *United Nurses*, it may be inferred that he was at least reckless as to whether the authority of the court would be impaired. The evidence adduced at trial meets the *mens rea* requirements for the offence defined in the final portion of art. 50 para. 1 *C.C.P.*: the appellant has shown beyond a reasonable doubt that the respondent publicly incited students to breach the terms of court orders, including the Safeguard Order, whose content and scope were known to him and that he was, at best, reckless as to the possibility that his comments would impair the authority of the courts.

#### F. *Freedom of Expression*

[122] Before I turn to the sentence, I believe it will be appropriate to comment briefly on the issue of freedom of expression, which was argued vigorously by the parties and the interveners and to which the Court of Appeal devoted several paragraphs of its decision (paras. 73-76). Given that the right to express opinions in public is protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms* and also, in Quebec, by s. 3 of the *Charter of human rights and freedoms*, CQLR, c. C-12, the Court of Appeal stressed that it was important [TRANSLATION] “to be aware of this

in assessing what was said in order to reduce the risk of having a chilling effect on the exercise of this fundamental right or indirectly imposing a form of censorship” (para. 76).

[123] The importance of freedom of expression and of the protection of that freedom in a democratic society can never be overstated, and I agree entirely with the concern expressed by the Court of Appeal about the need to protect freedom of expression in all its forms to the fullest extent possible. However, the idea of associating incitement to breach a court order with the legitimate exercise of freedom of expression is disconcerting. The impugned judgment and the remarks that gave rise to it have nothing to do with protecting freedom of expression. One may not use the exercise of one’s freedom of expression as a pretext for inciting people to breach a court order. Other remedies exist for contesting the validity of a court’s decision.

[124] The rule of law underpins our freedoms and is the very foundation of the *Canadian Charter (B.C.G.E.U.)*, the preamble to which states: “. . . Canada is founded upon principles that recognize . . . the rule of law”. Indeed, the rule of law is the reason why our freedoms, including freedom of expression, continue to thrive today. Wood J. explained this eloquently in *Bridges*:

Everything which we have today, and which we cherish in this free and democratic state, we have because of the rule of law. Freedom of religion and freedom of expression exist today because of the rule of law. Your right to hold the beliefs you do, to espouse those beliefs with the fervour which you do, and to attempt to persuade others to your point of view, exists only because of the rule of law. Without the rule of law there is only the rule of might. Without the rule of law the *Canadian Charter of*

*Rights and Freedoms*, which some of you sought to invoke, would be nothing but another piece of parchment adrift in the timeless evolution of man's history. [p. 156]

[125] Therefore, ensuring compliance with orders made by the courts, and thereby maintaining the authority and credibility of the courts, has the effect of reinforcing the rule of law and, by extension, our fundamental freedoms, including freedom of expression:

Over the centuries our laws have been built up to give the greatest protection to all classes of our society and only through the medium of the freedom and independence of the courts are these privileges protected. Once our laws are flouted and orders of our courts treated with contempt the whole fabric of our freedom is destroyed. We can then only revert to conditions of the dark ages when the only law recognized was that of might. One law broken and the breach thereof ignored is but an invitation to ignore further laws and this, if continued, can only result in the breakdown of the freedom under the law which we so greatly prize.

(*Canadian Transport Co. v. Alsbury* (1952), 6 W.W.R. (N.S.) 473 (B.C.S.C.), aff'd [1953] 1 D.L.R. 385 (B.C.C.A.), aff'd in *Poje*, at p. 478)

[126] In the trial judge's view, the respondent, by inciting others to disobey court orders, was in reality promoting anarchy and encouraging civil disobedience (para. 95). In light of the principles set out above, he was therefore interfering with the very freedoms he was claiming to exercise, since he was undermining the courts' ability to enforce them.

G. *Sentence*

[127] The respondent offers two arguments in support of his appeal from the sentence that was imposed on him. First, he submits that at the last sentencing hearing, the trial judge took into consideration a video that had previously been found inadmissible because it had been made on April 7, 2012, that is, before the Safeguard Order was made on May 2, 2012. The respondent requests that this evidence not be taken into account. Second, he argues that the enactment of *Law 12* at about the same time should be considered to be a mitigating factor, given that at the time of his sentencing, it was no longer necessary to deter potential offenders. He submits that in this context, the sentence the trial judge imposed on him was unreasonable and greatly disproportionate. In my view, he is wrong.

[128] With regard to the video, the trial judge correctly pointed out that the rules dealing with the admissibility of evidence are relaxed at the sentencing stage (*R. v. Gardiner*, [1982] 2 S.C.R. 368, at p. 414). In addition, I believe that a careful reading of the trial judge's reasons shows that the video did not lead him to impose an unreasonable sentence.

[129] I will now turn to the respondent's second argument. Under s. 32 para. 1 of *Law 12*, the orders issued to guarantee the delivery of instructional services to students having a right to such services ceased to apply on May 18, 2012. However, at the time the respondent made the remarks that constituted contempt — that is, on May 13, 2012 — those orders, including the one concerning the appellant, were still in effect. Moreover, s. 32 para. 2 of *Law 12* provides that proceedings for contempt of

court in relation to contraventions of orders issued before May 18, 2012 could be instituted or continued after that date. The trial judge was aware of this (sentencing decision, at paras. 42-44).

[130] The respondent submits that one of the reasons for imposing a sentence for contempt is to ensure that orders made by the courts will be obeyed. He therefore asserts that the sentence of 120 hours of community service was unreasonable, because at the time it was imposed, the need to prevent orders from being contravened no longer existed as a result of *Law 12*. This argument disregards another objective of sentencing for contempt of court, namely that of denouncing breaches of court orders and conduct that interferes with the orderly administration of justice or impairs the authority or dignity of the court (*Westfair Foods Ltd. v. Naherny* (1990), 63 Man. R. (2d) 238 (C.A.)).

[131] Finally, as to the proportionality of the sentence, it must be emphasized that, as in the case of criminal offences, the sentence that is imposed following a conviction for contempt is within the trial judge's discretion (*R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 39). An appellate court will not intervene unless it is shown that the sentencing judge erred in law or exercised that discretion improperly, or that the sentence is based on grounds that are not supported by law. The trial judge's reasons do not fit into any of these categories. The sentence he imposed is not disproportionate. A sentence of 120 hours of community service is not an unreasonable departure from the penalties imposed in similar cases in which the

contempt was public in nature (see, for example, *Charbonneau; Agence nationale d'encadrement du secteur financier v. Coopérative de producteurs de bois précieux Québec Forestales*, 2005 CanLII 11614 (Que. Sup. Ct.); *Westfair Foods*; and *Peter Kiewit Sons Co. v. Perry*, 2007 BCSC 305). Any person who is guilty of contempt of court under art. 50 *C.C.P.* is liable to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding one year (art. 51 para. 1 *C.C.P.*), and the appellant suggested a 30-day prison sentence. After considering all the relevant criteria and the mitigating and aggravating factors, the trial judge found that a sentence of 120 hours of community service adequately served the purposes of justice.

[132] Compliance with court orders and respect for the rule of law ensure the preservation of democracy. In the words of the trial judge, the respondent [TRANSLATION] “broke a fundamental rule of our society based on the rule of law” (sentencing decision, at para. 65). I therefore do not find that the sentence imposed in this case is excessive.

#### IV. Conclusion

[133] For these reasons, I would allow the appeal, restore the respondent's conviction and set aside the Court of Appeal's declaration that the Superior Court's sentencing decision is of no effect.

*Appeal dismissed with costs, WAGNER, CÔTÉ and BROWN JJ. dissenting.*

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