SCC Court File No. 39856

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF YUKON)

BETWEEN:

CINDY DICKSON

Appellant/Cross-Respondent
(Appellant)

- and -

VUNTUT GWITCHIN FIRST NATION

Respondent/Cross-Appellant
(Respondent)

- and -

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF ALBERTA, GOVERNMENT OF YUKON, BRITISH COLUMBIA TREATY COMMISSION, MÉTIS NATION OF ONTARIO AND MÉTIS NATION OF ALBERTA, CARCROSS/TAGISH FIRST NATION, TESLIN TLINGIT COUNCIL, CONGRESS OF ABORIGINAL PEOPLES, COUNCIL OF YUKON FIRST NATIONS, PAN-CANADIAN FORUM ON INDIGENOUS RIGHTS AND THE CONSTITUTION, CANADIAN CONSTITUTION FOUNDATION, BAND MEMBERS ALLIANCE AND ADVOCACY ASSOCIATION OF CANADA, FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

Interveners

FACTUM OF THE RESPONDENT ON CROSS-APPEAL, CINDY DICKSON

(Pursuant to Rule 43 of the *Rules of the Supreme Court of Canada* and
Order of Rowe J. dated August 30, 2022 permitting a 30 page response factum)

COUNSEL FOR THE APPELLANT/CROSS-RESPONDENT, CINDY DICKSON

Bridget Gilbride
Fasken Martineau Dumoulin LLP
550 Burrard Street, Suite 2900,
Vancouver, British Columbia
V6C 0A3
T: 604 631 4891
F: 604 631 3232
E: bgilbride@fasken.com

Harshi Mann
Ruby Shiller Enenajor DiGiuseppe, Barristers
171 John Street, Suite 101
Toronto, Ontario
M5T 1X3
T: 416 964 9664
F: 416 964 8305
E: hmann@rubyshiller.com

AGENT FOR THE APPELLANT/CROSS-RESPONDENT, CINDY DICKSON

Sophie Arseneault
Fasken Martineau Dumoulin LLP
55 Metcalfe Street, Suite 1300
Ottawa, Ontario
K1P 6L5
T: 613 696 6904
F: 613 230 6423
E: sarseneault@fasken.com

ORIGINAL TO: **Registrar**
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0J1

COPY TO:

COUNSEL FOR THE RESPONDENT/ CROSS-APPELLANT, VUNTUT GWITCHIN FIRST NATION

Elin Sigurdson, Kris Statnyk and Krista Robertson
Mandell Pinder LLP
1080 Mainland Street, Suite 422
Vancouver, British Columbia
V6B 2T4
T: 604 681 4146
F: 604 681 0959
E: elin@mandellpinder.com
kris@statnyk.com
krista@mandellpinder.com

AGENT FOR THE RESPONDENT/ CROSS-APPELLANT, VUNTUT GWITCHIN FIRST NATION

Jeff Beedell
Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3
T: 613 786 0171
F: 613 563 9869
E: jeff.beedell@gowlingwlg.com

COUNSEL FOR INTERVENER, GOVERNMENT OF YUKON

Ian H. Fraser and Katie Mercier
Department of Justice
Legal Services Branch (J-2E)
2134 Second Avenue, 2nd Floor
Whitehorse, Yukon
Y1A 2C6
T: 867 667 5142
F: 867 393 6379
E: I.H.Fraser@yukon.ca
Katie.Mercier@gov.yk.ca

AGENT FOR INTERVENER, GOVERNMENT OF YUKON

Marie-France Major
Supreme Advocacy LLP
340 Gilmour Street, Suite 100
Ottawa, Ontario
K2P 0R3
T: 613 695 8855 Ext: 102
F: 613 695 8580
E: mfmajor@supremeadvocacy.ca

COUNSEL FOR INTERVENER, ATTORNEY GENERAL OF CANADA

Anne M. Turley and Marlaine Anderson-Lindsay
Northern Region, National Litigation Sector
Department of Justice Canada
300 Main Street, Suite 310
Whitehorse, Yukon
Y1A 2B5
T: 867 667 8109
F: 867 667 3934
E: Marlaine.Anderson-Lindsay@justice.gc.ca
anne.turley@justice.gc.ca

AGENT FOR INTERVENER, ATTORNEY GENERAL OF CANADA

Christopher Rupar
Attorney General of Canada
Department of Justice
50 O'Connor Street
Ottawa, Ontario
K1A 0H8
T: 613 670 6290
F: 613 954 1920
E: Christopher.Rupar@justice.gc.ca

COUNSEL FOR THE INTERVENER, ATTORNEY GENERAL OF QUEBEC

Hubert Noreau-Simpson
Catheryne Bélanger
Sylvie Boulay
Procureur Général du Québec
Direction du Droit Constitutionnel et Autochtone
1200, route de l'Église, 4e étage
Québec, Quebec
G1V 4M1
T: 418 643 1477
F: 418 644 7030
E: hubert.noreausimpson@justice.gouv.qc.ca

AGENT FOR THE INTERVENER, ATTORNEY GENERAL OF QUEBEC

Pierre Landry
Noël Et Associés, S.E.N.C.R.L.
225, montée Paiement, 2e étage
Gatineau, Quebec
J8P 6M7
T: 819 503 2178
F: 819 771 5397
E: p.landry@noelassocies.com

COUNSEL FOR THE INTERVENER, ATTORNEY GENERAL OF ALBERTA

Michele Annich, Q.C.
Leah M. McDaniel
Attorney General of Alberta
Constitutional and Aboriginal Law
Legal Services Division
10025 - 102A Avenue, 10th Floor, 102A Tower
Edmonton, Alberta
T5J 2Z2
T: 780 422 0258
F: 780 643 0852
E: michele.annich@gov.ab.ca

AGENT FOR THE INTERVENER, ATTORNEY GENERAL OF ALBERTA

D. Lynne Watt
Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3
T: 613 786 8695
F: 613 788 3509
E: lynne.watt@gowlingwlg.com

COUNSEL FOR THE INTERVENER, PAN-CANADIAN FORUM ON INDIGENOUS RIGHTS AND THE CONSTITUTION

Bruno Gélinas-Faucher
Université de Moncton
Pavillon Léopold-Taillon 18, avenue Antonine-Maillet
Moncton, New Brunswick
E1A 3E9
T: 438 530 7144
F: 506 858 4534
E: bruno.gelinas-faucher@umoncton.ca

COUNSEL FOR THE INTERVENER, BRITISH COLUMBIA TREATY COMMISSION

Roy W. Millen
Joshua Hutchinson
Alison Burns
Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600
Vancouver, British Columbia
V7X 1L3
T: 604 631 4220
F: 604 631 3309
E: roy.millen@blakes.com
joshua.hutchinson@blakes.com
alison.burns@blakes.com

COUNSEL FOR THE INTERVENER, TESLIN TLINGIT COUNCIL

Kate Blomfield
Jeffrey Nicholls
Grace Hermansen
Ratcliff LLP
221 West Esplanade, Suite 500
North Vancouver, BC, V7M 3J3
T: 604 988 5201
F: 604 988 1452
E: kblomfield@ratcliff.com
jnicholls@ratcliff.com
ghermansen@ratcliff.com

AGENT FOR THE INTERVENER, TESLIN TLINGIT COUNCIL

Bijon Roy
Champ & Associates
43 Florence Street
Ottawa, Ontario
K2P 0W6
T: 613 237 4740
F: 613 232 2680
E: broy@champlaw.ca

COUNSEL FOR THE INTERVENERS MÉTIS NATION OF ONTARIO AND MÉTIS NATION OF ALBERTA

Jason T. Madden
Alexandria Winterburn
Alexander DeParde
Pape Salter Teillet LLP
546 Euclid Avenue
Toronto, Ontario, M6G 2T2
T: 416 916 3853
F: 416 916 3726
E: jmadden@pstlaw.ca
awinterburn@pstlaw.ca
adeparde@pstlaw.ca

AGENT FOR THE INTERVENERS MÉTIS NATION OF ONTARIO AND MÉTIS NATION OF ALBERTA

Matthew Estabrooks
Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3
T: 613 786 0211
F: 613 788 3573
E: matthew.estabrooks@gowlingwlg.com

COUNSEL FOR THE INTERVENER, CARCROSS/TAGISH FIRST NATION

Mary Ellen Turpel-Lafond
Lafond & Mack Law Group
7297 West Saanich Road
Saanichton, British Columbia, V8M 1R7
T: 250 213 2904
E: metl@lmlawgroup.ca

Gavin Gardiner
Woodward and Company Lawyers LLP
Suite 201, 3059 3rd Avenue
Whitehorse, Yukon Territory, Y1A 1E2
T: 867 633 5940
F: 250 380 6560
E: gavin@woodwardandcompany.com

AGENT FOR COUNSEL FOR THE INTERVENER, CARCROSS/TAGISH FIRST NATION

Marie-France Major
Supreme Advocacy LLP
340 Gilmour Street, Suite 100
Ottawa, Ontario
K2P 0R3
T: 613 695 8855
F: 613 695 8580
E: mfmajor@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, CONGRESS OF ABORIGINAL PEOPLES

Andrew Lokan
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th floor
Toronto, Ontario
M5V 3H1
T: 416 646 4324
F: 416 646 4301
E: andrew.lokan@paliareroland.com

AGENT FOR INTERVENER, CONGRESS OF ABORIGINAL PEOPLES

David R. Elliott
Dentons Canada LLP
99 Bank Street, Suite 1420
Ottawa, Ontario
K1P 1H4
T: 613.783.9699
F: 613.783.9690
E: david.elliott@dentons.com

COUNSEL FOR THE INTERVENER, CANADIAN CONSTITUTION FOUNDATION

Bryn Gray
Jesse Hartery
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto, Ontario
M5K 1E6
T: 416 362 1812
F: 416 868 0673
E: begray@mccarthy.ca
jhartery@mccarthy.ca

COUNSEL FOR THE INTERVENER, FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

Bruce J. Slusar
Bruce J. Slusar Law Office
316 6th Avenue, Suite 200
Saskatoon, Saskatchewan
S7K 2S5
T: 306 931 3737
F: 306 931 6741
E: slusar@shaw.ca

AGENT FOR THE INTERVENER, FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

Jonathan Laxer
Power Law
99 Bank Street, Suite 701
Ottawa, Ontario
K1P 6B9
T: 613 907 5652
F: 613 907 5652
E: jlaxer@powerlaw.ca

COUNSEL FOR THE INTERVENER, BAND MEMBERS ALLIANCE AND ADVOCACY ASSOCIATION OF CANADA

Ian Knapp
Mackenzie Fujisawa LLP
1095 W Pender Street, Suite 1600
Vancouver, British Columbia
V6E 2M6
T: 604 443 1203
F: 604 685 6494
E: IKnapp@macfuj.com

AGENT FOR THE INTERVENER, BAND MEMBERS ALLIANCE AND ADVOCACY ASSOCIATION OF CANADA

Marie-France Major
Supreme Advocacy LLP
340 Gilmour Street, Suite 100
Ottawa, Ontario
K2P 0R3
T: 613 695 8855
F: 613 695 8580
E: mfmajor@supremeadvocacy.ca

COUNSEL FOR THE INTERVENER, COUNCIL OF YUKON FIRST NATIONS

James M. Coady, Q.C.
Daryn Leas
Tammy Shoranick
Boughton Law Corporation
595 Burrard Street, Suite 700
Vancouver, British Columbia
V7X 1S8
T: 604 687 6789
F: 604 683 5317
E: jcoady@boughtonlaw.com
dleas@boughtonlaw.com
tshoranick@boughtonlaw.com

AGENT FOR INTERVENER, COUNCIL OF YUKON FIRST NATIONS

Nadia Effendi
Borden Ladner Gervais LLP
100 Queen Street, Suite 1300
Ottawa, Ontario
K1P 1J9
T: 613 787 3562
F: 613 230 8842
E: neffendi@blg.com

TABLE OF CONTENTS

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Ms. Dickson commenced this proceeding because her Indigenous nation, the Vuntut Gwitchin First Nation ("**VGFN**"), has wholly barred her from participating on its elected governing body.

2. Ms. Dickson is a VGFN citizen. She seeks to run for, and serve on, VGFN's elected Council. She has dedicated her career to promoting environmental sustainability and Indigenous knowledge, with specific focus on issues faced by northern communities such as climate change. She has deep knowledge of, and is dedicated to the preservation of, VGFN lands. Her exclusion from VGFN Council on the basis she resides in Whitehorse is arbitrary and discriminatory. It does not reflect a historic practice integral to VGFN culture, nor is it the "will of the First Nation". There is no rational or legal basis on which to uphold the Residency Requirement.

3. To the contrary, to allow the Residency Requirement to persist, would be to endorse a view that citizens of Indigenous nations that have achieved self-government within Canada are entitled to lesser protections than other Canadians, including lesser protections than they would have if they were still governed under the *Indian Act*. This cannot be the case.

4. The *Canadian Charter of Rights and Freedoms* guarantees all Canadians basic and fundamental human rights in the face of government action, regardless of context. They are guaranteed to all Canadians, regardless of who they are, as against all government conduct.

5. Ms. Dickson's circumstances demonstrate exactly the situation the *Charter* is designed to protect — it ensures fundamental human rights in the face of decisions made by political entities. The VGFN constitution can be amended by as few as 13 citizens, at meetings held in Old Crow with no ability to attend remotely. VGFN does not have dispute resolution processes, nor have they created a VGFN Court. The provision of *Charter* protection to Ms. Dickson and all individuals whose *Charter* rights are infringed by Indigenous laws does not perpetuate a historic injustice at the hands of colonizers, but instead recognizes that all citizens of Canada, including those who are Indigenous, are entitled to constitutional protection of their individual rights against government conduct, including conduct by Indigenous governments. The application of the

Charter ensures Ms. Dickson and all VGFN citizens have the same human rights guaranteed to all Canadians and provides them a mechanism to enforce them.

6. VGFN argues this case as if it is a dispute with the Crown. Ms. Dickson is part of the VGFN, and this is not an external challenge to VGFN's rules of governance. It does not threaten VGFN's autonomy. It is a challenge originating from within VGFN, filed by a VGFN citizen, seeking that she be given an opportunity to serve on her nation's government. There is no single VGFN perspective in this case, and the *Charter* rights at stake are those belonging to Indigenous citizens. Holding VGFN to the terms of their Agreements and requiring that they respect their citizens' *Charter* rights does not result in any harm to the nation, or undermine their identity as an Indigenous collective who was here pre-sovereignty.

7. As found by the courts below, VGFN, Canada and Yukon did not leave the application of the *Charter* up for debate. The Final Agreement expressly provides that VGFN's self-governance will be "in conformity with the Constitution of Canada" and the federal legislation implementing the Self-Government Agreement provides that VGFN laws, including the VGFN constitution, are given force as laws of Canada. The VGFN constitution, including the Residency Requirement, therefore, is a law of Canada, and is subject to the *Charter*.

8. The Residency Requirement discriminates against Ms. Dickson, wholly denying non-resident citizens their fundamental democratic right to serve on VGFN Council, even though Council's decisions can profoundly affect their lives. Her exclusion from Council is not a historic practice integral to VGFN culture, or otherwise justified in a free and democratic society.

B. Additional Facts

i. Vuntut Gwitchin leadership

9. The Residency Requirement requires citizens re-locate to VGFN Settlement Land to serve in VGFN government. VGFN states at paragraph 2 of its factum that "the Residency Requirement is grounded in VGFN's distinct culture, laws, and values". However, historically and traditionally, VGFN were a nomadic people living and travelling across an extensive territory, covering parts of

what is now Alaska, Yukon and Northwest Territories.[1] Old Crow was not established until the twentieth century, and became a year-round community sometime in the 1950s.[2] The chambers judge made a finding that Vuntut Gwitchin leaders historically resided on their traditional territory, not the small portion of the territory that is Settlement Land nor the community of Old Crow.[3] The Yukon portion of the Vuntut Gwitchin traditional territory, as defined under the Final Agreement, is approximately 55,000 square miles in size.[4] VGFN Settlement Land is approximately 2,990 square miles, or about 5% of VGFN's traditional territory in the Yukon, and an even smaller percentage of their historic traditional territory.[5]

10. VGFN asserts that Vuntut Gwitchin leaders were historically chosen based on "their skills, knowledge and abilities in relation to the Traditional Territory and their ability to provide service for the general welfare of the community", relying on Ms. Shelagh M. Beairsto's master's thesis.[6] This thesis was not tendered as expert evidence but attached to the affidavit of a VGFN citizen, William Josie, and Ms. Beairsto notes its internal limitations in the thesis itself, stating that only *one* person was interviewed for the study and that her findings "reflect a limited view of Gwich'in culture".[7] Regardless, the Vuntut Gwitchin leadership qualities noted by Ms. Beairsto were: knowledge of the land and traditions, commitment to community service, an ability to communicate effectively, and wealth.[8] She made no conclusions regarding *residence* on the land. As demonstrated by Ms. Dickson's impressive resume, except for wealth, she possesses the characteristics identified by Ms. Beairsto.[9]

---

[1] *Dickson v. Vuntut Gwitchin First Nation*, 2021 YKCA 5 ("**YKCA Reasons**"), at para. 7.
[2] Affidavit #1 of Cindy Dickson ("**Dickson #1**"), Ex. D [Appellant's Record ("**AR**"), Vol III, Tab 5.8, p. 8].
[3] *Dickson v. Vuntut Gwitchin First Nation*, 2020 YKSC 22 ("**YKSC Reasons**"), at para. 44(1).
[4] YKCA Reasons, at para. 7; YKSC Reasons, at para. 8.
[5] YKSC Reasons, at para. 17.
[6] Respondent's Factum, at para. 32, citing YKSC Reasons, at para. 7 and YKCA Reasons, at para. 147.
[7] Affidavit #2 of William Josie, Ex. A, p. 17 [AR, Vol. IX, Tab 5.14, p. 7]. Ms. Bearisto also conducted a focus group of two un-named individuals: Ex. A, p. 14 [AR, Vol. IX, Tab 5.14, p. 4]
[8] YKSC Reasons, at paras. 6-7; Affidavit #2 of William Josie, Ex. A, at p. ii [AR, Vol. VIII, Tab 5.14, p. 165].
[9] YKCA Reasons, at paras. 3, 33; Dickson #2, Ex A [AR, Vol. VII, Tab 5.13, p. 40].

11. VGFN states at paragraph 114 of its factum that the courts below affirmed that the "Residency Requirement is properly characterized as an exercise of a VGFN 'aboriginal' right within the meaning of s. 25". This is incorrect. The courts below did not find the Residency Requirement is an Aboriginal right, and rather concluded it fit within s. 25 as an "other" right or freedom that pertains to Aboriginal peoples. There is no finding (or evidence) that the Residency Requirement was an element of a practice, custom or tradition integral to the distinctive culture of the VGFN, only that having leaders who did not reside in the VGFN traditional territory was a historic practice that was "unthinkable or impossible" to breach in the past.[10] There is, therefore, no finding that amending or repealing the Residency Requirement would harm, or diminish, VGFN culture in anyway. Rather, as the chambers judge found, "[g]iven the fluidity of residency, Vuntut Gwitchin citizens do not typically define themselves by their residency at a place in time; rather their primary identity is that of a Vuntut Gwitchin citizen".[11]

ii. VGFN's powers under the Self-Government Agreement

12. The legislative powers of VGFN are set out in s. 13 of the Self-Government Agreement.[12] They cover three general categories:

(a) Administration and management of VGFN affairs, rights and benefits realized in the Final Agreement (section 13.1);

(b) Powers over VGFN citizens, including, among others, provision of services and programs related to health care, welfare, education, matters related to guardianship, adoption, marriage, inheritance, administration of estates, and mental competency ("citizen-based powers", section 13.2); and

(c) Powers over VGFN Settlement Land including, among others, its use, disposition, expropriation, business licences, use of natural resources, environmental protection, control of firearms and intoxicants, vehicle use, and activities threatening public order, peace or safety ("land-based powers", section 13.3).

13. The citizen-based powers in section 13.2 apply to VGFN citizens anywhere in Yukon, and the land-based powers in section 13.3 apply to anyone entering Settlement Land including non-

---

[10] YKSC Reasons, at paras. 11 and 211.
[11] YKSC Reasons, at para. 14.
[12] Dickson #1, Ex. F, Self-Government Agreement ("**Self-Government Agreement**"), s. 13 [AR, Vol V, Tab 5.8, p. 86].

VGFN citizens.[13] VGFN has the power to establish penalties of fines or imprisonment for violation of their laws.[14]

14. Under s. 16 of the Self-Government Agreement, Canada and VGFN are required to enter into a "financial transfer agreement" under which Canada transfers funds to VGFN annually "towards the cost of public services, where Vuntut Gwitchin First Nation has assumed responsibility" as well as for other matters.[15] The funding must be sufficient to enable VGFN to provide public services "at levels reasonably comparable to those generally prevailing in Yukon".[16] VGFN is required to publish its accounts in accordance with standards generally accepted for governments of Canada.[17]

15. The VGFN constitution states that: "Subject to the terms of the Vuntut Gwitchin Final Agreement and the Vuntut Gwitchin Self-Government Agreement, the operations and authority of the Vuntut Gwitchin First Nation shall extend to and over all land and resources, all Citizens, all occupants of Settlement Land and all matters within the jurisdiction of the Vuntut Gwitchin First Nation, and to the collective rights and interests of Citizens".[18]

iii. VGFN's government operates from Whitehorse as well as Old Crow

16. VGFN places significant emphasis on the "core principle" that VGFN's "seat of government" be located on VGFN lands as justification for the Residency Requirement.[19] However, in practice, VGFN already has a government presence in Whitehorse. In 2006, VGFN

---

[13] Affidavit of Cindy Dickson #2 ("**Dickson #2**"), Ex. P, VGFN Constitution ("**VGFN Constitution**") [AR, Vol. VIII, Tab 5.13, p. 135], Article II(1). In addition to any visitors, approximately 12% of Old Crow's population is not Indigenous: Dickson #1, Ex. M, p. 5 [AR, Vol. V, Tab 5.8, p. 135].

[14] Self-Government Agreement, s 13.6.4.1 [AR, Vol. V, Tab 5.8, p. 93]; See Amendment to the Vuntut Gwitchin First Nation Self-Government Agreement, P.C. 2013-0027 (January 31, 2013).

[15] Self-Government Agreement, ss. 16.1, 16.2.1, 18 [AR, Vol. V, Tab 5.8, p. 100, 105]; See also Government of Canada, *Vuntut Gwitchin First Nation Self-Government Agreement Implementation Plan* (April 3, 2013).

[16] Self-Government Agreement, s. 16.1 and s. 17.3.1 [AR, Vol. V, Tab 5.8, p. 100, 104].

[17] Self-Government Agreement, s. 22.1 [AR, Vol. V, Tab 5.8, p. 108].

[18] VGFN Constitution, Article II(1) [AR, Vol. VIII, Tab 5.13, p. 135].

[19] Respondent's Factum, at paras. 2, 28, 30-31, 147.

established an office in Whitehorse "to assist the large number of beneficiaries and citizens living outside Old Crow"[20] and VGFN has polling stations for Chief and Council elections in both Old Crow and Whitehorse.[21] A number of important VGFN government employees who have authority over land and resources reside in Whitehorse, including the Acting Director of Natural Resources, the Heritage Manager and the Manager of Lands.[22] In 2019, VGFN passed a resolution acknowledging "[t]he majority of our Citizens reside outside of our settlement land and are not getting essential supports to thrive and excel in their lives", and resolved to include in its strategic and wellness plan "the resources necessary to support all VGFN Citizens residing in the Yukon".[23]

iv. VGFN sought to have Ms. Dickson's claim dismissed without being heard on the merits

17. VGFN states in its factum that the VGFN constitution provides "a complete internal code" guaranteeing the protection of the rights and freedoms of VGFN citizens.[24] When Ms. Dickson's nomination for Council was rejected in 2018, she requested a dispute resolution process from VGFN Council, and none was provided.[25] Her only option was to commence a petition at the Yukon Supreme Court.

18. At the hearing before the Yukon Supreme Court, VGFN took the position that the court should decline to hear Ms. Dickson's petition on the basis the Residency Requirement is "purely political" and non-justiciable, or alternatively, that the court ought to defer to Indigenous decision-makers.[26]

19. In their amended response, VGFN grounded their opposition to Ms. Dickson's petition on the basis that the Yukon Supreme Court did not have jurisdiction over her *Charter* claim, or should decline to exercise jurisdiction. VGFN's arguments on the merits are set out in the alternative. Additionally, in their amended response, VGFN does not: (i) assert an Aboriginal right to self-

---

[20] Dickson #1, at para. 36 [AR, Vol. II, Tab 5.8, p. 60].
[21] Dickson #1, at para. 77 [AR, Vol. II, Tab 5.8, p. 67].
[22] Dickson #1, at para. 70 [AR, Vol. II, Tab 5.8, p. 66].
[23] Dickson #2, at para. 26 and Ex. N [AR, Vol VII, Tab 5.13, p. 36].
[24] Respondent's Factum, at paras. 84, 94.
[25] Dickson #1, at paras 80-81, 83 [AR, Vol II, Tab 5.8, p. 68]; See also Affidavit #1 of Dana Tizya-Tramm, Ex. B to D [AR, Vol. VI, Tab 5.10, p. 150].
[26] YKSC Reasons, at paras. 93-101, 109; YKCA Reasons, at paras. 38-40.

government pursuant to s. 35 (as they do now) or refer to s. 35 at all; (ii) assert that such a right would be a shield to Ms. Dickson's *Charter* claim pursuant to s. 25 of the *Charter*,[27] rather, they assert "section 15 of the *Charter* must be interpreted in light of section 25 of the *Charter*"; or (iii) expressly contest Ms. Dickson's assertion that the Residency Requirement infringes her s. 15(1) right to equality.[28] In advance of the Yukon Supreme Court hearing, VGFN filed an application to convert part of Ms. Dickson's petition to an action, but opted not to pursue it.

20. In this Court, VGFN claims a s. 35 right to self-government, although they have not pleaded this right or attempted to prove it in evidence. The courts below dealt with the Residency Requirement as an "other" right under s. 25, not as an Aboriginal right.

PART II – RESPONDENT'S POSITION ON QUESTIONS IN ISSUE

21. VGFN raises the following questions in their cross-appeal:

a) Whether the *Charter* applies to the Residency Requirement; and

b) Whether the Residency Requirement infringes s. 15(1) of the *Charter*.

22. Ms. Dickson submits that: (a) the *Charter* applies to the Residency Requirement; and (b) the Residency Requirement infringes Ms. Dickson's equality rights under s. 15(1) as it creates a discriminatory distinction on the analogous ground of "Aboriginality-residence", and such infringement is not a reasonable limit that can be demonstrably justified in a free and democratic society under s. 1.

PART III – STATEMENT OF ARGUMENT

A. The *Charter* applies to the Residency Requirement

23. The Residency Requirement is a law found within the VGFN constitution, which has been given the force of law within Canada pursuant to the federal legislation giving effect to the Self-Government Agreement.[29] VGFN's self-governance, including its constitution, is subject to the

---

[27] VGFN asserts at para. 109 of its factum that "the task of the Court is to determine based on the pleadings" whether s. 25 is triggered.
[28] VGFN's Amended Response [AR, Vol. II, Tab 4.2, p. 15].
[29] *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35.

Charter, as expressly agreed to by VGFN and by operation of the implementing legislation which makes the VGFN constitution a law of Canada. This is a complete answer to VGFN's assertion that the *Charter* does not apply to the Residency Requirement.

i. The Agreements clearly and unambiguously provide for *Charter* protection for VGFN citizens in respect of all VGFN laws

24. The Final Agreement and Self-Government Agreement expressly provide that the *Charter* applies to VGFN's self-government. The Final Agreement's requirement that VGFN's self-government be "in conformity with the Constitution of Canada" is unambiguous.[30] The Final and Self-Government Agreements further provide that the Self-Government Agreement "shall not affect the rights of [VGFN citizens] as Canadian citizens" nor their entitlement to all of the "benefits and protections" other Canadian citizens have.[31] The interpretation urged by VGFN that the *Charter* does not apply to VGFN or its laws (and that s. 25 operates as a complete shield), is inconsistent with these specific provisions and the Agreements as a whole.

25. In an effort to have this Court find the Agreements mean something different than what they plainly say,[32] VGFN relies on evidence from Dave Joe — the chief negotiator for VGFN and legal advisor to Teslin Tlingit Council and his own nation Champagne and Aishihik First Nations — as presenting the "VGFN perspective".[33] Mr. Joe attests to the subjective intention of VGFN during negotiations of the Agreements (some 30 to 35 years ago) and asserts: "No agreement was reached between the parties as to the application of the *Charter* and the Agreements were therefore left silent on this matter".[34] This is plainly incorrect given the text of the Agreements cited above, namely sections 24.1.2 and 24.1.3 of the Final Agreement and s. 3.6 of the Self-Government

---

[30] Dickson #1, Ex. E, Final Agreement ("**Final Agreement**"), s. 24.1.2 [AR, Vol V, Tab 5.8, p. 1].
[31] Final Agreement, 24.1.3 [AR, Vol V, Tab 5.8, p. 1]; Self-Government Agreement, s. 3.6 [AR, Vol. V, Tab 5.8, p. 76].
[32] *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58, at para. 36; *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, at paras. 9-10, 12; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at paras. 47, 57, 59; *British Columbia (Technology, Innovation and Citizens' Services) v. Columbus Real Estate Inc.,* 2018 BCCA 340, at paras. 63-65.
[33] Respondent's Factum, at para. 62; Affidavit #1 of Dave Joe, at para. 3 [AR, Vol. VII, Tab 5.12, p. 2].
[34] Affidavit #1 of Dave Joe, at para. 5 [AR, Vol. VII, Tab 5.12, p. 2].

Agreement. Neither does an alleged failure to agree lead to the conclusion that the *Charter* does not apply. The chambers judge and the Court of Appeal considered VGFN's argument in this regard, gave Mr. Joe's evidence appropriate weight,[35] and nonetheless both courts concluded the *Charter* applies to VGFN and its laws.[36]

26. The approach to interpreting modern treaties was set out by this Court in *Beckman*, *Moses*, and *Nacho Nyak Dun.*[37] In these cases, the Court found that modern treaties are "meticulously negotiated by well-resourced parties" and courts must "pay close attention to [their] terms".[38] In *Beckman*, the Court held that modern comprehensive land claim agreements "while still to be interpreted and applied in a manner that upholds the honour of the Crown, were nevertheless intended to create some precision around property and governance rights and obligations".[39] The Final Agreement is a modern treaty. The Self-Government Agreement is not. They are both comprehensive agreements that provide precision around VGFN's governance rights and obligations, including the application of the *Charter*. The words of the Agreements must be given effect. It would be inappropriate to rely on subjective evidence of Mr. Joe's memory of the negotiations, dating back decades, to read-in limiting language and conclude the Agreements mean something different than what they plainly and unambiguously say.

27. The Parliamentary debates related to the implementing legislation indicate that Canada was of the view that the parties' *common* intention was that the *Charter* applies.[40] The Minister of Indian Affairs and Northern Development described what was meant by "self-government" as follows:

> Before reviewing some of the main features of this legislation, I would like to make clear to the House exactly what we mean by self-government in the context of this bill.

---

[35] YKSC Reasons, at para. 88.
[36] YKSC Reasons, at paras. 83, 111, 131; YKCA Reasons, at paras. 95, 97.
[37] *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53; *Quebec (Attorney General) v. Moses,* 2010 SCC 17; *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58.
[38] *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58, at para. 36; *Quebec (Attorney General) v. Moses,* 2010 SCC 17, at para. 7.
[39] *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, at para. 12, see also paras. 10 and 54.
[40] YKCA Reasons, at paras. 96-97.

> These agreements were negotiated under the previous government's community based self-government policy. They make no reference to the inherent right of self-government and they will not receive constitutional protection as treaty rights under section 35 of the Constitution Act upon passage of this bill …
>
> The principles embodied in the Charter of Rights and Freedoms and the Constitution of Canada as a whole will continue to apply. First Nation constitutions will also provide protections for the rights and freedoms of First Nation citizens.[41]

28. Moreover, in *Beckman*, this Court made it clear that modern treaties such as the Final Agreement are subject to "constitutional limitations". This includes the Crown's constitutional duty of honourable dealing with Indigenous peoples,[42] and similarly, must include *Charter* protection.

ii. The Residency Requirement is a "law" under s. 52 of the *Constitution Act, 1982* and a matter within the authority of Parliament under s. 32 of the *Charter*

29. The VGFN constitution and all VGFN laws have the force of law in Canada by virtue of the *Yukon First Nations Self-Government Act* (the "**Federal Act**"), which gives effect to the VGFN Self-Government Agreement.[43]

30. The preamble to the Federal Act provides that the self-government agreement will be "in accordance with the Constitution of Canada". Section 8 of the Federal Act requires VGFN to enact a constitution with certain mandatory elements, including the "composition, membership, powers, duties and procedures" of their governing bodies. Under s. 10 of the Federal Act, the VGFN constitution and all VGFN laws are given the force of law in Canada. They are declared to be in force on the day after they are enacted, or as otherwise specified, and VGFN is required to maintain a public register of laws that contains the constitution and all other VGFN laws. Judicial notice may be taken of any law contained in the register.[44]

---

[41] Canada, House of Commons, *House of Commons Debates*, Vol. 133, No. 76, 1st Sess., 35th Parl., June 1, 1994 (Hon. R. Irwin), at p. 4716. See also Canada, House of Commons, *House of Commons Debates*, Vol. 133, No. 82, 1st Sess., 35th Parl., June 9, 1994 (Hon. T. McWhinney), at p. 5077; Government of Canada, *Self-government* (August 25, 2020).
[42] *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, at paras. 54, 61.
[43] *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35.
[44] *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35, s. 10, see also s. 8(3).

31. The VGFN constitution, including the Residency Requirement, therefore has the force of law in Canada pursuant to the Federal Act, and is subject to the *Charter* under s. 32(1)(a) of the *Charter* as legislative instruments given force of law by Parliament.[45] In addition, the VGFN constitution and all its provisions are "laws" within the meaning of s. 52 of the *Constitution Act, 1982*.

32. VGFN does not dispute they are a "government" *by their very nature*, or that the Residency Requirement is a VGFN law. Rather, they argue their laws are not captured by s. 32 because their right to self-government derives from their pre-sovereignty legal traditions, recognized and affirmed in s. 35. The Court of Appeal, however, concluded this is insufficient to escape *Charter* scrutiny,[46] a view shared by the Quebec Court of Appeal.[47] Similarly, the Court of Quebec found the *Charter* applied to the Chisasibi Band, a modern self-governing nation pursuant to the James Bay and Northern Québec Agreement.[48]

33. Not only is VGFN's argument that their laws are not subject to the *Charter* inconsistent with their express agreement to the application of the *Charter* (as outlined above), it is inconsistent with s. 10 of the Federal Act that makes the VGFN constitution a law of Canada.

34. This conclusion does not undermine the fact that VGFN is a rights-holding Indigenous collective in Canada that was here before European settlement, practicing their own legal traditions.[49] VGFN's modern self-governance must be exercised in accordance with the Self-

---

[45] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at paras. 20-21.
[46] YKCA Reasons, at para. 98.
[47] *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185, at paras. 525-7.
[48] *Band (Eeyouch) c. Napash*, 2014 QCCQ 10367, at paras. 91-106.
[49] See *Sga'nism Sim'augit (Chief Mountain) v. Canada (Attorney General)*, 2013 BCCA 49, at paras. 8 and 81, in which the BC Court of Appeal found that the Nisga'a Treaty, which included self-government provisions, was constitutionally valid as a delegation of power and giving effect to the Treaty did not require opining on Nisga'a Nation's inherent rights to govern nor undermine them.

Government Agreement, which is given effect by federal[50] and territorial legislation.[51] The Self-Government Agreement is not a codification of rights they held pre-sovereignty, but a modern agreement achieved through negotiation that encompasses many powers that are not historic practices but creatures of legislation.[52] Under s. 13.2 of the Self-Government Agreement, VGFN assumes responsibilities over important public services, such as health care and education, that would otherwise be the responsibility of Yukon or Canada, and Yukon and Canada continue to fund these services. Under s. 13.3, VGFN has powers over non-VGFN citizens on Settlement Land, including enforcement powers. Absent the Self-Government Agreement, VGFN's powers would continue to be exercised by Yukon, Canada or VGFN's predecessor *Indian Act* band. These responsibilities cannot be transferred without their accompanying *Charter* protections.[53]

35. Although this Court need not determine the issue in this case, even if the Residency Requirement is a law affirmed and recognized under s. 35 and received into the body of Canadian common law at the time of sovereignty as asserted by VGFN,[54] it would not escape *Charter* scrutiny. As this Court observed in *Gladstone,* and repeated in *Delgamuukw* and *Mitchell*, "distinctive aboriginal societies exist within, and are a part of, a broader social, political and economic community, over which the Crown is sovereign".[55] Similarly, in *Van der Peet* and *Beckman*, this Court held "aboriginal rights exist within the general legal system of Canada".[56]

---

[50] *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c. 34; *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35.
[51] Order in Council, O.I.C. 1994/230 made pursuant to the former *An Act Approving Yukon Land Claims Final Agreements*, now *An Act Approving Yukon Land Claim Final Agreements*, R.S.Y. 2002, c. 240; Order in Council, O.I.C. 1995/001 (formerly Order in Council, O.I.C. 1994/229), made pursuant to *First Nations (Yukon) Self-Government Act*, R.S.Y. 2002, c. 90 (formerly *First Nations (Yukon) Self-Government Act*).
[52] For example, provision of welfare (s. 13.2.4); business licencing (s. 13.3.6); regulation of vehicle use (s. 13.3.13); regulation of firearms (s. 13.3.21) [AR, Vol. V, Tab 5.8, pp. 86-9].
[53] *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 48, per La Forest J.; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at para. 42; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 72.
[54] Respondent's Factum, at para. 75.
[55] *R. v. Gladstone*, [1996] 2 S.C.R. 723, at para. 73; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 161; *Mitchell v. M.N.R.*, 2001 SCC 33, at para. 133, per Binnie J.
[56] *R. v. Van der Peet*, [1996] 2 S.C.R. 507, at para. 49; *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, at para. 45; See also *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 165.

36. The Constitution of Canada, including the *Charter,* is the supreme law of Canada and applies to all laws in Canada. The reach of s. 52 has been interpreted broadly.[57] In *Dolphin Delivery*, this Court found there is "no doubt" that pursuant to s. 52, the *Charter* applies to the common law.[58] Even if the Residency Requirement were a law received into the common law at the time of sovereignty, and is now recognized and affirmed under s. 35, it would still nonetheless be subject to the *Charter* pursuant to s. 52, which provides that *any law* inconsistent with the Constitution is of no force or effect.

iii. The *Charter* provides important and necessary protection for VGFN citizens which is not replaced by the VGFN constitution

37. The *Charter* provides important protection for Ms. Dickson in the circumstances of this case. At the Yukon Supreme Court, VGFN argued that Ms. Dickson's claim was not justiciable on the basis that the Residency Requirement is fundamentally a "purely political" question, or alternatively, that the court should exercise "restraint", "judicial forbearance", or "judicial deference", and decline to hear Ms. Dickson's claim on its merits.[59] These submissions are in contrast to VGFN's position in this Court that VGFN has their own "enforceable code protecting fundamental civil, political, social and economic rights of their citizenry"[60] and that the VGFN constitution was intended to be a "complete internal code guaranteeing the recognition and protection of the rights and freedoms of Citizens within a free, self-governing and democratic Vuntut Gwitchin society".[61]

---

[57] *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, at paras. 86-90.
[58] *RWDSU v. Dolphin Delivery Ltd.,* [1986] 2 S.C.R. 573, s. 25; *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, at para. 86 and see also para. 52; See also *R. v. Thomsen*, [1988] 1 S.C.R. 640, at para. 15 which states "prescribed by law" in s. 1 of the *Charter* includes the common law.
[59] YKSC Reasons, at paras. 93-101, 109; See also VGFN's Amended Response [AR, Vol II, Tab 4.2].
[60] Respondent's Factum, at para. 94.
[61] Respondent's Factum, at para. 84.

38. In this case, when Ms. Dickson's nomination form for VGFN Council was rejected, she sought and was denied dispute resolution from the existing Council.[62] She had to request written reasons for their decision,[63] and when she brought the matter to the Yukon Supreme Court as she is entitled to do, VGFN took the position her claim was not justiciable and sought to have it dismissed without being adjudicated on the merits.[64] This is despite the fact VGFN has not yet established the VGFN Court, although they have been self-governing for almost thirty years. In these circumstances, it would be unjust to deny Ms. Dickson access to the *Charter* on the basis the VGFN has a "complete" and "enforceable" human rights code. The *Charter* provides valuable and necessary protection for individuals such as Ms. Dickson who are inherently vulnerable to government action.

39. Applying the *Charter* does not conflict with s. 10.1.4 of the Self-Government Agreement that says VGFN's constitution shall "recognize and protect the rights and freedoms of Citizens", as asserted by VGFN.[65] The two codes can co-exist so that VGFN can enact specific protections unique to their society, citizens, and culture that are additional to, or duplicative of, the human rights protections in the *Charter*.[66] This same parallel structure exists with Canada's provinces, some of whom have enacted human rights regimes that reflect their own circumstances, the most notable among them being Quebec's *Charter of Human Rights and Freedoms.*[67] These regimes co-exist with the *Charter*, but do not replace or override the *Charter,* which under s. 52 of the *Constitution Act, 1982*, is the supreme law of Canada.[68] There is no conflict.

---

[62] Dickson #1, at paras. 81-84 [AR, Vol. II, Tab 5.8, p. 68]; Self-Government Agreement, s. 13.2.11 provides that VGFN has the power to enact laws related to "provision of services to Citizens for resolution of disputes outside the courts" [AR, Vol V, Tab 5.8, p. 87].

[63] Dickson #1, para. 86 [AR, Vol. II, Tab 5.8, p. 69].

[64] YKSC Reasons, at paras. 93-101.

[65] Respondent's Factum, at para. 68

[66] YKSC Reasons, at paras. 118-120. VGFN's human rights provisions in their constitution mirror a number of *Charter* provisions, while omitting others.

[67] Quebec *Charter of Human Rights and Freedoms,* CQLR, c. C-12; See also Alberta *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 2000, c. H-14.

[68] *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35; *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844.

40. It is also a confounding position that VGFN now says the proper avenue for Ms. Dickson is to have the Yukon Supreme Court, a court situated in Whitehorse currently without any VGFN or Indigenous judges, to assess whether the Residency Requirement is a reasonable limit within "Vuntut Gwitchin society" in accordance with "Vuntut Gwitchin law and principles".[69] It is not clear how this can be fairly done by a non-VGFN judge sitting in the Yukon Supreme Court, at least without a lengthy and time-consuming hearing. This assertion is also in contrast to their position below that laws of Indigenous bodies must be deferred to by Canadian courts.[70]

41. Practically speaking, the fact Ms. Dickson was not granted an internal dispute resolution process, the absence of a VGFN Court, and VGFN's initial position that Ms. Dickson's complaint was non-justiciable, reveal the gaps and limits of VGFN's existing regime, and reinforce the value and need for VGFN citizens to be able to access the *Charter*.

42. VGFN asserts if *Charter* protection is bestowed on their citizens, it is certain to result in "significant adverse effects" on VGFN self-government and law-making, however, they do not articulate what those effects are.[71] The only specific example of harm they articulate is that applying the *Charter* would risk "reviving old ghosts in the law such as the discriminatory legal concepts grounded in the 'doctrine of discovery'".[72] There is clearly no nexus between VGFN citizens having access to their *Charter* rights and the doctrine of discovery, and invoking this comparison is entirely unhelpful.

43. Ms. Dickson submits no harm to VGFN or its governance arises when VGFN citizens enjoy *Charter* protection, and when all VGFN citizens are granted the opportunity to serve in their government. These citizen protections only strengthen the foundation and quality of VGFN's democratic self-government. Courts have consistently found that Canada should not have "*Charter*-free" zones,[73] and that no Canadian citizens should be deprived of *Charter* protection in

---

[69] Respondent's Factum, at para. 124.
[70] See YKSC Reasons, at paras. 109, 115, citing *Pastion v. Dene Tha' First Nation,* 2018 FC 648, para. 23.
[71] Respondent's Factum, at para. 97.
[72] Respondent's Factum, at para. 97.
[73] *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, at para. 22; *Taypotat v Taypotat*, 2013 FCA 192, at para. 39 (rev'd 2015 SCC 30 on other grounds); *R v Ippak*, 2018 NUCA 3, at para. 3.

the face of government action. As citizens of Canada, Indigenous persons are as much entitled to *Charter* rights as everyone else.[74]

B. The Residency Requirement infringes section 15(1) of the *Charter*

44. The Court of Appeal correctly concluded that the Residency Requirement is discriminatory and in violation of s. 15(1) of the *Charter*.[75] The Residency Requirement (a) creates a distinction on the basis of an analogous ground, "Aboriginality-residence", and (b) denies a fundamental right to VGFN citizens living away from Settlement Land in a manner that reinforces, perpetuates, and exacerbates the disadvantage and stereotyping they already experience, namely that they are less-deserving than other VGFN citizens, and have less interest in their land and culture.[76]

45. Ms. Dickson and other VGFN citizens living away from their Settlement Land did not agree to lesser equality protections when they ratified the Final and Self-Government Agreements. Nor did the historical disadvantages, prejudices and socio-economic conditions experienced by Indigenous persons living away from their communities automatically extinguish when their nations entered self-government agreements. Ms. Dickson and other VGFN citizens who live away from Old Crow have attested to the vulnerabilities, disadvantages, and harm they experience due to living away from their community.

46. A fair and faithful interpretation of *Corbiere* is that the equality protection of "Aboriginality-residence" ought to apply to all Aboriginal peoples.[77] This Court did not intend to exclude members of self-governing nations from protection under this ground, nor would such an interpretation advance reconciliation or accord with the purpose of s. 15(1). It would be inconsistent with the findings in the *Report of the Royal Commission on Aboriginal Peoples*, and

---

[74] *Taypotat v Taypotat*, 2013 FCA 192, at paras. 38-40 (rev'd 2015 SCC 30 on other grounds); *R v. Ippak*, 2018 NUCA 3, at para. 3; *Band (Eeyouch) c. Napash*, 2014 QCCQ 10367, at paras. 32-34, 103; *Cunningham v. Alberta (Aboriginal Affairs and Northern Development),* 2009 ABCA 239, at paras. 73-74, (rev'd 2011 SCC 37 on other grounds); *R. v. Kapp*, 2008 SCC 41, per Bastarache J., at para. 99.

[75] YKCA Reasons, at paras. 107-110, 163.

[76] *Fraser v. Canada (Attorney General),* 2020 SCC 28, at para. 27; *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, at paras. 19-21.

[77] *Corbiere v. Canada (Minister of Indian and Northern Affairs),* [1999] 2 S.C.R. 203 ("***Corbiere***").

with the numerous Federal Court decisions applying *Corbiere,* including as recently as 2021. It is irrelevant to the Indigenous person experiencing inequality, in this case Ms. Dickson, whether the discriminatory distinction at issue was made by the federal government, her provincial or territorial government, or her own Indigenous government, whether it be an *Indian Act* band or a self-governing nation.

47. The Residency Requirement is discriminatory as it denies non-resident citizens the right to hold office in their nation's government, an infringement that undermines human dignity and strikes at the heart of democracy. Non-resident VGFN citizens are governed by VGFN and are co-owners of VGFN land. They are deeply affected by the decisions made by their Chief and Council. The Residency Requirement perpetuates a stereotype that non-resident citizens are less interested in their nation, land and culture, and are therefore "less worthy" as citizens.

i. The distinction created by the Residency Requirement is properly based on the well-established analogous ground of "Aboriginality-residence"

48. The analogous ground of "Aboriginality-residence", recognized by this Court in *Corbiere*, is a constant marker of potential discrimination and applies to all circumstances where a distinction is drawn between Indigenous individuals living in their community and those living away. VGFN advances an overly narrow interpretation of *Corbiere*, suggesting that the equality protection of Aboriginality-residence is only applicable to one subset of Indigenous peoples: members of *Indian Act* bands who live off-reserve.[78] VGFN differentiates themselves on the basis they are self-governing and no longer subject to the *Indian Act*. Their position is that they may enact laws denying their non-resident citizens' rights that would be discriminatory if VGFN were still subject to the *Indian Act*. This result is unprincipled. It cannot be the case that the achievement of self-government results in Indigenous citizens having lesser access to their equality rights than they had when governed by the *Indian Act*.

49. Both courts below correctly concluded that the Residency Requirement creates a distinction based on Aboriginality-residence. VGFN's narrow interpretation of Aboriginality-residence fails to grapple with the fundamental findings and legal reasoning in *Corbiere* and misconstrues the gravamen of the decision. In her concurring reasons, Justice L'Heureux-Dubé

[78] Respondent's Factum, at paras. 140-141.

describes the root of this constructively immutable characteristic as Indigenous persons having to choose "whether to live with other members of the band to which they belong, or apart from them", a choice that "relates to a community and land that have particular social and cultural significance to many or most band members".[79]

50. The historical disadvantages and prejudices that non-resident Indigenous individuals experience, described and relied on in *Corbiere*, persist today, including with respect to the VGFN community.[80] These harms are not limited to *Indian Act* bands, but are experienced by all Indigenous peoples in Canada. In *Corbiere*, this Court relied heavily on findings of the *Report of the Royal Commission on Aboriginal Peoples,* which apply to all Indigenous persons in Canada and remain true today.[81] The Federal Court has specifically held that broad claims of "advancing the goals of self-government" do not justify discriminating against a portion of your own population,[82] as the equality rights of all Indigenous individuals should be protected.

(a) The application of Aboriginality-residence to all Indigenous persons is consistent with the purpose of s. 15(1)

51. The purpose of s. 15(1) is to prevent the violation of human dignity through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society where all persons are considered worthy of respect and consideration.[83]

52. Indigenous persons living in urban areas or otherwise away from their communities are historically disadvantaged as a result of Canada's colonial policies of assimilation and displacement, directed at all Indigenous peoples and maintained for generations. As found by the chambers judge, the displacement and alienation of Vuntut Gwitchin people through imposed colonial laws and policies "has caused significant harm to the integrity and health of the Vuntut

---

[79] *Corbiere*, at para. 62, per L'Heureux-Dubé J., concurring.
[80] YKSC Reasons, at para. 13.
[81] *R. v. Desautel,* 2021 SCC 17, at para. 33; See also Dickson #2, Ex. D, *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* [AR, Vol. VII, Tab 5.13, p. 58].
[82] *Joseph v. Dzawada'enuxw (Tsawataineuk) First Nation*, 2013 FC 974, at paras. 28-9, 51-2, 58.
[83] *Quebec (Attorney General) v. A*, 2013 SCC 5, at para. 138; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para. 51; *Corbiere*, at para. 5.

Gwitchin as a collective".[84] This harm was not un-done or erased (nor could it be) in 1993 by the signing of the VGFN Final and Self-Government Agreements. Ms. Dickson has personally felt the harmful impact of Canada's assimilation and displacement policies as both her mother and father were taken to residential school when they were younger.[85] She was largely raised by her grandfather in Old Crow, as her parents suffered from alcoholism.[86] Former Chief Bruce Charlie deposed that from the ages of 19 to 24 he went to residential school in Whitehorse.[87] Other non-resident citizens who swore affidavits in support of Ms. Dickson's petition attested to the disconnection they feel from living away from their community.[88] To exclude these citizens at the first stage of the s. 15(1) analysis because they are no longer subject to the *Indian Act* and Old Crow is not technically reserve land, would fail to recognize the long-lasting harm of Canada's policies. It would exclude them from s. 15 protection — without an analysis of whether the distinction perpetuates their disadvantage — solely because their nation has executed a self-government agreement with Canada.

53. This approach would result in a subset of Indigenous persons being denied access to s. 15(1) even though it is still available to Indigenous persons governed by the *Indian Act*. This interpretation does not respect or preserve human dignity, or advance reconciliation with Indigenous peoples, as it arbitrarily narrows the "discrete and insular minority" intended to be captured by the analogous ground of Aboriginality-residency.[89]

(b) Aboriginality-residence is a constant marker of discrimination, intended to encompass all Indigenous persons who live away from their communities

54. VGFN asserts that Aboriginality-residence *only* applies in situations involving *Indian Act* bands where a distinction is made between members who live on and off reserve. To accept this argument would be to endorse the view that this Court in *Corbiere* intended to provide equality

---

[84] YKSC Reasons, at para. 13.
[85] Dickson #1, at para. 4 [AR, Vol. II, Tab 5.8, p. 54].
[86] Dickson #1, at para. 4 [AR, Vol. II, Tab 5.8, p. 54].
[87] Affidavit #1 of Bruce Charlie, at para. 4 [AR, Vol II, Tab 5.4, p. 27].
[88] Affidavit #1 of Margret Njootli, at paras. 6-10 [AR, Vol. II, Tab 5.2, p. 22]; Affidavit #1 of Carol Patterson, at paras. 9-13 [AR, Vol. II, Tab 5.5, p. 37]; Affidavit #1 of Sandra Charlie, at paras. 15, 20 [AR, Vol. II, Tab 5.6, p. 41]; Affidavit #1 of Garry Njootli, at para. 14 [AR, Vol. II, Tab 5.7, p. 52].
[89] *Corbiere*, at para. 13.

protection to *some* Indigenous individuals but not others, even though all Indigenous peoples suffered the harmful impacts of Canada's assimilation and displacement policies, which underpinned this Court's findings in *Corbiere*. This was plainly not the Court's intention.

55. Indigenous peoples face many barriers and constraints in relation to residence, and the choice, if available, is "an important one to their identity and personhood".[90] This Court therefore concluded that Aboriginality-residence "is no less constructively immutable than religion or citizenship" and changeable "only at great cost, if at all".[91]

56. Analogous grounds do not exist "only in some circumstances"— they are *constant* markers of suspect decision-making and potential discrimination in *all* circumstances.[92] They do not "change from case to case, depending on the government action challenged".[93] To bar Ms. Dickson's challenge at the outset because her nation has achieved self-government would be unprincipled. VGFN is incorrect that the "raison d'être" of Aboriginality-residence is "discrimination against off-reserve band members, deriving from the *Indian Act*".[94] VGFN's position means Indigenous persons governed by a self-governing nation, as opposed to the *Indian Act*, would be excluded from protection under this ground. On their submission, the analogous ground itself depends on the characteristics of the government actor, instead of the disadvantaged group.[95]

57. The analogous ground of "Aboriginality-residence" was not based on the status of Indigenous persons under the *Indian Act*, but on the Indigeneity of the claimants and the fact their cultural identity is tied to their community and land. It recognizes the prejudices and disadvantages they endure as Indigenous peoples living apart from their community and land.[96] Indigenous

---

[90] *Corbiere*, at para. 62, per L'Heureux-Dubé J., concurring.
[91] *Corbiere*, at para. 14.
[92] *Corbiere*, at para. 8.
[93] *Corbiere*, at para. 9.
[94] Respondent's Factum, at para. 143.
[95] *Corbiere*, at para. 67, per L'Heureux-Dubé J., concurring.
[96] *Corbiere* at, paras. 17-18.

individuals in urban centres "have experienced racism, culture shock, and difficulty maintaining their identity in particular and serious ways".[97]

58. The Federal Court has consistently applied the analogous ground of Aboriginality-residence to laws enacted by Indigenous governing bodies, including to customary election codes, and to distinctions beyond residency on reserve, including residency on traditional territory.[98] In *Joseph v Dzawada'enuxw (Tsawataineuk) First Nation*, the court explained: "While the fact that a Band chooses on its own to adopt electoral restrictions instead of being subjected to them by the [Indian] Act is relevant to the context, it does not excuse discriminatory laws".[99]

59. For Ms. Dickson, the fact that, legally, VGFN is no longer her "band" but her "self-government", and that Old Crow, where she grew up, is no longer her "reserve" but part of her "Settlement Land", makes little difference to her when faced with discrimination based on her residence. Old Crow remains a remote fly-in, fly-out community, with limited access to housing, medical care, education and jobs.[100] The majority of VGFN citizens live away from their Settlement Land.[101] Some are survivors of residential schools, and some, like Ms. Dickson, are children of survivors. Many, like Ms. Dickson, have compelling reasons for living away from Old Crow. All have experienced the harm of Canada's policies of assimilation.

60. The core of all enumerated or analogous grounds is recognition that there are certain personal characteristics that individuals cannot change, or change only at great cost.[102] They are characteristics the government has no legitimate interest in expecting individuals to change to

---

[97] *Corbiere*, at para. 72, per L'Heureux-Dubé J., concurring; Dickson #1, Ex. C, *Report of the Royal Commission on Aboriginal Peoples* [AR, Vol. II, Tab 5.8, pp. 90-95].
[98] See *Janvier v. Chipewyan Prairie First Nation*, 2021 FC 539, at paras. 1-4, 28; *Clark v. Abegweit First Nation Band Council*, 2019 FC 721, at paras. 2, 58; *Cardinal v. Bigstone Cree Nation*, 2018 FC 822, at paras. 1, 19, 65-6; *Joseph v. Dzawada'enuxw (Tsawataineuk) First Nation*, 2013 FC 974, at paras. 1, 66; *Woodward v. Council of the Fort McMurray*, 2010 FC 337, at paras. 1, 3, 34 (rev'd [2011] F.C.J. No. 1736 (F.C.A.) on s. 1); *Thompson v. Leq'á:mel First Nation*, 2007 FC 707, at paras. 1, 14, 21; *Esquega v. Canada (Attorney General),* 2007 FC 878, at paras. 40, 96, 98 (appeal allowed 2008 FCA 182 on remedy only); *Clifton v. Hartley Bay Indian Band*, 2005 FC 1030, at paras. 1, 58.
[99] *Joseph v. Dzawada'enuxw (Tsawataineuk) First Nation*, 2013 FC 974, at para. 51.
[100] Dickson #1, at paras. 45-67 [AR, Vol. II, Tab 5.8, p. 62-66].
[101] YKCA Reasons, at para. 8.
[102] *Corbiere*, at paras. 13-14.

receive equal treatment under the law.[103] A principled interpretation of *Corbiere,* and a purposive interpretation of s. 15(1) that advances human dignity and reconciliation, is that the analogous ground "Aboriginality-residence" was meant to apply to all Indigenous peoples, regardless of who governs them, and not arbitrarily confined to individuals governed by the *Indian Act*.

61. The evidence in this case parallels the evidence in *Corbiere*, and the findings of the 1996 *Report of the Royal Commission on Aboriginal Peoples* apply with equal force to VGFN today. They have been confirmed and supported by subsequent independent commissions, and reviews by government and non-governmental organizations.[104] In 2019, the report issued by the *National Inquiry into Missing and Murdered Indigenous Women and Girls* found that, as a result of past government conduct, Indigenous women in urban areas have found themselves "alienated from their home communities, sometimes as single parents and sole providers for their children" and are "often hundreds of kilometres from their homes and social support systems, navigating racist barriers deeply embedded in urban services and experiences".[105]

62. In *Desautel,* this Court held that reading in a residency requirement into the definition of "aboriginal peoples of Canada" in s. 35, thereby excluding Indigenous persons forced to move outside of Canada, would risk "perpetuating the historical injustice suffered by aboriginal peoples at the hands of colonizers".[106]

63. There is no compelling reason to depart from *Corbiere* in relation to Ms. Dickson's claim. The factors which led this Court in 1999 to recognize the unique vulnerabilities of Indigenous individuals living away from their communities are long-lasting, inter-generational and still persist

---

[103] *Corbiere*, at para. 13.
[104] Dickson #2, Ex. D, *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* [AR, Vol. VII, Tab 5.13, p. 58]; Brittany Collier, "Services for Indigenous People Living in Urban Areas" (December 1, 2020), *Parliamentary Information and Research Service*, at p. 6; Statistics Canada, *Indigenous people in urban areas: Vulnerabilities to the socioeconomic impacts of COVID-19* (May 26, 2020); National Association of Friendship Centres, *Urbanization and Indigenous Peoples in Canada: Responses for the Questionnaire from the Special Rapporteur on the Rights of Indigenous Peoples* (February 27, 2021), at pp. 4-6.
[105] Dickson #2, Ex. D, *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, at p. 273 [AR, Vol. VII, Tab 5.13, p. 64].
[106] *R. v. Desautel,* 2021 SCC 17, at para. 33, citing the *Report of the Royal Commission on Aboriginal Peoples*, at pp. 139-40 and *R. v. Côté*, [1996] 3 S.C.R. 139, at para. 53.

to this day. They continue to be experienced by VGFN citizens and were not simply erased when VGFN signed its Self-Government Agreement.

ii. The Residency Requirement is discriminatory as it denies non-resident VGFN citizens a fundamental democratic right and reinforces stereotypes they are "less worthy"

64. The Court of Appeal correctly held that the Residency Requirement is discriminatory as it exacerbates the difficulties faced by VGFN citizens living away from their territory in maintaining their culture and community.[107] Running for, and serving, in government is a fundamental democratic right. The fact Ms. Dickson may have access to jobs, hospitals and other important services in Whitehorse that she would not have if she lived in Old Crow does not off-set the harmful effect of her disenfranchisement from VGFN Council. In Ms. Dickson's case, she cannot re-locate to Old Crow because of her son's medical condition.[108]

65. Contrary to VGFN's submissions, the distinction created by the Residency Requirement perpetuates and reinforces the stereotype, observed in *Corbiere* and the cases that followed, that Indigenous citizens living outside their community are not interested in maintaining a meaningful connection with their nation and are less interested in the preservation of their land, sending the message they are less deserving members of the nation. The effect of the Residency Requirement is to exacerbate Ms. Dickson's ability to maintain a connection to her community and to preserve her identity as a VGFN citizen.[109] This is supported by direct evidence from Ms. Dickson, other VGFN citizens, and findings from national commissions and other government and non-governmental reports, cited above.[110] In Ms. Dickson's case, a woman and a single mother, she is in many ways "doubly disadvantaged".[111]

---

[107] YKCA Reasons, at para. 109
[108] Dickson #1, at para. 50 [AR, Vol. II, Tab 5.8, p. 63].
[109] Dickson #1, at paras. 20, 92 [AR, Vol. II, Tab 5.8, pp. 57, 70].
[110] See footnotes 86-88, 98, and 104. Ms. Dickson reviewed the *Report of the Royal Commission on Aboriginal Peoples* and the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* and confirmed they reflect her experience: Dickson #1, at para. 20 [AR, Vol. II, Tab 5.8, p. 57] and Dickson #2, at para. 9 [AR, Vol. VII, Tab 5.13, p. 32].
[111] *Corbiere*, at para. 72, per L'Heureux-Dubé J., concurring.

66. The distinction created by the Residency Requirement results in a denial of a fundamental right on the basis of a personal characteristic unrelated to VGFN citizens' "needs, capacities, and merits".[112] The burden of re-locating, if even possible, is not "relatively modest" as asserted by VGFN but severe.[113] Forcing VGFN citizens to choose between serving in government and moving their residence to Old Crow sets up an impossible, and discriminatory, choice.[114]

(a) The right to vote and participate in the General Assembly does not replace the right to serve in government, which is fundamental to democracy

67. The interest affected by the Residency Requirement is not "narrow" and the incursion is not "very limited", as asserted by VGFN.[115] The deprivation of the democratic right to serve in office is not replaced or mitigated by the ability to participate in other ways as asserted by VGFN, namely through the ability to vote, to run for office, or to participate in the General Assembly and, if eligible, the Elders Council.[116]

68. The right to run for, and serve, in office is a defining feature of democracy.[117] It is a pillar of democratic governments, protected in both s. 3 of the *Charter* and Article 25 of the *International Covenant on Civil and Political Rights*. It is not a "narrow" right but a fundamental political right, and its denial is severe and comes at the expense of citizens' dignity and sense of self-worth.[118]

69. This right is distinct and independent from the right to vote. In *Joseph v. Dzawada'enuxw (Tsawataineuk) First Nation* and *Esquega v. Canada (Attorney General),* the Federal Court

---

[112] *Law v. Canada (Minister of Employment and Immigration),* [1999] 1 S.C.R. 497, at para. 53, cited in *Corbiere*, at para. 59, per L'Heureux-Dubé J., concurring.
[113] Respondent's Factum, at para. 173.
[114] YKCA Reasons, at para. 110; *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at para. 87; *Corbiere*, at para. 19.
[115] Respondent's Factum, at paras. 156-7.
[116] Respondent's Factum, at paras. 157.
[117] *Reference re Secession of Quebec,* [1998] 2 S.C.R. 217, at para. 65
[118] *Frank v. Canada (Attorney General),* 2019 SCC 1, at para. 82; *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, para. 59; *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876, at paras. 23-30.

rejected the same argument being made by VGFN, holding that being able to vote is not a replacement for holding office as a Council member.[119]

70. The other avenues of participation suggested by VGFN are illusory. While VGFN citizens may technically "run" for Council, they must re-locate to Settlement Lands to serve their four-year term once elected. The "right to run" is therefore of no value to any citizen who is unable or unwilling to relocate. Relying on the right to run for office, without regard to whether the successful candidate can in fact serve, is inconsistent with the principle of substantive equality, which requires consideration of the "full context of the claimant group's situation", and the "actual impact of the law on that situation".[120] As held in *Fraser*, "the fact that a person could avoid discrimination by modifying his or her behaviour does not negate the discriminatory effect".[121]

71. Changing residency is not simply a matter of cost, and it is not mitigated by the fact VGFN Councillors earn a salary or that housing will be arranged, as argued by VGFN.[122] This argument disregards the impact of changing residency and does not account for citizens like Ms. Dickson who simply cannot move. This Court has found these citizens' residency is a personal characteristic "no less constructively immutable than religion or citizenship" that can be changed "only at great cost, if at all".[123] In *Bigstone Cree*, the Federal Court struck down a requirement that elected Councillors must re-locate to the reserve within three months of being elected, finding that it perpetuates "the pre-existing disadvantage of the group it was intended to benefit" and the "stereotype that only members on the reserve are able to decide the affairs of the band".[124]

72. In any event, the evidence before this Court is that it is difficult to find housing in Old Crow, let alone adequate housing. Former Chief Bruce Charlie deposed there are very few to no available homes for anyone seeking to move to Old Crow, and this was an issue throughout his

---

[119] *Joseph v. Dzawada'enuxw (Tsawataineuk) First Nation*, 2013 FC 974, at paras. 28-29, 57-58; *Esquega v. Canada (Attorney General),* 2007 FC 878, at paras. 40, 96, 98 (appeal allowed 2008 FCA 182 on remedy only).
[120] *Fraser v. Canada (Attorney General)*, 2020 SCC 28, para. 42.
[121] *Fraser v. Canada (Attorney General)*, 2020 SCC 28, paras. 86-7, citing *Lavoie v. Canada*, [2002] 1 S.C.R. 769, at para. 5, per McLachlin and L'Heureux-Dubé JJ.
[122] Respondent's Factum, at para. 157.
[123] *Corbiere*, at para. 14.
[124] *Cardinal v. Bigstone Cree Nation*, 2018 FC 822, at paras. 58, 65.

term as Chief.[125] Sandra Charlie, a VGFN citizen who moved to Old Crow in 2018 to be VGFN Director of Health and Social Programs, deposed to her difficulty in finding housing and the long waitlist, even as a government employee.[126] Houses that are available are often in rough shape requiring a lot of time, effort, and expense to make liveable.[127]

73. VGFN's suggestion that non-resident citizens can alternatively "exercise authority" through the Elders Council and the General Assembly is also illusory. Ms. Dickson is not eligible for Elders Council, and there are many practical barriers making it difficult for non-resident citizens to attend the annual General Assembly meetings. These meetings are held in the vicinity of Old Crow, and last multiple days.[128] VGFN requires citizens to attend in person, and has denied participation by video or teleconference, even though Old Crow has internet access.[129] Only two weeks' notice is required, and in practice this period has been shorter.[130] Quorum for the General Assembly is 25 citizens, and decisions are made by majority vote when consensus is not reached.[131] These rules make it practically very difficult for VGFN citizens living outside of Old Crow to arrange for flights, accommodation and other matters such as time off work or childcare in order to participate in the General Assembly. Even if they could make arrangements, it is doubtful Old Crow would have sufficient housing and flights to accommodate them in any significant numbers. At the same time, if they do not attend, as few as 13 citizens (of 560 total VGFN citizens) can amend the constitution, and significantly affect their lives. In these

---

[125] Affidavit #1 of Bruce Charlie, at para. 19 [AR, Vol. II, Tab 5.4, p. 29]. In 2009, there were 143 houses in Old Crow and 60% of the housing was "substandard"; further, "[a]vailability of housing limits the ability of the 50% of beneficiaries living away from Old Crow to return to the community to take up local jobs": Dickson #1, Ex. D, VGFN Integrated Community Sustainability Plan, p. 15 [AR, Vol. III, Tab 5.8, p. 22].

[126] Affidavit #1 of Sandra Charlie, at para. 22 [AR, Vol. II, Tab 5.6, p. 42].

[127] Affidavit #1 of Sandra Charlie, at para. 23-24 [AR, Vol. II, Tab 5.6, p. 42]; Dickson #1, at paras. 55-59 [AR, Vol. II, Tab 5.8, p. 64] and Ex. D, pp. 7, 15, 20 [AR, Vol. III, Tab. 5.8, pp. 14, 22, 27] and Ex. X, at p. 11 and Ex. AA [AR, Vol. VI, Tab 5.8, p. 36, 73].

[128] Dickson #2, at para. 20 [AR, Vol. VII, Tab 5.13, p. 34].

[129] Dickson #2, at paras. 8-13 [AR, Vol. VII, Tab 5.13, pp. 31-33]; Dickson #1, Ex. D, p. 21 [AR, Vol. III, Tab 5.8, p. 28].

[130] VGFN Constitution, Article VI(2) [AR, Vol. VIII, Tab 5.13, p. 139]; Dickson #2, at paras. 15-17 [AR, Vol. VII, Tab 5.13, p. 33].

[131] VGFN Constitution, Article VI(2) [AR, Vol VIII, Tab 5.13, p 139].

circumstances, non-residents hardly have a "majority voice" in the General Assembly, as asserted by VGFN.[132]

74. Fundamentally, VGFN citizens ability to vote for Council and their right to attend General Assembly meetings (even if accessible) do not replace the right to hold office in VGFN's Council. VGFN's Council is the primary governing body of VGFN, responsible for making laws, implementing policies, controlling VGFN finances and assets, and representing VGFN in dealings with other governments, organizations, and industry.[133] The effective exclusion of Ms. Dickson from serving on Council is a severe deprivation of her democratic rights that could have significant impacts on her well-being.

(b) VGFN's Residency Requirement cannot be compared to residency requirements imposed by Yukon or municipalities in Yukon

75. Indigenous peoples living away from their communities are a minority group that has been historically discriminated against, a factor that flows from the specific history of Indigenous peoples in Canada, and the policies they have been subject to. The "profound" decision made by an Indigenous person to live within or apart from their community (assuming choice is even possible) cannot be compared to the "ordinary" residence decisions "faced by the average Canadian".[134]

76. Similarly, VGFN's inclusion of a residency requirement (one that wholly bars a majority of their citizens from serving on VGFN Council) cannot be compared to residency requirements imposed by the Yukon or by municipalities within Yukon.[135] Not only are the circumstances and experiences of Indigenous persons unique and complex, the jurisdictions of those governments generally end at their geographic borders. If a person moves, they may lose the ability to participate in the government of one municipality (or territory), but they gain the ability to participate in a new one.

---

[132] Respondent's Factum, at para. 156.
[133] VGFN Constitution, Articles I, IX, XVI [AR, Vol. VIII, Tab 5.13, p. 134].
[134] *Corbiere*, at para. 15.
[135] Respondent's Factum, at paras. 150, 174.

77. In contrast, VGFN's powers extend beyond the borders of Settlement Land, to their citizens throughout Yukon.[136] Their citizens, regardless of where they live, are co-owners of VGFN land and assets, and have a shared interest in its preservation and enhancement. VGFN's constitution provides that VGFN citizens cannot concurrently hold membership in another First Nation or band.[137] Similar factors were taken into account in *Corbiere*:

> 17 …Off-reserve band members have important interests in band governance which the distinction denies. They are co-owners of the band's assets. The reserve, whether they live on or off it, is their and their children's land. The band council represents them as band members to the community at large, in negotiations with the government, and within Aboriginal organizations. Although there are some matters of purely local interest, which do not as directly affect the interests of off-reserve band members, the complete denial to off-reserve members of the right to vote and participate in band governance treats them as less worthy and entitled, not on the merits of their situation, but simply because they live off-reserve...[138]

78. Given the scope of VGFN's powers, completely excluding all non-resident citizens from serving on Council is not an appropriate or rational criterion, and cannot be justified on the basis Yukon or other cities impose residency requirements. While Ms. Dickson fully agrees it is important for VGFN to have Council representation in Old Crow, this does not necessitate the complete exclusion of citizens living outside of Old Crow. Under their current rules, VGFN has been unable to even fill their Council seats.[139] Surely an empty seat does not lead to better governance than allowing one Councillor to reside in Whitehorse. This outcome is discriminatory to non-residents and harmful to all VGFN citizens.

(c) The purpose and context of the Residency Requirement is properly considered under the s. 1 analysis, not under s. 15(1)

79. VGFN seeks this Court consider the purpose of the Residency Requirement as part of the s. 15(1) analysis, asserting it enhances VGFN self-government and sustains connection to the

---

[136] Self-Government Agreement, s. 13.2 [AR, Vol. V, Tab 5.8, p. 86]; VGFN Constitution, Article II(1) [AR, Vol. VIII, Tab 5.13, p. 135].
[137] VGFN Constitution, Schedule I, s. 2 [AR, Vol VIII, Tab 5.13, p. 150].
[138] *Corbiere*, at para. 17.
[139] Dickson #1, at para. 89 [AR, Vol. II, Tab 5.8, p. 69].

Traditional Territory.[140] Ms. Dickson disagrees that the Residency Requirement achieves these objectives, but in any event, VGFN's purpose in enacting the law is irrelevant to the court's analysis under s. 15(1), which is focussed on the adverse effects on the complainant's dignity.[141] In *Fraser,* Justice Abella stated that "[p]roof of discriminatory intent has never been required to establish a claim under s. 15(1)…Nor is an ameliorative purpose sufficient to shield legislation from s. 15(1) scrutiny".[142] Similarly, it would be inappropriate to take into account characteristics of the government actor who enacted the impugned law as part of the s. 15(1) analysis. The person experiencing discrimination feels its effects regardless of who enacted the law.

80. While these factors may be considered as part of s. 1 of the *Charter*, they do not belong in s. 15. As stated by Justice L'Heureux-Dubé, "s. 15(1) provides for the 'unremitting protection' of the right to equality, in whatever context the analysis takes place, whether there is one disadvantaged or minority group affected or more than one".[143]

81. Accordingly, the Residency Requirement violates s. 15(1) of the *Charter*, and the complete denial of Ms. Dickson's right to serve as an elected member of government is not justified in a free and democratic society, and ought to be declared of no force or effect. As stated in Ms. Dickson's petition, she is open to an order suspending any such declaration for a reasonable period to allow VGFN to design eligibility criteria that accord with s. 15(1) of the *Charter*.

PART IV – COSTS

82. The appellant seeks costs throughout and further seeks that, regardless of the outcome, no costs be awarded against her, as her appeal raises important issues of public interest.

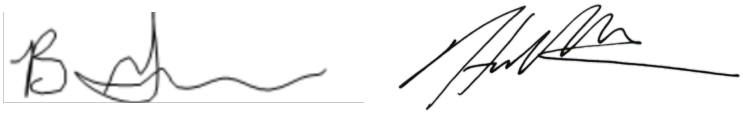
PART V – ORDER SOUGHT

83. The appellant respectfully requests that the appeal be allowed, and the cross-appeal be dismissed, with costs throughout.

---

[140] Respondent's Factum, at para. 147.
[141] *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at para. 47-48.
[142] *Fraser v. Canada (Attorney General),* 2020 SCC 28, at para. 69; *Ontario (Attorney General) v. G*, 2020 SCC 38, at para. 69.
[143] *Corbiere*, at para. 67, per Justice L'Heureux-Dubé, concurring.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of October 2022.



Bridget Gilbride and Harshi Mann
Counsel for the Appellant and Respondent on Cross-Appeal, Cindy Dickson

PART VI – TABLE OF AUTHORITIES

Cases	Paragraph Reference
Band (Eeyouch) c. Napash, 2014 QCCQ 10367	32, 43
Beckman v. Little Salmon/Carmacks First Nation, 2010 SCC 53	25, 26, 28, 35
British Columbia (Technology, Innovation and Citizens' Services) v. Columbus Real Estate Inc., 2018 BCCA 340	25
Cardinal v. Bigstone Cree Nation, 2018 FC 822	58, 71
Chaoulli v. Quebec (Attorney General), 2005 SCC 35	39
Clark v. Abegweit First Nation Band Council, 2019 FC 721	58
Clifton v. Hartley Bay Indian Band, 2005 FC 1030	58
Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203	Cited throughout
Cunningham v. Alberta (Aboriginal Affairs and Northern Development), 2009 ABCA 239	43
Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010	35
Dickson v. Vuntut Gwitchin First Nation, 2020 YKSC 22	Cited throughout
Dickson v. Vuntut Gwitchin First Nation, 2021 YKCA 5	Cited throughout
Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624	31, 34
Esquega v. Canada (Attorney General), 2007 FC 878 (appeal allowed 2008 FCA 182 on remedy only)	58, 69
First Nation of Nacho Nyak Dun v. Yukon, 2017 SCC 58	25, 26
Frank v. Canada (Attorney General), 2019 SCC 1	68
Fraser v. Canada (Attorney General), 2020 SCC 28	44, 66, 79
Godbout v. Longueuil (City), [1997] 3 S.C.R. 844	34, 39
Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component, 2009 SCC 31	36, 43
Harvey v. New Brunswick (Attorney General), [1996] 2 S.C.R. 876	68

Thompson v. Leq'á:mel First Nation, 2007 FC 707	58
Woodward v. Council of the Fort McMurray, 2010 FC 337 (rev'd [2011] F.C.J. No. 1736 (F.C.A.) on s. 1)	58

Legislation	**Paragraph Reference**
Amendment to the Vuntut Gwitchin First Nation Self-Government Agreement, P.C. 2013-0027 (January 31, 2013)	13
An Act Approving Yukon Land Claim Final Agreements, R.S.Y. 2002, c. 240	34
Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1892,* being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, at ss. 1, 15(1), 25 *Charte Canadienne Des Droits et Libertés*, édictée comme annexe B *Canada Act 1982 (UK)*, 1982, c 11, at ss. 1, 15(1), 25	Cited throughout
Charter of Human Rights and Freedoms, CQLR, c. C-12	39
Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, at ss. 35, 52 *Loi constitutionnelle de 1982,* Annexe B de la *Loi de 1982 sur le Canada (R-U),* 1982, c 11, at s. 35, 52	Cited throughout
First Nations (Yukon) Self-Government Act, R.S.Y. 2002, c. 90	34
Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14	39
Order in Council, O.I.C. 1994/230	34
Order in Council, O.I.C. 1995/001	34
Yukon First Nations Land Claims Settlement Act, S.C. 1994, c. 34	34
Yukon First Nations Self-Government Act, S.C. 1994, c. 35	23, 29, 30, 34

Secondary Sources	**Paragraph Reference**
Brittany Collier, "Services for Indigenous People Living in Urban Areas" (December 1, 2020), *Parliamentary Information and Research Service*	61
Canada, House of Commons, *House of Commons Debates*, Vol. 133, No. 76, 1st Sess., 35th Parl., June 1, 1994 (Hon. R. Irwin)	27
Canada, House of Commons, *House of Commons Debates*, Vol. 133, No. 82, 1st Sess., 35th Parl., June 9, 1994 (Hon. T. McWhinney)	27
Government of Canada, *Self-government* (August 25, 2020)	27
Government of Canada, *Vuntut Gwitchin First Nation Self-Government Agreement Implementation Plan* (April 3, 2013)	14
National Association of Friendship Centres, *Urbanization and Indigenous Peoples in Canada: Responses for the Questionnaire from the Special Rapporteur on the Rights of Indigenous Peoples* (February 27, 2021)	61
Statistics Canada, *Indigenous people in urban areas: Vulnerabilities to the socioeconomic impacts of COVID-19* (May 26, 2020)	61