

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

BETWEEN:

**CINDY DICKSON**

Appellant  
(Appellant)

-and-

**VUNTUT GWITCHIN FIRST NATION**

Respondent  
(Respondent)

-and-

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YUKON FIRST NATIONS , PAN-CANADIAN FORUM ON INDIGENOUS RIGHTS  
AND THE CONSTITUTION, CANADIAN CONSTITUTION FOUNDATION, BAND  
MEMBERS ALLIANCE AND ADVOCACY ASSOCIATION OF CANADA and  
FEDERATION OF SOVEREIGN INDIGENOUS NATIONS**

Interveners

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**FACTUM OF THE INTERVENER,  
COUNCIL OF YUKON FIRST NATIONS**

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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## PART I – OVERVIEW AND STATEMENT OF FACTS

### A. Overview

1. The outcome of this appeal has implications for the legitimacy of the entire self-government framework agreed to between Yukon First Nations and the Government of Yukon and the Government of Canada (collectively, with the Government of Yukon, the “**Crown**”). The Council of Yukon First Nations (“**CYFN**”) is an umbrella organization representing ten self-governing First Nations—including the respondent/cross appellant in this appeal, Vuntut Gwitchin First Nation (“**VGFN**”), as an associate member of CYFN—all of which have modern treaties, self-government agreements and constitutions like those in this appeal. Given the substantial similarity between all Yukon First Nations’ self-government agreements, this Court’s judgement will establish the validity, or irrelevance, of self-governing Yukon First Nations’ self-government agreements and constitutions in Canadian constitutional law and will entrench or erode the concept of a nation-to-nation relationship between First Nations and the Crown.

2. Yukon First Nation self-government agreements and constitutions flow from commitments made in modern treaties between Yukon First Nations and the Crown and should be interpreted and respected in a manner consistent with the principles applicable to the interpretation of modern treaties. To that end, this Court should recognize the *sui generis* nature of Yukon First Nation self-government agreements and the constitutions that are enacted further to those agreements. Self-government agreements codify the unique and heavily negotiated nation-to-nation relationship between Yukon First Nations and the Crown, and confirm the recognition and legitimacy of Yukon First Nations’ inherent right of self-government, the most fundamental expression of which is a First Nations’ own constitution. First Nations’ self-government agreements and constitutions must be afforded the legitimacy owing to foundational documents of their nature, and the corresponding protection of s. 25 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”).<sup>1</sup>

3. CYFN submits that full force must be given to the broad protections afforded by s. 25 of the *Charter* by finding that self-government agreements and First Nation constitutions that are enacted further to such agreements are *sui generis* in nature, and that self-government rights

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<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11

affirmed and codified in such documents are protected by s. 25. This Court has the important role of declaring that Yukon First Nations' rights of self-government, including their own constitutional laws, have a legitimate place in the fabric of Canadian constitutional law.

## **B. Statement of Facts**

4. The VGFN Final Agreement—like all Yukon First Nations Final Agreements—incorporate the terms of the 1993 Umbrella Final Agreement (the “UFA”)<sup>2</sup>, which was negotiated and signed by the Council for Yukon Indians (the predecessor to CYFN)<sup>3</sup> and the Crown. The UFA established a model for First Nations self-government in the Yukon and provided the framework within which each Yukon First Nation has or will conclude land claims agreements with the Crown (the “**Final Agreements**”). The Final Agreements incorporate all of the text of the UFA, with the addition of specific provisions which apply to the individual First Nations. Eleven Yukon First Nations—including the respondent/cross-appellant in this appeal—have entered into Final Agreements, which are land claims agreements within the meaning of s. 35 of the *Constitution Act, 1982*.<sup>4</sup>

5. As part of the UFA negotiations, CYFN and Yukon First Nations negotiated a model self-government agreement with federal and territorial officials, which served as a template agreement for Yukon First Nations' self-government agreements with the Crown (the “**Self-Government Agreements**”), including the VGFN Self-Government Agreement.<sup>5</sup> All Self-Government Agreements entered into by Yukon First Nations as part of the UFA modern treaty framework are substantially similar in content.

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<sup>2</sup> [Umbrella Final Agreement](#) between the Government of Canada, the Government of Yukon and the Council for Yukon Indians, May 29, 1993 [UFA]

<sup>3</sup> Chapter 1 of the UFA includes any successor to the Council for Yukon Indians; references to the Council for Yukon Indians in the UFA and in the Final Agreements refer to CYFN.

<sup>4</sup> *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11. See [UFA](#), at Ch. 2.2.1, pdf p 26. See also Vuntut Gwitchin First Nation Final Agreement made between the Vuntut Gwitchin First Nation, the Government of Canada and the Government of Yukon on May 29, 1993 [VGFN Final Agreement] at Ch. 2.2.1, in Affidavit #1 of Cindy Dickson, sworn February 15, 2019 [Dickson Affidavit #1], Exhibit E, AR Vol. III, Tab 5.8 at 91

<sup>5</sup> Vuntut Gwitchin First Nation Self-Government Agreement [VGFN SGA] in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at 64

6. Each Final Agreement includes a commitment by each Yukon First Nation and the Crown to negotiate a Self-Government Agreement pursuant to “Ch. 24—Yukon Indian Self-Government” of the UFA and the Final Agreements.<sup>6</sup> The UFA and Final Agreements provide that Self-Government Agreements entered into pursuant to Ch. 24 will not be construed to be treaty rights within the meaning of s. 35 of *The Constitution Act, 1982*.<sup>7</sup> Notably, the UFA and Final Agreements were enacted without prejudice to the rights of Yukon First Nations pursuant to s. 25 and s. 35 of the *Constitution Act, 1982*.<sup>8</sup> It is open to Yukon First Nations who have entered into Self-Government Agreements to also act pursuant to the s. 35 inherent rights to self-government.

7. The Self-Government Agreements, which established and codified the nation-to-nation relationship, are unique to the Yukon and, together with the Final Agreements, recognize and validate First Nations’ inherent right to self-government and affirm, among other matters, a Yukon First Nation’s exclusive power to enact laws relating to its internal administration and management of its citizens and land.<sup>9</sup>

8. Each Self-Government Agreement requires self-governing Yukon First Nations to enact a constitution that would provide for the matters required by Ch. 10 of the Self-Government Agreements, including: establishing governing bodies and provide for their powers, duties, composition, membership and procedures (Ch. 10.1.2); the recognition and protection of the rights and freedoms of citizens (Ch. 10.1.4); and, the process for challenging the validity of the laws enacted by the First Nation and quashing invalid laws (Ch. 10.1.5).<sup>10</sup> Constitutions of self-governing Yukon First Nations are intended to be based on the view of each First Nation's citizens and reflect that Yukon First Nation’s history, culture and values with respect to its governance practices.

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<sup>6</sup> [UFA](#), at Ch. 24, pdf p 273; VGFN Final Agreement at Ch. 24, in Dickson Affidavit #1, Exhibit E, AR Vol. V, Tab 5.8 at 1

<sup>7</sup> [UFA](#), at Ch. 24.12.1, pdf p 279. *See also* VGFN Final Agreement, at Ch. 24.12.1, in Dickson Affidavit #1 Exhibit E, AR Vol. V, Tab 5.8 at 7

<sup>8</sup> [UFA](#), at s. 24.12.2 and 24.12.4, pdf p 279-280. *See also for example* VGFN Final Agreement, at Ch. 24.12.2 and 24.12.4 in Dickson Affidavit #1 Exhibit E, AR Vol. V, Tab 5.8 at 7-8

<sup>9</sup> *See for example* VGFN SGA at Ch. 13.1.1, in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at p. 86

<sup>10</sup> *See for example* VGFN SGA at Ch. 10, in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at 83

9. VGFN enacted its own constitution further to Ch. 10 of the VGFN Self-Government Agreement (the “**VGFN Constitution**”); the VGFN Constitution provides that any citizen elected to VGFN Council has the responsibility, in fulfilling their duties and exercising their powers, to reside at the location of the seat of government, within Settlement Land, at the heart of the Traditional Territory (the “**Residency Requirement**”).<sup>11</sup> The Residency Requirement is an expression of VGFN's self-government rights in a manner that acknowledges its special relationship to its Traditional Territory.<sup>12</sup> The Residency Requirement is an example of a law related to the internal governance of a Yukon First Nation which, pursuant to the VGFN Self-Government Agreement, is within its exclusive jurisdiction of VGFN and is mandated to be in the VGFN Constitution.<sup>13</sup>

10. The Crown was generally aware of the legal scope and nature of the self-governing Yukon First Nations’ constitutions prior to their coming into force. Before each Final Agreement and Self-Government Agreement was brought into legal effect, it was the general practice for the federal and territorial negotiation officials to review the Yukon First Nations’ constitution, and, if necessary, raise concerns or seek clarity about the provisions of the First Nations’ constitution.

## **PART II – STATEMENT OF ISSUES**

11. If this Court finds that the *Charter* applies to the Residency Requirement,<sup>14</sup> is the Residency Requirement protected by s. 25 of the *Charter*?

## **PART III – STATEMENT OF ARGUMENT**

12. CYFN submits that Yukon First Nation self-government rights—including the right to make laws related to the internal governance of a Yukon First Nation, such as the Residency Requirement—which have been affirmed by the UFA and Final Agreement modern treaty framework and codified in the Self-Government Agreements and constitutions of self-governing

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<sup>11</sup> VGFN Constitution at Article XI, s. 2, Affidavit #2 of Cindy Dickson, affirmed September 10, 2019, AR Vol. VIII, Tab 5.13 at 143

<sup>12</sup> *Dickson v Vuntut Gwitchin First Nation*, [2021 YKCA 5](#) at paras 26-28 (citations omitted)

[**YKCA Reasons**]

<sup>13</sup> VGFN SGA at Ch. 10.1.2 and 13.1.1, in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at 83 and 86

<sup>14</sup> CYFN supports VGFN's position that the *Charter* does not apply to the Residency Requirement

Yukon First Nations,<sup>15</sup> are part of the modern treaty process and are *sui generis* in nature and are thus entitled to the protective shield of s. 25.

**A. Self-Government Agreements and constitutions of self-governing Yukon First Nations are *sui generis* in nature**

13. CYFN submits that the interpretation principles applicable to the Final Agreements—including the VGFN Final Agreement—as modern treaties are equally applicable to the Self-Government Agreements and constitutions of self-governing First Nations that result from the Final Agreement framework. These foundational documents of indigenous self-government, which flow from commitments made in a modern treaty, must be interpreted and respected in a manner consistent with the special nature of the *sui generis* Indigenous-Crown relationship and further to the “national commitment” to reconciliation.<sup>16</sup>

14. This Court has recognized that “[t]he fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions”.<sup>17</sup> The UFA and Final Agreements—including the VGFN Final Agreement—are modern treaties of a *sui generis* nature<sup>18</sup> that are heralded as a “model for reconciliation”.<sup>19</sup> Modern treaties, such as the Final Agreements, “are intended to renew the relationship between Indigenous peoples and the Crown to one of equal partnership.”<sup>20</sup>

15. The Final Agreement framework “establishes institutions for self-government and the management of lands and resources...and is intended to foster a positive and mutually respectful long-term relationship between the signatories.”<sup>21</sup> The VGFN Self-Government Agreement—like

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<sup>15</sup> CYFN acknowledges that the Residency Requirement is an exercise of VGFN's inherent right to self-government, and notes that inclusion of such rights in Final Agreements, Self-Government Agreements or constitutions of Yukon First Nations does not invalidate their inherent nature.

<sup>16</sup> *R v Marshall*, [1999] 3 SCR 533, para 45; [YKCA Reasons](#), *supra* note 12, at para 93

<sup>17</sup> *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 1

<sup>18</sup> *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58 [*Nacho Nyak Dun*] at paras 33-34

<sup>19</sup> *Id.* at para 10; *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 [*Beckman*] at para 10

<sup>20</sup> *Nacho Nyak Dun*, *supra* note 18 at para 33 (citations omitted)

<sup>21</sup> *Nacho Nyak Dun*, *supra* note 18 at para 10 (citing *Beckman*, *supra* note 19 at paras 8 and 10)

all Yukon Self-Government Agreements—was negotiated and entered into in accordance with the UFA and Ch. 24 of the VGFN Final Agreement and confirms the “mutual intentions of the parties, which include maintaining traditional Vuntut Gwitchin decision-making structures within contemporary Vuntut Gwitchin society, protecting Vuntut Gwitchin’s land-based way of life and achieving certainty in the relationship between Vuntut Gwitchin, Canada and Yukon.”<sup>22</sup>

16. Self-Government Agreements are a key component of the reconciliation process and in the establishment of an equal partnership between the Crown and Yukon First Nations—while Self-Government Agreements are not treaties, they were executed pursuant to commitments made by both Yukon First Nations and the Crown in the Final Agreements, which are modern treaties. The Final Agreements and Self-Government Agreements together establish a unique and nation-to-nation relationship between Yukon First Nations and the Crown and signify the recognition of Yukon First Nations’ inherent right of self-government.<sup>23</sup>

17. The Yukon Court of Appeal rightly recognized the *sui generis* nature of the Self-Government Agreements:

...rather than engage in the perhaps futile debate regarding inherent Aboriginal rights and the source of the authority to self-govern, courts should recognize the *sui generis* nature of modern treaties (and, I would suggest, self-government agreements) and interpret them in a manner consistent with the ‘national commitment’ to reconciliation.<sup>24</sup>

18. CYFN submits this Court should come to the same conclusion and extend it to the First Nation constitutions enacted further to Self-Government Agreements, and particularly those constitutional provisions—such as the Residency Requirement—that relate to the internal governance of a Yukon First Nation and are in accordance with the understanding reached in a Self-Government Agreement. The most fundamental expression of a Yukon First Nations’ self-government is that First Nations’ own constitution. The Yukon Supreme Court has recognized that “the very concept of aboriginal self-government, as set out in the Preamble to [the First Nation Constitution] is ‘to assume and exercise full responsibility for our own well-being...’”<sup>25</sup>

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<sup>22</sup> *Dickson v Vuntut Gwitchin First Nation*, [2020 YKSC 22](#) at para 54

<sup>23</sup> *Teslin Tlingit Council v Canada (Attorney General)*, [2019 YKSC 3](#) at para 16

<sup>24</sup> [YKCA Reasons](#), *supra* note 12, at para 93

<sup>25</sup> *Harpe v Massie*, [2005 YKSC 54](#) at para 43 [*Harpe 2005*]

19. This Court has recognized that the Final Agreements “may set out in precise terms a cooperative governance relationship.”<sup>26</sup> This is precisely the case here, where the Final Agreements created the legal basis for a nation-to-nation relationship by requiring the parties to negotiate Self-Government Agreements; the Self-Government Agreements in turn represent an agreement between the Crown and Yukon First Nations as to the nature of Yukon First Nation self-government. This agreed to framework for self-government includes an acknowledgment of a Yukon First Nations’ exclusive jurisdiction to enact laws relating to its internal administration and management of its citizens and land,<sup>27</sup> and an explicit requirement for each First Nation who enters into a Self-Government Agreement to enact a constitution that must provide for the matters set out in Ch. 10 of the Self Government Agreements. The Self-Government Agreements, and the constitutions enacted pursuant to them, fulfill the commitments made by the parties in the Final Agreements.

20. The Yukon First Nations’ constitutions are directed by Ch. 10 of the Self-Government Agreements to address core governance matters; such governance matters are intended to incorporate and reflect each First Nation’s specific cultural traditions and values, which may vary from community to community. For example, Ch. 10.1.4 of the Self-Government Agreements requires every constitution to set out the rights and freedoms of their citizens.<sup>28</sup> Indeed, the rights and freedoms recognized and protected by the constitutions of many of self-governing Yukon First Nations appear to be consistent generally with many *Charter* provisions, while still incorporating the unique cultural traditions and values of each community. Self-governing Yukon First Nations seek to protect and uphold their citizens’ rights just like any Canadian government would, they simply wish to do so on terms that align with their unique history, culture, values and traditions.

21. The Residency Requirement fulfills VGFN’s commitment to include in the VGFN Constitution provisions that establish its governing bodies and provide for their powers, duties, composition, membership and procedures, pursuant to Ch. 10.1.2 of the VGFN Self-Government

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<sup>26</sup> *Nacho Nyak Dun*, *supra* note 18 at para 33

<sup>27</sup> *See for example* VGFN SGA at Ch. 13.1.1, in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at 86

<sup>28</sup> *See for example* VGFN SGA at Ch. 10.1.4, in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at 83



Agreement.<sup>29</sup> The Crown and this Court must now fulfill the commitments made in the VGFN Final Agreement and VGFN Self-Government Agreement to respect and honour VGFN's exclusive right to establish the requirements for its own governing bodies and to set out those requirements (including the Residency Requirement) in the VGFN Constitution.

22. "Reconciliation is found in the respectful fulfillment of a modern treaty's terms";<sup>30</sup> CYFN submits that respectful fulfillment of the Final Agreements calls for the Self-Government Agreements and First Nations constitutions that flow from the commitments made in the Final Agreements to be recognized as integral to the implementation of the Final Agreements and thus *sui generis* in nature; such documents, and the rights and processes expressed therein, must be afforded the corresponding status that such *sui generis* rights are entitled to in Canadian constitutional law. This is particularly the case for those constitutional provisions (like the Residency Requirement), which fulfill the requirements in Ch. 10 of the Self-Government Agreements and relate to the internal governance of a First Nation.

**B. Section 25 shields self-government rights codified in *sui generis* documents, including the Self-Government Agreements and constitutions of self-governing Yukon First Nations**

23. "A First Nation constitution must be interpreted as a constitutional document, not a statute".<sup>31</sup> The principle of reconciliation is respected if the expressions of self-government rights in Self-Government Agreements and constitutions of Yukon First Nations are treated as rights of a *sui generis* nature. The VGFN Constitution was enacted not only pursuant to the inherent right to self-government, but also in accordance with the Final Agreement and Self-Government Agreement framework. The VGFN Constitution—like all constitutions of self-governing Yukon First Nations—is of a *sui generis* character, and should be shielded by the protections afforded in s. 25.<sup>32</sup> This is particularly the case for those constitutional provisions that relate to the requirements of a constitution mandated by the Self-Government Agreements, such as the

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<sup>29</sup> VGFN SGA at Ch. 10.1.2, in Dickson Affidavit #1, Exhibit F, AR Vol. V, Tab 5.8 at 83

<sup>30</sup> *Nacho Nyak Dun*, *supra* note 18 at paras 37-38

<sup>31</sup> *Harpe v Massie and Ta'an Kwäch'än Council*, [2006 YKSC 1](#) at para 94. *See also Harpe 2005*, *supra* note 25 at para 37

<sup>32</sup> CYFN also supports the position taken by VGFN that the Residency Requirement should be protected by section 25 as an inherent right to self-government.

Residency Requirement. Failure to do so would have adverse implications for the future of the nation-to-nation relationship between Yukon First Nations and the Crown and would erode trust in the reconciliation process.

24. S. 25 is a “shield” that protects “aboriginal, treaty and other rights or freedoms” from being adversely affected by provisions of the *Charter*.<sup>33</sup> In *R v Kapp*, the minority judgment of the Court noted “other rights or freedoms” in s. 25 is “all-embrative”; this indicates the protections afforded by s. 25 are meant to be broad.<sup>34</sup> CYFN submits that the Courts below correctly concluded that s. 25 of the *Charter* shields the Residency Requirement; but CYFN further submits that the shield of s. 25 extends to protect all *sui generis* rights, including self-government rights affirmed in the Final Agreement and Self-Government Agreement framework and codified in Yukon First Nations' constitutions.

25. Self-government rights—such as the Residency Requirement—are precisely the type of rights s. 25 is meant to protect from abrogation or derogation:

Whatever rights to self-government exist, whether derived from aboriginal, treaty, contractual or statutory sources, they are section 25 rights or freedoms. Thus the *Charter* cannot abrogate or derogate from the right to govern. [...] Section 25, in other words, not only prevents distinctive Aboriginal understandings and approaches from being washed away in a flood of undifferentiated Charter interpretation; it appears to prevent the Charter from interfering with the exercise of self-government rights at all.<sup>35</sup>

26. Indeed, constitutions of self-governing Yukon First Nations have been recognized as being entitled to the protections afforded by s. 25.<sup>36</sup> The *sui generis* nature of the Final Agreements extends to the Self-Government Agreements and constitutions that stem from the Final Agreement framework. This necessitates interpreting s. 25 in a way that ensures there is no abrogation or derogation of self-government rights agreed to between the parties in the modern treaty process.

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<sup>33</sup> *Campbell et al v AG BC/AG Cda & Nisga'a Nation et al*, [2000 BCSC 1123](#) at para 156

<sup>34</sup> *R v Kapp*, [2008 SCC 41](#) at para 101

<sup>35</sup> Kerry Wilkins, *But we Need the Eggs: The Royal Commission, the Charter of Rights and the Inherent Right of Self-Government* (1999) 49:1 UTLJ 53 at pp. 110-11 (citations omitted)

<sup>36</sup> [Harpe 2005](#), *supra* note 25 at para 36

27. The Residency Requirement is a self-government right relating to the internal governance of a First Nation that has been affirmed in the Final Agreement and Self-Government Agreement framework and is codified in the VGFN Constitution; it is *sui generis* and is entitled to the protective shield of s. 25 and cannot be abrogated or derogated from. Failure to find s. 25 shields such self-government rights would be a step back from reconciliation.

28. First Nation constitutions provide important certainty and cultural protections for self-governing Yukon First Nations and their citizens. The structures of values and traditions that Yukon First Nations create through their own unique constitutional laws must carry constitutional weight in Canadian law, otherwise their constitutions have no practical value, and, by extension, the self-government commitments made by the Crown in the Final Agreements and Self-Government agreements are undermined. The scope and nature of Yukon First Nations self-governance, and its perceived legitimacy, are in jeopardy if First Nations' Self-Government Agreements and self-government rights expressed in their constitutions are not given the utmost power under the law, including recognition of their *sui generis* nature and protection by s. 25.

29. The Residency Requirement in the VGFN Constitution is entitled to the protections afforded by s. 25 of the *Charter* as a fundamental expression of the inherent right to self-government and resulting from the *sui generis* nature of the VGFN Final Agreement, VGFN Self-Government Agreement and VGFN Constitution. Any abrogation or derogation of the Residency Requirement by the application of the *Charter* is a violation of s. 25 and not permitted.

#### **PART IV – SUBMISSIONS ON COSTS**

30. CYFN seeks no costs and asks that no costs be awarded against it.

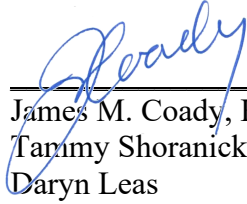
#### **PART V – ORDER**

31. CFYN takes no position on the outcome of this appeal.

#### **PART VI – SUBMISSIONS ON PUBLICATION**

32. N/A

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 2022.

A handwritten signature in blue ink, appearing to read "Ready", is written over a horizontal line.

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James M. Coady, K.C.  
Tammy Shoranick  
Daryn Leas  
*Counsel for the Intervener,  
Council of Yukon First Nations*

## PART VII – AUTHORITIES

## A. Caselaw

No.	Authority	Paragraph Reference
1.	<i>Beckman v Little Salmon/Carmacks First Nation</i> , <a href="#">2010 SCC 53</a>	14, 15
2.	<i>Campbell et al v AG BC/AG Cda &amp; Nisga'a Nation et al</i> , <a href="#">2000 BCSC 1123</a>	24
3.	<i>Dickson v Vuntut Gwitchin First Nation</i> , <a href="#">2020 YKSC 22</a>	15
4.	<i>Dickson v Vuntut Gwitchin First Nation</i> , <a href="#">2021 YKCA 5</a>	9, 13, 17
5.	<i>First Nation of Nacho Nyak Dun v Yukon</i> , <a href="#">2017 SCC 58</a>	14, 15, 19, 22
6.	<i>Harpe v Massie</i> , <a href="#">2005 YKSC 54</a>	18, 23, 26
7.	<i>Harpe v Massie and Ta'an Kwäch'än Council</i> , <a href="#">2006 YKSC 1</a>	23
8.	<i>Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)</i> , <a href="#">2005 SCC 69</a>	14
9.	<i>R v Kapp</i> , <a href="#">2008 SCC 41</a>	24
10.	<i>R v Marshall</i> , <a href="#">[1999] 3 SCR 533</a>	13
11.	<i>Teslin Tlingit Council v Canada (Attorney General)</i> , <a href="#">2019 YKSC 3</a>	16

## B. Secondary Sources

No.	Secondary Source	Paragraph Reference
1.	Kerry Wilkins, <i>But we Need the Eggs: The Royal Commission, the Charter of Rights and the Inherent Right of Self-Government</i> (1999) 49:1 UTLJ 53 at pp. 110-11 (citations omitted)	25

**C. Statutes, Regulations, Rules, etc.**

<b>No.</b>	<b>Statute, Regulation, Rule, etc.</b>	<b>Section, Rule, Etc.</b>
1.	<i>Canadian Charter of Rights and Freedoms, Part 1 of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11</i>	<a href="#">s. 25</a>
	<i>Charte Canadienne Des Droits et Libertés, Partie 1 de la Loi constitutionnelle de 1982 édictée comme Annexe B Canada Act 1982 (UK), 1982, c 11</i>	<a href="#">s. 25</a>
2.	<i>Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11</i>	<a href="#">s. 35</a>
	<i>Loi constitutionnelle de 1982, édictée comme Annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11</i>	<a href="#">s. 35</a>
3.	<i>Rules of the Supreme Court of Canada, SOR/2002-156</i>	<a href="#">Rule 37</a> <a href="#">Rule 42</a>
	<i>Règles de la Cour suprême du Canada, DORS/2002-156</i>	<a href="#">Règle 37</a> <a href="#">Règle 42</a>

**D. Other Authorities**

<b>No.</b>	<b>Other Authorities</b>	<b>Section, Rule, Etc.</b>
1.	<a href="#">Umbrella Final Agreement</a> between the Government of Canada, the Government of Yukon and the Council for Yukon Indians, May 29, 1993	Chapter 1, 2.2.1, 24, 24.12.1, 24.12.2, 24.12.4

**PART VII – STATUTES, REGULATIONS, ETC.**

**A. Umbrella Final Agreement between the Government of Canada, the Government of Yukon and the Council for Yukon Indians, May 29, 1993**

**Umbrella Final Agreement between the Government of Canada, the Government of Yukon and the Council for Yukon Indians, May 29, 1993**

Chapter 1 – Definitions

“Council for Yukon Indians” includes any successor to the Council for Yukon Indians and, in the absence of any successor, the Yukon First Nations.

2.1.1 Ratification of the Umbrella Final Agreement by the Yukon First Nations, through the Council for Yukon Indians, and by Canada and the Yukon signifies their mutual intention to negotiate Yukon First Nation Final Agreements in accordance with the Umbrella Final Agreement.

....

2.2.1 2. Settlement Agreements shall be land claims agreements within the meaning of section 35 of the Constitution Act, 1982.

...

**CHAPTER 24 - YUKON INDIAN SELF-GOVERNMENT**

**24.1.0 General**

24.1.1 Government shall enter into negotiations with each Yukon First Nation which so requests with a view to concluding self-government agreements appropriate to the circumstances of the affected Yukon First Nation.

24.1.2 Subject to negotiation of an agreement pursuant to 24.1.1 and in conformity with the Constitution of Canada, the powers of a Yukon First Nation may include the powers to:

24.1.2.1 enact laws and regulations of a local nature for the good government of its Settlement Land and the inhabitants of such land, and for the general welfare and development of the Yukon First Nation;

24.1.2.2 develop and administer programs in areas of Yukon First Nation responsibility;

24.1.2.3 appoint representatives to boards, councils, commissions and committees as provided for in the Settlement Agreements;

24.1.2.4 allocate, administer and manage Settlement Land;

24.1.2.5 contract with Persons or governments;

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- 24.1.2.6 form corporations and other legal entities;
- 24.1.2.7 borrow money; and
- 24.1.2.8 levy and collect fees for the use or occupation of Settlement Land including property taxes.

24.1.3 Self-government agreements shall not affect:

- 24.1.3.1 the rights of Yukon Indian People as Canadian citizens; and
- 24.1.3.2 unless otherwise provided pursuant to a self-government agreement or legislation enacted thereunder, their entitlement to all of the services, benefits and protections of other citizens applicable from time to time.

**24.2.0 Subjects for Negotiation**

24.2.1 Negotiations respecting a self-government agreement for a Yukon First Nation may include the following subjects:

- 24.2.1.1 the Yukon First Nation constitution;
- 24.2.1.2 the Yukon First Nation's community infrastructure, public works, government services and Local Government Services;
- 24.2.1.3 community development and social programs;
- 24.2.1.4 education and training;
- 24.2.1.5 communications;
- 24.2.1.6 culture and aboriginal languages;
- 24.2.1.7 spiritual beliefs and practices;
- 24.2.1.8 health services;
- 24.2.1.9 personnel administration;
- 24.2.1.10 civil and family matters;
- 24.2.1.11 subject to federal tax Law, the raising of revenue for local purposes including direct taxation;
- 24.2.1.12 economic development;
- 24.2.1.13 the administration of justice and the maintenance of law and order;
- 24.2.1.14 relations with Canada, the Yukon and local governments;
- 24.2.1.15 financial transfer arrangements;
- 24.2.1.16 an implementation plan; and
- 24.2.1.17 all matters ancillary to the foregoing, or as may be otherwise agreed.



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**24.3.0 Devolution**

- 24.3.1 Government and a Yukon First Nation may negotiate the devolution of programs and services associated with the responsibilities of the Yukon First Nation as agreed in negotiations over matters enumerated in 24.2.1.
- 24.3.2 For greater certainty, pursuant to 24.2.1, Government and the Yukon First Nation may negotiate the devolution of programs and services dealing with the following:
- 24.3.2.1 Yukon First Nation authority for the design, delivery and management of Indian language and cultural curriculum;
- 24.3.2.2 Yukon First Nation authority for the design, delivery and administration of tribal justice; and
- 24.3.2.3 the division and sharing of Yukon First Nation and Government responsibility for the design, delivery and administration of programs relating to,

**Education**

- (a) Indian student counselling,
- (b) cross cultural teacher/administrator orientation,
- (c) composition of teaching staff,
- (d) early childhood, special, and adult education curriculum,
- (e) kindergarten through grade 12 curriculum,
- (f) the evaluation of teachers, administrators and other employees,

**Health and Social Services**

- (g) family and child welfare, including custom adoption,
- (h) substance abuse programs,
- (i) juvenile offender programs,
- (j) child development programs,
- (k) programs for the mentally, physically, emotionally or socially disabled,
- (l) other health and social services that the parties may agree to from time to time,

**Justice**

- (m) policing and enforcement of law,
- (n) corrections,
- (o) probation services,

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(p) community conflict resolution,

**Employment Opportunities**

(q) increased employment opportunities for Yukon Indian People; and

24.3.2.4 such other programs and services as the parties may agree.

**24.4.0 Participation**

24.4.1 The parties to the Umbrella Final Agreement may negotiate guaranteed representation for Yukon First Nations on government commissions, councils, boards and committees in the Yukon established to deal with the following matters:

24.4.1.1 education;

24.4.1.2 health and social services;

24.4.1.3 justice and law enforcement; and

24.4.1.4 other matters as may be agreed.

**24.5.0 Yukon First Nation Constitutions**

24.5.1 Negotiations regarding a Yukon First Nation constitution may include the following:

24.5.1.1 composition, structure and powers of the Yukon First Nation government institutions;

24.5.1.2 membership;

24.5.1.3 election procedures;

24.5.1.4 meeting procedures;

24.5.1.5 financial management procedures;

24.5.1.6 composition and powers of all committees;

24.5.1.7 the rights of individual members of a Yukon First Nation with respect to the powers of the Yukon First Nation government institutions;

24.5.1.8 amending procedures;

24.5.1.9 internal management of the Yukon First Nation, including regional or district management structures; and

24.5.1.10 use, occupation and disposition of the Yukon First Nation's Settlement Land and resources.

**24.6.0 Financial Transfer Arrangements**

24.6.1 The intent of any financial transfer arrangement negotiated in accordance with 24.2.1.15 shall be to:

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- 24.6.1.1 specify a method for determining levels of Government financial transfers to the Yukon First Nation in question;
- 24.6.1.2 specify obligations of all parties, including minimum program delivery standards for programs to be delivered by the Yukon First Nation; and
- 24.6.1.3 specify accountability requirements with respect to transferred funds.
- 24.6.2 Such financial transfer arrangements shall address requirements for contributions from the Government towards the funding of Yukon First Nation institutions and programs.
- 24.6.3 Financial transfer arrangements may provide for the transfer of funds through a block-funding mechanism.
- 24.6.4 Financial transfer arrangements may be re-negotiable every five years.
- 24.7.0 Regional or District Structures**
- 24.7.1 A Yukon First Nation, Canada, the Yukon and Yukon municipalities, may develop common administrative or planning structures within a community, region or district of the Yukon and these structures shall:
  - 24.7.1.1 remain under the control of all Yukon residents within that district; and
  - 24.7.1.2 include direct representation by the affected Yukon First Nations within that district.
- 24.8.0 Status of Yukon First Nations under the Income Tax Act**
- 24.8.1 Agreements negotiated pursuant to 24.1.1 shall include provisions respecting the status of a Yukon First Nation as a municipality or public body performing the functions of government or a municipal corporation under the Income Tax Act, S.C. 1970-71-72, c. 63.
- 24.8.2 Unless the parties otherwise agree, an entity described in 24.8.1 shall be restricted by its enabling authority to the provision of government or other public services and, in particular, it shall not engage in commercial activities nor control any entity that carries on a commercial activity or is engaged in making investments.
- 24.9.0 Legislation**
- 24.9.1 The parties to the Umbrella Final Agreement shall negotiate guidelines for drafting Legislation to bring into effect agreements negotiated pursuant to 24.1.1.
- 24.9.2 Subject to 24.9.1, the Yukon shall recommend to its Legislative Assembly, Legislation separate from the Settlement Legislation to bring into effect those agreements negotiated pursuant to 24.1.1 for which the Yukon has legislative authority.

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24.9.3 Subject to 24.9.1, Canada shall recommend to Parliament Legislation separate from the Settlement Legislation to bring into effect those agreements negotiated pursuant to 24.1.1 for which Canada has legislative authority.

**24.10.0 Amendment**

24.10.1 Government shall consult with affected Yukon First Nations before recommending to Parliament or the Yukon Legislative Assembly, as the case may be, Legislation to amend or repeal Legislation enacted to give effect to those agreements negotiated pursuant to 24.1.1.

24.10.2 The manner of consultation in 24.10.1 shall be set out in each self-government agreement.

24.10.3 Yukon First Nations constitutions may be amended only by internal amending formulae or by amendment to the self-government Legislation.

**24.11.0 Process**

24.11.1 Prior to commencing substantive negotiations on self-government agreements, the parties to such negotiations shall agree on:

24.11.1.1 the order in which the matters to be negotiated are to be addressed;

24.11.1.2 the time frame within which negotiations will take place, which shall be concurrent with time frames established for the negotiation of Yukon First Nation Final Agreements; and

24.11.1.3 such other matters as may be necessary or desirable to ensure that negotiations proceed in a logical and efficient manner.

24.11.2 Funding for negotiations shall be according to federal policy for self-government negotiations.

**24.12.0 Protection**

24.12.1 Agreements entered into pursuant to this chapter and any Legislation enacted to implement such agreements shall not be construed to be treaty rights within the meaning of section 35 of the Constitution Act, 1982.

24.12.2 Nothing in this chapter or in the Settlement Agreements shall preclude Yukon First Nations, if agreed to by the Yukon First Nations and Canada, from acquiring constitutional protection for self-government as provided in future constitutional amendments.

24.12.3 Any amendments to this chapter related to the constitutional protection for self-government in whole or in part shall be by agreement of Canada and the Yukon First Nations.

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24.12.4 Nothing in 24.12.1, 24.12.2 or 24.12.3 shall be construed to affect the interpretation of aboriginal rights within the meaning of sections 25 or 35 of the Constitution Act, 1982.