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December 16, 2021

**VIA EMAIL**

Supreme Court of Canada  
301 Wellington Street  
Ottawa ON K1A 0J1

**Attention: Acting Registrar**

Dear Sir/Madame:

**Re: *Dickson v Vuntut Gwitchin First Nation*, SCC File No. 39856**

We write in reply to the Applicant's response of December 6th to Vuntut Gwitchin First Nation's (VGFN) application for leave to cross-appeal. We underscore that VGFN's application is conditional on the Applicant being granted leave to appeal respecting the issues the Applicant raises in regard to s. 25. VGFN's position is that the application for leave to appeal should be denied.

The Applicant has not expressly opposed VGFN's conditional application for leave to cross-appeal. VGFN nevertheless takes this opportunity to reply briefly to three comments made in the Applicant's response submission.

The Applicant states that s. 32 of the *Charter* has been given extensive consideration by this Court. The application of the *Charter* has been considered and decided in a number of contexts, but until this case no court, including this Court, has expanded the application of the *Charter* to a self-governing First Nation exercising its self-governance pursuant to a final land claim agreement and further to its inherent self-government rights and traditions. This case – particularly if applied more broadly than the appropriately-narrow finding of the Yukon Court of Appeal – presents a distinct and particularly problematic application of the *Charter* that undermines both inherent and externally-confirmed Indigenous governance.

The Applicant states that there is no suggestion by Canadian courts that the analogous ground of discrimination articulated in *Corbiere* ought to be revisited. To the contrary, the Yukon Supreme Court's decision (which was not adopted by the Yukon Court of Appeal) expresses exactly this need in its application of the *Corbiere* decision.

Chief Justice Veale's reasons set out the factual backdrop at issue in *Corbiere*, and then articulate several significant distinctions of the factual context of the Residency Requirement in this case [para 145]. In doing so, the YKSC indicates that the *Corbiere* requirement is of a substantively different

nature than the Residency Requirement, given the nature of the body imposing the requirement (i.e. VGFN, a self-governing First Nation engaging traditional decision-making structures, rather than the federal government imposing restrictions through the *Indian Act*). While the Federal Court in particular has consistently applied the *Corbiere* analogous ground, that body of law has not addressed the context at play in this case. Here, particularly given Chief Justice Veale's expression of many of the applicable distinctions, VGFN's Residency Requirement and the challenge to it reveals that "aboriginality-residence" should not be understood as inflexibly and monolithically as it has been previously treated.

Finally, the Applicant questions how it is possible that the application of the *Charter* might be a narrow issue for Ms. Dickson, whereas it is a broader concern for VGFN. This distinction illustrates a fundamental feature of this case: the tension between individual rights and collective rights. Although Ms. Dickson is a citizen of VGFN and may have a broader theoretical interest in how the *Charter* and VGFN's governance interact, the goal of her petition was to secure the opportunity to be elected without needing to relocate to Old Crow, and to be able to avail herself of the individual rights articulated in the *Charter* to do so. For VGFN, the case is fundamentally about collective and inherent rights, and the ability of a self-governing First Nation to express and implement those rights in a manner consistent with the First Nation's collective and fundamental connection to their lands and their traditional modes of governance. Understanding the different goals of individual versus collective rights underscores each of the legal issues arising in this case, including s. 25, s. 15(1) and s. 32.

Yours truly,

c/o MANDELL PINDER LLP



Kris Statnyk

Yours truly,

MANDELL PINDER LLP



Krista Robertson

Yours truly,

MANDELL PINDER LLP



Elin Sigurdson

ES/ejr

cc: All Agents/Counsel for the Parties and Interveners