



VUNTUT GWITCHIN GOVERNMENT

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Court of Appeal upholds residency requirement in Dickson v. VGFN

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Yukon's Court of Appeal has unanimously agreed that Vuntut Gwitchin First Nation's residency requirement for elected Council members, adopted by the General Assembly in 2019, must be protected and is legally valid.

On July 21, the Court of Appeal heard the appeal and cross appeal of the Yukon Supreme Court's 2020 decision in Dickson v. Vuntut Gwitchin First Nation, in which VGFN Citizen Cindy Dickson challenged the requirement in VGFN's Constitution for Citizens to move to Old Crow within 14 days if they become elected to Council on the basis that it violated her rights to equality as a Canadian citizen under the Canadian Charter of Rights and Freedoms. Dickson argued that VGFN Citizens should be able to live outside of Old Crow while serving their four-year term on Council. The Court of Appeal disagreed with Dickson's argument and in favour of VGFN's residency requirement, including the within 14 days portion which had been found invalid in the earlier 2020 decision.

The Court of Appeal recognized that:

[A]mong the discerning features of the Vuntut Gwitchin society is the emphasis it places, and has always placed, on its leaders' connection to the land, their expectation of ongoing personal interaction between leaders and others, and their wish to resist the 'pull' of outside influences [and that the requirement for Chief and Council to live in Old Crow] is clearly intended to reflect and promote the VGFN's particular traditions and customs relating to governance and leadership — a matter of fundamental importance to a small First Nation in a vast and remote location.

VGFN's residency requirement is also not unique to Vuntut Gwitchin law but is common to the election laws adopted by other levels of government in Yukon and Canada.

VGFN was unsuccessful before the Yukon Supreme Court, and now before the Court of Appeal, in its argument that the Charter does not apply to VGFN self-government generally, although it affirmed VGFN's use of Section 25 of the Charter as a "tool" for VGFN and other self-governing First Nations to use as a "shield" for protecting their rights to collectively govern and to decide internal matters under their own laws and traditions. As the Court of Appeal held:

Where the 'collective' is a First Nation that has survived years of paternalism and the suppression of its culture, the better view seems to be that under Section 25, the collective right should prevail undiminished." In reaching this conclusion the Court of Appeal set out the courts must recognize the unique nature of modern treaties and self-government agreements and interpret them "in a manner consistent with the 'national commitment' to reconciliation.

"The court's decision confirms what we at Vuntut Gwitchin Government felt very strongly was

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not a human rights violation, but a normal, practical requirement of good governance enacted collectively by and for Vuntut Gwitchin First Nation Citizens,” said VGFN Chief Dana Tizya-Tramm. “I hope this decision brings clarity for other Nations in Canada to some decades-old concerns about the Charter’s relationship to modern treaties and self-government and sets a precedent for the use of Section 25 as a protector of Indigenous laws and self-determination.”

Timeline

July 2021: The Court of Appeal delivers its decision on Dickson v. Vuntut Gwitchin First Nation.

March 2021: The Court of Appeal hears Dickson’s appeal and VGFN’s cross appeal over three days before Chief Justice Bauman, Justice Newbury and Justice Frankel; Government of Canada, Government of Yukon, Council of Yukon First Nations, Teslin Tlingit Council, Carcross/Tagish First Nation and Metis Nation Ontario participate as intervenors.

February 2020: The hearing in Yukon Supreme Court of Cindy Dickson’s petition takes place over three days before Justice Veale; Government of Canada and Government of Yukon participate as intervenors. Dickson’s petition followed a rejection of her nomination for VGFN Council in the November 2018 general election and the VGFN General Assembly’s decision in August 2019 to amend the residency requirement to allow Citizens living outside of Old Crow to run for Council but to relocate to Old Crow “within 14 days” of being elected.

2006: VGFN’s General Assembly amends the Constitution to include a residency requirement at the time of nomination: “Any Vuntut Gwitchin First Nation member over the age of 18 years may be nominated and elected to the position of Chief or Councilor if they are eligible to vote in the election and have not been convicted of an indictable offence in the last 5 years and are resident on settlement land.”

1993: VGFN Citizens approve the Final Agreement, Self-Government Agreement and first written Constitution which required the seat of the VGFN government to be located on Settlement Land.

1973 – 1993: VGFN and other Yukon First Nations participate in negotiations with the governments of Canada and Yukon regarding land claims and self-government matters, which leads to the Umbrella Final Agreement, a blueprint for Yukon First Nations land claims and self-government agreements. VGFN raises the concern throughout negotiations that Canada’s Charter (enacted in 1982) should not apply unconditionally to self-governing First Nations as it is based on individual rights in relation to state power whereas VGFN values and laws are collective in nature and pre-exist the Canadian state.

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