COURT OF APPEAL OF YUKON

Citation: *Dickson v. Vuntut Gwitchin First Nation*, 2021 YKCA 3

Date: 20210226
Docket: 20-YU872

Between:

Cindy Dickson

Appellant/
Respondent on Cross Appeal
(Petitioner)

And

Vuntut Gwitchin First Nation

Respondent/
Appellant on Cross Appeal
(Respondent)

And

Government of Yukon and Attorney General of Canada

Intervenors

Before: The Honourable Madam Justice Fenlon
(In Chambers)

On appeal from: An order of the Supreme Court of Yukon, dated June 8, 2020 (*Dickson v. Vuntut Gwitchin First Nation,* 2020 YKSC 22, Whitehorse Docket 18-AP012).

Oral Reasons for Judgment

Counsel for the Appellant, appearing via teleconference:	E.A.B. Gilbride H. Mann
Counsel for the Respondent, appearing via teleconference:	K.M. Robertson E.R.S. Sigurdson I. Twinn, Articled Student

Counsel for the Intervenor, Government of Yukon, appearing via teleconference:	I. Fraser K. Mercier
Counsel for the Intervenor, Attorney General of Canada, appearing via teleconference:	M. Anderson-Lindsay S. McCallum Rougerie
Counsel for the Proposed Intervenor, Carcross/Tagish First Nation, appearing via teleconference:	M.E. Turpel-Lafond G. Gardiner E. Linklater
Counsel for the Proposed Intervenor, Teslin Tlingit Council, appearing via teleconference:	K. Blomfield J. Nicholls
Counsel for the Proposed Intervenor, Council of Yukon First Nations, appearing via teleconference:	J.M. Coady, Q.C. T.M. Shoranick
Counsel for the Proposed Intervenor, Métis Nation of Ontario, appearing via teleconference:	J.J.T. Madden A.J. Winterburn
Place and Date of Hearing:	Vancouver, British Columbia February 25, 2021
Place and Date of Judgment:	Vancouver, British Columbia February 26, 2021

Summary:

The appellant is a member of the Vuntut Gwitchin First Nation, a self-governing Yukon First Nation. The Vuntun Gwitchin Constitution required members of Council to reside on the Nation's settlement land. The appellant sought a declaration that the residency requirement violated her s. 15 equality right. The trial judge dismissed the appellant's petition, finding that a modified version of the residency requirement did not violate s. 15 of the Charter. The appellant filed an appeal, arguing the judge erred in not finding the entire residency requirement in violation of her s. 15 right. The respondent cross-appealed, arguing the judge erred in his application of the Charter to the Vuntut Gwitchin Constitution. The Carcross/Tagish First Nation, the Métis Nation of Ontario, the Council of Yukon First Nations, and the Teslin Tlingit Council seek leave to intervene.

Held: Applications granted. All four proposed intervenors had either a direct interest or a public interest in the appeal. Each applicant could bring a unique perspective to the appeal and would not unduly expand the issues on appeal. In cases involving novel Charter arguments, intervenors are more likely to be of assistance to the court.

[1] **FENLON J.A.**: The Carcross/Tagish First Nation, Métis Nation of Ontario, Council of Yukon First Nations, and Teslin Tlingit Council apply for leave to intervene on this appeal.

Background

[2] A brief overview of the underlying proceeding is necessary to understand the nature of the proposed interventions.

[3] The appellant, Cindy Dickson, is a member of the respondent Vuntut Gwitchin First Nation ("VGFN"). The VGFN's traditional territories are located in the far north of the Yukon, with the major community being Old Crow, located approximately 800 km north of Whitehorse.

[4] In 1993, the VGFN signed the Vuntut Gwitchin First Nation Final Agreement, a modern treaty defining their rights and relationship with the Canadian and Yukon governments. Chapter 24 comprehensively sets out the self-governance rights of the VGFN and provides for a VGFN Constitution. That Constitution sets out the organization of the VGFN Government and the eligibility criteria for Chief and Council, which, at the relevant time, included a residency requirement, requiring

non-resident candidates for Council to move to the Settlement Land within 14 days of being elected.

[5] Ms. Dickson wanted to run for Council but, for compelling reasons, lived in Whitehorse and could not return to Old Crow if elected. She applied to the Supreme Court of Yukon for a declaration that the residency requirement violated s. 15 of the *Charter* and therefore was of no force or effect.

[6] Chief Justice Veale concluded: (1) the *Charter* applied to the VGFN Government, Constitution, and laws; (2) the residency requirement without the move within "14 days" stipulation did not infringe Ms. Dickson's s. 15 right to equality; and (3) even if it did, s. 25 of the *Charter* could be used to shield the residency requirement.

[7] Ms. Dickson appealed. She contends the trial judge erred by (1) not finding that the residency restriction in its entirety infringed her s. 15 rights; and (2) finding that s. 25 of the *Charter* shielded the VGFN's right to adopt the residency restriction.

[8] The VGFN filed a cross-appeal. They argue the judge erred in concluding that the *Charter* applies to the VGFN Government, Constitution, and laws. They also argue the judge erred in holding that s. 25 of the *Charter* only applies if a *Charter* infringement cannot be saved under s. 1 and in finding that the words "within 14 days" infringed Ms. Dickson's s. 15 rights and were not saved under s. 1.

Leave to Intervene

[9] The test for leave to intervene in an appeal was set out in *Commission Scolaire Francophone du Yukon c. Procureure Générale du Yukon,* 2011 YKCA 11 at paras. 10–11 (Chambers):

> [10] There are generally two situations in which the court is prepared to allow an intervention. First, when a decision could have a direct impact on a person, in order to be fair it is necessary to provide that person with an opportunity to make submissions. The court is usually generous in allowing interventions, even in private litigation, when a person's interests are directly involved in a case.

> [11] The second situation in which an intervention is allowed is a case that raises issues involving public interests. It is necessary to ensure that all important perspectives are considered before deciding such a case. There are many examples of interventions that have been allowed for this purpose, particularly in the context of the interpretation of the *Charter*.

[10] In cases involving novel *Charter* arguments, intervenors are to be welcomed, as they are more likely to be of assistance to the court. There is no disagreement that the appeal in this case raises novel constitutional and *Charter* issues. I have heard lengthy submissions and read the materials filed on these motions. I do not intend in these reasons to repeat those submissions and arguments here, but they, of course, underpin my decision. I accept that the three Yukon applicants have a direct interest in the appeal. If the court determines that the *Charter* applies to the laws and governance authority of self-governing Yukon First Nations, it will directly affect their legal rights and obligations.

[11] I accept that the Métis Nation of Ontario meets the second public interest category, as would the Yukon applicants.

[12] The real issue on these applications is whether each of the applicants would bring a unique perspective to the appeal that could be of assistance to the Court given that all oppose the application of the *Charter* to First Nations Governments and laws. I turn to that question now.

Carcross/Tagish First Nation

[13] The Carcross/Tagish First Nation is the most recent to negotiate a self-government agreement. They will bring the unique perspective of a First Nation that has organized based on clans, which are the primary mode of representation and service in their government rather than through individuals. Further, they have developed structures based on a traditional principle that, unlike most self-governing Yukon First Nation constitutions, does not contemplate members going to the Supreme Court of Yukon to resolve disputes.

Teslin Tlingit Council

[14] The Teslin Tlingit Council is also clan-based. It brings a unique perspective because it has entered into an Administration of Justice Agreement with Canada and the Government of Yukon, which contemplates the negotiation of how the *Charter* would be reconciled with the Teslin Tlingit Council justice system. It will bring the perspective of a First Nation that would have negotiated rights eroded by the approach adopted in the decision under appeal.

Council of Yukon First Nations

[15] The Council of Yukon First Nations is comprised of nine Yukon First Nations and represents the remaining Yukon First Nations who will be directly affected by the issues raised on appeal. It negotiated the Umbrella Final Agreement, which establishes a model for First Nations self-government in the Yukon and can bring a broad perspective to the history purpose and objects of those agreements.

[16] It will submit that challenges to the constitutional laws of a self-governing Yukon First Nation should first be addressed through the First Nation's process and will propose that s. 25 should presumptuously protect the entirety of a self-governing Yukon First Nation's laws.

Métis Nation of Ontario

[17] The Métis Nation of Ontario would bring the perspective of nations outside of the Yukon whose rights may be affected mid-negotiation by the analytical framework used to understand the relationship between s. 25, s. 32, and s. 35.

Disposition

[18] I am satisfied that all of the proposed intervenors have a unique perspective to bring the appeal that may be of assistance to the Court. I am mindful that their admission to the appeal will place an additional burden on the appellant in particular, but I am satisfied that their intervention will not expand the issues before the Court or add unduly to the record.

[19] I therefore grant leave to the Carcross/Tagish First Nation, Métis Nation of Ontario, Council of Yukon First Nations, and Teslin Tlingit Council to intervene on the following terms:

1. Each intervenor may file a factum of up to ten pages, which is not to duplicate the arguments of the parties or the other intervenors;

2. Each intervenor may file and refer to the affidavits listed in its notice of motion to intervene;

3. Oral submissions, if any, will be determined by the division hearing the appeal; and

4. Costs will not be awarded for or against these intervenors.

"The Honourable Madam Justice Fenlon"