SUPREME COURT OF YUKON

Citation: *Frost v. Blake*, 2021 YKSC 29

Date: 20210507
S.C. No.: 21-A0013
Registry: Whitehorse

BETWEEN:

PAULINE FROST

PETITIONER

AND

ANNIE BLAKE and H. MAXWELL HARVEY, CHIEF ELECTORAL OFFICER OF THE YUKON TERRITORY

RESPONDENTS

Before Chief Justice S.M. Duncan

Appearances:

James R. Tucker and Luke S. Faught	Counsel for the Petitioner
Shaunagh Stikeman	Counsel for the Respondent, Annie Blake
Mark E. Wallace	Counsel for the Respondent, H. Maxwell Harvey, Chief Electoral Officer of the Yukon Territory
Vincent Larochelle	Counsel for Proposed Intervenors

REASONS FOR DECISION
(applications to intervene)

[1] DUNCAN C.J. (Oral): There are two applications to intervene in this petition brought under s. 356 of the *Elections Act*, R.S.Y. 2002, c. 63, for an order declaring that the election held in the electoral district of Vuntut Gwitchin (the "District") on April 12,

2021, was invalid and that the office for that electoral district is vacant. The grounds for the relief sought in the petition are based on the residency of two voters in the District:

- Mr. Christopher Schafer was not resident in the District between March 12, 2021, the day the writ was dropped, and April 12, 2021, the day of the election, as required under the *Elections Act*; and
- Ms. Serena Schafer-Scheper was not resident in the Yukon for 12 months before April 12, 2021.

[2] The applications to intervene are brought by these two individuals, Mr. Christopher Schafer and Ms. Serena Schafer-Scheper, on the grounds that they have a direct interest in the litigation, or, in the alternative, they have a public interest in a public law issue in question and can bring a different perspective to the consideration of the issues.

[3] The respondent Ms. Annie Blake supports the applications to intervene. The respondent chief electoral officer and the petitioner oppose the applications.

[4] I will first address the statutory bar argument raised by the petitioner. I will then review the law of intervention and apply the law to the facts of this matter, to the extent that they are known, to arrive at a conclusion.

Doctrine of Implied Exclusion - to express one thing is to exclude another

[5] There are no provisions in the *Elections Act* or in the *Rules of Court* or in any other statutes that set out criteria for intervention by an elector (or anyone else) in a challenge under s. 356 as is raised by this petition.

[6] The petitioner argues that the doctrine of implied exclusion applies here as a statutory bar preventing the Court from considering these applications to intervene because:

(a) the *Elections Act* has specifically set out in s. 360(1) the individuals who may be parties to a proceeding brought under s. 356 of the *Elections Act* — that is, the candidates and the chief electoral officer, and is silent on the ability of anyone else to participate;

(b) there are provisions in the *Elections Act* that address the participation of electors in proceedings (ss. 356, 368) and intervening in s. 356 proceedings is not one of these; and

(c) intervenor participation under the statute is limited to two specific situations:

  (i) an elector or the chief electoral officer can intervene and carry on proceedings taken against anyone who has committed an offence under the *Act* in the event of suspension or delay (see s. 368(2)); and

  (ii) the chief electoral officer can intervene in and become a party to any proceeding commenced or carried on by an elector under ss. 368(1) or 368(2) (see s. 368(3)).

[7] The petitioner argues that these statutory provisions attract the application of the implied exclusion doctrine to s. 356 because they give rise to:

> 38. ... a strong expectation that if intervenors or electors were permitted in s. 356 applications, the legislature would have expressly provided for it. ... [T]he legislature's failure to mention electors as parties or

> intervenors in s.356 applications permits [or even compels] the inference that intervenors were deliberately excluded.

[8] The petitioner says if the doctrine were found to apply, then the Court has no inherent jurisdiction to make a decision in conflict with the statute, making intervention in s. 356 applications statute-barred.

[9] Courts have generally exercised caution in applying this doctrine because: much depends on context; express reference to a matter may have been considered unnecessary and been made only out of an abundance of caution; the lack of express reference may have been inadvertent; what is expressly stated and where the statute is silent, even if they are incongruous, must still be such to make it clear they were not intended to co-exist; and the indiscriminate application of the doctrine may lead to inconsistency or injustice (see *Dorval v. Dorval*, 2006 SKCA 21).

[10] The commentary in the text *Sullivan on the Construction of Statutes*, 6th ed., at p. 257, suggests that this doctrine of interpretation is no more likely to mislead than other kinds of interpretive inferences and its weight depends on contextual factors and the weight of competing considerations.

[11] I appreciate the contextual argument of the petitioner that this kind of challenge under s. 356 is meant to be an expedited process as evidenced by a number of statutory provisions (outlined below). Limiting the participants is a part of achieving this objective.

[12] In this case, I first note that counsel for the proposed intervenor made brief oral submissions on this argument, which were helpful. But the fact that the petitioner raised the argument in response to the application by the petitioner, combined with the very

short timelines for the hearing of this application, meant that the legal argument on this issue was unable to be fully fleshed out.

[13] It is true that the *Elections Act* is silent on who can intervene in a s. 356 application and does make reference to interventions in a different context — that is, an application under s. 368, which is a proceeding against a person who has committed an offence under the *Elections Act.* But this does not necessarily support an interpretation that the legislature intended to bar all interventions in a s. 356 proceeding. If the legislature had made reference in the context of s. 356 to interventions by some but not others, then the answer to this question may have been clearer.

[14] However, an equally valid interpretation is that the legislature was focussed on who could be a party to a s. 356 proceeding and simply did not turn its mind to interventions in this context. The intervention referred to in s. 368(2) is an entirely different context than an application for intervention to assist the Court in a s. 356 proceeding. In s. 368, the intervention is to allow the proceedings that are suspended or delayed to be carried on in the event of such suspension or a delay; and in s. 368(3), the chief electoral officer is permitted to intervene and become a party in a s. 368 proceeding commenced by an elector, similar to the chief electoral officer becoming a party in a s. 356 proceeding.

[15] The reference to electors being able to commence proceeding in both kinds of applications does not suggest that they cannot be intervenors — in fact, it could be argued that this demonstrates the high degree of participation in these processes that the legislature considered an elector is able to have. Given this context, it is possible that the legislature was deliberately focussed on parties in s. 356; and was focussed on

ensuring the proceedings concerning offences in s. 368 were brought to a conclusion. The law on intervention, as is set out below, has mechanisms to ensure proceedings are not unduly delayed or caused to stray off course by intervenors.

[16] As a result, the petitioner has not persuaded me in this case that the doctrine of implied exclusion acts as a statutory bar to the consideration of applications for intervention in a s. 356 proceeding.

Law of Intervention

[17] Leave to intervene may be granted in two circumstances. Each of these circumstances has a different purpose. This test was set out by the British Columbia Court of Appeal in *Ahousaht Indian Band v. Canada (Attorney General)*, 2012 BCCA 330, and followed by this Court in *Ross River Dena Council v. Yukon (Government of)*, 2015 YKSC 10.

[18] The first basis for intervention is where the decision in the litigation at issue will have a direct impact on the applicant. The applicant must be in a position analogous to a party and will have their legal rights or obligations determined by the litigation. The applicant must establish that the decision will directly consider and determine their rights or liabilities (see *Snaw-Naw-As First Nation v. Canada (Attorney General)*, 2021 BCCA 89, ("*Snaw-Naw-As*") at para. 19; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2021 BCCA 138, para. 24). This basis is generally interpreted narrowly. The fact that a decision may set a precedent that may have some adverse effect on the applicant's legal position is not enough to establish a direct interest. The purpose of this basis of intervention is fairness to the applicant.

[19] The second and much more common circumstance in which leave to intervene is granted is where the applicant shows they are particularly well-placed to assist the court by providing a special perspective on an issue of public importance. The purpose of this basis of intervention is to ensure that important points of view are not overlooked by the court. Even here, however, the scope is limited. The intervenor must be able to make a valuable contribution or present a different perspective that is not already before the court (see *Snaw-Naw-As*, para. 18). At the same time, it must not expand the litigation by raising new matters or by changing the focus of the litigation to an issue that is peripheral to the case. As stated in *Ahousaht*, "The niche that may be occupied by an intervenor is, therefore, necessarily a very narrow one." — at para. 5.

[20] Specific factors for the Court to consider for applicants to intervene on the public interest basis were set out by the British Columbia Court of Appeal in *Snaw-Naw-As* at para. 20:

> a) Does the proposed intervenor have a broad representative base?
>
> b) Does the case legitimately engage the proposed intervenor’s interests in the public law issue raised on appeal?
>
> c) Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?
>
> d) Does the proposed intervenor seek to expand the scope of the appeal by raising issues not raised by the parties?

[21] This last factor, which weighs against allowing intervention, has led to the articulation of further considerations in the jurisprudence, such as: whether the intervention will place an undue burden or injustice on the parties, including by causing

undue delay (see *Carter v. Canada (Attorney General)*, 2012 BCCA 502, at para. 14, and *Faculty Association of the University of British Columbia v. University of British Columbia*, 2008 BCCA 376, at para. 15); and the importance of imposing restrictions on the intervenors to make submissions on the facts and issues in the petition and responding materials (see *Carter v. Canada (Attorney General)*).

Application to the Facts of this Case

[22] The issue raised by the petition is whether the election held in the District complied with the provisions in the *Elections Act*, and specifically ss. 3, 6, and 10(2).

[23] Section 3 sets out the qualifications of an elector:

> 3 Except as otherwise provided in this Act, every person who is or becomes resident in a polling division between the issue of the writ and the close of polls on polling day and who
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> > (a) on polling day has reached the age of 18 years;
> >
> > (b) on polling day is a Canadian citizen;
> >
> > (c) on polling day has been resident in the Yukon for the previous 12 months; and
> >
> > (d) at a by-election only, continues to be resident in the electoral district until polling day, is qualified as an elector to vote in that polling division.

[24] Similarly, s. 6 defines residency in some detail:

> 6(1) "Residence" and similar expressions used in relation to a person, means the person's true, fixed, permanent home or habitation to which, whenever absent, the person has the intention of returning.
>
> (2) The following rules apply to the determination of a person's residence;

> (a) a person's residence is not lost or changed by the person's temporary absence from the place in which it is established;
>
> (b) a person's residence in the Yukon is lost if the person leaves the Yukon with the intention of residing elsewhere;
>
> (c) the place where a person's family resides is considered to be the person's place of residence but if the person takes up residence or continues to reside at some other place with the intention of remaining there, the person is considered to be a resident of that other place;
>
> (d) if a person usually sleeps in one place and has meals or is employed in another place, the residence of the person is where the person sleeps;
>
> (e) a person may change residence only with the intention of establishing a residence in another place;
>
> (f) a person may have only one residence at one time; and
>
> (g) while a person remains in the Yukon, the person is considered not to have lost a residence established in the Yukon until another is acquired.

[25] And finally, s. 10(2) provides an exception to the residence requirement for students attending an educational institution outside the Yukon:

> 10(2) A person who resides outside of the Yukon in order to attend an educational institution who is otherwise qualified as an elector is considered to be ordinarily resident in the Yukon.

[26] The order sought in this petition, as set out above, is to declare the election invalid and the office vacant. It requires an assessment of whether the election was conducted in accordance with the provisions of the *Elections Act* and, more specifically, the residency provisions.

[27] I will now address each applicant separately.

[28] First, Mr. Christopher Schafer. He seeks to make the following factual and legal submissions:

(a) He was qualified as an elector because he was resident in the Yukon for the 12 months preceding the polling day (see s. 3 of the *Elections Act*). This supports a direct interest.

(b) He was qualified to vote in the District as a result of his residence in Old Crow at the time of the election (see s. 6 of the *Elections Act*). Again, this supports his argument that he has a direct interest.

(c) How "residency" under the *Elections Act* is to be understood and interpreted, both within the constitutional framework of Canada and the context of Vuntut Gwitchin culture, history, and reality. This supports his argument on public interest.

(d) The impact that criminal proceedings can have on Yukoners' living arrangements generally, but also particularly Yukoners living in rural communities where fewer resources are available for community corrections. This again supports his argument on public interest.

(e) The right of incarcerated persons to vote in the electoral district of their intended residence. Also, a public interest argument.

[29] Mr. Schafer argues that he has both a direct interest and a public interest in the litigation. His direct interest is protecting his right to vote on the basis of his residential status. He says his temporary absence from Old Crow, in part on the basis of his involvement in the criminal justice system, did not strip him of his right to vote in the District.

[30] The petitioner argues that the petition is not seeking to disenfranchise Mr. Schafer. The petition does not seek an order related to or limiting Mr. Schafer's right to vote. Mr. Schafer did vote and his vote was counted. If the petitioner is successful, the likely result is that a by-election will be called. The petitioner acknowledges that if they are successful, the decision in this matter may be a precedent that assists in the determination of whether Mr. Schafer's residency, assuming the factual circumstances are the same as they were in April 2021, will allow him to vote in future elections in the District. However, the petitioner says the establishment of a precedent that may affect a future right to vote in a certain electoral district is not sufficient to constitute a direct interest (see *Faculty Association of the University of British Columbia v. University of British Columbia* at para. 9; *Susan Heyes Inc. v. South Coast B.C. Transportation Society*, 2010 BCCA 113).

[31] The chief electoral officer agrees with the petitioner that the issue to be decided in the petition is whether Mr. Schafer was resident in the District for the 2021 election, in compliance with the *Elections Act* (see s. 6(2)). The chief electoral officer says the petition will not be determining the electoral district in which Mr. Schafer is entitled to vote, as that is determined by s. 6(2) of the statute. Mr. Schafer's legal rights and obligations are not under consideration by the Court in this petition. The chief electoral officer said in oral submissions that they would be arguing at the hearing of the petition that Mr. Schafer was a resident of the District in accordance with the statutory requirements.

[32] The issue here is not whether Mr. Schafer or Ms. Schafer-Scheper need to intervene to ensure the facts of their situations are before the Court. There is no dispute

among the parties that the evidence of both individuals is crucial for the determination of the issues in this petition. Counsel have agreed that their evidence will be part of the hearing, even if they are not intervenors, brought either through counsel for the respondent Ms. Annie Blake, or through the petitioner by subpoena. Intervention is therefore not required for the Court to obtain the facts and circumstances of Mr. Schafer and Ms. Schafer-Scheper related to their residency for the purpose of the *Elections Act*. Submissions may be made by all counsel on the basis of the facts elicited from these individuals.

[33] While on its face it may appear that Mr. Schafer is directly affected by this petition, because of the importance of his factual circumstances to the determination of the petition's outcome, the order sought is not about Mr. Schafer. It is about whether the *Elections Act* was complied with. An order granted in favour of the petitioner will not affect Mr. Schafer's legal right to vote. It may have precedential effect on him for future elections, but I am persuaded by the finding of the court in two cases from the British Columbia Court of Appeal (see *Faculty Association of the University of British Columbia v University of British Columbia*; *Susan Heyes Inc. v. South Coast B.C. Transportation Society*).

[34] I will quote first from *Faculty Association of the University of British Columbia v University of British Columbia* at para. 9. The Court there said:

> [9] Having a direct interest has been contrasted with simply being concerned about the effect of a decision or being affected by it because of its precedential value: *Vancouver Rape Relief v. Nixon*, 2004 BCCA 516, 26 Admin. L.R. (4th) 75 at para. 7 (Chambers); *Bosa Development Corp. v. British Columbia* (Assessor of Area 12 – Coquitlam) (1996), 82 B.C.A.C. 260 at para. 22 (Chambers). Simply being affected by a decision on the basis of *stare decisis* is an

> indirect interest only: *Maple Trust Co. v. Canada (Attorney General)*, 2007 BCCA 195, 241 B.C.A.C. 222 (Chambers) ...

[35] At para. 10, the Court says:

> [10] In *Gateway Casinos LP v. British Columbia Government and Service Employees' Union*, 2007 BCCA 48, 235 B.C.A.C. 248 (Chambers), Smith J.A., an action in trespass was initiated against a union attempting to organize the employees of a casino; the action was dismissed, the casino appealed, and the United Food and Commercial Workers International Union, Local 1518, sought to intervene in the appeal. The would-be intervenor argued it had "a direct interest in this appeal because an outcome in favour of the appellants would set a precedent that will constrain its ability to attend in parking lots to convey information during labour disputes and to organize employees whose work is carried out in such parking lots": para. 9. But, at para. 11, it was held:
>
> > The interest advanced by the applicant is not a direct interest. That it may be affected by the outcome of the appeal is not sufficient in itself to justify its intervention: see *Dha v. Ozdoba* (1991), 47 C.P.C. (2d) 23 (B.C.C.A.) (Chambers, Macfarlane J.A.), *Vancouver Rape Relief Society v. Nixon*, *supra*. In this respect, it is in no different position than all other unions in British Columbia.

[36] In the case of *Susan Heyes Inc. v. South Coast B.C. Transportation Society*, at para. 12:

> [12] With respect to Mr. Arvay's argument that the chambers judge took too "restrictive" an approach to the meaning of "direct interest", I would not attempt to provide an inflexible definition to be applied to all applications for intervenor status. Certainly some courts have taken a wider view of what is a sufficient interest to justify granting such status than have other courts: see for example the broad view taken by Williams J.A. (as he then was) in *Bosa Development Corp. v. British Columbia (Assessor of Area 12 - Coquitlam)* (1996) 82 B.C.A.C. 260 and that taken by Pigeon J. for the Court in *Norcan Ltd. v. Lebrock* [1969] S.C.R. 665, referred to by Sopinka J. in *Reference re*

> *Workers' Compensation Act 1983 (Nfld.)*, [1989] 2 S.C.R. 335, at 339. But while some effects of litigation are more direct than others, I adopt the view taken by this court on several occasions that it is not usually sufficient for a proposed intervenor to show he or she "may be affected by the outcome of the appeal in the sense that it will stand as a precedent" which may affect his or her potential liability: see *Richmond (Township) v. Dha* (1991) 47 C.P.C. (2d) 23 (B.C.C.A.), *sub nom. Dha v. Ozdoba* at 12, and *Faculty Association of the University of British Columbia*, *supra*, at para. 9. In my view, the Applicants have not shown they would be affected by the appeal in *Heyes* other than by its precedential effect.

[37] I also note in this case that any precedential effect on Mr. Schafer may not exist if the facts of his situation are different by the time another election is called. I find that Mr. Schafer therefore has not met the test of direct interest in the proceeding.

[38] Turning to the application of the public interest basis for intervention in Mr. Schafer's application, I will apply each of the four considerations set out in *Snaw-Naw-As* by the British Columbia Court of Appeal.

[39] First, does he have a broad representative base?

[40] There is no evidence that he does. I note that intervention by an individual on a public interest basis is unusual. Most intervenors on this basis are organizations, associations, or advocacy groups that represent a significant number of individuals. Although Mr. Schafer has raised issues that may affect individuals similarly situated to him, such as those who are incarcerated or have conditions during an election period, or those from rural communities where there are fewer correctional resources, there is no evidence that they share his views or that he represents them. This is unlike a situation where a proposed intervenor is an advocacy group for prisoners' rights, for example, or even an institution such as the John Howard Society, that might put forward

points of view and legal submissions commonly shared by incarcerated individuals based on their membership or constituency.

[41] Second, does this case legitimately engage the proposed intervenor's interests in the public law issue raised?

[42] The public law issue in this case is the validity of the election pursuant to the provisions of the *Elections Act*. Contesting the election's validity is grounded in the residency issue of the proposed intervenor. The inquiry is a factual one to determine if the requirements of the statute have been met, and includes an interpretation of the statutory provisions.

[43] I will address the specific interests articulated by the proposed intervenor. Some of these interests extend beyond this exercise. For example, he raises a policy issue related to the criminal justice system that is beyond the scope of this petition — that is, the impact of criminal proceedings on living arrangements generally but particularly Yukoners living in rural communities where fewer resources are available for community corrections. This goes far beyond the determination to be made in this proceeding — that is, whether the *Elections Act* was complied with in the April 2021 election in the District.

[44] How residency under the statute is to be understood and interpreted is another one of the interests identified by Mr. Schafer and it is part of the issue that will have to be determined in this petition.

[45] Legal submissions on statutory interpretation requirements will be made by all counsel for the parties from their own perspectives. I note that the two candidates are Vuntut Gwitchin First Nation citizens. I do not think it is necessary to hear from

Mr. Schafer on statutory interpretation issues, given the breadth of arguments counsel for the parties are expected to provide.

[46] The rights of incarcerated people to vote is not in issue — this has been legally established years ago. But the issue of where incarcerated people or people with conditions are entitled to vote is governed by policies of the chief electoral officer — and this will be addressed in this petition. This is a legitimate interest of the proposed intervenor.

[47] The position of the chief electoral officer is that Mr. Schafer did have the right to vote in the District on the basis of the policies of the chief electoral officer implemented under the *Elections Act*. The chief electoral officer will be advancing arguments in support of this position. Presumably, counsel for respondent Ms. Annie Blake, a citizen of Vuntut Gwitchin, in opposing the petition, will be taking the same or similar position. The question is, then, whether the proposed intervenor has a unique and different perspective to assist the Court in the resolution of the issue of where incarcerated people or people with conditions are entitled to vote.

[48] I turn now to this factor. Mr. Schafer's perspective is based on his personal situation as an incarcerated individual in Whitehorse, who voted in the electoral district of Vuntut Gwitchin in the April 2021 election.

[49] In my view, Mr. Schafer may have something to contribute in a limited way on the issue of residency based on his perspective as an incarcerated individual in Whitehorse with connections to Old Crow. However, that contribution must be strictly limited to ensure that the litigation is not taken away from the parties to the proceeding — that is,

the candidates and the chief electoral officer — and in order to preserve the timelines that have been agreed to and established.

[50] I will grant Mr. Schafer the right to intervene to provide submissions in writing, limited to five pages, with respect to the effect or impact on him of the policies of the chief electoral officer and their implementation, used to determine where incarcerated individuals or those with conditions are entitled to vote.

[51] I recognize that this is a broad interpretation of the test for intervention. It would have been preferable to have these interests presented by an organization, association, or institution that clearly represents more than one individual's perspective. However, I am persuaded to permit this limited intervention to an individual on a public interest basis in this case because he has a unique perspective on an issue of public interest that will be addressed in this petition and that may assist the Court.

[52] No evidence will be allowed to be introduced by Mr. Schafer, other than the facts of his own circumstances that are relevant to the petition, and no submissions in any other area may be made.

[53] Secondly, Ms. Serena Schafer-Scheper.

[54] Ms. Schafer-Scheper proposes to argue the following.

> a. The applicant was qualified as an elector given that she was a resident in the Yukon for the twelve months preceding the polling day, s. 3 the *Act*.

— this supports an argument of direct interest.

> b. The applicant's residence in the Yukon was not lost or changed by her temporary absence given that her demonstrated intention was to return to her residence in Old Crow, s. 6, the *Act*.

— an argument of direct interest.

> c. The applicant was qualified to vote in the electoral riding of Vuntut Gwitchin as a result of her residence in Old Crow at the time of the election: *Elections Act*. s. 6.

— an argument of direct interest.

> d. How "residency" under the *Act* is to be understood and interpreted both within the constitutional framework of Canada, and the context of Vuntut Gwitchin culture, history and reality.

— this is a public interest argument.

> e. The reality of young Yukoners residing in the Yukon, and how this should impact the interpretation of "residency" under the *Act*.

— again, a public interest argument.

[55] For the same reasons set out above for Mr. Schafer, I find that Ms. Schafer-Scheper does not have a direct interest in the litigation. She voted in the election and her vote was counted. There is no suggestion that she did not or does not have the right to vote. The order sought will not disenfranchise her. The sole issue is whether she was qualified to vote according to the provisions of the *Elections Act* in the April 2021 election. The decision may serve as a precedent in determining Ms. Schafer-Scheper's ability to vote in future elections but, because of the fact-driven nature of this inquiry, this is far from certain. Even if she were to be affected by any precedential effect of the decision, for the reasons stated above, this is insufficient to constitute a direct interest for the purpose of intervention.

[56] The public interest basis for the proposed intervention of Ms. Schafer-Scheper is also inapplicable.

[57] First, does she have a broad representative base?

[58] There is no evidence that Ms. Schafer-Scheper represents anyone other than herself. Her situation is fact specific and there is no evidence that she represents anyone else who may be similarly situated.

[59] Second, does the case legitimately engage Ms. Schafer-Scheper's interests in the public law issue raised?

[60] Her interests, as stated in the notice of application, are in the interpretation of residency in accordance with the constitution and Vuntut Gwitchin traditions, as well as the reality of young Yukoners residing in the Yukon and how this should impact the interpretation of residency under the *Act*.

[61] I do not see that these stated interests provide a basis for public interest intervention. As was the case for Mr. Schafer, legal submissions on the statutory interpretation requirements will be made by counsel for all the parties from their own perspectives. The two candidates, who are parties, are both citizens of Vuntut Gwitchin First Nation and the Court will hear their submissions on what should be taken into account in interpreting the statutory provisions, no doubt from different perspectives. The reality of young Yukoners may be an interest of Ms. Schafer-Scheper, but it is not a focus of the petition. The focus is the definition of "residency" as it is set out in the statute, and its applicability to the facts of this case. It is not confined to the situation of young Yukoners. Factual and legal submissions of the nature proposed by Ms. Schafer-Scheper are beyond the scope of the petition and threaten to take the litigation away from the parties.

[62] Third, does Ms. Schafer-Scheper have a unique and different perspective that will assist the Court in resolving the issues?

[63] There is no evidence that Ms. Schafer-Scheper has a unique and different perspective. The facts of her situation are, of course, crucial to the determination of the issues in this petition, but all counsel will make arguments after hearing those facts. Counsel for the chief electoral officer has indicated their position that Ms. Schafer-Scheper was a qualified elector and that the election was valid as a result. Presumably counsel for Ms. Blake will take a similar position. I do not see any unique perspective that Ms. Schafer-Scheper can add to assist the Court.

[64] Finally, there is a risk that allowing Ms. Schafer-Scheper's intervention will expand the scope of the hearing beyond the issues to be determined in the petition leading to undue delay.

[65] I agree with counsel for the petitioner and the chief electoral officer that the petition calls into question the integrity of the electoral process and there is uncertainty, as a result, for the constituents of the District as well as for the respondents and the petitioner.

[66] I also agree that the *Elections Act* provisions noted by the petitioner (s. 355, a 30-day limitation period for application; s. 357, two grounds for challenge; s. 362(1), no counting or recounting of ballots; s. 365, general evidence about the writ is sufficient; s. 366, certificate evidence is admissible; and finally, the requirement that the judge immediately provide a written copy of the decision to the chief electoral officer) support the view that any contestation of the validity of an election should be proceeded with as expeditiously as possible.

[67] Ms. Schafer-Scheper's application to intervene is denied.

Conclusion

[68] Mr. Schafer is granted intervenor status on the following conditions:

(a) Mr. Schafer may file written submissions on the effect or impact on him of the policies of the chief electoral officer and their implementation used to determine where incarcerated individuals or those with conditions are entitled to vote — the date of the written submissions will be determined in discussion with counsel after I finish my decision — and the written submissions are to be no longer than five pages in length;

(b) The parties may file written submissions in response — again, on a date to be determined;

(c) Mr. Schafer's submission shall attempt to avoid duplication of any of the arguments advanced by the parties;

(d) The Court will determine after all the submissions are filed whether Mr. Schafer may make oral arguments at the hearing; and

(e) Mr. Schafer will not be entitled to or liable for costs and has no right of appeal of the Court's decision on the merits of this matter.

[69] On those last points, I followed, for counsels' benefit, the decision in *Ross River Dena Council v Yukon (Government of)*.

[70] That is my decision.

[DISCUSSIONS]

[71] THE COURT: I want to thank counsel for your submissions, both written and oral, because it made my job much easier and I was able to render a decision in a day

largely because your submissions were so thorough. So, thank you for that.

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DUNCAN C.J.