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***The Supreme Court upholds a First Nation’s requirement that its leaders must live on its traditional territory.***

This appeal dealt with the question of whether the *Canadian Charter of Rights and Freedoms* applied to an election rule enacted by a self-governing First Nation in the Yukon. It also addressed whether that rule unjustifiably infringed a member’s right to equality under Section 15 of the *Charter*. To answer the second question, the Supreme Court needed to determine whether upholding the individual’s equality right “abrogated” or “derogated from” (in other words, abolished or diminished) a protected Aboriginal, treaty or other right or freedom belonging to the Aboriginal peoples of Canada, as stated under Section 25 of the *Charter*.

The Vuntut Gwitchin First Nation (“VGFN”) is a self-governing Indigenous community in the Yukon. Its seat of government is based in Old Crow, a village located about 800 kilometers north of Whitehorse in the traditional territory of the Vuntut Gwitchin and constituting the VGFN’s main community in its settlement land. VGFN has its own Constitution, as well as electoral rules and standards. One of these rules requires that the elected Chief and Councillors reside on the settlement land of the First Nation, or relocate there within 14 days of their election.

Cindy Dickson is a member of the VGFN and a citizen of Canada. She lives in Whitehorse and is constrained for personal reasons to stay there. She wanted to stand for election as a Councillor of VGFN and said that the residency requirement discriminated against her as a non-resident of the settlement land. She challenged the residency requirement before the Yukon Supreme Court, arguing that it violated her right to equality guaranteed under Section 15(1) of the *Charter*.

In response, the VGFN relied on Section 32(1) of the *Charter*, which identifies certain entities that are bound by it, including federal and provincial legislatures and governments, as well as entities that are controlled by a government or that perform governmental functions. As a self-governing Indigenous community, the VGFN said that it did not fit the definition and scope of a “government” under Section 32(1), and therefore, was not bound by the *Charter*. As such, the residency requirement fell outside the *Charter*’s application.

Alternatively, the VGFN argued that if it were bound by the *Charter*, the residency requirement did not violate Ms. Dickson’s right to equality, and, even if it did, the requirement was protected by Section 25 of the *Charter*. Section 25 states that the guarantee in the *Charter* of certain rights and freedoms must not be interpreted so as to abrogate or derogate from any Aboriginal, treaty or other rights or freedoms that belong to the Aboriginal peoples of Canada. According to the VGFN, the residency requirement protected collective minority rights relating to its traditional Indigenous modes of government and leadership. As such, it could not be defeated by Ms. Dickson’s individual *Charter* right.

The Yukon Supreme Court agreed that the *Charter* applied to the VGFN, but that if the residency requirement infringed Ms. Dickson’s equality right, it was still protected by Section 25 of the *Charter*. As a result, Ms. Dickson’s challenge was rejected. The Yukon Court of Appeal also agreed. Ms. Dickson then appealed to the Supreme Court of Canada on the question of the constitutional validity of the residency requirement, and the VGFN cross-appealed on the question of the application of the *Charter*.

The Supreme Court has dismissed Ms. Dickson’s appeal and the VGFN’s cross-appeal.

**The residency requirement is protected as an “other” right or freedom under section 25 of the *Charter* because it preserves “Indigenous difference”.**

Writing for the majority, Justice Kasirer and Justice Jamal held that the *Charter* applied to the VGFN, but Ms. Dickson’s Section 15 *Charter* challenge failed and the residency requirement was upheld, because of the operation of Section 25.

The *Charter* applied to the VGFN, principally because it is a government by nature pursuant to Section 32(1). Furthermore, Justice Kasirer and Justice Jamal determined that Ms. Dickson had succeeded in showing that the residency requirement constituted a *prima facie* (or, on its face) infringement of her right to equality under Section 15(1) of the *Charter*.

However, Justice Kasirer and Justice Jamal said that the residency requirement was an exercise of an “other” right or freedom that pertains to the Aboriginal peoples of Canada under Section 25 of the *Charter*. As they explained, the purpose of Section 25 is to uphold certain collective rights and freedoms of Indigenous peoples when those collective rights conflict with an individual’s *Charter* rights. They declared that the residency requirement protects “Indigenous difference”, understood as interests connected to Aboriginal cultural difference, Aboriginal prior occupancy, Aboriginal prior sovereignty, or Aboriginal participation in the treaty process. “Requiring VGFN leaders to reside on settlement land helps preserve the leaders’ connection to the land, which is deeply rooted in the VGFN’s distinctive culture and governance practices. It also bolsters the VGFN’s ability to resist the outside forces that pull citizens away from its settlement land [...]. Such interests are associated with various aspects of Indigenous difference . . .”

Justice Kasirer and Justice Jamal concluded that Ms. Dickson’s claim based on her Section 15 right to equality abrogated or derogated from this “other” right under Section 25, which created an irreconcilable conflict between the two. As such, pursuant to Section 25 of the *Charter*, her claim could not be given effect.

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**Breakdown of the decision:** *Majority:* Justice [Kasirer](#) and Justice [Jamal](#) dismissed the Ms. Dickson’s appeal and the VGFN’s cross-appeal (Chief Justice [Wagner](#) and Justice [Côté](#) agreed) | *Dissenting:* Justice [Martin](#) and Justice [O’Bonsawin](#) agreed with the majority to dismiss the VGFN’s cross-appeal. However, they would have allowed Ms. Dickson’s appeal. They would have held that the residency requirement did not fall within the ambit of Section 25. They would have then decided that the residency requirement was not saved under Section 1 of the *Charter*, and as a result, the residency requirement should be declared of no force or effect. | *Dissenting:* Justice [Rowe](#) agreed with the majority to dismiss Ms. Dickson’s appeal but would have allowed the VGFN’s cross-appeal. He said that on a proper application of Section 32(1), the residency requirement is not subject to the *Charter*.

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** [Decision](#) (Supreme Court of the Yukon Territory) | [Appeal](#) (Court of Appeal of the Yukon Territory)

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