# Q&A with Bridget Gilbride: Litigating Dickson v Vuntut Gwitchin First Nation

**In this Q&A session, CCS summer student Juliana Quan interviews lawyer Bridget Gilbride (Fasken Martineau DuMolin), who is representing claimant Cindy Dickson in a landmark *Charter* case currently before the Supreme Court of Canada. For more info on the *Dickson* case, see here: https://journals.library.ualberta.ca/constitutional_forum/index.php/constitutional_forum/issue/view/1959**

## Q: We are currently awaiting the Supreme Court of Canada's decision in the case of *Dickson v VGFN*. Could you briefly summarize the legal dispute that the Court will be addressing?

**A:** The case arises because the appellant, Cindy Dickson, a citizen of the Vuntut Gwitchin First Nation, is barred from serving on the VGFN's government because she lives in Whitehorse, not Old Crow, the only community within the VGFN's Settlement Land. The majority of VGFN citizens live outside of their Settlement Land (including a large contingent in Whitehorse), and the VGFN exercises considerable legislative authority over all their citizens in Yukon. Ms. Dickson brought a *Charter* challenge to VGFN's residency requirement on the ground that it discriminates against her based on where she lives, relying on a previous decision of the Supreme Court of Canada, *Corbière v Canada*. There are three issues before the Supreme Court: 1) whether the *Charter* applies to the Vuntut Gwitchin government, an Indigenous self-government in Canada; 2) if the *Charter* applies, whether section 25 operates to shield the residency requirement from *Charter* review; and 3) if the Charter applies, whether the residency requirement is discriminatory, as found by the courts below.

## Q: The Yukon Court of Appeal found that the *Charter* applies to the VGFN and that its residency requirement is discriminatory but is shielded from invalidation by section 25 of the *Charter*. What are your thoughts on the idea that section 25 can function as an effective shield against *Charter* claims? Are there other interpretive approaches to section 25 that might be preferable?

**A:** We argued that section 25 is an interpretative provision that should not be applied as an automatic shield and should not bypass the balancing exercise required by section 1 of the *Charter*. In circumstances in which an Indigenous right will be *negated* through the application of the *Charter*, section 25 may well operate as a shield, but the analysis should be case-by-case, so that harm arising from the *Charter* infringement can be considered and balanced as part of the analysis. Specifically, we argued that section 25 should not operate to automatically shield laws of Indigenous governments, having the effect of providing lesser protections to Indigenous individuals than others in Canada.

## Q: How might the Supreme Court's ruling impact the relationship between Indigenous people and their governments? Are you concerned that the decision could underestimate the positive role that the Charter can play in Indigenous communities across Canada?

**A:** The *Charter*, which in large part constitutionalizes human rights recognized in important international covenants, provides basic and fundamental protections to *all* Canadian citizens, who are inherently vulnerable in the face of government conduct. The *Charter* empowers and protects individuals, which in turn strengthens democracies, including Indigenous governments.

## Q: More generally, what challenges have you experienced in representing Ms. Dickson?

**A:** It is a privilege representing Cindy. Mostly, I regret that I have not succeeded to date in the courts below. Cindy is very courageous to bring this important issue forward, and it has not been easy on her. She tried other avenues to resolve this issue but was not left with any options other than this court challenge. I am humbled by her commitment to equality for her fellow citizens, and honoured to be part of it.