

Date: 2024 12 06  
Docket: S-1-CV 2023 000 188

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

Gwich'in Tribal Council, James Andre, Phyllis Andre, Russell Andre, Alison  
Cardinal, John Norbert and Peter Ross

Applicants

-and-

Gwichya Gwich'in Council, Mavis Clark, Jared Blake, John Firth, Doris Koe, and  
Albert Ross

Respondents

---

Application for Relief from Alleged Election Irregularities and Oppression under  
the *Canada Not-for-profit Corporations Act*, SC 2009 c 23

Heard at Yellowknife: December 5, 2023

Written Decision filed: December 6, 2024

---

**REASONS FOR DECISION**  
**OF THE HONOURABLE JUSTICE S.M. MacPHERSON**

## INDEX

1. Introduction
2. The Parties
3. Facts
4. Legislative Framework
5. Issues
  - a. Do the GTC and the Member Applicants have standing to bring the application?
    - i. Standing to apply for an election review
    - ii. Standing to apply for an oppression remedy
  - b. Are any of the claims statute barred?
  - c. Whether there were irregularities that affected the results of the 2023 Election and, if so, the remedies which should follow?
    - i. Onus
    - ii. Allegations regarding lack of notice
    - iii. Allegation regarding residency requirement being prejudicial
    - iv. Alleged failure to confirm candidate eligibility and acclaiming Mavis Clark as President despite her being ineligible to run as a candidate
    - v. Allegation that the CRO conducted the 2023 Election in a biased manner
  - d. Did the Respondents act in a manner that is oppressive, unfairly prejudicial to, or unfairly disregards, the interests of the Applicants and, if so, the remedies that should follow?
6. Conclusion

*Gwich'in Tribal Council et al v Gwichya Gwich'in Council et al*, 2024 NWTSC 58

Date: 2024 12 06  
S-1-CV 2023 000 188

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

BETWEEN:

Gwich'in Tribal Council, James Andre, Phyllis Andre, Russell Andre, Alison  
Cardinal, John Norbert and Peter Ross

Applicants

-and-

Respondents

Gwichya Gwich'in Council, Mavis Clark, Jared Blake, John Firth, Doris Koe, and  
Albert Ross

**REASONS FOR DECISION**

**1 INTRODUCTION**

[1] The Gwich'in Tribal Council ["GTC"] plus 6 individual members of the Gwichya Gwich'in Council ("GGC") apply for relief pursuant to ss. 169 and 253 of the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23 ("*NFP Act*"). For ease of reference, I will refer to the six individual members of the GGC as the Member Applicants and to the Gwich'in Tribal Council as the GTC. Collectively, they are the Applicants.

[2] One Respondent is the GGC. The individual Respondents are persons who were acclaimed to office in an election held for the GGC President and Directors in 2023(the "2023 Election"). Mavis Clark was acclaimed as President of the GGC. Jared Blake, John Firth, Doris Koe and Albert Ross were acclaimed as Directors of

the GGC, together with the Applicant Alison Cardinal. The Respondents oppose the relief sought and seek to have the application dismissed.

[3] The Applicants seek a remedy for alleged election irregularities pursuant to s 169 of the *NFP Act*. Additionally, they assert that the combined effect of various financial obligations as well as the 2023 Election irregularities constitutes conduct that is oppressive, unfairly prejudicial or unfairly disregards the interests of the Applicants contrary to s 253 of the *NFP Act* and seek remedies in relation to that conduct.

[4] The Respondents oppose the application, asserting that the Applicants have no standing, that some of the claims by the Applicant are statute-barred, that the GGC is in compliance with its reporting obligations to its members, and that the 2023 Election was run appropriately.

## **2 THE PARTIES**

[5] The GTC is an Indigenous organization established in 1992 under the Gwich'in Comprehensive Land Claim Agreement, dated April 22, 1992 ("GCLCA"), entered into between the Government of Canada and the Gwich'in as represented by the GTC. The GCLCA defines who is considered to be "Gwich'in" and provides a method of enrolling those who are considered to be Gwich'in. Those individuals are called Participants and are entitled to be enrolled on the Enrolment Register. Notably, benefits provided under the GCLCA are provided to the Participants collectively and no individual participant has a right to land, money or other benefits unless specifically provided (article 4.8.3).

[6] The GTC is comprised of a number of institutional structures, including four designated Gwich'in organizations ("DGOs"), one DGO in each of the four Gwich'in communities. The DGOs represent the interests of the Gwich'in Participants in the GCLCA. The GCLCA provides that each DGO shall be open to membership by all Participants who are not minors. Each DGO elects a president and director from its enrolled membership.

[7] The GGC is one of the four DGOs and represent the interests of the Participants in the community of Tsiigehtchic.

[8] Both the GTC and the GGC are federally incorporated under, and must comply with, the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23 (“*NFP Act*”).

### 3 FACTS

[9] The Applicants filed eight affidavits, namely:

- a. the affidavit of the then Grand Chief of the GTC, Ken Kyikavichik, sworn June 2, 2023,
- b. the affidavit of James Andre, sworn July 4, 2023, t
- c. the affidavit of Phyllis Andre, sworn July 13, 2023,
- d. the affidavit of John Norbert, sworn July 4, 2023,
- e. the affidavit of Alison Cardinal, sworn July 13, 2023,
- f. the affidavit of Peter Ross, sworn July 7, 2023;
- g. the affidavit of Russell Andre, sworn June 13, 2023; and
- h. the affidavit of Jensen Thibault, sworn November 15, 2023.

[10] The Respondents filed two affidavits, namely:

- a. the affidavit of Phoebe Arey, Deputy Returning Officer, sworn September 19, 2023; and
- b. the affidavit of Mavis Clark, President of the GGC, sworn September 19, 2023.

[11] Ken Kyikavichik, Russell Andre, Phoebe Arey and Mavis Clark were cross-examined on their affidavits.

[12] Neither party sought leave to adduce further evidence at the hearing.

[13] The governance of GGC, such as the holding of assemblies, special assemblies, the role of the board of directors, the structure of committees, to name only a few governance activities, is set out in By-Law No. 1 (Governance) enacted on August 11, 2018 and amended on August 23, 2019 (GGC By-Law No.1). GGC By-Law No. 1 appends and incorporates an Election Policy which contains rules governing the conduct of elections.

[14] As will be further discussed below, there was some confusion on the facts as to what by-law governed the conduct of the 2023 Election as there had been attempts

to introduce and pass a new by-law in 2022. Nonetheless, all parties are in agreement that GGC By-Law No. 1, passed in 2018 and amended in 2019, was the governing by-law at all material times.

[15] The dispute between the parties began in approximately 2020. On October 15, 2020, the then Grand Chief of the GTC, Ken Kyikavichik, wrote to the GGC President and Directors expressing concerns with respect to the financial management of the GGC. In particular, Mr. Kyikavichik expressed a concern that the GGC had allegedly failed to complete financial audits and financial reporting since 2017. Additionally, it was alleged that the GGC had changed auditors without the approval of its members.

[16] The GTC's evidence is that the GTC offered to assist the GGC with respect to addressing the financial issues but the GGC did not take the GTC up on its offer. According to the Applicants, concerns with respect to the GGC's management of finances persisted throughout 2020-2022 and the issues identified in Mr. Kyikavichik's correspondence of October 15, 2020 remained of concern.

[17] On February 5, 2022, the GGC convened a Special Assembly and, amongst other business, purported to pass a new by-law to replace GGC By-Law No. 1. There was confusion as to which version of a new by-law was considered. In 2021, the GTC had sent a draft by-law to all four DGOs, including the GGC, to consider. The intention of doing so was to replace the original GGC By-Law No. 1. This by-law would have required that the President and Directors reside in Tsiigehtchic during their term but would not have required that they be a resident prior to running for office. It was this version that Mr. Kyikavichik initially believed was considered by the GGC during the Assembly held on February 5, 2022. On the evidence, it appears that another version of a by-law was considered. This by-law would have retained the requirement that all candidates for office have lived in Tsiigehtchic for at least one year before running for office. Regardless of which version was considered by the Participants at the Special Assembly, the evidence is clear that the Participants were not given adequate notice of the proposed by-law pursuant to the *NFP Act*.

[18] As such, GGC By-Law No. 1 remained in force and was the operative by-law at all material times.

[19] At the Special Assembly held on February 5, 2022, Participants also called for an election to be held.

[20] No election was held in 2022. The Respondent, Mavis Clark, who had been the interim president from July 13, 2020 until she was sworn in as President in July 2023, deposed that there were no funds to run an election in 2022. Ms. Clark also deposed that in September 2022, the GTC suspended the GGC's operational funding. Ms. Clark stated that she subsequently reached out on a number of occasions to the GTC with respect to seeking funding to run an election but funding was not reinstated.

[21] Notwithstanding that operational funding had been suspended by the GTC, funding for an election was ultimately found by the GGC and arrangements were made to hold an election in May 2023.

[22] On December 14, 2022, Phoebe Arey was appointed as Chief Returning Officer ("CRO"). Ms. Arey subsequently resigned as CRO but agreed to stand as Deputy Returning Officer ("DRO") and Shawa Nerysoo was appointed CRO.

[23] On April 6, 2023, Notice of Election was posted by Ms. Arey which provided that a general election for the GGC positions of President and Directors would be held. The Notice of Election was posted in several locations throughout the Tsiigehtchic community, including conspicuous areas, like: the Northern Store, the Charter Community of the Tsiigehtchic Office, the Gwich'in Social and Cultural Institute Building, and the Gwichya Gwich'in Council Office. The Notice of Election was also posted on the Tsiigehtchic Events Facebook page.

[24] On April 17, 2023, Ms. Arey posted a Notice Calling for Nomination of Candidates in the same locations in Tsiigehtchic and on the Tsiigehtchic Events Facebook page.

[25] It is uncontested that the DRO did not send the Notice of Election or Notice Calling for Nomination of Candidates to members of the GGC by mail. Ms. Arey deposes that her understanding was that members of the GGC have never been informed of general elections for President or Directors by mail.

[26] The Nomination of Candidates was to be received by 5pm on Friday, April 21, 2023.

[27] The DRO received 2 nominations for President (being Geraldine Blake and Mavis Clark) and 5 for Director (being Jared Blake, Alison Cardinal, John Firth, Doris Koe, and Albert Ross).

[28] The election plan was that the advance poll would be May 19 and election day would be May 26, 2023.

[29] On May 2, 2023, Geraldine Blake withdrew her candidacy for GGC President, leaving Mavis Clark as the only candidate. Mavis Clark was acclaimed as President the same day. Also on May 2, 2023, the DRO posted a Notice of Acclamation for Director for Jared Blake, Alison Cardinal, John Firth, Doris Koe, and Albert Ross. No appeal from these elections or the election procedure was filed pursuant to the Election Policy.

#### **4 LEGISLATIVE FRAMEWORK**

[30] Two sections of the *NFP Act* are engaged in this application. Firstly, the Applicants seek relief relating to what they contend are election irregularities. They rely on s 169:

169(1) A corporation or a member or director may apply to a court to determine any controversy with respect to an election or appointment of a director or public accountant of the corporation.

(2) On an application under this section, the court may make

(a) an order restraining a director or public accountant whose election or appointment is challenged from acting pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment, and including in the order directions for the management of the activities and affairs of the corporation until a new election is held or appointment made;

(d) an order determining the voting rights of members and of persons claiming to hold memberships; and

(e) any other order that it thinks fit.

[31] Secondly, the Applicants seek an oppression remedy for financial irregularities. They rely upon s 253 of the *NFP Act* which provides:



253 (1) On the application of a complainant, a court may make an order if it is satisfied that, in respect of a corporation or any of its affiliates, any of the following is oppressive or unfairly prejudicial to or unfairly disregards the interests of any shareholder, creditor, director, officer or member, or causes such a result:

- (a) any act or omission of the corporation or any of its affiliates;
- (b) the conduct of the activities or affairs of the corporation or any of its affiliates; or
- (c) the exercise of the powers of the directors or officers of the corporation or any of its affiliates.

## 5 ISSUES

[32] This application raises the following issues:

- a. Whether the Applicants have standing to bring the Application;
- b. Whether any allegations are statute-barred;
- c. Whether there were irregularities that affected the results of the 2023 Election and, if so, the remedies that should follow; and
- d. Whether the Respondents acted in a manner that is oppressive, unfairly prejudicial to, or unfairly disregards the interests of the Applicants and, if so, the remedies that should follow.

### **a Do the GTC and the Member Applicants have standing to bring this application?**

[33] There are two types of standing at issue. Firstly, do the Applicants have standing to bring an application for a review of the 2023 Election? And secondly, do the Applicants have standing to seek an oppression remedy?

#### **i Standing to apply for an election review**

[34] The Applicants' position is that s 169 of the *NFP Act*, which gives the court jurisdiction to determine any controversy regarding elections, provides the Member Applicants with authority to apply to the court for a review of the 2023 Election. The Member Applicants are each current members of the GGC.

[35] The Respondent does not dispute the entitlement to standing of the Member Applicants. It is only the entitlement of the GTC to apply for election relief which is in issue. The Respondent's position is that the GTC does not have standing to apply for an election review, as s 169 of the *NFP Act* requires a proper party to be a member or director of the GGC.

[36] The GTC have not asserted authority to apply for election relief in their pleadings and are content to leave the issue of election relief to the Member Applicants who clearly have standing. As such, I do not need to decide the issue of whether the GTC has authority to apply for election relief under s 169. The Member Applicants have authority to seek relief from this Court.

## **ii Standing to apply for an oppression remedy**

[37] The Applicants' position is that under s 253 of the *NFP Act*, a complainant may apply to a court for relief if the activities or affairs of the corporation have been carried on or conducted in a manner that "is oppressive or unfairly prejudicial to or unfairly disregards the interests of any shareholder, creditor, director, officer or member."

[38] The Applicants rely on ss 250 (a) and (e) of the *NFP Act* to claim they have standing as "complainants". Section 250 defines "complainant" as:

(a) a former or present member or debt obligation holder of a corporation or any of its affiliates;

[...]

(e) any other person who, in the discretion of a court, is a proper person to make an application under this Part.

[39] The Applicants rely on s 250(a) to provide the Member Applicants, as members of GGC, with standing to seek an oppression remedy. The Respondents do not dispute the entitlement of the Member Applicants.

[40] With respect to the GTC, the Applicants assert that s 250(e) is meant to provide a remedy where a person is not on an enumerated list of complainants but "by virtue of their relationship to, or dealings with, the company, have an interest that is not dissimilar to that of a shareholder": *N'Quatqua Logging Co Ltd v Thevarge et al*, 2006 BCSC 1122 at para 19. [*N'Quatqua*].

[41] *N'Quatqua* was cited with approval by Shaner, J (as she then was) in *Marlowe et al v Barlas et al*, 2024 NWTSC 38 at para 184. In that case, while the parties involved were separate legal entities, the Lutsel K'e Dene First Nation was held to have an interest equivalent to that of a shareholder with respect to the corporate respondents by virtue of the fact that the Lutsel K'e Dene First Nation derived all of its revenues from the corporate respondents.

[42] The Applicants assert that “complainant” is to be given a broad and liberal interpretation and simply because another person can bring an application does not preclude the court from finding that GTC is a proper person: *HSBC Capital Canada Inc v First Mortgage Alberta Fund (V) Inc*, 1999 ABQB 406 at para 35. [HSBC]

[43] The Applicants urge the court to examine whether there is a “nexus between the applicant and the harm done” or whether the Applicants have a “real interest in pursuing the matter”. *Zimmer v. DenHollander*, 2004 ABQB 493 at para 27, *HSBC, supra* at paras 28.

[44] As for a nexus, the Applicants rely on the role performed by the GTC as the body responsible for overseeing GGC's affairs and delegating rights and responsibilities to the GGC under the GCLCA. They assert the GTC has a direct interest in the GGC governance and in ensuring that the GGC will not act in a manner that disregards or is prejudicial to the interests of the GTC.

[45] The Respondent asserts that the GTC is mistaken in saying s 250(e) applies to give the GTC standing by virtue of having the responsibility to oversee the GGC. The Respondent argues that the GTC and the GGC are distinct legal identities. The GTC is responsible for distributing settlement funds released by the Settlement Corporation. The GTC is not responsible for overseeing the GGC or of delegating rights and responsibilities to the GGC. The GTC's role is to preserve the benefits transferred to the Gwich'in under the GCLCA for the collective benefit of the Participants as it pertains to capital and lands.

[46] Though the Respondent's argument regarding the separate legal status of the two organizations is compelling, it cannot be accepted. Under s 253 of the *NFP Act*, complainants enjoy certain rights, including the rights to bring an oppression action and to seek leave of the court to bring a derivative action on behalf of the corporation. The definition of “complainant” is clearly much wider than the concept of “member”. Complainants include, but are not limited to, members of a not-for-profit corporation. The Court may determine that “any other person” is a “proper person to make an application”.

[47] Therefore, the issue is whether the GTC is a “proper person” to make an application”. In my view, the Applicant is correct to cite HSBC for the proposition that an Applicant may be a proper person where their complaint is about conduct that breaches the underlying expectation that gave rise to the relationship between the person and the corporation.

[48] A review of the GCLCA makes it clear that there is a significant nexus between the GTC and DGOs, of which the GGC is one. The GCLCA was negotiated between the Government of Canada and the GTC, representing the interests of all Gwitchin. The GTC plays a determinative role with respect to the assignment of rights and obligations to DGO’s pursuant to article 7.1.1 of the GCLCA. These rights may be reassigned by the GTC. DGOs are mandated to be structured in such a fashion that all participants have an equal interest as at the date of settlement legislation and those organizations shall be owned and controlled by participants with non-transferrable membership (article 7.1.3). The GTC is responsible for keeping a public register of DGO’s, identifying all rights and obligations assigned to the DGOs.

[49] The intricate balance set out in the GCLCA makes it clear that there is a nexus between the GTC and the DGOs, which include the GGC. While I would not go so far as to say that the GTC plays an oversight role, or that the GGC is subordinate to the GTC, the principles underlying the GCLCA reflect a careful balance of community autonomy and collective strength. Although both organizations are separate legal entities, the wording and principles of the GCLCA make it clear that there is a strong nexus between the GTC and the GGC and that the interests and activities of one organization affects the other.

[50] As such, I find that the GTC is properly able to make an application for an oppression remedy.

**b Are any of the claims statute barred?**

[51] The Respondents assert that some of the claims made by the Applicants are statute barred. They rely on s 2(1) of the *Limitation of Actions Act*, RSNWT 1988, c L-8. This section reads:

s. 2(1) The following actions must be commenced within and not after the following times:

(b) actions for penalties, damages or sums of money in the nature of penalties given by any Act to Her Majesty or the person aggrieved, or partly to one and partly to the other, within two years after the cause of action arose.

[52] The Respondents also rely on the limitation period in the *NFP Act* at s 263(1) and (2) in pointing out that prosecutions for offences under the *NFP Act* may not be commenced more than two years after the subject matter of the complaint arose.

[53] The claims which the Respondents allege are statute barred relate to the concerns regarding financial mismanagement and failure to provide financial statements. Specifically, they assert that the following claims made in the Originating Notice are barred:

9. In October 2020, the GTC became concerned about the financial administration of the GGC, in particular with respect to GGC's lack of annual financial audits and financial reporting. The GGC had failed to complete financial audits since the 2017 year end, in contravention of the *NFP Act* and the GGC's By-Laws. The GGC also made a unilateral decision in April 2021 to replace its auditors without approval from its Participant Members at an Assembly.

10. Due to the failure to complete the required audits, GGC's members have not been provided with the GGC financial statements or had an opportunity to vote on the same since 2018.

[...]

29. The business and affairs of the GGC have not been conducted in accordance with the Reasonable Expectations of the Applicants. Among other things:

- a. The GGC President and Directors failed to conduct regular financial audits and provide audited financial statements to GGC members as required;
- b. The GGC President and Directors adopted a discriminatory and unlawful residency requirement that prohibited otherwise eligible candidates from running in the Election pursuant to such unlawful residency requirement.

[54] With respect to the *Limitation of Actions Act*, the Applicants note that the alleged financial irregularities are ongoing, therefore, the limitation period is not applicable.

[55] With respect to the provisions of the *NFP Act* which provide that prosecutions must be commenced within two years, the Applicants note that this is not a matter where a prosecution has been commenced, hence, ss 263(1) and (2) are irrelevant to the issue as to whether the claim is statute barred. They further assert that the Applicant Members are entitled to insist on compliance with the provisions of the *NFP Act* and the mere fact that these concerns have been outstanding for some time does not disentitle the Applicant to declaratory relief.

[56] On the evidence, it appears that the GTC was concerned with the GGC's alleged financial management since 2017 and these concerns were ongoing. The concern was expressed in a formal fashion in correspondence dated October 15, 2020, and, on the evidence, remained unresolved until, at the earliest, mid-2023. I say "at the earliest" as there is a dispute between the parties as to whether the GGC has now complied with its financial reporting obligations.

[57] As such, given that the concerns over compliance with financial obligations have been an apparently ongoing issue, and are not isolated in time to more than 2 years ago, I agree with the position taken by the Applicants and find that their claim is not statute barred by either the *Limitation of Actions Act* nor the *NFP Act*.

**c Whether there were irregularities that affected the results of the 2023 Election and, if so, the remedies that should follow?**

**i Onus**

[58] The Applicants allege a series of irregularities regarding the 2023 Election. These irregularities can be grouped into four categories:

- (a) GGC Participant members were provided with inadequate notice of the 2023 Election and nominations for the Board of Directors;
- (b) That the GGC imposed unlawful residency requirements on candidates for Directors, relying on a residency requirement that prejudices the GGC members who do not reside in Tsiigehtchic;
- (c) That the GGC failed to confirm candidate eligibility and acclaiming Mavis Clark as President despite her being ineligible to run as a candidate; and

- (d) That the CRO appointed for the Election was biased in favour of Mavis Clark and did not conduct the Election in an impartial manner.

[59] The Applicants allege that these irregularities justify an order for a new election for the President and Directors, with the CRO to be appointed by the GTC to ensure that the new election is conducted in a fair and impartial manner.

[60] The Respondents dispute that irregularities occurred and submit that the 2023 Election was conducted according to the rules and obligations set out under the GGC By-law No. 1, the Election Policy, and the *NFP Act*.

[61] With respect to the test to be applied in determining the issue, I adopt the test set out in *Mowat v University of Saskatchewan Students' Union*, 2006 SKQB 462 [*Mowat*], a case decided under the *NFP Act* which dealt with an application to declare the results of a referendum invalid and directing the holding of a new referendum. That case adopts the test as set forth by *Abrahamson v Baker and Smishek*, 1964 CanLII 380 (SK CA) at para 27:

...to be successful on a petition based upon the irregularities therein-stated, it must be shown to the satisfaction of the Court that the election was not conducted in accordance with the principles of the Act and that such non-compliance did affect the result of the election. The onus for establishing these two requirements rests on the petitioner.

[62] The Applicants assert that once irregularities are established, the onus shifts to the Respondents to satisfy the court that the irregularities did not affect the outcome of the election: *Mowat* at para 47, citing with approval McLachlin, J (as she then was) in *Leroux v Molgat*, 1985 CanLII 229 (BC SC).

[63] The Respondent submits that at all times, the onus rests with the Applicants, relying on *Bhagria v Sharma*, 2014 ONSC 5563 at para 23 and *Hellenic Congress of Quebec v Canadian Hellenic Congress*, 2020 ONSC 2224 at para 142.

[64] I do not accept that *Mowat* stands for the proposition that once an irregularity has been established, the onus then shifts to the Respondents. I note that *Mowat* also cites *Abrahamson* which clearly places the onus for both branches of the test on the party seeking the election relief. I do not view *Mowat* as conclusively establishing that the onus shifts.

[65] More significantly, this court has previously held that that election irregularities do not shift the burden of proof. Marshall, J. in *Camsell v Rabesca*, 1987 CanLII 8600 (NWT SC) addressed this issue in the context of a challenge to a local plebiscite. He wrote (at 198-99):

I turn again to the question of onus or burden of proof. The confusion in the cases, it seems to me, arises from the interpretation of early statutes in which showing that the irregularity was innocuous was treated as a proviso. So the cases cast a burden on the petitioners to show an irregularity, and the cases held that this itself would give rise to the petitioner's right. Showing that the irregularity did not offset the result, it seems, was treated as a special fact, and the burden for this was placed on the party seeking to uphold the election. Later statutes and some of the cases recognized this, but others, especially those that followed the strong precedent in the *Hickey* case, did not.

The problem with that allocation of onus aside from the fact that it does not accord with the general rule as to onus or with the English and some of the Canadian authorities I have cited, is that it will not lead to a proper result, I think, in some of the cases. As I have said, most elections will give rise to irregularities in the taking of the vote. In many instances of irregularities there may be no evidence on the issue, other than that the irregularity occurred. If the rule in *Hickey*, supra, were the law, such election would have to be declared invalid, that is, if there was *no evidence* on the question of whether the result might have been affected by the irregularity or not, or indeed if the evidence on the point *were in balance*. That, as this case shows, I think, will not uncommonly be the case.

On the other view, that is, following the decision in the *Morgan* case, supra, and the other cases I cited, taking the view that the onus throughout is on the petitioners, the petitioners are asserting and should be required to prove not only that there were irregularities but that these irregularities might have affected the result. It should not be just a part of but the entire factual situation that must be shown, to give rise to the right in the petitioners: see *Vines v. Djordjevitch* (1955), 91 C.L.R. 512 (Aus. H.C.).

...

This view as to onus, it seems to me, as well comports with the general rule regarding the legal or persuasive burden of proof. The general rule is that he who asserts must prove: see *Woolmington v. D.P.P.*, [1935] A.C. 462, 25 Cr. App. R. 72, [1935] All E.R. Rep. 1 (H.L.). The reason for the rule is grounded in plain common sense, that is, that he who would call another to account in the courts, with all the trouble and expense that entails, should be able to make out a case. The rule discourages harassment



in the courts and the improper use of the legal process by enemies, adversaries, busybodies, and others.

[66] The approach taken by Marshall, J. in *Camsell* was adopted by Vertes, J. in *Beamish v Miltenberger* 1997 CanLII 2910 (NWT SC).

[67] I find that the Applicant bears the onus throughout of establishing both election irregularities *and* that those irregularities affected the results of the election.

## **ii Allegations regarding lack of notice**

[68] The Applicants assert that some GGC members did not receive any notice of the 2023 Election. It is undisputed that notice of the 2023 Election and the subsequent call for candidates was given only through the Tsiigehtchic Facebook page and through posting at four locations within the community. The Respondents assert that GGC members without access to the Facebook page or who did not reside in Tsiigehtchic did not receive notice of the 2023 Election.

[69] The Applicants rely on s 162 of the *NFP Act*, and s 63(1) of the *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223 (the “*Regulations*”) to support their argument that proper notice was not given. Section 162 of the *NFP Act* provides:

The corporation shall give members entitled to vote at a meeting of members notice of the time and place of the meeting in accordance with the by-laws and regulations.

[70] Section 63(1) of the *Regulations* provides:

63 (1) For the purpose of subsection 162(1) of the Act, one or more of the following manners is a prescribed manner of giving notice:

(a) by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held;

(b) by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held;

(c) by affixing the notice, no later than 30 days before the day on which the meeting is to be held, to a notice board on which information respecting

the corporation's activities is regularly posted and that is located in a place frequented by members; and

(d) in the case of a corporation that has more than 250 members, by publication

(i) at least once in each of the three weeks immediately before the day on which the meeting is to be held in one or more newspapers circulated in the municipalities in which the majority of the members of the corporation reside as shown by their addresses in the register of members, or

(ii) at least once in a publication of the corporation that is sent to all its members, during a period of 21 to 60 days before the day on which the meeting is to be held.

[71] The Respondents assert that GGC members did receive proper notice of the 2023 Election. They rely on the fact that the Elections Policy allows for the use of social media platforms for the duration of the Election Period and point to the Facebook posting as evidence of the use of social media platforms. They also point to the posting of the notices within the community. They assert there is nothing requiring the CRO or the DRO to share notice of an election via mail or email. It is the evidence of Ms. Arey that the GGC has never provided notice of prior elections by mail or email.

[72] The Respondents assert that the Elections Policy was complied with in all respects and that the Applicants are importing additional notice requirements which are not set out in the Elections Policy.

[73] By-Law No. 1 provides, in s 7.1 that the President and Directors shall be elected in accordance with the GGC Elections Policy. The Elections Policy directs the CRO to provide notice with respect to an election but is silent on how notice should be disseminated, unlike, for example, the requirement that the list of voters be published by posting it in a "conspicuous location on a notice board in the community" (s 14(a)) or the requirement that the List of Candidates be posted "in a conspicuous location on every notice board in Tsiigehtchic" and posted "in any manner(s) of communication deemed appropriate" by the CRO (s 15.8).

[74] However, the Elections Policy specifically authorizes the use of social media during the election period to disseminate information pertaining to an election: s 8.2.

[75] Notably, while the Elections Policy authorizes the general use of social media, and also calls for posting of information within the community at various stages of the election process, nowhere does it specify that notice of an election is to be given by mail or email.

[76] The only evidence that GGC members have received notice of elections previously by mail or email is contained in the affidavit of Russell Andre, sworn June 13, 2023. Mr. Andre is a member of the GGC as well as a member of Gwichya Gwich'in Band and the GTC. In that affidavit, Mr. Andre deposes that "In past years, I have received notices of election in the mail." Under cross examination, Mr. Andre stated:

Q. ...earlier you discussed paragraph 7 of your affidavit, you say that you received notices of election in the past from the band and the GTC. Did you ever receive notice of election in the mail for the GGC?

A. *I can't recall but probably have.* Like I say like I have been travelling for the last five years because of work, I was coast guard and things like that, so I was always travelling so I had no then, it came by email or phone calls.

.....

Q. And I'm sorry, just to make sure, so you said – just to make sure I heard you, you said they don't receive – you didn't receive it by mail and that includes people from outside communities as well?

A. No, I said people in the community don't receive mail, I believe they are posted. But the people outside the community that are notified of an election usually. Usually.

Q. Usually. For the GGC?

A. For the GGC.

...

Q. ... And between 2007 and 2014, did you receive notices of election in the mail?

A. Yes.

Q. From the band?

A. From the band, yeah.

Q. *And did you receive notices from the GGC?*

A. *GGC, no. Where they didn't have to, or did they? Oh back, you're talking about, '07 to '14, yeah.*

Q. Yea, the GGC existed then?

A. *It would be either a phone call or - - usually it's posted all over Facebook.*

(emphasis added)

[77] I find that the evidence of Russell Andre is far from conclusive on the issue of whether notices of election have historically been provided to eligible voters by email or mail. Mr. Andre asserts that he “can’t recall” but they “probably have” and then asserts “usually it’s posted all over Facebook”. In addition to being a member of GGC, he is also a member of two other organizations and his evidence is confusing on the issue of which organization historically provided notice to voters by email or mail.

[78] Given the evidence that there is no practice of providing notice by email or mail, I can only look to the *Regulations*, GGC By-Law No. 1, and the Elections Policy as to the expectations around the conduct of the election. The *Regulations* provide that notice can be given in a variety of ways, including through posting in a place frequented by members. This was done in this case. Additionally, the Elections Policy specifically authorizes the use of social media to disseminate information. While the Elections Policy does not expressly address how notice of an election is to be given, it is implicit that notice may be given by social media.

[79] I find that the evidence establishes that appropriate notice of the 2023 Election was given in accordance with the *Regulations* as well as the Elections Policy. Additionally, notice of the 2023 Election was given in accordance with what appears to be past practice. There were no irregularities regarding the way notice was provided and no evidence any irregularity went to the heart of the process.

[80] Moreover, the manner in which notice was given was effective. Six of the seven affidavits filed by the Applicants confirm that they obtained information about the 2023 Election via the Tsiigehtchic Events Facebook page.

### **iii Allegation regarding residence requirement being prejudicial**

[81] The Applicants allege that the requirement that candidates for election have been resident in Tsiigehtchic for a period of at least one year was prejudicial to non-residents of Tsiigehtchic. This requirement is contained with the Elections Policy and By-Law No 1. The Applicants assert that the residency requirement is prejudicial because it prevents GGC members from running in elections for President and Directors if they have not lived in Tsiigehtchic for at least one year. More than half of GGC members do not reside in Tsiigehtchic and are thus ineligible to run.

[82] In support of this argument, the Applicants note that the *NFP Act* does not contain any residency requirements, nor does it provide any justification for the GGC to limit its members' eligibility to run in elections. They also rely upon the fact that "member" is defined in the By-Law No. 1 as being "a Participant registered pursuant to Chapter 4 of the GCLCA". By-Law No. 1 only distinguishes members based on age and creates two classes of members; those over 18 years of age and those under 18 years of age. It does not further distinguish between members and whether they are residents of Tsiigehtchic. Given this, they assert that the residency requirement unfairly prejudices non-residents by stripping them of their right to run for office in the DRO to which they belong.

[83] The Applicants further assert that the residency requirement is an irregularity that affected the results of the 2023 Election given that two of the Applicants both stated that they would have run for office if they had not been prohibited from doing so by the residency requirement.

[84] In response, the Respondent asserts that the By-Law No. 1 and Elections Policy were both approved by members at an annual assembly in 2019, including the residency requirements contained in both. They also note that there is no evidence as to what the residency requirements were prior to 2019.

[85] While the evidence establishes that there were attempts on behalf of the GTC and the GGC to pass a new by-law to replace By-Law No. 1, the evidence is clear that those attempts were not successful.

[86] As such, By-Law No. 1, approved by the membership in 2019, is the governing By-Law. Both By-Law No. 1 and the Elections Policy provide that only those who have lived in Tsiigehtchic for one year can run for office.

[87] The Applicants also raised the issue that those GGC Members who do not reside in Tsiigehtchic cannot vote. “Eligible Voter” in By-Law No. 1 is defined as meaning “any Gwichya Gwich’in, living within Tsiigehtchic, who is enrolled as a participant under the Gwich’in Comprehensive Land Claim Agreement and is at least eighteen (18) years of age on or before the date of the Election Day”. Thus, those Participants who do not reside in Tsiigehtchic cannot run for office or vote.

[88] It is noteworthy that non-residents are Participants and thus entitled to attend annual assemblies, to vote at annual assemblies and to pass or amend by-laws, including By-Law No. 1 which includes the residency provision. The Respondents argues, and I agree, that there is nothing preventing those Participants from changing the residency provisions contained within By-Law No. 1 to allow non-residents to vote and to run for office. I agree with the submissions that it is within the power of all Participants to determine how they wish to govern themselves. I find no prejudice in the Respondents’ reliance on a validly passed by-law to govern how elections occur within the community.

[89] The Applicants are clear that they are not alleging a breach of rights set out in in the *Canadian Charter of Rights and Freedoms* (“*Charter*”). Indeed, they query whether the *Charter* applies at all to the actions of the GGC. They rely exclusively on the *NFP Act* in asserting a prejudicial effect to members arising from the residency requirement.

[90] At the time this case was argued, we did not have the benefit of the Supreme Court of Canada’s reasons in *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10. At its heart, *Dickson* dealt with the issue of whether the *Charter* applied to Vuntut Gwitchin First Nation, a Yukon First Nations self government created under a land claim agreement and enshrined in legislation. The Vuntut Gwitchin First Nation had a similar provision as here; namely, that non residents could not vote or run for office.

[91] The Supreme Court of Canada, in holding that the residency restrictions were constitutional, had this to say:

[217] In light of the evidence and the factual findings at trial, we are satisfied that the residency requirement is an exercise of a right that protects interests associated with Indigenous difference. 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. The residency requirement promotes the VGFN’s expectation that its leaders will be able to maintain ongoing personal

interactions between leaders and other community members. It also bolsters the VGFN's ability to resist the outside forces that pull citizens away from its settlement land and prevents erosion of its important connection with the land. Such interests are associated with various aspects of Indigenous difference, including Vuntut Gwitchin cultural difference and prior sovereignty, as well as their participation in the treaty process that culminated in the enactment of the VGFN Constitution.

[218] Finally, we agree with both courts below that the residency requirement is of a "constitutional character" in a substantive, rather than formal, sense (trial reasons, at para. 207; C.A. reasons, at para. 147). The question of whether a "constitutional character" will always be required for s. 25 protection need not be decided: here it is clear that the residency requirement has a significant constitutional dimension. Beyond the mere fact that the residency requirement is part of the VGFN Constitution, it is an aspect of the First Nation's law that preserves and enshrines an important dimension of VGFN leadership traditions and practices, and VGFN leaders' connection to the land. We particularly note the Court of Appeal's conclusion that the residency requirement "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" (para. 147). On any reasonable understanding of what it means for a right or its exercise to have a "constitutional character", the residency requirement meets this standard.

[92] While this is not a *Charter* case, the comments of the Supreme Court of Canada with respect to this issue offer guidance as to why residency provisions may be viewed as significant within the context of an Indigenous organization such as the GGC.

[93] In summary, it is up to the Participant Members to dictate a residency requirement and it is equally up to those Participant Members to amend the by-laws to remove that residency requirement.

#### **iv Alleged failure to confirm candidate eligibility and acclaiming Mavis Clark as President despite her being ineligible to run as a candidate**

[94] The Applicants allege that the 2023 Election was substantially impacted by the fact that Mavis Clark was permitted to run for President of the GGC despite being ineligible to be a candidate. Mavis Clark was formerly a Director of the GTC but was suspended on Oct 5, 2022 after the GTC determined that she was in breach of the GTC Directors' Code of Conduct. The Applicants assert that because Ms. Clark had been suspended as a GTC director, she did not meet the requirements for

eligibility under the 2019 GGC By-law and Elections Policy. They further assert that there is no evidence that the Returning Officer or the Deputy Returning Officer verified the eligibility of candidates who were nominated to run in the 2023 Election.

[95] Section 7.3 of the GGC By-law No. 1 addresses eligibility to run for election to the office of President or Directors. Section 7.3 provides:

7.3 **Eligibility for President or Directors.** A President or Director shall be a Participant associated with the Gwichya Gwich'in Council, regular resident of the Gwich'in Community of Tsiigehtchic for no less than one (1) year and in Good Standing with the Gwichya Gwich'in Council and its Affiliates and/or Gwich'in Tribal Council and its Affiliates.

[96] Section 7.4 (d) provides that people who do not satisfy the eligibility requirements under s 7.2 of the By-law are disqualified from being a President or Director.

[97] Similarly, the Elections Policy provides that no person shall stand as a candidate where the person “has been disqualified as per 7.3 of By-Law No. 1”.

[98] While no one disputes that Mavis Clark is a Participant, the Applicants assert that because she was suspended as a Director of the GTC, she was not in “Good Standing” with the GTC and, therefore, ineligible to run for office with the GGC.

[99] This raises two issues. Firstly, what does “good standing” mean? And secondly, does a person have to be in “good standing” with the GTC to run for office of the GGC?

[100] “Good standing” is defined in 1.1(p) of the GGC By-Law in a circular fashion (as written):

“**Good Standing**” means a Participant who is not disqualified to be an [sic] President or Director pursuant to Section 7.3 of this By-Law.

[101] The Applicants assert that that the suspension of Mavis Clark by the GTC means that she was not in good standing with the GTC and, therefore, was not in good standing with the GGC.

[102] That, however, is not the end of the inquiry. The Respondents assert that the suspension of Mavis Clark was unfair and was not done in accordance with GTC’s



own procedures. As such, given the lack of procedural fairness, they assert that the Court should disregard the suspension and subsequent removal of Ms. Clark as a director of the GTC. In essence, they say she is in good standing until she is suspended or removed in a procedurally fair manner.

[103] Ken Kyikavichik deposes in his affidavit that Mavis Clark was suspended on October 5, 2022 after being provided with correspondence on September 20, 2022 advising of concerns with respect to her conduct. The letter provides Ms. Clark with notice of the intention to move a motion to suspend her at the next Board Meeting on October 5, 2022.

[104] The Respondents assert that Mr. Kyikavichik's correspondence does not contain specific factual information about the reasons for the suspension and that this lack of detail constitutes a breach of the principles of natural justice. I disagree. Mr. Kyikavichik's correspondence of September 20, 2022, provided the following specifics:

- a. A verbal warning from the Board respecting allegations of bullying, verbal abuse and intimidation was discussed with Ms. Clark in December 2021;
- b. Disparaging comments were allegedly made by Ms. Clark about Mr. Kyikavichik in July 2022;
- c. Concerns about the content of an email sent by Ms. Clark to Mr. Kyikavichik on July 26, 2022;
- d. An attempt to censure Mr. Kyikavichik at a Board meeting and at the 2022 Annual General Assembly; and
- e. Reference to an earlier written warning from the former Grand Chief on June 9, 2020, respecting inappropriate comments allegedly made.

[105] Mr. Kyikavichik's correspondence also provided specifics of provisions of the By-Law and Code of Conduct alleged to have been breached.

[106] This is not a situation where Ms. Clark was unaware of the concerns of the GTC. She was given adequate notice of the alleged breaches and of the fact that a motion to suspend her was going to be brought forward at the next Board meeting in October 2022.

[107] The Respondents also assert a failure of natural justice in that Mavis Clark was not provided with written notice of her suspension, therefore, she could not invoke the appeal procedures set out within the GTC By-law No 1. However, the evidence is that Ms. Clark was in attendance at the meeting which suspended her and participated in that meeting. According to the evidence of Ken Kyikavichik, Ms. Clark provided a verbal statement at that meeting. She was present for the vote to suspend her and only then left the meeting. She was clearly aware of the outcome of the proceedings. The fact that she was not provided with written notice of the suspension, in these circumstances, is not procedurally fair. The purpose of written notice would be to let Ms. Clark know of the suspension. There is no question that she knew of the suspension, despite not being provided with written notice.

[108] Consequently, the Respondents' argument that Mavis Clark was improperly suspended must fail. I find no procedural unfairness in her suspension.

[109] However, that does not dispose of the issue. Even though Mavis Clark may have been properly suspended in accordance with GTC's own procedures, it is far from clear that that suspension resulted in her being ineligible to run for President of the GGC.

[110] As noted above, GGC's By-Law No. 1 provides that a candidate must be in good standing with the GGC and its affiliates and/or the GTC and its affiliates. Ms. Clark was not in good standing with the GTC. Therefore, the question is raised as to whether Ms. Clark was in good standing with the GGC and its affiliates?

[111] "Affiliates" is defined as having the meaning ascribed to it by the *NFP Act*, and including, for greater certainty, the Gwichya Gwich'in Council Development Corporation. It refers to subsidiaries of a company or instances where one company is controlled by the other. This is not a case where the GGC is an "affiliate" of the GTC within the meaning of either the *NFP Act* or the GGC By-Law No 1.

[112] The use of the phrase "and/or" leaves doubt as to whether a candidate must be in good standing with the GGC **and** the GTC or whether a candidate must be in good standing with the GGC **or** the GTC.

[113] Confusion and ambiguity often arise in scenarios where "and/or" is used. The confusion stems from the fact that the word "and" is conjunctive (i.e., it combines things), while the word "or" is disjunctive (i.e., it separates things). Because the

phrase “and/or” can reasonably be construed as conjunctive and disjunctive at the same time, it is inherently ambiguous.

[114] Had the GGC meant to link qualification to run for office to those who were in good standing with *both* the GGC and the GTC, they could, and should have, said so. In this context, by using the phrase “and/or”, it is equally plausible that a candidate must be in good standing with either the GGC or the GTC.

[115] In the circumstances, given the ambiguous wording of article 7.3, I will resolve the ambiguity in favour of Ms. Clark. Where one seeks to disqualify an individual from holding office, clarity is required. See for e.g., *Jacko v Cold Lake First Nation*, 2014 FC 1108 at para 77; *Barthropp v West Vancouver (District)*, 1979 CarswellBC 403.

[116] Additionally, I note that s 7.4(g), addressing disqualification of certain individuals for by-law breaches, including GTC by-law breaches, does not apply to those holding office as President. As such, the Applicants cannot rely on that provision to support their argument that Ms. Clark was disqualified as President of the GGC.

[117] Lastly, I note that the GTC, through the then Grand Chief, continued to refer to Ms. Clark as interim president of the GGC in his correspondence of January 31, 2023, notwithstanding that Ms. Clark had been suspended and then subsequently removed from her role as Director of the GTC in October, 2022. Had Ms. Clark’s suspension from the GTC meant that she was no longer eligible to sit as the President of GGC, it makes no sense that the then Grand Chief would continue to refer to Ms. Clark as the interim president.

[118] As such, I find that Ms. Clark was eligible to run for President of the GGC because she was in good standing with the GGC.

[119] The Applicants also raised a concern with respect to whether the CRO and DRO carried out their duty to verify the eligibility of all candidates to run for office. They point to the lack of evidence that criminal record checks were done. The evidence on this point was ambiguous. Furthermore, the Applicants have failed to establish that if there were irregularities in this regard, that those irregularities affected the outcome of the 2023 Election.

**v Allegation that the CRO conducted the 2023 Election in a biased manner**

[120] The Applicants allege that the CRO, Shawna Nerysoo, was biased in favour of the current President and Directors and, as such, did not conduct the election in an unbiased manner. They point to the failure to provide information about the election in a timely manner as well as the decision to allow Mavis Clarke to run for office, notwithstanding her suspension and subsequent removal from office with the GTC.

[121] The Applicant, Phyllis Andre, who resides outside of Tsiigehtchic, swore an affidavit in which she expressed her concern about Ms. Nerysoo, indicating that Ms. Nerysoo was a close friend of Mavis Clark. Ms. Andre speculated that might be why Ms. Clark was permitted to run for office. Ms. Andre also advised that she had placed a call to Ms. Arey, the DRO and was told that the CRO [Ms. Nerysoo] would get back to her. Ms. Andre deposes that she wished to nominate someone for office as well as run for office herself. She asserts that the CRO did not get back to her.

[122] The evidence of the Respondent, Mavis Clark, is that Shawna Nerysoo was the only person to apply for the position of CRO. Ms. Clark advised that Council made the decision to appoint Ms. Nerysoo and that Ms. Clark's only involvement was to state that she must be a good candidate because Ms. Nerysoo had run the GTC election.

[123] It cannot be said that Ms. Nerysoo was biased simply because she was a close friend of Ms. Clark's. The Applicants must establish that the friendship affected how Ms. Nerysoo, and those working with her such as Ms. Arey, carried out their duties. It is not unusual in small northern communities for people to know each other and have friendships. The uncontested evidence is that she was the only applicant for the position and that Ms. Clark did no more than pass on her application to council. As well, the fact Ms. Nerysoo had previously run a GTC election would further support the decision to hire her.

[124] It is unfortunate that Ms. Andre's inquiries were not responded to. However, as a non-resident, it is also clear that she would not have been eligible to run as a Director. The non-response did not affect the outcome of the election.

[125] Additionally, the Applicants, Russell Andre and Alison Cardinal, also swore affidavits expressing their concern about the appointment of Ms. Nerysoo, given that it was their understanding that Ms. Nerysoo and Ms. Clark were close friends. They

provided no additional information to support their speculation that the close friendship influenced Ms. Nerysoo's conduct of the election.

[126] I find that the Applicants have failed to establish that the election was conducted in a biased manner.

**d Did the Respondents acted in a manner that is oppressive, unfairly prejudicial to, or unfairly disregards the interests of the Applicants and, if so, the remedies that should follow?**

[127] Section 253 of the *NFP Act* provides that a complainant can apply to court to make an order if it is satisfied that the actions of a corporation were oppressive, unfairly prejudicial to, or unfairly disregards the interests of any member. This is commonly referred to as an oppression inquiry. The Applicants rely on the allegations of election irregularities dealt with above as well as the failure of the GGC to meet its financial reporting obligations to its members as evidence of conduct sufficient to engage section 253 and deserving of a remedy.

[128] I have dealt with the alleged election irregularities above and find that they do not support an oppression remedy. However, on the evidence before me, there is concern that the GGC has failed in its obligation to provide financial statements to its members.

[129] The Supreme Court of Canada, in *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 68, sets out the test to determine whether the court should intervene:

In summary, the foregoing discussion suggests conducting two related inquiries in a claim for oppression:

- (1) Does the evidence support the reasonable expectation asserted by the claimant? and
- (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

[130] On the evidence here, there is substantial concern that the GGC has failed in meeting its financial obligations to its members and to the GTC. The issue of a lack of financial reporting was raised by GTC on October 15, 2020. The same issue was again raised by the GTC on January 31, 2023. In that correspondence, it is alleged that financial audits had not been done since 2017. An individual Applicant, Russell

Andre, alleges in his affidavit that it had been years since meeting minutes or financial statements were provided. Peter Ross alleges in his affidavit that he has requested copies of GGC's financial statements for the past couple of years and that he has always been told that they did not have the financial statements ready.

[131] There is some evidence that financial statements may have been done by the time this matter was argued before me, however, even that was not clear. In her affidavit, Ms. Clark asserts that she had provided her financial statements to the GTC as of August 1, 2023, and requests a reinstatement of operational funding, however, there is no evidence that the financial statements have been provided to the members. Indeed, even at the hearing of this matter, there was some doubt as to whether the financial statements had been provided to the GTC.

[132] Section 172(1) of the *NFP Act* creates an obligation for financial documents, including financial statements, to be placed before members at every annual meeting. A copy of a summary of these documents must also be sent to members (s 175(1)). Section 148(1) enshrines the common law duty for directors and officers to act honestly and in good faith and 148(2) recognizes there is a duty to comply with the requirements of the *NFP Act*.

[133] Section 253(3)(i) authorizes a court, where it has found oppressive, prejudicial or unfair conduct, to make an order requiring a corporation to produce to interested persons financial statements in the form required by section 172. In these circumstances, given that financial statements have not been provided to members for a number of years, I will make such an order.

[134] I direct financial statements for the period 2017 to 2023 be produced and made available to all GGC members, and to the GTC, within four months of the date of this decision. The GGC may make the financial statements available to members by posting a notice on the Tsiigehtchic Facebook page advising as to the availability of the financial statements for any members interested. As well, the GGC shall provide copies of the financial statements to any members who request them through calling the GGC office. Lastly, the GGC shall provide copies of the statements directly to the GGC within four months of the date of this decision.

## 6 CONCLUSION

[135] I direct the production and publication of financial statements in accordance with the terms of paragraph 134. The balance of the relief sought by the Applicants is dismissed.

[136] Counsel may speak to costs if they cannot agree.

S. M. MacPherson  
J.S.C.

Dated at Yellowknife, NT, this  
6<sup>th</sup> day of December, 2024

Counsel for the Applicants: Jessica Buhler

Counsel for the Respondents: Darryl Korell

**IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES**

---

BETWEEN:

Gwich'in Tribal Council, James Andre, Phyllis Andre,  
Russell Andre, Alison Cardinal, John Norbert and  
Peter Ross

Applicants

-and-

Gwichya Gwich'in Council, Mavis Clark, Jared Blake,  
John Firth, Doris Koe, and Albert Ross

Respondents

---

**REASONS FOR DECISION**

---