

Court of Appeal Act Amendments Discussion Document

Department of Justice
2026



The Yukon Court of Appeal is seeking feedback regarding its procedures and rules.

Your contributions will inform upcoming amendments to the *Court of Appeal Act RSY 2002 c. 47* and the *Court of Appeal Rules 2005* (Yukon Civil Rules).

The purpose of this work is to

- define the connection between the legislation supporting the Court of Appeal of Yukon (YKCA) and the Act and Rules in the Court of Appeal for British Columbia (BCCA);
- modernize the territory's Act and Rules so they reflect Yukon practice and procedure while maintaining as much alignment with the rules and practice of BC's Court of Appeal as possible; and
- provide a clear set of powers for the Court, justices, and the Registrar.

We welcome input from all court users, including lawyers, paralegals, legal assistants, articling students, law librarians, legal organizations, the Yukon First Nations and the public.

This Discussion Document was prepared with assistance from the Court of Appeal for British Columbia. Establishing consistent practices between the two courts is beneficial for the efficient and effective operation of the Yukon Court of Appeal.

This document is not an authoritative statement of the relevant law and should not be treated as such. An opportunity to provide comments or suggestions on any aspect of the legislation supporting the Court of Appeal of Yukon is provided at the end of this Discussion Document.

Establishing the Yukon Court of Appeal

The Yukon's Court of Appeal Act [referred to as the YKCA Act] establishes the Court of Appeal of Yukon as a superior court of record and gives the Court the power to hear all appeals or motions in relation to judgments, orders, or decisions of the Supreme Court or the Territorial Court. As per s. 1 of the YKCA Act, the Court has the “same powers, jurisdiction and authority in relation to matters arising in the Yukon possessed immediately before January 1, 1971, by the Court of Appeal for British Columbia in relation to matters arising in British Columbia in the exercise of its ordinary jurisdiction.”

As such, the YKCA Act is still read in conjunction with the British Columbia Court of Appeal Act, RSBC 1960, c. 82 as it existed as of December 31, 1970 (hereafter referred to as the “1970 Act”).

In July 2022, British Columbia's new *Court of Appeal Act* SBC 2021, c. 6 (referred to as the BCCA Act) and the *Court of Appeal Rules BC Regulation 120/2022* (referred to as the BCCA Rules) came into force. As the YKCA Act still relies on the 1970 Act, this creates nuances in the YKCA's practices that are distinct from the reforms the BCCA made to its Act and Rules in 2022.

Constitution of the YKCA

The Yukon's Court of Appeal consists of the Chief Justice of the Court and any justices the Governor-in-Council appoints from the BCCA and the judges and *ex officio* judges of the Supreme Court [YKCA Act s. 3]. This includes the resident judges of the Yukon Supreme Court and *ex officio* the judges who sit on the Nunavut Court of Justice and the Northwest Territories Supreme Court.

In practice, when justices are appointed to the BCCA, they are also cross appointed to the YKCA. The three resident judges of the Supreme Court and the judges who sit on the Nunavut Court of Justice and the Northwest Territories Supreme Court are also cross appointed to the YKCA.

As per s. 7 of the YKCA Act, the YKCA can sit in either British Columbia or the Yukon. When sitting in the Yukon, divisions are generally comprised of two judges of the

BCCA and one judge from a northern territory. When sitting in Vancouver, the division is composed of justices from the BCCA.

Question 1: Are there any Yukon matters of practice and procedure relating to the constitution of the Court of Appeal that deserve attention or amendment?

Court of Appeal Procedure

General

Section 11 of the YKCA Act allows justices of the YKCA to “make rules for regulating the practice and procedure on appeals to the Court of Appeal.” The YKCA currently has such rules in the *Yukon Civil Rules* and the *Yukon Territory Court of Appeal Criminal Rules* 1993 SI/93-53.

The YKCA Act s. 12 provides that, where there is no provision in either the Act or Rules, the proceedings “shall be as nearly as possible in conformity with the rules of the Court of Appeal for British Columbia.”

Question 2: Are there sufficient legislative guidance and rule-making authority in the current YKCA Act?

Notice of Appeal

To initiate an appeal in the YKCA, a notice of appeal must be given within 30 days from the date of the pronouncement of the judgment, order, or decree or within any additional time allowed by the judge who made the pronouncement [YKCA Act s.10].

Unlike the YKCA Act, the BCCA Rules also provide a 30-day timeline for bringing an appeal but do not provide for the judge who made the order to extend the time to appeal [BCCA Rules, R. 6]. Any request for a time extension must be made to a justice of the BCCA [BCCA Rules, R. 41].

Question 3: Should Yukon retain the ability for any presiding judge to extend the 30-day time limit for filing an appeal?

Leave to Appeal

One of the key differences between the YKCA and the BCCA is that there is no leave to appeal provision in the YKCA Act, meaning appellants do not have to seek permission from the YKCA to bring an appeal.

Section 2 of the YKCA Act provides that an appeal is as of right from every judgment, order or decree made by the Supreme Court (final or interlocutory), from every decision relating to matters of certiorari, quo warranto, mandamus, prohibition, and habeus corpus, and under any Act of the Legislature or Parliament.

There is provision under Rule 3 of the Yukon Civil Rules for leave to appeal in civil matters, but this provision is used in circumstances where another statute requires leave to appeal.

Question 4: Should the YKCA maintain the status quo regarding leave to appeal or amend the YKCA Act to better align with the BCCA Act and Rules?

Powers of a Single Justice

Unlike the procedure in the BCCA, the YKCA Act does not detail the powers of a single justice. Instead, the authority for the powers of a Yukon justice in chambers comes from s. 12 of the 1970 Act:

In any cause or matter pending before the Court of Appeal, any direction incidental thereto not involving a decision of the appeal may be given by a single Judge of the Court of Appeal in Chambers, and a single Judge of the Court of Appeal may at any time during vacation make an interim order to prevent prejudice to the claims of any parties pending an appeal, as [they] may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

This provision allows a justice of the Court to give orders that are “incidental” as well as “interim orders to prevent prejudice” to the claims of any parties pending an appeal. Section 12 also indicates a justice may make such orders “at any time during vacation,” with “vacation” interpreted to mean that a division of the Court is not sitting. This suggests a single justice in chambers can make an order on any day that a division of the YKCA is not hearing appeals. Any order made by a single judge in chambers, however, may be discharged or varied by a division of the Court of Appeal.

In contrast, s. 30 of the BCCA Act provides a broader range of powers:

In an appeal or other matter before the court, a justice may do one or more of the following:

- a) make orders incidental to the appeal or matter not involving a decision of the appeal on the merits;
- b) make orders or give directions for the purposes of managing the conduct of the appeal or other matter;
- c) make interim orders to prevent prejudice to any person;
- d) exercise the powers referred to in the following sections for the purposes of a matter that is to be decided by a justice:
 - i) s. 24 (2)(a) and (b) [general powers of the court]
 - ii) s. 26 [limiting hearings and requiring preparation of written arguments]
- e) exercise the powers given to the registrar by this Act or the rules;
- f) grant leave to intervene;
- g) refer any application to the court;
- h) make any order with the consent of all parties to the appeal;
- i) in making any order, impose terms and conditions and give direction that the justice considers just.

Further, a judge of either the Supreme Court or YKCA can stay the execution of the judgment appealed from (YKCA Act s. 13). In contrast, a single justice of the BCCA may

stay all or part of the proceedings, including execution, in the cause or matter from which the appeal is brought (BCCA Act s. 33(1)).

Question 5: Should the YKCA retain the powers of a single justice currently provided by the YKCA Act or should it align with the powers granted under the BCCA Act?

General Powers of the Court

The general powers of the YKCA as a court are not set out in the YKCA Act. Rather, these powers come from the 1970 Act, which include:

Original Jurisdiction

8. The Court of Appeal further has and shall exercise such original jurisdiction as may be necessary or incidental to the hearing and determination of any appeal.

Further Powers

9. For all the purposes of and incidental to the hearing and determination of any matter within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order, and for the purpose of every other authority expressly or impliedly given to the Court of Appeal by this Act, the Court of Appeal has the power, authority, and jurisdiction vested in the Supreme Court.

The 2022 BCCA Act provides more precise provision for general powers of the court:

General powers of the court

24. 1) On an appeal the court may

- a) make any order that the court appealed from could have made,
- b) impose reasonable terms and conditions in an order, and
- c) make any additional order that it considers just.

2) The court may

- a) draw inferences of fact,
- b) exercise the powers of the Supreme Court in relation to matters of contempt of court, and

- c) exercise any original jurisdiction that may be necessary or incidental to the hearing and determination of an appeal.

3) The court may exercise its powers

- a) even though only part of an order is being appealed, and

- b) in favour of any person, whether or not the person is a party to the appeal.

Court has the power of court appealed from

25. The court has the power, authority and jurisdiction vested in the court appealed from

- a) for all purposes of and incidental to

- i) the hearing and determination of any matter, and

- ii) the amendment, execution and enforcement of any order, and

- b) for the purposes of every other authority expressly or impliedly given to the court.

Question 6: Do you have any concerns with aligning the general powers of the YKCA with those granted in the BCCA Act?

Hearings

The YKCA Act provides the authority for the Court to conduct hearings of appeals. On the hearing of an appeal, the Court or a justice may also order a party to prepare written arguments on any matter, whether it is in the factum or motion book (Yukon Civil Rules R. 41).

The BCCA Act authorizes the Court to limit hearings and to require the preparation of written arguments (BCCA Act s. 26). This means a hearing can be conducted in writing, a matter can be decided without a hearing, or the time for hearing an appeal can be limited by the Court (BCCA Act s. 26(1)). The Court may also order a party to prepare written arguments on any issue, whether the issue has been previously addressed by the party or not (BCCA Act s. 26(2)).

The YKCA Act and its rules do not contain similar provisions for limiting the time for hearing or allowing an appeal to proceed in writing only.

Question 7: Should the YKCA Act and rules regarding hearings be amended to better align with the BCCA Act and rules?

Registrar's Powers and Review of a Registrar's Orders

The YKCA Act (s. 9) indicate there shall be a registrar of the Court who "shall perform those functions and exercise those powers determined from time to time by the Chief Justice of the Court of Appeal." However, it does not establish the parameters of those powers as set out in the recent BCCA Act.

The BCCA Act (s. 37) allows the registrar to exercise the powers conferred under the rules or by the Chief Justice. This provision authorizes the Chief Justice to allow the registrar to exercise powers for the management of an appeal or other matter of the Court. The Chief Justice may also impose limits or conditions around the exercise of the registrar's powers.

The YKCA Act does not give a judge the power to review a registrar's order or direction. However, the 1970 Act allows for appeals of a registrar's decision to be heard by a full division of the Court.

Question 8: Should the registrar's powers and the ability to review a registrar's orders maintain status quo with the current YKCA Act or be aligned with the new BCCA Act?

Summary Determination

A feature of the recent BCCA Act is the ability to refer a matter for summary determination. Currently, the YKCA Act does not have a provision granting comparable authority for summary determination.

The BCCA Act (s. 21) gives a justice or the registrar the ability to refer an appeal to the Court for summary determination if the justice or registrar considers the appeal to be

frivolous or vexatious or it can otherwise be dismissed on a summary basis. On referral, the Court may either dismiss all or part of the appeal if it considers the appeal is indeed frivolous, vexatious or can be summarily dismissed. Appellants are given an opportunity to make submissions or to be heard prior to the Court dismissing all or part of the appeal.

Question 9: Should the YKCA have the power of summary determination?

Vexatious Proceedings

The YKCA is, on application or on its own motion, permitted to make an order against a litigant for vexatious proceeding (YKCA Act s. 12.1). The person subject to the order may apply to the Court to have the order rescinded or they can apply for leave to institute or continue a proceeding.

Section 22 of the BCCA Act allows for an order to be made against a person who has habitually, persistently and without reasonable cause commenced or continued vexatious proceedings in any of the courts of British Columbia. This provision also allows the justice who made the order to refer the matter to the Court.

The BCCA Act allows the Court or justice to consider the litigant's conduct in other courts in BC, but the YKCA Act does not have a similar provision.

Question 10: Should a litigant's conduct in any Yukon court be considered when determining if appellate proceedings are vexatious?

Inactive and Dismissed Appeals

Inactive appeals are treated similarly in both BC and YT Courts. However, the YKCA Act and Rules do not address a process for reinstatement of an appeal. The Yukon Civil Rules provide a procedure on settlements or abandonments. When a certificate of readiness is not filed within one year after the filing of a notice of appeal or notice of

application for leave to appeal, the registrar must place the appeal or application for leave on the inactive appeal list and mail notice of that action to each counsel of record and each unrepresented appellant or respondent (*Yukon Civil Rules*, R. 46(2)).

An appeal or application for leave must be removed from the inactive appeal list when a judge grants leave to proceed with the appeal or application for leave (Rule 46(3)). If an appeal has been on the inactive list for 180 consecutive days, on the 181st day, the appeal is dismissed as abandoned (Rule 46(6)).

The BCCA Act states that if an appeal or application for leave to appeal is inactive under the rules, it will be dismissed as abandoned (BCCA Act s. 23). An appeal is placed on the inactive list if a notice of hearing has not been filed one year after the notice of appeal is filed, or 60 days after the appeal is ready for hearing (BCCA Rules r. 49 and 50). An appellant may not file any document in relation to an appeal that is on the inactive list (Rule 49(3)). An appeal is dismissed as abandoned if it remains on the inactive list for 180 day (Rule 51). However, the BCCA Act and Rules provide for a process for an appeal to be reinstated (BCCA Act s. 23(2), BCCA Rule 51(2)).

Question 11: Should the YKCA amend the Act and Rules to establish a procedure for reinstating an inactive appeal?

Costs

The YKCA Act is silent on costs. The authority for making a costs order comes from the 1970 Act, which states that costs shall follow the event unless otherwise ordered for good cause.

The YKCA Act also does not address security for costs. In its place, the 1970 Act provides that security for costs can be ordered to be posted by the appellant in an amount fixed by a judge of the Court appealed from, not by a justice of the Court of Appeal. The Act limits this amount to \$200, meaning, in practical terms, that a YKCA justice in chambers lacks the jurisdiction to order security for appeal costs.

Question 12: Should costs, including security costs, be addressed in the YKCA Act or is the guidance currently provided in *Yukon Civil Rules Appendix B* sufficient?

Pronouncement of Judgments

The BCCA Act allows the Chief Justice to establish practices and procedures for the court respecting the pronouncement of judgements (BCCA Act s. 39(1)). A judgment must be pronounced by a justice in open court **or** in a manner established by the Chief Justice (s.40(1)).

The YKCA Act does not provide a process for pronouncement, meaning the framework from the 1970 Act still applies. Section 27 of the 1970 Act indicates all judgments of the Court of Appeal shall be delivered in open court.

Question 13: Should the YKCA Act be amended to allow the Chief Justice to establish how a judgment is pronounced?

Question 14: Do you have any additional concerns or comments regarding any aspect of the YKCA legislation?

Thank you for taking the time to consider these important questions. Please provide your written responses by email to jus-coa-review@yukon.ca no later than October 19, 2026.

