



Applying to change a Family Order

Family Law Self-Help Guide

Government of Yukon legal information resources

Family Law Information Centre
867-456-6721
1-800-661-0408 ext. 6721 (toll-free)
yukon.ca/en/family-law-information-centre

Supreme Court Registry
867-667-5937
1-800-661-0408 ext. 5937 (toll-free)

Law Library
867-667-3086
1-800-661-0408 ext. 3086 (toll-free)

Maintenance Enforcement Program (Information Line)
867-667-5437
1-877-617-5347 ext. 5437 (toll-free)
yukon.ca/en/legal-and-social-supports/family-law/find-out-about-maintenance-enforcement-program

Sheriff's Office
867-667-5451
1-800-661-0408 ext. 5451 (toll-free)

Victim Services
867-667-8500
1-800-661-0408 ext. 8500 (toll-free)

Non-Government legal information resources

The Law Line (Yukon Public Legal Education Association – YPLEA)
867-668-5297
1-866-667-4305 (toll-free)
yplea.com

Legal Aid (Yukon Legal Services Society – YLSS)
867-667-5210
1-800-661-0408 ext. 5210 (toll-free)
yukonlegalaid.ca

Lawyer Referral Service (Law Society of Yukon)
867-668-4231
lawsocietyyukon.com

Women's Legal Advocate (Skookum Jim Friendship Centre)
867-633-7680 ext. 1009

Family support services

Victoria Faulkner Women's Centre
867-667-2693 ext. 101
vfwomenscentre.com

Kids Help Line
1-800-668-6868
kidshelpphone.ca

Child, Youth and Family Treatment Team (CYFTT)
1-800-456-3838
yukon.ca/en/health-and-wellness/mental-wellness/get-counselling-and-support-families-youth-and-children

Applying to change a Family Order: step-by-step



i Important: This guide has been produced by the Yukon Department of Justice, with financial assistance from Justice Canada. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice. Contact Legal Aid to see if you are eligible at 867-667-5210, or contact the Law Society of Yukon at 867-668-4231, to obtain a list of family lawyers.

■ Applying to change a Family Order

A court order is a decision made by a judge that the people named in it must follow. This guide provides step-by-step instructions for applying to the Supreme Court of Yukon to change a court order that deals with matters that are covered by the *Family Property and Support Act*, the *Children's Law Act* or the *Divorce Act* (Canada), such as divorce, spousal support and Child Support, custody and access.

The *Divorce Act* (Canada) was amended significantly, and those changes came into force on March 1, 2021. This legislation replaces the term custody with 'decision making responsibility', and access with 'parenting arrangements'. This document will use the term custody and access, which continues to be used in territorial legislation. When completing court forms, it is important to use the proper terminology based on the legislation that your application is relying on.

The steps in this self-help guide are generally appropriate for situations where the parties **do not** agree.

Other publications produced by the Yukon Department of Justice provide more information on family law that can help you understand your legal issue and court procedures. Additional tools, information and publications on family law and Child Support can be found on the Family Law Information Centre website at yukon.ca/en/family-law-information-centre.

Basic information on changing a Family Order

Changing an order is often called “varying” an order, and an order that has been changed is often called a “Variation Order.” Either party may apply to change a family order, and both parties have the right to agree with the other's application or to oppose it. When you are applying to change (vary) an existing order, you will have to provide evidence that your situation is now significantly different from when the order was made. The judge will make a decision based on the information (evidence) provided by both parties and the laws that apply to your situation, including the Child Support Guidelines if children are involved.

A lawyer can help you to determine if you have a strong enough reason to make an application to vary, what evidence you need and the possible outcomes of your application. Contact Legal Aid to see if you are eligible at (867) 667-5210, or contact the Law Society of Yukon to obtain a list of family lawyers.

Whenever possible, work together to try to come to an agreement before going to court. You may not be able to agree on every issue, and can still go to court to ask a judge to decide about the things you can't agree on. When you have settled as much as you can with the other party outside of court, you are more likely to get an order that will work in the best interests of your changing family. The Department of Justice operates the Yukon Family Mediation Service (YFMS), which is a voluntary program that allows parties to resolve conflict and disagreements that affect children, without going to court. For more information, visit yukon.ca/en/family-mediation-service or call (867) 667-5753.

If at any step in your family law proceeding you and the other party come to an agreement, you can apply for a Consent Order. Information and instructions for requesting a Consent Order can be found in the Family Law Self-Help Guide: Consent Orders.

Child Support

Child Support is a child's right and a parent's responsibility under the law. If children are involved in your family law matter, understand the law before you begin. The judge will refer to the federal or territorial Child Support Guidelines when making a decision about Child Support. The Child Support Guidelines are designed to reduce conflict about Child Support and to protect the best interests of children by making sure that Child Support is fair, predictable and consistent.

At some point in time after an order is made, a parent's financial situation may change so that the support amount is no longer fair. This can happen when the paying parent's income increases or decreases, or when other circumstances cause a financial hardship (called an "undue" hardship) that either makes it difficult to pay the ordered amount or to raise a child on the ordered amount. When this happens, either parent can apply to change the order.

In a 2006 decision, the Supreme Court of Canada said that it is the responsibility of the paying parent to report increases in income and make Child Support payments that reflect their income amount. If a paying parent's income increases and their support payments do not increase to reflect that income, a judge may order a retroactive award.

Inter-jurisdictional Support Orders

If the other party lives outside the Yukon, you may be able to make an application for an Inter-jurisdictional Support Order (ISO) to deal with Child Support and spousal support. Inter-jurisdictional Support Orders enable a person living in the Yukon to obtain or vary a support order when the other person involved lives outside the Yukon. This process can result in a support or variation order being made in the other person's jurisdiction without having a court hearing in the Yukon. This process does not apply to support orders where both parties live in the Yukon. An ISO cannot deal with custody or access.

More information about ISO applications can be accessed at the Family Law Information Centre. To find out more about Inter-jurisdictional Support Orders, contact the Family Law Information Centre at 867-456-6721 or toll free in Yukon at 1-800-661-0408 ext. 6721, or visit their website at yukon.ca/en/family-law-information-centre.

Applying to change (vary) a Family Order: Step-by-step

Step 1: Research the laws and rules that apply to your family matter

Before you begin, you should research the laws and rules that apply to your situation. Read the other publications produced by the Department of Justice that apply to your family law matter, as well as the Supreme Court of Yukon Rule 63: Divorce and Family Law and Rule 63A: Financial Disclosure. (Rules can be found on the Supreme Court of Yukon website at yukoncourts.ca/en/supreme-court/rules-forms). You can also read the *Family Property and Support Act*, the *Children's Law Act*, and the *Divorce Act* (Canada). You should consult a lawyer for interpretation of the law that applies to your case and for other legal advice. Contact Legal Aid to see if you are eligible at (867) 667-5210, or contact the Law Society of Yukon at (867) 668-4231, to obtain a list of family lawyers.

Contact the Family Law Information Centre at 867-456-6721, toll free 1-800-661-0408 ext 6721, or visit their website at yukon.ca/en/family-law-information-centre for more information.

Situation	Legislation		
	Canada Divorce Act	Yukon Family Property and Support Act	Yukon Children's Law Act
Divorcing			
Married without children	divorce, spousal support	property	
Married with children	divorce, spousal and Child Support, decision making responsibility, parenting time	property	guardianship
Separating			
Married without children		property, spousal support	
Married with children		property, spousal and Child Support	custody, access, guardianship
Common-law without children		Spousal support	
Common-law with children		spousal and Child Support	custody, access, guardianship

Step 2: Collect your supporting documents

Make sure that you have a copy of the original order. If you do not have a copy, contact the court registry either in person at the office in the courthouse in Whitehorse or by calling 867-667-5753, toll free 1-800-661-0408 ext. 5937 to get one. A photocopying fee will apply.

If you are required to submit a Financial Statement – Form 94/94A, you will need to provide documents to support the income, debt, special expenses and assets you are reporting.

You will also need to collect any other documents that you will be submitting as evidence.

Step 3: Prepare and complete forms

To apply to change a family order, you will need to fill out forms to submit to the court registry with information specific to your case. Supreme Court forms can be found in Microsoft Word format at yukoncourts.ca/en/supreme-court/rules-forms under Supreme Court, Rules and Forms. The staff at the Family Law Information Centre can help you to complete your Supreme Court forms either over the telephone or on one of the workstations at their office. They cannot provide legal advice or tell you what to write in your court forms, but they can provide guidance on the rules for completing the forms and help with using Microsoft Word.

Many of the forms come with instructions throughout the body of the document on how to fill them out. You should not delete the instructions. If you are removing any content from a form that does not apply to your situation, do not change or reset the numbering or lettering for any other paragraph.

Important: When preparing your documents, remember that family law issues are adult problems. Do not involve your children in drafting Affidavits or reviewing court documents.

Generally, the forms you will need to file when applying to change a family order are:

- A. Notice of Application – Form 52
- B. Notice of Hearing – Form 103
- C. Affidavit – Form 59
- D. Financial Statement – Form 94/94A (if required under Rule 63A)

The Supreme Court file number assigned to the original application does not change. Record the number on all your forms.

- E. Notice to File a Financial Statement – Form 95 (if required under Rule 63A)

Completing your forms:

A) Notice of Application – Form 52

This form lists what orders you are asking the court to grant, the laws (statutes and regulations) you will be relying on, and lists the Affidavits you are filing with the Notice of Application - Form 52.

B) Notice of Hearing – Form 103

This form informs the other party of the date and time of the court hearing. Contact the deputy clerk of the Supreme Court at 867-667-5937, toll free 1-800-661-0408 ext. 5937, or the Family Law Information Centre at 867-456-6721 or 1-800-661-0408 ext. 6721 to obtain a hearing date (Family Chambers) to enter into the form. If possible, confirm that the other party will be available on that date. Chambers dates for the upcoming months can be found on the Supreme Court website at yukoncourts.ca/en/supreme-court/court-calendar.

An Important Caution: Be sure that your evidence is complete, accurate, clear and relevant to your application. You must, in all cases, tell the truth. In your Affidavit you can only say things that you know personally to be true or things that you believe to be true (but you must give a reason for that belief). There are serious legal consequences for not telling the truth in a sworn document. The other party or other party's lawyer can cross-examine you about anything you include in your Affidavit.

C) Affidavit – Form 59

An Affidavit is the document that states any information that you want the judge to know. Filing an Affidavit is a way to give written evidence to the court. You can file additional Affidavits at any time throughout your proceeding as long as the other party has been served with reasonable notice before a hearing. Your Affidavit may include one or more exhibits, which are documents that support the information or claims you are making in your Affidavit. Your Affidavit and all exhibits must be sworn. (See Step 5: Have your Financial Statement and Affidavits notarized). **Do not sign your document until you are having it sworn before the Notary Public or other qualified person!**

If you have more than one supporting document (exhibit) to attach to any Affidavit, you must place consecutively numbered tabs on the first page of each exhibit. All of the exhibit pages should be numbered consecutively. For more information on rules for Affidavits, see Rule 49: Affidavits.

The Affidavit is a very important document because it contains most of your evidence. There are special rules for preparing an Affidavit. The Yukon Department of Justice has published an information sheet titled Preparing an Affidavit (Family Law) to help you complete an Affidavit – Form 59.

D) Financial Statement – Form 94/94A (if required under Rule 63A)

Form 94A is a simplified Financial Statement, which is required for establishing Child Support. Form 94 is a detailed Financial Statement, which will be required in matters involving Section 7 of the Federal Child Support Guidelines expenses, claim for undue hardship, spousal support, property division, etc. This form is used to report income, debt, special expenses and assets for calculating Child Support, spousal support, and division of property. Additional information on the Rules of Court for financial disclosure can be found in Rule 63A. You may or may not be required to complete this form depending on your situation. However, a judge may order that you file the form even if you are not required to under Rule 63A. The form contains very specific instructions for filling it out. Only complete the sections that are right for your situation. Your completed Financial Statement and supporting documents must be sworn. (See Step 5: Have your Financial Statement and Affidavits notarized). Do not sign your document until you are having it sworn before the Notary Public or other qualified person!

Each page of the supporting documents that you are filing with the Financial Statement must be numbered consecutively and attached to the form.

E) Notice to file a Financial Statement – Form 95 (if required under Rule 63A)

If, under Rule 63A, you are entitled to receive Financial Statement - Form 94/94A from the other party, you must file and serve a Notice to File a Financial Statement - Form 95 along with your application.

Step 4: Make copies of all your forms and documents

You will need three sets of your forms to submit for filing. The original filed form will always remain on the court file and the two sets of filed copies will be returned to you. Keep one set for your own records, serve one set on the other party. You will need to attach the front page of each form you served to the Affidavit of Service, which should be filed with the court registry.

Step 5: Have your financial statement and Affidavits notarized

The Financial Statement – Form 94/94A and all Affidavits must be sworn. Bring all copies of your documents and proof of identification with you to be sworn by a Notary Public or someone else who is allowed to hear an oath, such as a lawyer, justice of the peace or a commissioner of oaths. Some government staff members are Notaries Public, including those working in the Sheriff's Office, Court Registry and the Family Law Information Centre.

Step 6: File your forms with the Supreme Court

When you mail or bring your forms to the court registry for filing, the deputy clerk of the Supreme Court will review your forms before accepting them. The clerk will look to see that you have followed the Rules of Court but will not provide advice or comment on the content of your documents. Your forms will be stamped by the clerk with the date that they were filed.

When you file forms with the court registry, fees generally apply. You can find a list of fees online at yukoncourts.ca/en/supreme-court/rules-forms, Supreme Court, as "Appendix C: Fees" on the Rules and Forms page. You can also contact the Family Law Information Centre at 867-456-6721 or toll free 1-800-661-0408 ext. 6721 to find out how much money you will need to pay. If you send your forms by mail, you must include the filing fees or your forms will be returned. The court registry will accept payment by cash, cheque, debit card (if you come in person to the office in Whitehorse) or by Visa or MasterCard.

Step 7: Arrange to have your filed forms served on the other party

Whenever you file documents or forms with the court, you always have to provide the other party with a copy. The Sheriff's Office (867-667-5451 or toll free 1-800-661-0408, ext. 5451) can provide a list of process servers, or they may be able to serve your documents for you. A fee is usually charged for this service. If the other party is willing to voluntarily come to the Family Law Information Centre, staff there can serve your documents for no fee.

According to the Rules of Court, none of the forms for applying to change a family order are required to be served on the other party by someone other than the applicant (person applying for the order). However, it is strongly recommended that you have someone else serve your documents for you. If you deliver the documents yourself, there may be a greater risk of conflict between you and the other party.

Step 8: Prepare and file an Affidavit of Service

The person who serves your documents must sign and swear an Affidavit of Service - Form 7 for filing with the court. Depending on who you choose to serve your documents, you may have to prepare an Affidavit of Service for the server. Once completed, the front page of all documents served will be attached as exhibits to the Affidavit of Service. The Affidavit of Service must be sworn in the same way your other Affidavits and financial statement were sworn (Step 5: Have your Financial Statement and Affidavits notarized). Be sure to make a copy of the completed Affidavit of Service before filing it with the court. You do not have to provide the other party with the Affidavit of Service.

It is important to file the Affidavit of Service with the court registry before the court date so that if the other party does not show up on the court date, the judge has proof that they were notified about it.

Step 9: Wait for a response from the other party

The other party can oppose (fight or counter) your Notice of Application - Form 52 by filing a Response - Form 11, and potentially their own Notice of Application - Form 52 and/or an Affidavit - Form 59. The amount of time the other party is given to respond is set out in the Notice of Application form you completed. Follow the instructions provided to the other party set out in the forms to figure out how much time to allow for a response.

If no response is filed, proceed to Step 11.

Step 10: Prepare responding Affidavits

If, after you receive responding forms from the other party, there is more information that you would like the court to know, you can file your own Response - Form 11 along with an Affidavit - Form 59. After you have completed your responding Affidavit, you will have to repeat Steps 3-8.

The other party can, in turn, respond to your response. This process can be repeated.

It is important to remember that the judge will make their decision based upon the evidence. Responding to documents filed with the court is a way to present additional information as evidence, not as a means to "argue" with the other party.

Step 11: Go to court for the hearing of the application

Bring all your files and supporting documents, as well as a pen and paper with you. Unless the judge specifically asks you to, do not bring your children with you to court.

On the day of court, check the Family Chambers list to find your courtroom number. These lists are posted in the atrium of the Law Courts Building on Second Avenue in Whitehorse. The list is posted just outside the Court Services office. If you are uncertain about where to go, ask the court registry to confirm the courtroom number.

Your name will appear on the Family Chambers list. Your name will be called when it is time for your application to be heard. Be sure to be in court at the start time of the list. Even if your name is further down the list, you may be called earlier if hearings before yours proceed quickly or are cancelled.

You will be asked to present your case to the judge. The only facts that you can discuss in court are the ones that are included in your Notice of Application, your Affidavits or Affidavits from the other party. Be prepared to answer questions from the judge and from the other party or the other party's lawyer.

The judge will make a decision based on the evidence provided by both parties and the laws that apply to your situation, including the Child Support Guidelines if children are involved.

Step 12: Prepare and submit the Order for filing

After a judge makes a decision, as the applicant/plaintiff, you must prepare an Order – Form 44, unless the judge orders someone else (e.g. the other party's lawyer) to do it. To do this, you can review your notes, or the notes of a person that you may have brought with you to court, or you can purchase a copy of the court clerk's notes from the court registry. You can also make a request to the court registry to listen to a recording of the court matter. The workstations at the Family Law Information Centre are available to type out and print this document. If you prepare the order, before you sign it, the clerk and sometimes the judge may review it to ensure its accuracy.

Besides other details set out by the judge in your particular case, if your order provides for Child Support, the Child Support Guidelines say that Child Support orders must include:

- the names of the people paying and receiving Child Support;
- the names and birth dates of the children to whom the order relates;
- the income of people whose income is used to determine the amount of the Child Support;
- the Child Support Guidelines table amount determined for the number of children to whom the order relates;
- the amount determined for a child the age of majority or over;

Yukon Department of Justice has published **Representing Yourself** to help you to prepare for court. You can pick up a copy at the court registry or at the Family Law Information Centre. You can find the Family Law Handbook for self-represented litigants, published by the Canadian Judicial Council, on the Supreme Court website at yukoncourts.ca/en/resources-self-represented-parties

- the particulars of expenses, the child to whom the expense relates, the amount of the expense or, where the expense cannot be determined, the proportion to be paid in relation to the expense; and
- the date on which the lump sum or first payment is payable and the day of the month or other time when subsequent payments are to be made.

If both parties were present for the hearing, they must both sign the order, unless the judge said that one or the other of them did not need to. Signing the order does not mean that you or the other party agrees with it. It means that you both agree that the terms of the order as written are substantially the same as what the judge said in court. For more information on orders, read Rule 43: Orders.

Finally, take the original and two copies of the order to the court registry for filing by the clerk of the court. If the order is filed, the copies will be returned to you but the original order will always stay on the court file. Sometimes the court registry will ask that changes be made to your draft order before it can be filed. When that happens, you will need to make the changes and submit a new signed original with copies.

If the judge orders it, you will have to serve the filed order on the other party. Usually the other party can obtain their own copy of the order from the court registry.

Remember, the judge will refer to the Child Support Guidelines when deciding about Child Support. The amount of Child Support awarded will be the amount in the Child Support Guidelines tables unless there are special circumstances.

Additional steps

If your matter involves a claim for custody, access or Child Support, the court requires both parties to take the parenting workshop called For the Sake of the Children. (See Supreme Court Practice Direction Family 2 about Parent Education after Separation or Divorce on the Supreme Court page, yukoncourts.ca/en/supreme-court/practice-directions). If you have already attended the workshop, you do not need to go again, but should be prepared to provide your certificate of completion. The requirement does not apply to parents who do not live within 30 km of a community where the workshops are offered, when the parties involved have filed a written agreement settling the issues between them, or when all children are 16 years of age or older. For more information or to register for the For the Sake of the Children workshop, contact the Family Law Information Centre at (867) 456-6721.

While you are not required to participate in a Family Law Case Conference to change an existing order, you can request one. Contact the Trial Coordinator at 867-667-3442 or toll free 1-800-661-0408 ext. 3442, to schedule a family law case conference. If you live outside of Whitehorse, you can ask for permission to attend by telephone or by videoconference by making arrangements with the Supreme Court registry at (867) 667-5937.

If you and the other party work out an agreement in the Family Law Case Conference, you can prepare and file a **Family Law Case Conference Order – Form 109**.

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For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

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yukoncourts.ca/en

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