

Family Law

Court Procedure Booklets



4

Applying for an Order
for Child Support

C o u r t S e r v i c e s I n f o r m a t i o n

Court Services Branch: 667-5441 (toll-free 1-800-661-0408, extension 5441)

Sheriff's Office: 667-5365 (toll-free 1-800-661-0408, extension 5365)

Maintenance Enforcement Program: 667-5437 (toll-free 1-800-661-0408, extension 5437)

Child Support Guidelines: 667-3066 (toll-free 1-800-661-0408, extension 3066)

Law Library: 667-3086 (toll-free 1-800-661-0408, extension 3086)

L e g a l I n f o r m a t i o n

The Law Line: 668-5297 (toll-free 1-800-668-5297)

Legal Aid: 667-5210 (toll-free 1-800-661-0408, extension 5210)

Lawyer Referral Service (Law Society of Yukon): 668-4231

Yukon Public Legal Education Association (also called the Law Line): 867-667-4305
(toll-free 1-866-667-4305)

F a m i l y S u p p o r t S e r v i c e s

Family Violence Prevention Unit: 667-3581 (toll-free 1-800-661-0408, extension 3581)

Kids Help Line: 1-800-668-6868

Parents Help Line: 1-888-603-9100

Victoria Faulkner Women's Centre: 667-2693

Yukon Family Services Association (YFSA) – Counselling: 667-2970 (call collect outside Whitehorse)
YFSA also provides workshops on parenting after separation

Part 1. Services

Some of the offices that deal with child support matters are in the Court Services Branch of the Yukon Department of Justice. These offices include the court registry, the Maintenance Enforcement Program, the Child Support Guidelines Office, the Sheriff's Office and the Law Library. All of these offices are in the Law Courts Building on Second Avenue (between Wood Street and Jarvis Street) in Whitehorse. The Court Services mailing address is Box 2703 Whitehorse, Yukon, Y1A 2C6.

About this booklet

This booklet is one of a series to help you if you are representing yourself in a court procedure to deal with a family law matter. This particular booklet is about applying for a child support order. Forms to apply for a child support order are part of the information package with this booklet. You can also ask for the forms from Yukon Court Services. For forms on-line, go to: www.justice.gov.yk.ca.

Yukon court system

The Yukon court system includes:

- Yukon Supreme Court – hears civil and criminal matters, such as divorce, adoption and most child support matters, and appeals of decisions from the Territorial Court;
- Territorial Court – deals with most adult criminal prosecutions under the Criminal Code of Canada and other federal statutes, has jurisdiction over child protection matters under the Yukon *Children's Act*;
- Youth Court – a part of the Territorial Court that deals with young offender matters;
- Justice of the Peace Court – a part of the Territorial Court that deals with a range of matters such as issuing search warrants, receiving pleas, conducting sentencing hearings and other responsibilities of a Justice of the Peace;
- Small Claims Court – a part of the Territorial Court that hears civil cases when the amount of money or value of personal property being claimed is \$5,000 or less; and
- the Domestic Violence Treatment Option (DVTO) – a part of the Territorial Court that offers a court-based alternative to dealing with domestic violence that includes counselling for offenders and support for victims and families.

Most child support matters are heard in the Yukon Supreme Court.

The information in this booklet is believed to be correct as of its date of publication. Please note, however, that although this booklet is written to help you through the court process, it does not replace the advice of a lawyer in private practice or through Legal Aid. You can also get information from the Yukon Public Legal Education Association (YPLEA), also called the Law Line. You should also note that the Law Society of Yukon has a list of lawyers who will provide a half-hour session for a set rate. Further, some lawyers do "pro bono" work (free or at a reduced rate). Telephone numbers for all of these organizations are listed on page 2.

The Court Services Branch in the Yukon Department of Justice provides administrative and support services. A trial coordinator in Court Services schedules trials, hearings and applications for the Yukon Supreme Court and the Territorial Court.

Court Services staff, librarians in the Law Library and other government employees cannot provide legal advice. You must consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

Before you begin

If you have already had a lawyer represent you in court, that lawyer is your lawyer of record. The court assumes that this person is still your lawyer unless you let the court know that you will represent yourself. Ask Court Services staff for the form called **Notice of Intention to Act in Person** (page 6) if you want to represent yourself.

Going to court can be a stressful experience. You may be adding to that stress by representing yourself. Furthermore, it will take a lot of time to prepare for court. Court Services staff cannot give legal advice. You may use the Law Library in the Law Courts Building on Second Avenue in Whitehorse, but library staff cannot provide legal advice. This library is open to the public.

This booklet does not replace a lawyer and cannot teach you everything you need to know. It is always helpful to seek legal advice even if you decide to proceed without a lawyer.

Be sure to read booklet 2 in this series (Representing Yourself in Court).

The province of Nova Scotia has produced a video called "Your Day in Court". You can borrow this video from the Law Library in the Law Courts Building. Some of the details in the video may not apply in the Yukon, but the tape provides good information on court behaviour and the court process.

Forms

Depending on your situation, you will need to complete several documents to prepare for court, such as:

- Petition for Divorce (if married, requesting child support *and* seeking a divorce);
- another document to cause a court file to be opened (the document you need to cause a court file to be opened depends on your situation — you should talk to a lawyer for legal advice or call the Law Line for information);
- Notice of Motion;
- Notice of Hearing;
- Affidavit; and
- Financial Statement.

After the judge's decision, you will be required to prepare a court order.

Get the forms at Court Services in the Law Courts Building in Whitehorse. The address and phone number for Court Services is listed on page 2. Get the forms on-line at: <http://www.justice.gov.yk.ca>.

Part 2. Steps in applying for a child support order

The process to apply for a child support order from the court is a formal one. Some of the legal terms that you will need to understand are defined in booklet 1 of this series (List of Key Words).

Step 1. Gather income information and prepare a Financial Statement

A Financial Statement needs to be filed in all family court proceedings if support is sought. The Financial Statement must be sworn before a Notary Public. There is a Notary Public at the Sheriff's Office and in the court registry.

Financial information includes everything needed for a judge to determine how much child support should be paid according to the Child Support Guidelines.

Your own information may include:

- a copy of personal income tax returns for the last three years;
- a copy of notices of assessment (and reassessment) from the Canada Revenue Agency for the last three years;
- if you are an employee, your most recent statement of earnings indicating total earnings paid to date (including overtime, bonuses, commissions, etc.) or a letter from your employer showing your rate of annual salary or remuneration;
- if you are self-employed, financial statements of business or professional practice (other than a partnership) and a statement showing a breakdown of salaries, wages management fees or other payments or benefits paid out for the three most recent taxation years;
- if you are in a business partnership, confirmation of income, draw and capital in the corporation for the three most recent taxation years;
- if you control a corporation, financial statements of the corporation and a statement showing salaries, wages, management fees or other payments paid, for the last three taxation years;
- if you are the beneficiary of a trust, a copy of the trust settlement agreement and the trust's three most recent financial statements;
- proof of the amount of Social Assistance, Employment Insurance, workers' compensation payments, or any income other than from employment this year;
- any other information you have to show your income; and
- a list of any special expenses you may be asking for under section 7 of the Child Support Guidelines.

Even if the Child Support Guidelines do not seem to require the income information of the person who will be receiving child support, the judge may still ask for it.

If you need more information, please refer to section 13 (Income) of the Yukon Child Support Guidelines, which are a regulation of the Yukon *Family Property and Support Act*. To get to both of these, go to the Yukon government legislation web page at www.gov.yk.ca/legislation/pages/page_f.html. Click on *Family Property and Support Act* and you will see a list that will take you to the legislation and to the Yukon Child Support Guidelines regulation.

Sample form: Notice of Intention to Act in Person

IN THE SUPREME COURT OF THE YUKON TERRITORY

S. C. No. _____

BETWEEN: _____ Plaintiff/Petitioner

AND: _____ Defendant/Respondent

NOTICE OF INTENTION TO ACT IN PERSON

TAKE NOTICE that I now intend to act personally in this proceeding
in place of _____

Dated _____ Party _____

My address for delivery is: _____

Fax number for delivery: _____

full name of person who began court proceeding (see Step 2)

full name of the other party

name of lawyer of record (i.e. the lawyer who has represented you before)

date you sign the document

your signature

your full address

provide fax number (or indicate "no fax")

The other party's information

Bring the same type of information to show the other party's income. To get the other party's financial information, send a letter to that person. You should send the letter by Registered Mail. You need to be able to prove that you have asked for the information. By using Registered Mail, you get a receipt when you mail the request and you can contact Canada Post to purchase a hard copy of the other party's signature and date when the request was received.

The Child Support Guidelines say that, when the financial information is asked for in writing:

- the other party has 30 days after the request is received to get the information to you if the other party lives in Canada; and
- the other party has 60 days after the request is received to get the information to you if the other party lives outside Canada.

The Child Support Guidelines also say that you can assume that your written request is received 10 days after it is sent. Remember to keep a record of the date when you mailed the request. You can check the delivery status of Registered Mail on the Canada Post web site at www.canadapost.ca but to see the signature of the other party, you need to purchase a hard copy from Canada Post. Postal outlet staff will explain all of this to you.

If the other party does not respond to your request for financial information, you may apply for a court order that says that the other party must give the information to you. To do this, you would usually file a **Notice of Motion** (page 8) and swear an **Affidavit** (page 10) and file these documents with the court by taking them to the court registry (the front counter in the Court Services office). In some cases, however, when you are in court for the hearing and the other party does not show up or hasn't filed the required documents before the hearing, you may ask the judge, orally, for an order for income disclosure. In either case, a judge makes the decision about whether or not to issue the court order.

You should note that if you file the Notice of Motion and the Affidavit, the practice is that you give notice to the other person. In some unusual cases, however (such as when there are family violence issues), you do not have to tell the other party that you have applied for an order for income disclosure.

Step 2. File the appropriate documents to cause a court file to be opened

You need to prepare a document (called an originating application) that will cause a court file to be opened. Talk to a lawyer or call the Law Line for information about what documents may apply in your situation.

Depending on your circumstances, your originating document may be a Writ of Summons and Statement of Claim, a Petition to the Court or a Requisition with a Consent Order. For example, if a couple is married and the parent asking for child support is also seeking a divorce, that person may file a Petition for Divorce.

If a couple is *not* married (or if the person seeking child support is *not* also seeking a divorce), the person seeking child support may file a Writ of Summons and a Statement of Claim. These are two separate documents that are usually filed at the same time, but the Writ of Summons can be filed first (as long as it includes an endorsement which is a summary of the claim) and the Statement of Claim can be filed later.

Sample form: Notice of Motion

S.C. No. _____

IN THE SUPREME COURT OF THE YUKON TERRITORY

Between _____

and _____

Petitioner/ Plaintiff

Respondent/Defendant

NOTICE OF MOTION

To: _____

TAKE NOTICE that an application will be made by _____ to the presiding judge at the courthouse at 2134 Second Avenue, Whitehorse, Y.T. at a date and time to be set for an order that _____

The applicant will rely on _____

At the hearing of the application, the applicant will rely on the following affidavit(s) and other documents: _____

The applicant estimates that the application will take minutes.

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must, within the proper time for response,

(a) deliver to the applicant

(i) 2 copies of a response in Form 124, and

(ii) 2 copies of each of the affidavits and other documents, not already in the court file, on which you intend to rely at the hearing, and

(b) deliver to every other party of record

(i) one copy of a response in Form 124, and

(ii) one copy of each affidavit and other document, not already in the court file, on which you intend to rely at the hearing.

TIME FOR RESPONSE

If the application is for a final judgment under Rule 18A, the response must be delivered on or before the 11th day after the delivery to you of the notice of motion.

In all other cases, the response must be delivered on or before the 8th day after the later of

(a) the last date fixed for entry of appearance by you, and

(b) the date on which the notice of motion was delivered to you.

Dated Party [or party's solicitor]

Again, to be sure about which document you may need to cause a court file to be opened, talk to a lawyer or call the Law Line.

Step 3. Prepare a Notice of Motion and a Notice of Hearing

In most cases, you must complete a Notice of Motion to appear in front of a judge. The Notice of Motion says what you are requesting from the court, what documents you will present to support your request and what law applies to your application.

The Notice of Hearing gives the date and time of the hearing.

Step 4. Prepare an Affidavit

This is the document that states any information that you want the judge to know. An Affidavit is a document that must be sworn before a Notary Public. There is a Notary Public available at the Sheriff's Office and at the court registry.

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 say only things that you *know* personally to be true or things that you *believe* to be true (but you must give the reason for that belief). There are serious legal consequences for not telling the truth in a sworn document.

The other party or the other party's lawyer can cross-examine you about anything you include in your Affidavit.

An Affidavit (page 10) typically contains information such as:

- a statement that you believe your statements to be true;
- the timeframe of your relationship with the other party;
- the names and dates of birth of the children;
- where you live;
- where you are employed; and
- any other relevant information you would like the court to consider.

Step 5. Copy documents

Make sure that you have three copies besides the original of each document.

- Notice of Motion – form 55 (one copy for each party and one copy to be attached to the Affidavit of Service – the original is kept by the court registry)
- Affidavit (one copy for each party and one copy to be attached to the Affidavit of Service – the original is kept by the court registry)
- Financial Statement (one copy for each party and one copy to be attached to the Affidavit of Service – the original is kept by the court registry)
- Notice of Hearing – form 126 (one copy for each party and one copy to be attached to the Affidavit of Service – the original is kept by the court registry)

Sample form: Affidavit

date sworn

_____ #

S.C. No. _____

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

_____ Petitioner/Plaintiff

_____ Respondent/Defendant

AND:

full name of the other party

your name

AFFIDAVIT

I, _____, of _____

_____, MAKE OATH AND SAY AS FOLLOWS:

1. I am the _____ in this proceeding and as such have personal knowledge of the matters and facts hereinafter deposed to, save where stated to be on information and belief and where so stated I verily believe the same to be true.

2. _____

3. _____

4. _____

Sworn before me at the _____ of _____, in the Yukon Territory, this _____ day of _____, 20____

_____ Party

Notary Public In and For the Yukon Territory

your first initial and your last name

full name of person who began court proceeding (see Step 2)

city/town and territory

put "Petitioner" or "Respondent" (whichever you are in this application)

fill in details of date sworn (same date as at top of form)

signature of Notary Public

your signature

as many numbered paragraphs as you need to give the facts to support your case

Step 6. Obtain a court date

Go to the court registry to obtain a date for court. A trial coordinator will set a date for your hearing.

If possible, the applicant should consult with the other party to make sure that he or she is available before asking the court registry to schedule a hearing. The date and time of the court hearing are on the **Notice of Hearing** (page 12).

Step 7. File documents

Bring all the copies of your documents with you. Make sure they are in order and that the places where you will need to sign are flagged. The clerk in the court registry will file your Notice of Motion, Notice of Hearing, Affidavit and Financial Statement and return your copies to you, stamped with the date of filing. It's important to file the Affidavit of Service before the court date as well so that if the other party does not show up on the court date, the judge has proof that he or she was notified about it.

Step 8. Get the application to the other party

While you may deliver the court documents you have filed for child support to the other party, the more common procedure is to have the Sheriff's Office serve them. There is a charge for this service, but it takes a lot of stress and responsibility off the applicant. First of all, if the Sheriff's Office serves the documents, that office also prepares and returns the Affidavit of Service to you for you to file with the clerk in the court registry. If you serve the documents yourself, you must prepare and file the Affidavit of Service yourself. Second, the sheriff is a neutral party. If you deliver the documents yourself, there may be a greater risk of conflict between you and the other party.

In any case, the other party must receive copies of all documents that you file with the court.

If you choose to deliver the documents yourself, remember that if you used Registered Mail you should keep your post office receipt and purchase a copy of the other party's signed delivery receipt from Canada Post. You will need to list these as exhibits attached to your Affidavit of Service.

Step 9. Court

If you and the other party come to an agreement, please go directly to Step 11.

Make sure that you are ready for court. Besides your files and supporting documents, take a pen and paper with you so that you can write down information such as the judge's name, the courtroom number and date of the hearing. You will also want to write down the judge's decision.

Rules of Court: The Yukon Supreme Court uses the British Columbia Rules of Court. You can see these rules in the Law Library and on-line at: http://www.ag.gov.bc.ca/courts/civil/sup_crt_rules/rules/index.htm. You should be familiar with the Rules of Court that apply to your situation. For example, Rule 51 is about affidavits. Among other things, Rule 51 tells you how to prepare an Affidavit including how to identify exhibits, what to do if there are alterations to the Affidavit and the contents of an Affidavit. Other instructions are called Practice Directions.

Be sure to bring a copy of the filed Affidavit of Service which includes documents such as the Notice of Motion, Notice of Hearing and Affidavit. Have copies of Financial Statements and supporting documents on hand.

Sample form: Notice of Hearing

S.C. No. _____

IN THE SUPREME COURT OF THE YUKON TERRITORY

Between

Petitioner/Plaintiff

and

Respondent/Defendant

NOTICE OF HEARING

TO

TAKE NOTICE that the application of _____ dated _____
will be heard in chambers at the courthouse at 2134 Second Avenue,
Whitehorse, Y.T. on _____ at the hour of _____

The parties have agreed as to the date of the hearing of this application,
OR
The parties have been unable to agree as to the date of the hearing but notice
of the hearing will be given to respondents in accordance with Rule 51A (8),
OR
This matter is unopposed, by consent or without notice.
It has been agreed by the parties that the hearing will take _____ minutes,
OR
The parties have been unable to agree as to how long the hearing will take and
(a) the time estimate of the applicant is _____ minutes, and
(b) the time estimate of the respondent is _____ minutes.
OR
(b) the respondent has not given a time estimate.

Dated: Applicant (or applicant's solicitor)

This Notice of Hearing was prepared by the applicant.

full name of person who began court proceeding (see Step 2)

full name of the other party

name of the party who is making the application

full name and address of the other party (who is to receive the Notice of Hearing)

date of the application

date and time of the hearing

estimate time

estimate time

your signature

On the day of court, check the 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 of the Court Services office.

Your name will appear on the 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 Affidavit or an Affidavit from the other party. Be prepared to answer questions from the judge and from the other party or the other party's lawyer.

Step 10. Prepare the Order

After a judge makes a decision, you have to prepare the written **Order** (page 14). To do this you may 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. If both parties were present for the hearing, both parties must sign it, unless the judge said that one or the other of them did not need to.

Besides other details specified by the judge in your particular case, 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;
- 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.

While lawyers must confirm their client's application to be heard in Chambers (i.e. most child support applications) the day before it is scheduled to be heard, you, as a self-represented litigant are not asked to do this. If you do not need the court date, however, you should contact the clerk at the Supreme Court to cancel your hearing.

The order that you prepare must be typed. You can use the computer in the Law Library to do this.

If the other party was represented by a lawyer, the lawyer will sign the order. If the other party will not sign the order, you should speak to a lawyer to find out what you can do. It is possible to return to court to ask the judge who made the order to "settle" it, meaning that the other party will not need to sign it.

The other party's signature on the order does not mean that he or she agrees with it. It means that the other party agrees that the terms of the order as written by you are substantially the same as the judge's verbal order.

Sample form: Order

S. C. No. _____

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN: _____

PLAINTIFF/PETITIONER

AND: _____

DEFENDANT/RESPONDENT

ORDER

BEFORE THE HONOURABLE MR. (or) _____ day, the _____ day of _____, 20____

MADAM) JUSTICE _____

THE APPLICATION of _____, coming on for hearing at _____, on the _____ day of _____, 20____, and on hearing _____, counsel for the _____, and _____, counsel for the _____.

THIS COURT ORDERS that

1. _____
2. _____
3. _____

Approved as to order made:

Counsel for (or party)

Counsel for (or party)

BY THE COURT:

Clerk of the Court

full name of person who began court proceeding (see Step 2)

full name of the other party

details of date and time

name of judge

Whitehorse

name of person requesting child support

name of the other party or the other party's lawyer

cross out "counsel for the" and add "appearing on his/her own behalf"

name of person requesting child support

if other party has a lawyer write "defendant"; if not, cross out "counsel for the" and add "appearing on his/her own behalf" OR write "no one appearing for the defendant"

as many numbered paragraphs as you need to give the details of the judge's decision

signature of parties or their lawyers

Finally, submit the order for filing to the clerk of the court with the original and two copies by taking them to the court registry. If the order is filed, all copies will be returned to you but the original order will always stay on 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.

In situations where it might be ordered, the filed order is served on the other party. Usually, however, the other party can obtain his or her own copy of the order from the court registry.

The party who applied for the child support order must prepare the written order, unless the judge orders someone else (e.g. the other party's lawyer) to do it.

Step 11. Consent order

If you and the other party come to an agreement before the court date, you may want to prepare a consent order that must be signed by both parties to present to a judge for approval. A consent order contains the basic information that a judge needs to make an order. This information includes:

- the names of the people paying and receiving support;
- the names and birth dates of the children for whom the support is being paid;
- the annual income of the person paying support, or the income agreed by the parties to be the basis for support payments;
- the Child Support Guidelines table amount for that level of income and the number of children for whom support is to be paid;
- the amount of support agreed to by the parties;
- the date when the support payments will begin; and
- the subsequent dates when support payments must continue to be made (e.g. "on the first day of each month thereafter").

Remember, the judge will refer to the Child Support Guidelines to come to a decision. The amount of child support awarded will be the amount in the Child Support Guidelines tables unless special circumstances exist.

April 2005

This publication is **number 4** in a series published by the Department of Justice. These easy-to-understand publications provide information about court procedures related to family law:

- ① List of Key Words
- ② Representing Yourself in Court
- ③ General Steps to a Court Order
- ④ **Applying for a Child Support Order**
- ⑤ Changing a Child Support Order (if the parties do not agree)
- ⑥ Opposing an Application for Child Support

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ISBN 1-55362-233-2

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

Government of Yukon, Department of Justice

Court Services

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www.justice.gov.yk.ca

Funding provided by Justice Canada

