

## Family Law

# Court Procedure Booklets



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List of Key Words

## **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

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

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

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

**Kids Help Line:** 1-800-668-6868

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

**Parents Help Line:** 1-888-603-9100

**Victoria Faulkner Women's Centre:** 667-2693

**Yukon Family Services – Counselling:** 667-2970 (call collect outside Whitehorse)  
*They also provide workshops on parenting after separation*

These key words will help you understand some of the legal terms that you may come across as you represent yourself in a family law matter.

These definitions do not replace legal advice from a lawyer on what these terms mean and how they may apply in your situation.

These definitions may be worded differently than the definitions in a statute (law) so that they are easier to understand. Please note that if there is a conflict between a definition here and what is in a statute, the definition in the statute applies.

A

**access**

Access is the right of parents whose children do not live with them (non-custodial parent), to visit or spend time with their children. The court order or separation agreement describes the access allowed. There are usually three types of access: unspecified access, specified access and supervised access.

**1. unspecified access:** (typically “reasonable”) Unspecified access gives parents the flexibility to make their own arrangements about access to their children. One parent visits their children at times arranged with the other parent with whom the children live. Visiting times should be reasonable and appropriate for the situation of the resident parent and the children. *see custodial parent and non-custodial parent*

**2. specified access:** Specified access sets out certain times for parents whose children do not live with them to spend time with their children.

**3. supervised access:** Supervised access allows parents whose children do not live with them to spend time with their children only when another adult is present.

**adjournment**

When a court hearing or trial is delayed or postponed, it is called an adjournment.

**adultery**

When people who are married have sexual relations with someone other than their husband or wife, they commit adultery. Adultery is grounds for divorce.

**affidavit**

If a written statement of facts is sworn under oath as being the truth, it is called an affidavit. A person may file an affidavit as a way to give evidence to the court. An affidavit is sworn in front of someone who is allowed to hear an oath such as a lawyer, justice of the peace, commissioner of oaths or notary public.

**age of majority**

The age of majority is when children reach the full legal age of adulthood. This age is not the same in all provinces and territories. The age of majority in Yukon is 19 years.

**alternative dispute resolution (ADR)**

This term refers to ways to settle disputes or differences without involving the courts. Methods of alternative dispute resolution include settlement conferences, mediation, collaborative law or negotiation.

**Answer and Counter Petition**

This is the formal written response to a petition for divorce made by one spouse. The Answer and Counter Petition to the petition for divorce is a document that states the other spouse’s position. This document is filed with the court.

<b>appeal</b>	A person who does not agree with the decision of a court (or a board or other body) may be able to appeal the decision to a higher court (or the court named in the legislation that applies to the situation). The court reviews the earlier decision.
<b>appeal file</b>	This is the court file that contains appeal documents.
<b>appellant</b>	This is the person who appeals a decision of one court to a higher court.
<b>applicant</b>	The person who starts an application in court is the applicant.
<b>application</b>	A person who wants to ask the court to make an order files an application (e.g. petitions, notices of motion and writs of summons). The application says what type of order the person wants.
<b>application to vary</b>	When a person applies to a court to change an order, this is called an application to vary. An application to vary is usually filed when financial circumstances or the care and control of dependents have changed since the original order was made. Parties have the right to oppose the other's application to vary. <i>see vary/variation</i>
<b>arrears</b>	This is the amount of money that has not yet been paid under a court order or agreement. The amount of arrears grows larger each time a payment is missed. Arrears may be claimed against a person's estate.

**B**

<b>best interests</b>	This is the test that judges use when they make custody and access decisions about children. The needs and well-being of the children are the most important factors. The judge must decide what is best for the children rather than what is best for the parents.
<b>business name</b>	This is the name chosen by a person for his or her business. It is also called a "trade name". A business name is important when identifying financial assets and income.

**C**

<b>Certificate of Divorce</b>	This is the document that says that a divorce is final. <i>see divorce and Divorce Judgment</i>
<b>chambers</b>	This is a courtroom or a private room or office where a judge carries out business.
<b>chattels</b>	This is the legal term for a person's property other than real estate.
<b>child support</b>	Money paid by one parent to the other parent for the support of their children is called child support. Someone other than a parent may be ordered by the court to pay child support. <i>see maintenance</i>
<b>child support amount</b>	This is the amount of child support that one parent is ordered to pay the other. In most cases, it will equal the table amount (in the Child Support Guidelines) plus, in some cases, an amount for special expenses. In some cases the table amount in the Child Support Guidelines may be reduced due to "undue hardship". The amount of child support may also be different from the table amount if both parties agree.

<b>Child Support Guidelines</b>	The guidelines are the rules used for calculating how much child support a parent (or another person) will have to pay. They are laws that include support amount tables for each province and territory. The guidelines also include rules for calculating special or extraordinary expenses, claims of undue hardship and child support amounts when the custody of children is split or shared. <i>see custody</i>
<b>Child Support tables</b>	Child Support tables are added to the Child Support Guidelines. There are tables for each province and territory. They set out the basic amounts of child support based on the gross annual income of the paying parent and the number of children covered by the support payments.
<b>claimant</b>	A claimant is a person who is applying to receive maintenance or who receives maintenance.
<b>contempt of court</b>	This is a charge that can occur when a person intentionally does not follow the terms of a court order (such as a support order). This charge can lead to arrest or jail.
<b>contested hearing</b>	A contested hearing takes place when one or both parents do not agree with what the other is asking the court to do. <i>see uncontested hearing</i>
<b>contract</b>	A written or oral agreement that is legally binding is called a contract.
<b>Corollary Relief Order</b>	This is a court order issued on or after the date of a divorce judgment. It usually addresses custody, access, child support, spousal support and the division of matrimonial assets.
<b>costs</b>	A judge may order one side or the other to pay costs after a contested hearing or trial. Costs help successful parties with their legal expenses caused by being in court. Costs usually do not cover all lawyer fees. Additional costs may be ordered against a person who does not follow the court's directions before or during a trial.
<b>court order</b>	A court order is a decision by a judge that the people named in it must follow. A court order deals with the issues presented to the court (such as custody, access and maintenance).
<b>creditor</b>	A creditor is a person who is owed money.
<b>custodial parent</b>	The parent with whom the children usually live is called the custodial (or residential) parent. The other parent is the non-custodial parent. In sole custody situations, one parent is the custodial parent. In joint custody situations, both parents are custodial parents but usually only one is the residential parent. <i>see non-custodial parent</i>

- custody** This is a legal term that says which parent or other person is responsible for making decisions involving the children. The four types of custody are sole custody, joint custody, shared custody and split custody.
- 1. sole custody:** Sole custody means that the children live with one parent (the custodial parent) and the other parent usually has the right to visit with the children. The custodial parent is responsible for making decisions about the children, but the other parent may be allowed to contribute to these decisions.
  - 2. joint custody:** Joint custody is the term used when both parents make day-to-day decisions about the children when the children are in their care. Parents make major decisions about the children together. In some cases, the children may live with one parent most of the time, but they see the other parent regularly. In other cases, the children may spend equal amounts of time living with each parent.
  - 3. shared custody:** Shared custody occurs when either parent exercises the right of access to the children or has physical custody of the children for at least 40 percent of the time in the year.
  - 4. split custody:** Split custody is the term used when the parents have more than one child and each parent has custody of one or more of those children.

D

- debtor** A debtor is a person who owes money to another person.
- default hearing** This is a hearing held in court when a Maintenance Enforcement Program respondent fails to make payments required under a support order if it is proven to the court that payments could have been made but that the respondent chose not to make them.
- divorce** The legal ending of marriage.
- Divorce Judgment** A Divorce Judgment is an order from the court that says that two people are divorced.

E

- evidence** Evidence is the information presented to the court. It can be given by the parties or by other witnesses. Evidence is given orally or in writing (in an affidavit). Judges use this information to help them make decisions.
- exclusive possession** This is the right of one party to be the only one to use a residence or other asset, usually the family home or its contents. This may be one of the terms of a separation agreement or the court may award exclusive possession when one of the parties applies for it.
- exhibit** This is a paper, document or piece of physical evidence provided to the court at a trial or hearing or attached to an affidavit.

F

- family assets** Family assets are the family home and other property owned by one or both spouses and used by one or more family members when the spouses lived together. Family assets may have been acquired before or during the marriage or common law union. Some assets are generally not considered family assets. These include gifts, inheritances or trusts, awards for settlement of damages, insurance proceeds, reasonable personal effects, business assets, property exempted under a marriage contract or separation agreement.
- family home** This is the home where the parties lived with their family before separation.
- fees** This is the money payable to the court for certain services. Parties must pay a fee to the court to file documents or to obtain a legal document such as an order.
- filing documents** This is the process of adding documents to a court file by giving the original and one or more copies to the court clerk at the court registry. There is a fee to file some documents.
- final order or judgment** This is a court order that ends a family court process.
- financial statement** This is a document that sets out a person's income from all sources and estimates monthly expenses. A financial statement also lists a person's assets and debts (what a person owns and what a person owes). The court form requires that a financial statement be sworn under oath. *see statement of financial information*

G

- garnishment** This is a process most often used by the MEP to take money for maintenance payments. This money may be salary, other income (e.g. investment income) or other money (e.g. tax refunds, bank accounts).
- grounds** The reason for a divorce (set out in the federal *Divorce Act*) is referred to as grounds for a divorce. The only grounds for divorce is a breakdown of the marriage. There are three ways to establish this breakdown: a year where the parties live separate and apart; adultery; and physical or mental cruelty.

H

- hearing** When a matter is heard by a judge in a courtroom, it is called a hearing.
- home study assessment** This is an evaluation done by a professional to investigate, assess and report to the court on the needs of the children and the ability of the parties to meet those needs. A judge can order an assessment in cases that involve custody or access.

I

- information** This is a sworn statement by a person or a police officer. An information may be sworn as evidence to support a criminal charge being laid or in support of an application for a peace bond. An information gives the time and place of an incident and the law that is thought to have been broken.

<b>interception</b>	This is a garnishment issued to intercept money owed by the federal government. This money could include tax refunds, GST rebates or employment insurance. An interception can be used only by maintenance enforcement programs. <i>see garnishment</i>
<b>interim order</b>	A temporary order that deals with the matters that the parties are discussing is called an interim order. The interim order is in effect until it is replaced by a final order or another interim order. <i>see final order or judgment</i>
<b>J</b>	
<b>joint custody</b>	<i>see custody</i>
<b>L</b>	
<b>leave of the court</b>	This is the court's permission to proceed with certain types of applications or to proceed in a certain way. <i>see application</i>
<b>M</b>	
<b>maintenance</b>	This is money paid as child support or as spousal support.
<b>maintenance enforcement legislation</b>	The Yukon <i>Maintenance Enforcement Act</i> is the legal authority of the Yukon government to collect support payments from respondents and to forward that money to claimants.
<b>Maintenance Enforcement Program (MEP)</b>	In the Yukon, court orders or separation agreements for maintenance (made in the Yukon or in another jurisdiction) may be filed with the Yukon Maintenance Enforcement Program (MEP). The respondent then makes payments through the program. If the respondent fails to make payments required in the court order or separation agreement, the MEP may take action to enforce the order.
<b>maintenance order</b>	This is an order of the court that sets out the amount and details of support that a parent, spouse or other party must pay.
<b>maintenance payment</b>	This refers to the amount of money payors are legally obliged to pay to claimants for the financial support of children or a spouse. This is also called a support payment.
<b>matrimonial assets</b>	<i>see family assets</i>
<b>matrimonial home</b>	<i>see family home</i>
<b>mediation</b>	This is a type of alternative dispute resolution (ADR) where a trained, impartial mediator helps people reach agreements to resolve a dispute. <i>see alternative dispute resolution</i>
<b>MEP</b>	<i>see Maintenance Enforcement Program</i>



N

- non-custodial parent** This is a parent who does not have custody of his or her children.
- Notice of Intention to Act in Person** This is a court document that tells the court and the other parent that you are representing yourself in the family court process if you were previously represented by a lawyer.
- Notice of Motion** This is a form used for a type of application to the court. It sets out what the party who prepares the Notice of Motion is asking for from the court and the reason for the request.
- Notice of Hearing** This is a document filed with the court and delivered to the other party. A Notice of Hearing says when and where an application will be heard by the court.

O

- oath** People swear an oath on a holy book to say that everything they are about to say or have written is true. They can affirm without the holy book that what they are about to say or have written is true. *see swear/affirm*
- order** *see court order*

P

- parties** The parties are the people who are formally named in the proceeding. Parties have the right to appear in court and ask the court for an order.  
*see petitioner, plaintiff, applicant, respondent*
- paying parent/payor** This is the person who pays maintenance for child or spousal support. In the *Maintenance Enforcement Act*, the paying parent/payor is called the respondent.  
*see respondent*
- peace bond** This is a formal, legal promise that a person makes to the court not to contact another person or go to a certain place. If a peace bond is broken, the person who signed it may be fined or jailed.
- petition** This is a type of application to the court.
- Petition for Divorce** This is an application to start a divorce proceeding. Either spouse may file a petition for divorce.
- petitioner** This is a person who starts a divorce or other court proceeding by petition.
- plaintiff** This is a person who starts a lawsuit by filing a Writ of Summons.
- pre-trial conference** This is an administrative procedure that can be ordered by the court or requested by the parties. A judge hears information from both parties. The purpose of a pre-trial conference is to determine if both parties are ready for trial.

R

- recipient** *see claimant*
- respondent** Respondent has two different meanings in family law. First, a respondent is a person or party who responds to a document that is filed in court (sometimes called a defendant). Second, respondent is a maintenance enforcement term for a person who is ordered by the court to pay maintenance (i.e. child or spousal support). This person may be called a paying parent, payor, or a debtor.
- Rules of Court** These “rules” are procedures that people must follow. The Rules of Court also include forms that must be used when a person is filing any document with the court. For example, if parties file for a divorce, they must follow the Divorce Rules specifically.

S

- settlement conference** The purpose of a settlement conference is to attempt to resolve issues between the parties without going to court. Both parties must agree to participate in the process. A judge hears information from both parties. The judge at a settlement conference cannot be the trial judge if the matter goes to court.
- separation** Two people who are married or who lived in a common-law relationship but who no longer live together are separated. These people do not need a “legal” or other document to be separated.
- separation agreement** A separation agreement is a contract between two parties who used to live together, to live apart. The agreement states the terms and conditions for the separation. These usually include custody and access, maintenance and the division of family assets and debts.
- service** Service is the word used to describe when court documents are given to the proper person. Documents “served” usually give notice of a legal proceeding. Some documents may be served by mail or left with a designated person on behalf of the named person. Other documents must be served personally by putting the documents into the hands of the named person.
- shared custody** *see custody*
- sole custody** *see custody*
- special or extraordinary expenses** A court may order maintenance payments larger than the Child Support Guidelines table amounts. These special or extraordinary expenses can include child care, health care, school-related or extracurricular expenses.  
*see child support amount and table amount*
- split custody** *see custody*
- spousal support** *see maintenance payment*
- standing** A person who has standing has the right to participate in a court proceeding.  
*see parties*

<b>statement of financial information</b>	This is a document that shows all sources of gross income. It sometimes includes estimates of monthly expenses. If child support is an issue, the statement of financial information must include information required by the Child Support Guidelines. <i>see financial statement and Child Support Guidelines</i>
<b>subpoena</b>	This is a document that tells a person that she or he is required to appear to give evidence at a court hearing. A person who is served with a subpoena but who fails to appear as required may be arrested.
<b>support</b>	<i>see maintenance payment</i>
<b>swear/affirm</b>	These words are used when any party or witness swears on a holy book (such as the Bible) to tell the truth, or makes a solemn affirmation (a promise) that she or he will tell the truth to the court. <i>see oath</i>
<b>T</b>	
<b>table amount</b>	This is the amount of child support that equals the amount calculated using only the Child Support Guidelines tables.
<b>U</b>	
<b>uncontested hearing</b>	This is a court hearing where no one disagrees with what the court is asked to do. <i>see contested hearing</i>
<b>undue hardship</b>	Undue hardship refers to a decision by the court that it would cause too much difficulty for one parent or a child if the paying parent were required to pay the table amount of child support. A hardship application can be made by either parent, but it is more often made by the paying parent who seeks to pay less than the table amount. <i>see Child Support Guidelines and table amount</i>
<b>V</b>	
<b>vary/variation</b>	This is the process to change or alter an order such as a spousal support order or a child support order. The party applying to vary a previous order must show that there has been a material change of circumstances since the last order was made.
<b>W</b>	
<b>warrant</b>	This is a court document that orders the police or other peace officers to arrest someone. The court can issue a warrant if someone fails to appear in court or does not obey a court order.
<b>writ</b>	A writ is a document that directs the sheriff or other person to carry out its terms (e.g. to seize property or garnish money or to take some other specified action). Some writs are issued by the court. Some writs are filed with the court.

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This publication is **number 1** 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 an Existing Child Support Order
- ⑥ Opposing an Application for Child Support

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