

Family Law

Court Procedure Booklets



6

Opposing an Application
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.

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

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 opposing (disagreeing with) an application for child support. The forms to oppose an application for a child support order are part of the information package with this booklet. You can also get the forms from Court Services or on-line at www.justice.gov.yk.ca.

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 may 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.

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 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 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

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. You may use the Law Library in the Law Courts Building on Second Avenue in Whitehorse. This library is open to the public.

This booklet does not replace a lawyer and does not include 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).

Forms

You will need to prepare documents to oppose a child support application. Get forms at Court Services or on-line at www.justice.gov.yk.ca. These documents may include:

- a Response (where you state your intention to disagree with the other party's application);
- an Affidavit; and
- Financial Statement.

Part 2. Steps to oppose a child support application

Introduction

If you have been served with court documents about a child support application and you want to oppose the application, please carefully read the steps outlined in this part of the booklet. Some of the legal terms that you will need to understand are defined in booklet 1 of this series (List of Key Words).

The Notice of Hearing tells you the date, time and place of the hearing that you *must* attend. The Affidavit gives the facts that the other party is presenting to the court.

If you do not agree with what the other party is asking for, you can oppose the application. A judge will decide on the appropriate amount of child support to be paid and on the terms of the court order. The judge will refer to the Child Support Guidelines to come to a decision. The amount of child support awarded may be higher or lower than the amount stated in the Child Support Guidelines tables.

Any court process is a formal one. You must take seriously the application that deals with child support. You should also get legal advice, even if you want to represent yourself. A lawyer can help you understand what your legal position is, what your obligations are and what is the best way for you to proceed.

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** if you want to represent yourself.

The Yukon follows the British Columbia Supreme Court “Rules of Court”. You can review these at www.ag.gov.bc.ca/courts/civil/sup_crt_rules or in the Law Library. The Law Line may also be able to answer questions you have about Rules of Court and it would be helpful for you to ask a lawyer for advice about which rules apply in your situation. There are other instructions called Practice Directions issued by Yukon Supreme Court.

If the original child support order was made in conjunction with a divorce order, the federal *Divorce Act* and the federal Child Support Guidelines apply. Check at the Law Library, call the Law Line or go to the federal government web site at <http://canada.justice.gc.ca> for information.

If the original child support order was *not* made in conjunction with a divorce order, you should refer to the Yukon *Family Property and Support Act* and the Yukon Child Support Guidelines (a regulation to the *Family Property and Support Act*). Go to the Law Library or to the Yukon 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.

Step 1. Gather financial 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 includes:

- 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.

Sample form: Affidavit

date sworn

your first initial and your last name

S.C. No. _____ # _____

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

full name of person who began court proceeding

Petitioner/Plaintiff

AND:

full name of the other party

Respondent/Defendant

your name

AFFIDAVIT

city/town and territory

I, _____, of _____

_____, MAKE OATH AND SAY AS

FOLLOWS:

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

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.

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

2. _____

3. _____

4. _____

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

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

signature of Notary Public

your signature

Notary Public In and For the Yukon Territory Party

If you need more information, please refer to section 13 (Income) of the Yukon Child Support Guidelines.

Step 2. Prepare an Affidavit

This is the document that states any information that you want the judge to know. An **Affidavit** (page 6) 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 typically contains information such as:

- a statement that you believe your statements to be true;
- a statement of 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 statements about relevant information you would like the court to consider.

One of the most common reasons for opposing a child support application is that the children are living with the responding party a substantial amount of the time. If the children spend 40 percent or more of their time with you (the person responding to the application), it affects the amount of child support payable.

Anything that you want the judge to know must be in the Affidavit. Be sure that your Affidavit includes clear statements about why you are opposing the other party's application for child support or to vary an existing child support order.

Step 3. Fill in a Response to the other party's Notice of Motion

The **Response** (page 8) is the form that you use to say you oppose the other party's Notice of Motion. It is also the place where you say what Affidavits and documents you will rely on to oppose the other party's application. File the Response (form 124) with the court registry.

Please note that if you are opposing a change to a Corollary Relief Order, you do not fill in a Response form. Rather, you complete an Affidavit to state that you oppose the other party's application.

Step 4. Copy documents

- 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)
- your Response form (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 of Service – the original is filed (there are no other copies)

Sample form: Response to the other party's Notice of Motion

S.C. No. _____

IN THE SUPREME COURT OF THE YUKON

Between: _____

and _____

Plaintiff/Petitioner

Defendant/Respondent

Response of _____

The respondent does not oppose the granting of the relief set out in the following paragraphs of the petition (or notice of motion):

The respondent opposes the granting of the relief set out in the following paragraphs of the petition (or notice of motion):

The respondent consents to the granting of the relief set out in the following paragraphs of the petition (or notice of motion) on the following terms:

The respondent will rely on the following affidavits and other documents:

The respondent estimates that the application will take minutes.

Dated: Respondent (or respondent's solicitor)

full name of person who began court proceeding

full name of other party

list paragraph numbers

list paragraph numbers

list paragraph numbers and any proposed terms

list affidavits delivered with this response and any other affidavits or other documents already in the court file on which you will rely

estimate time

Step 5. File documents

File documents at the court registry. Your copies, stamped with the date of filing, will be returned to you.

Step 6. Get documents to the other party

While you may give your filed Response and Affidavit 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 your shoulders. 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 deliver 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 is 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 have filed 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 7. Court

If you and the other party come to an agreement before your court date, please go directly to Step 8.

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.

Be sure to bring a copy of the filed Affidavit of Service which includes your Affidavit. Also bring a copy of your Response and your Financial Statement. Have a copy of any supporting documents on hand.

On the day of court, check the Chambers list to find your courtroom number. 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 case. 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 other hearings proceed quickly or are cancelled.

In court, the other party will present information first. Then, you will have the chance to give your response. Unless the judge asks other questions, the only evidence you can discuss in court is what is 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. You can ask the other party questions too.

The person who initiates the child support application must indicate in the Notice of Motion and the Notice of Hearing the length of time that he or she feels the hearing will take. If the estimate is more than 30 minutes, the parties must prepare an "outline". The outline (form 125) includes sections on what is being requested from the court and the reasons why the request is being made, and a section completed by the other party to say why the application is being opposed.

Sample form: Consent Order

IN THE SUPREME COURT OF THE YUKON TERRITORY

S.C. No. _____

BETWEEN: _____ Plaintiff/Petitioner

AND: _____ Defendant/Respondent

ORDER

BEFORE A JUDGE) day, the day of

OF THE COURT) , 20 .

ON THE APPLICATION of the _____, without a hearing and by consent

THIS COURT ORDERS that _____

Consented to: _____

Plaintiff/Petitioner

Defendant/Respondent

By the Court: _____

Clerk of the Court

full name of person who began court proceeding

full name of the other party

"plaintiff" or "defendant" whichever you are

details of date

list in numbered paragraphs the terms of the consent order

signatures of the parties

Step 8. Sign the order

After a judge makes a decision, the other party will have to prepare the written (typed) order. If both parties were present for the hearing, both parties must sign it, unless the judge has said that one or the other of them does not need to.

It's up to the person who started the application to arrange for you to sign the order once it is prepared, unless the judge orders otherwise.

Your signature does not mean that you are agreeing with the order. It means that you agree that the terms of the order as written by the other party are substantially the same as the judge's verbal order. This is where the notes that you took during the hearing are important. Refer to your notes and compare them to the order as it was drafted by the applicant. You can also purchase a copy of the clerk's notes from the court registry.

The other party will take the order to the clerk of the court for filing. In situations where it might be ordered, you are served with the filed order. Usually, however, you can obtain your own copy of the order from the court registry.

If the other party's application is successful or if you fail to attend a scheduled court date, you may have to pay court costs. The judge decides who pays costs.

The province of Nova Scotia has produced a video called "Your Day in Court". You can borrow it 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.

Step 9. Prepare a consent order

If you and the other party come to an agreement before the court date, you may want to prepare a **consent order** (page 10) 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 should include:

- 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 6** 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**

© 2005 Government of Yukon

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

Andrew A. Philipsen Law Centre

Second Avenue (between Wood Street and Jarvis Street)

Box 2703, Whitehorse, Yukon Y1A 2C6

www.justice.gov.yk.ca

Funding provided by Justice Canada

