2016 Annotated Rules Update

Rule	sub	Citation
1.	(6)	*C.B. v. S.B. and S.W.*, 2009 YKSC 12 *Atkinson v. McMillan and Liard First Nation*, 2010 YKSC 13 *DP1 Inc. v. Holland,* 2016 YKSC 44
	(8)	*Dawson (Town of the City of) v. Carey*, 2014 YKCA 3
	(13)	*Western Copper Corporation v. Yukon Water Board*, 2010 YKSC 61 *M.W.L. v. R.K.L.,* 2016 YKSC 1
2.	(3)	*Bauman v. Evans,* 2016 YKSC 6
	(9)(b)	*Ron Will Management and Construction Ltd. v. 10532 Yukon Ltd.*, 2012 YKSC 70
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5.	(11)	*Ross River Dena Council v. Canada (Attorney General)*, 2009 YKSC 38
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10.	(1)	*Faro (Town) v. Knapp*, 2011 YKSC 43 *Yukon (Department of Highways and Public Works) v. P.S. Sidhu Trucking Ltd.,* 2015 YKCA 5
	(5)	*Western Copper Corporation v. Yukon Water Board*, 2010 YKSC 61
11.	(9)	*Faro (Town) v. Knapp*, 2014 YKSC 72
12.	(7)	*Champion v. First Nation of Nacho Nyak Dun,* 2015 YKSC 47
	(11)	*T.M.G. v. S.D.I.*, 2009 YKSC 28
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15.	(5)(a)	*Liard First Nation v. Yukon Government and Selwyn Chihong Mining Ltd*, 2011 YKSC 29
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17.	(16)	*T.M.G. v. S.D.I.*, 2009 YKSC 28
	(17)	*Canada (Attorney General) v Menzies*, 2014 YKSC 73
18.		*Estate of Malik et al. v. Estate of Sidat and Malik et al. v. Security National Insurance Company*, 2009 YKSC 43
	(1)	*Griffis v. Fireweed*, 2013 YKSC 62
	(6)	*Ross v. Golden Hill Ventures Limited Partnership*, 2010 YKCA 04, aff'g 2009 YKSC 80 *Carlick v. Canada (AG)*, 2012 YKSC 92 *Carlick v. Canada (AG)*, 2013 YKSC 115 *McDiarmid v Yukon (Government of),* 2014 YKSC 31
19.		*Ross River Dena Council v. Yukon*, 2015 YKSC 45

		Murphy v. Szulinsky, 2016 YKSC 18
	(9)(b)	*Norcope Enterprises v. Yukon*, 2012 YKSC 25
	(12)	*Krafta v. Densmore*, 2013 YKSC 119 *Cobalt Construction Inc. v. Kluane First Nation,* 2014 YKSC 40
20.	(9)	*Estate of Malik et al. v. Estate of Sidat and Malik et al. v. Security National Insurance Company*, 2009 YKSC 43
	(10)	*Estate of Malik et al. v. Estate of Sidat and Malik et al. v. Security National Insurance Company*, 2009 YKSC 43
	(17)	*Fuller v. Schaff et al.*, 2009 YKSC 22 *Knapp v. James H. Brown Professional Corp.,* 2015 YKSC 22
	(18)	*Ross River Dena Council v. Canada (Attorney General)*, 2009 YKSC 57
	(26)	*Golden Hill v. Ross Mining Limited and Norman Ross*, 2009 YKSC 80, aff'd 2010 YKCA 4 *Estate of Malik et al. v. Estate of Sidat and Malik et al. v. Security National Insurance Company*, 2009 YKSC 43 *Dana Naye Ventures v. Canada (Attorney General)*, 2011 YKSC 20 *Ausiku v. Hennigar*, 2011 YKCA 5, aff'g 2010 YKSC 63 *Ausiku v. Yukon Human Rights Commission*, 2012 YKCA 5 *Silverfox v. Chief Coroner*, 2012 YKSC 36 *McClements v. Pike*, 2012 YKSC 84 *Wright v. Yukon (Utilities Board)*, 2014 YKSC 43 *Ross (Guardian ad litem) v. Equinox*, 2015 YKSC 15 *McDiarmid v Yukon (Government of)*, 2014 YKSC 31 *McDiarmid v Canada (Public Prosecution Service)*, 2014 YKSC 61 *Sidhu v. Canada (Attorney General),* 2016 YKCA 6
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24.	(1)	*Ross River Dena Council v. Canada (Attorney General)*, 2011 YKSC 86 *McDiarmid v Canada (Public Prosecution Service)*, 2014 YKSC 61
25.	(6)	*Spencer v. Marshall*, 2012 YKSC 13
	(14)	*Ross River Dena Council v. Canada (Attorney General)*, 2009 YKSC 04, aff'd 2009 YKCA 8 *Coyne v Coyne*, 2014 YKSC 20
	(15)	*Freedom TV Inc. v. Holland,* 2016 YKSC 24
26.		*Silverfox v. Chief Coroner et al.*, 2010 YKSC 39
	(6)	*Ross River Dena Council v. Canada (Attorney General)*, 2016 YKSC 52
27.	(5)(b)	*Spencer v. Marshall*, 2012 YKSC 13
	(13)	*Toman v. Fulmer et al.*, 2010 YKSC 35
	(18)	*Valard Construction LP v. Yukon Energy Corporation*, 2015 YKSC 11
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	(28)	*Toman v. Fulmer et al.*, 2010 YKSC 35
28.	(1)	*Harvey v. 5505 Yukon Limited*, 2011 YKSC 76
29.	(1)	*Dana Naye Ventures v. Canada (Attorney General)*, 2011 YKSC 59 *Fine Gold Resources Ltd. V. 46205 Yukon Inc.,* 2016 YKSC 67
	(2)	*Dana Naye Ventures v. Canada (Attorney General)*, 2011 YKSC 59
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	(5)	*M.S.Z. v. Dr. M.*, 2008 YKSC 74 *Calandra et al. v. Henley et al.*, 2008 YKSC 96 *Ross River Dena Council v. Canada (Attorney General)*, 2011 YKSC 87
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36.		*Western Copper Corporation v. Yukon Water Board*, 2010 YKSC 61
37.	(6)	*Fuller v. Schaff et al.*, 2009 YKSC 22
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39.	(7)	*Estate of Buyck,* 2015 YKSC 46
	(21)	*K. v. M. and S.*, 2010 YKSC 04
	(27)	*Liedtke-Thompson v Gignac,* 2015 YKSC 5 *Estate of Buyck,* 2015 YKSC 46
	(41)	*J.W. v. Van Bibber*, 2013 YKSC 79
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41.		*D.M.M. v. T.B.M.*, 2011 YKSC 7
	(8)	*Humphrey v. Tanner*, 2015 YKSC 27
	(18)	*Ross River Dena Council v. Canada (Attorney General)*, 2013 YKCA 6 *MacNeil v. Hedmann,* 2013 YKSC 81
42.	(19)	*Ross River Dena Council v. Canada (Attorney General),* 2016 YKSC 47
43.	(13)	*Fine Gold Resources Ltd. V. 46205 Yukon Inc.,* 2016 YKCA 15
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47.	(6)	*Town of Faro v. Knapp, Dufresne et al.*, 2011 YKSC 52

48.	(2)	*Western Copper Corporation v. Yukon Water Board*, 2010 YKSC 61
	(10)	*Town of Faro v. Knapp, Dufresne et al.*, 2011 YKSC 52
49.	(12)	*Miller et al. v. Government of Yukon et al.*, 2010 YKSC 22, aff'd 2011 YKCA 2 *Cobalt Construction v Kluane First Nation*, 2013 YKSC 124 *P.S. Sidhu Trucking Ltd. v. Yukon Zinc Corp.,* 2016 YKSC 40
50.	(9)	*Hy's North Transportation Inc. v. Finlayson Minerals Corp.*, 2016 YKSC 39
	(14)	*K.P.L. v. R.W.E.,* 2016 YKSC 62
51.	(6)	*Faro (Town) v. Knapp*, 2011 YKSC 43
52.	(1)	*Duke Ventures Ltd v Seafoot*, 2015 YKSC 14 *Fine Gold Resources Ltd. v. 46205 Yukon Inc.,* 2016 YKCA 15
53.	(1)	*Western Copper Corporation v. Yukon Water Board*, 2010 YKSC 61
	(6)	*Fox v. Northern Vision Development Corp*, *et al.*, 2009 YKSC 64
54.		*Wright v. Yukon (Utilities Board)*, 2014 YKSC 43
	(5)	*Liard First Nation v. Yukon Government and Selwyn Chihong Mining Ltd*, 2011 YKSC 29 *Silverfox v. Chief Coroner*, 2013 YKCA 11 *White River First Nation v. Yukon (Energy Mines and Resources)*, 2013 YKSC 10 *Blackjack v. Yukon (Chief Coroner),* 2016 YKSC 53
	(6)	*Western Copper Corporation v. Yukon Water Board*, 2010 YKSC 61
	(7)	*Bretlyn v Yukon Medical Council,* 2015 YKSC 3
	(19)	*Cameron v. Yukon*, 2010 YKSC 58
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56.	(1)	*Ross v. Ross Mining Limited*, 2009 YKSC 55
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59.	(2)	*Gwich'in Development Corporation v. Alliance Sonic Drilling Inc. et al.*, 2009 YKSC 19
		B.J.G. v. D.L.G., 2010 YKSC 81
60.		*Knol v. Tamarack Inc.,* 2013 YKSC 47
	(1)	*Calandra v. Henley, et al.*, 2008 YKSC 82, aff'd 2009 YKCA 6 *Calandra v. Henley*, 2009 YKCA 6, aff'g 2008 YKSC 82 *C.M.S. v. M.R.J.S.*, 2009 YKSC 49 *City of Whitehorse v. Darragh*, 2008 YKSC 80, rev'd on other grounds 2009 YKCA 10 *M.P.T. v. R.W.T.*, 2010 YKSC 6 *D.M.M. v. T.B.M.*, 2011 YKCA 8 *Ross v. Golden Hill Ventures Limited Partnership et al.*, 2011 YKSC 30

		Golden Hill Ventures Limited Partnership v. Ross Mining Limited and Norman Ross, 2012 YKSC 18 *Fine Gold Resources Ltd. v. 46205 Yukon Inc.,* 2016 YKCA 15
	(2)	*Minet et al. v. Kossler*, 2009 YKSC 18
	(4)	*1371737 Alberta Ltd et al. v. 37768 Yukon Inc. et al.*, 2010 YKSC 17
	(9)	*Kareway Homes Ltd. v. 27889 Yukon Inc.*, 2012 YKSC 28 *Liedtke-Thompson v Gignac*, 2015 YKSC 5
	(12)	*Cobalt Construction Inc. v Kluane First Nation*, 2013 YKSC 124
	(32)	*1371737 Alberta Ltd et al. v. 37768 Yukon Inc. et al.*, 2010 YKSC 17
	(36)	*Dawson (Town of the City of) v. Carey,* 2014 YKCA 3
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63.		*D.T.B. v. L.A.R.A.*, 2011 YKSC 14
	(1)	*M.W.L. v. R.K.L.,* 2016 YKSC 1
	(6)	*K.R.G. v. R.R.*, 2009 YKSC 40 *MacNeil v. Hedmann*, 2009 YKSC 63
	(26)	*AJF v MLF*, 2014 YKSC 58
	(47)	*Coyne v Coyne,* 2013 YKSC 123
	(48)	*Coyne v Coyne,* 2013 YKSC 123
63A.	(7)	*B.J.G. v. D.L.G.*, 2010 YKSC 33
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	(37)	*Coyne v Coyne*, 2014 YKSC 123
64.	(7)	*Dickson (Estate of)*, 2012 YKSC 71
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App B.	s. 2(c)	*Ross River Dena Council v. Government of Yukon*, 2013 YKCA 7
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INTRODUCTION TO THE ANNOTATED RULES, 2014 EDITION

This is the third publication of the Annotated Rules, with currency from September 15, 2008 to December 31, 2016.

I would like to thank all committee members, past and present, for their hard work in completing this project, including Julie DesBrisay, Paul Di Libero and Andrea Bailey, who compiled the updates for this year.

Committee Members:

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Senior Judge
Supreme Court of Yukon

RULE 1 – INTRODUCTION AND DEFINITIONS

Rule 1(6) – Object of Rules

C.B. v. S.B. and S.W., 2009 YKSC 12
Despite the fact that there were at least 18 conflicting affidavits filed in the interim application the court held that it was the practice in this jurisdiction to decide interim applications on affidavits. Pursuant to Rule 1(6) and the principle of proportionality it was preferable to have a speedy and inexpensive application to grant an interim custody order. It was not necessary to hear oral evidence on the interim application.

Atkinson v. McMillan and Liard First Nation, 2010 YKSC 13
On an application for reconsideration the Court may consider if there are *prima facie* grounds on which the original result may have changed. Where the evidentiary basis for the original decision was before the Court and the issue was canvassed at trial, a party has been given the opportunity to be heard and there is no ground for reconsideration.

DP1 Inc. v. Holland, 2016 YKSC 44
The court will take into account a party's status as a self-represented litigant when balancing the need to secure a just, speedy, and inexpensive determination of a proceeding against the unique needs of such a party, particularly with regard to reasonable extensions of time and forgiveness of procedural errors. Such consideration, while generous, is not unbounded. In fairness to the other party and the efficient administration of justice, inordinate delay and unnecessary complication of the proceedings will not be permitted.

Rule 1(8) – Case Management

Dawson (Town of the City of) v. Carey, 2014 YKCA 3
Filing written submissions that advance new arguments on the day of the hearing, without notice and after numerous case management conferences, tends to undermine the case management process and should be treated seriously. Arguments not previously pleaded should be raised during case management.

Rule 1(13) – Definitions

Western Copper Corporation v. Yukon Water Board, 2010 YKSC 61
The definition of 'respondent' includes anyone entitled to notice of a petition under Rules 10 and 54, and is broadly inclusive. Any person who is entitled to a

notice of an action, appeal or judicial review and who files a response becomes a full party respondent. This status can be varied in case management.

M.W.L. v. R.K.L., 2016 YKSC 1
For the purposes of determining costs in a family law proceeding, “proceeding” may be interpreted broadly to include interlocutory and cross-applications, even where these applications follow a final order.

RULE 2 – EFFECT OF NON-COMPLIANCE

Rule 2(3) – Non-compliance with rules

Bauman v. Evans, 2016 YKSC 6
The use of "shall" in subrule 2(3) does not prevent the court from striking a petition and requiring that a fresh action commence by statement of claim. The exception provided in subrule 1(14), that "the court may order that any provision of these rules does not apply to the proceeding," may be invoked to overcome the general rule against wholly setting aside or staying a proceedings where it is in the interests of justice and the object of the rules that a new action commence.

Rule 2(9)(b) – Want of Prosecution

Ron Will Management and Construction Ltd. v. 10532 Yukon Ltd., 2012 YKSC 70
The Rule that the court shall dismiss a proceeding for want of prosecution where no step has been taken in the action for five years or more is mandatory unless it would not be in the interests of justice to apply the Rule strictly. Reasons for the delay are irrelevant, except, perhaps, where there has been an agreement between the parties. A party's interests are not secured by the statement of claim, which is merely a claim, nothing more, unless prosecuted.

RULE 5 – MULTIPLE CLAIMS AND PARTIES

Rule 5(11) –Representative Proceeding

Ross River Dena Council v. Canada (Attorney General), 2009 YKSC 38
An Indian Act Band Council is a juridical person who can act as a representative plaintiff on behalf of the members of a First Nation in a representative proceeding to enforce collective rights. No individual representative plaintiff is required.

RULE 10 – PETITION

Rule 10(1) – Petition

Faro (Town) v. Knapp, 2011 YKSC 43
A petition for an injunction after judgment as per Rule 51(6) is an "application authorized to be made to the court" under Rule 10(1)(a).

Yukon (Department of Highways and Public Works) v P.S. Sidhu Trucking Ltd., 2015 YKCA 5
The courts are reluctant to give mere advisory opinions. There must be a practical value or an active or imminent *lis* (controversy; dispute) for the judicial consideration of a petition. The court "may properly exercise its discretion to refuse a declaration where the relief sought is not related to an existing and defined *lis"* (citing *Tr'ondek Hwech'in v. Canada* 2004 YKCA 2).

Rule 10(5) – Response

Western Copper Corporation v. Yukon Water Board, 2010 YKSC 61
The effect of filing a response under Rule 10(5) is to make the person a respondent, with all the associated rights and liabilities, including right of appeal and costs exposure. Alternative standing status can be addressed in case management. See Rules 1 and 54.

RULE 11 – SERVICE AND DELIVERY OF DOCUMENTS

Rule 11(9) – If document does not reach person

Faro (Town) v. Knapp, 2014 YKSC 72
A party cannot rely on the fact that an assessment of costs sent by mail did not come to his or her notice under s. 11(9)(a) when a Writ of Execution referencing the bill of costs was personally served and no steps taken to set aside the costs assessment for over a year.

RULE 12 – SUBSTITUTED SERVICE

Rule 12(7) – Substituted service by mail without order

Champion v. First Nation of Nacho Nyak Dun, 2015 YKSC 47
The purpose of 12(7) is to allow substituted service without a court order, where personal service by Rule 11 is impractical. Evidence of impracticability is necessary, and in the absence of evidence, Rule 11 is to be followed.

Rule 12(11) – If document does not reach person

T.M.G. v. S.D.I., 2009 YKSC 28
Rule 12(11) does not apply to court-ordered substituted service. There is no Rule that provides for setting aside service effected through court-ordered steps. Where, despite court-ordered substituted service, judgment has been given in a matter in a party's absence, the party who is claiming that he did not receive notice has potential recourse only through the default judgment provisions in Rule 17.

RULE 15 – CHANGE OF PARTIES

Rule 15(5)(a) – Removing, adding or substituting party

Liard First Nation v. Yukon Government and Selwyn Chihong Mining Ltd., 2011 YKSC 29
A person or body who made a recommendation to the decision-maker through the process set out in the *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003 c.7, may apply to be a party, not merely an intervenor, to a judicial review of that decision.

RULE 17 – DEFAULT OF APPEARANCE OR PLEADING

Rule 17(16) – Court may set aside or vary default judgment

T.M.G. v. S.D.I., 2009 YKSC 28
To succeed in setting aside a judgment under Rule 17(16), the applicant must demonstrate that he satisfies three criteria:

1) that he did not willfully or deliberately fail to appear on the application;
2) that he made an application to set aside the default judgment as soon as reasonably possible after obtaining knowledge of it, or give an explanation for any delay in the application being brought;
3) that he has a meritorious defence or at least a defence worthy of investigation.

Rule 17(17) – Alternative methods of assessment

Canada (Attorney General) v Menzies, 2014 YKSC 73
In a personal injury action, where a plaintiff has assigned her rights and elected not to pursue a general damages claim, the assessment of special damages for medical and ancillary costs and wages may be made by the assignee on the basis of affidavit evidence. A claim for general damages will generally require oral evidence and cannot be concluded without assessing the credibility of the claim.

RULE 18 – SUMMARY JUDGMENT

Rule 18 – Summary Judgment

Estate of Malik et al. v. Estate of Sidat and Malik et al. v. Security National Insurance Company, 2009 YKSC 43
In a summary judgment application to strike a statement of claim on the basis that it is time-barred, the onus is on the plaintiff to demonstrate that there is some case to be put forward on the issue of discoverability.
See also *Carlick v. Canada (Attorney General)*, 2012 YKSC 92.

Rule 18(1) – Application for

Griffis v. Fireweed Plumbing & Heating Inc., 2013 YKSC 62
The need to establish that there is, or is not, a *bone fide* issue for trial in order to succeed on an application for summary judgment can be satisfied by establishing beyond a reasonable doubt that the respondent has no defence. Proof of the existence of a "100% Money Back Guarantee" in a purchase agreement and proof that is was not honoured meet the requirements of Rule 18(1).

Rule 18(6) – Summary Judgment for Defendant

Ross v. Golden Hill Ventures Limited Partnership, 2010 YKCA 04, aff'g 2009 YKSC 80
Rule 18(6) ought to be narrowly construed. A claim or petition may only be struck out where there are no material facts pleaded on which the claim could succeed. Where the pleadings disclose sufficient material facts, even if in a confusing and inconsistent manner, the determination of the nature of the claim is for the presiding judge to determine after weighing and assessing the evidence.

Carlick v. Canada (Attorney General), 2012 YKSC 92
On a summary judgment application, the defendant has an evidentiary burden of showing there is no genuine issue of material fact requiring a trial and cannot just rely on the pleadings. If satisfied, the onus shifts to the plaintiff to refute the evidence. Each side must put its best foot forward and the judge can make inferences of fact, as long as the inference is strongly supported on undisputed facts. There must be evidence before the court deciding the application; the parties cannot simply indicate what evidence may be produced at trial.

Carlick v. Canada (Attorney General), 2013 YKSC 115
On a Rule 18(6) application the defendants bear the initial and ultimate evidentiary burden of proving that there is no *bona fide* or genuine issue to be

tried based solely on the uncontested material facts in the pleadings and materials before the court.

McDiarmid v Yukon (Government of), 2014 YKSC 31
On a summary judgment application under Rule 18(6), the test is whether there is a *bona fide* triable issue of fact or law. The question is whether the claim is bound to fail. No issues of fact or law can be determined, and, if there is a doubt, the application must be dismissed. Caution and prudence must be exercised in an application to strike a claim in a summary fashion. It is a power which must be used sparingly and only in the clearest of cases, particularly where the case depends on the facts.

RULE 19 – SUMMARY TRIAL

Ross River Dena Council v. Yukon, 2015 YKSC 45
Murphy v. Szulinsky 2016 YKSC 18
Summary trials proceeding by affidavit evidence are appropriate in cases where cost efficiency is of central concern to one or all of the parties and where admissions by affidavit contain sufficient evidence to ground a decision. Disparity in financial resources and the overall affordability of proceedings are factors to be taken into consideration for Rule 19 applications.

Rule 19(9)(b) – Preliminary Orders

Norcope Enterprises v. Yukon, 2012 YKSC 25
Credibility issues and conflicts in evidence should not necessarily prevent the use of summary trials. A summary trial is likely to proceed unless
a) the litigation is extensive and the summary trial hearing itself will take considerable time;
b) the unsuitability of a summary determination of the issues is relatively obvious, e.g., where credibility is a crucial issue;
c) it is clear that a summary trial involves a substantial risk of wasting time and effort and of producing unnecessary complexity; or
d) the issues are not determinative of the litigation and are inextricably interwoven with issues that must be determined at trial.

Rule 19(12) – Judgment

Krafta v. Densmore, 2013 YKSC 119
Where all of the necessary facts are available, the issue of the inherent jurisdiction of the court to decide a dispute arising from violation of a collective agreement is an appropriate subject for summary trial as it will a) determine the need for a trial at all, and b) if a trial is necessary dispose of one issue prior to the trial.

Cobalt Construction Inc. v. Kluane First Nation, 2014 YKSC 40
A determination of whether a tender contract was breached can be resolved through summary trial where there are few if any facts in dispute, the matter not particularly complex, and credibility is not in issue.

RULE 20 – PLEADINGS GENERALLY

Rule 20(9) – Objection in point of law

Estate of Malik et al. v. Estate of Sidat and *Malik et al. v. Security National Insurance Company*, 2009 YKSC 43
Rule 20(9) allows conclusions or objections of law to be contained in the pleadings. Although it is preferable, it is not necessary to refer to the statute on which the conclusions or objections are based. Pleadings can be amended without prejudice to reflect the applicable legislation.

Rule 20(10) – Pleadings conclusions of law

Estate of Malik et al. v. Estate of Sidat and *Malik et al. v. Security National Insurance Company*, 2009 YKSC 43
Rule 20(10) allows conclusions or objections of law to be contained in the pleadings. Although it is preferable, it is not necessary to refer to the statute on which the conclusions or objections are based. Pleadings can be amended without prejudice to reflect the applicable legislation.

Rule 20(17) – Pleading after the statement of claim

Fuller v. Schaff et al., 2009 YKSC 22
So that a plaintiff is not taken by surprise, under Rule 20(17), a defendant must plead each defence; a defence that is not pleaded may be waived. This includes a statute of limitations defence or statutory bar defence. It is no answer to have brought a notice of intention to raise the defence in the context of a pre-trial settlement conference.

Knapp v James H. Brown Professional Corp., 2015 YKSC 22
The failure to plead a defence subsequent to a statement of claim will be deemed to be a waiver of that defence. However, the application of Rule 20(17) to an omitted defence does not relieve the plaintiff of the onus of proof.

Rule 20(18) – Order for particulars

Ross River Dena Council v. Canada (Attorney General), 2009 YKSC 57
On an application for an order for further and better particulars pursuant to Rule 20(18), the ordering of particulars is a matter of discretion that depends on the facts of each case. The order should only be made if it is “necessary” to define

the issues and to enable the defendant to plead. “Necessary” should not be interpreted to mean “helpful” or “of assistance”.

Rule 20(26) – Scandalous, frivolous or vexatious matters

Golden Hill v. Ross Mining Limited and Norman Ross, 2009 YKSC 80, aff’d 2010 YKCA 4
An application for an order to strike pleadings under Rule 20(26) is generally confined to an analysis of the pleadings. An application based on abuse of process under Rule 20(26)(d) is an exception; evidence may be adduced on such an application.

Estate of Malik et al. v. Estate of Sidat and *Malik et al. v. Security National Insurance Company*, 2009 YKSC 43
The defendant in a civil action cannot rely on a limitation period to strike a statement of claim as disclosing no reasonable claim under Rule 20(26), which will apply only when the statement of claim does not state a proper cause of action. Pleading a limitation period is the pleading of a defence, and the application is properly brought under Rule 18.

Dana Naye Ventures v. Canada (Attorney General), 2011 YKSC 20
On an application to strike, *Hunt v. Carey Canada Inc*, [1990] 2 S.C.R. 959, is the proper law to be applied, including in defamation actions. Decisions in other Canadian jurisdictions, indicating that defamation actions are a special exception that must be pleaded with particularity, are not binding in Yukon.

Ausiku v. Hennigar, 2011 YKCA 5, aff’g 2010 YKSC 63
A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. Evidence is not admissible under Rule 20(29) in an application to strike.

Ausiku v. Yukon Human Rights Commission, 2012 YKCA 5
If a statement of claim is an attempt to use a civil action to collaterally challenge a decision of an administrative tribunal that is otherwise subject to a statutory right of appeal or review that was not exhausted, it should be struck on the basis that it does not disclose a reasonable cause of action.

Silverfox v. Chief Coroner, 2012 YKSC 36
Remedies sought in a petition may be struck as being unnecessary and because they would delay a fair hearing of a case if they would divert a judicial review from its true purpose by requiring the participation of another person as a party.

McClements v. Pike, 2012 YKSC 84
In an application to strike a claim on the basis that it discloses no reasonable cause of action, the court must read the statement of claim generously, with

allowance for inadequacies due to deficient drafting. At this stage of proceedings, the court should not dispose of matters of law that are not fully settled in the jurisprudence.

Wright v. Yukon (Utilities Board), 2014 YKSC 43
Despite the dismissal of a judicial review application as disclosing no reasonable claim and an abuse of process, special costs were not awarded to the respondent given their punitive character and potential to serve as a significant deterrent to applicants with valid claims.

Ross (Guardian ad litem) v. Equinox, 2015 YKSC 15
The principles that govern the striking of a statement of claim apply equally to an application to strike a third party notice. The pleadings are presumed to be true or capable of being proven true and no evidence is admissible. Any evidence that has been presented as part of the application should be disregarded in its entirety.

McDiarmid v Yukon (Government of), 2014 YKSC 31
The test for an action being "frivolous" or "vexatious" requires the defendant to demonstrate that the pleading is groundless or manifestly futile, or that it is not in an intelligible form, or that it was instituted without any reasonable grounds whatsoever for an ulterior purpose. Caution and prudence must be exercised in an application to strike a claim in a summary fashion. It is a power which must be used sparingly and only in the clearest of cases, particularly where the case depends on the facts.

McDiarmid v Canada (Public Prosecution Service), 2014 YKSC 61
Claim against Crown prosecutor alleging delayed disclosure in ongoing criminal proceedings struck as unnecessary and an abuse of the process of the court. The trial judge in the criminal proceedings has the jurisdiction and is the proper person to deal with Crown disclosure and conduct in those proceedings.

Sidhu v. Canada (Attorney General), 2016 YKCA 6
Pleadings containing "mere allegations" unsupported by material facts will be struck by application of Rule 20(26). Subject to the discretion of the court, deficient pleadings may be remedied by amendment to include supportive material facts.

RULE 24 – AMENDMENT

Rule 24(1) – When amendment may be made

Ross River Dena Council v. Canada (Attorney General), 2011 YKSC 86
Amendments should be allowed unless they will be useless or the opposing party can demonstrate prejudice. Amendments that help to define the real issues between the parties should be allowed. Evidence and matters put before the court in case management should not be considered on the application.

McDiarmid v Canada (Public Prosecution Service), 2014 YKSC 61
The time limit in Rule 24(1)(a) which allows a party to amend a pleading without leave of the court "at any time up to 90 days before trial or hearing" refers to 90 days before a trial date on the merits, not the hearing of a motion to strike.

RULE 25 – DISCOVERY OF DOCUMENTS

Rule 25(6) – Affidavit of Documents

Spencer v. Marshall, 2012 YKSC 13
Where a party indicates on examination for discovery that he is in possession of original materials that are not listed in his affidavit of documents, the court may determine that he is in possession, control or power of those materials and order their production.

Rule 25(14) – Court may order production

Ross River Dena Council v. Canada (Attorney General), 2009 YKSC 04, aff'd 2009 YKCA
On an application for production, it is no answer for the respondent to say that the facts sought by the petitioner through the document may be discoverable by other means, and/or in other documents, at a later stage in the proceedings. To delay production on that basis would be unfair to the petitioner, as it would likely add to the length and cost of the litigation.

Coyne v. Coyne, 2014 YKSC 20
A claim for privilege in respect of documents must be expressly made to avoid production. The failure to expressly claim the privilege in the face of an explicit request by opposing counsel to state a position on the documents amounts to an implied intention to waive privilege.

Rule 25(15) – Court may inspect to determine claim of privilege

Freedom TV Inc. v. Holland, 2016 YKSC 24
Self-represented litigants have the benefit of litigation privilege in the same manner as a represented party with respect to communications to third parties generated in preparation for litigation.

RULE 26 – USE OF EVIDENCE OUTSIDE THE PROCEEDING

Rule 26 – Use of evidence outside the proceeding

Silverfox v. Chief Coroner et al., 2010 YKSC 39
Rule 26 codifies the implied undertaking rule at common law. Rule 26 does not, however, apply to a Coroner's Inquest, therefore the common law implied undertaking rule applies, subject to the express terms of the undertaking.

Rule 26(6) – Exception

Ross River Dena Council v. Canada (Attorney General), 2015 YKSC 52
The inconsistency between an affidavit in one proceeding and a second affidavit sworn by a different person in a different proceeding may trigger the exception to the implied undertaking rule because it may lead to an impeachment.

RULE 27 – EXAMINATION FOR DISCOVERY

Rule 27(5)(b) – Examination of employees, agents, etc.

Spencer v. Marshall, 2012 YKSC 13
Where a party seeks to examine a party's employee, the court will consider: the circumstances of the particular case, the responsiveness of the witness and her ability to inform herself, the nature and materiality of the evidence sought and whether examining the employee would be the most practical, convenient and expeditious alternative. The court may grant leave where discovery on a crucial issue can be obtained more expeditiously from an employee than by the representative of the employer informing herself of the events.

Rule 27(13) – Place

Toman v. Fulmer et al., 2010 YKSC 35
As a general rule, under Rules 27(13) and (28), examination for discovery should take place in Whitehorse unless it is appropriate, just and convenient to have it take place elsewhere. The costs of travel required by the parties and their counsel will be a factor in that determination.

Rule 27(18) – Production of documents

Valard Construction LP v. Yukon Energy Corporation, 2015 YKSC 11
It is incumbent on the person being examined for discovery to produce all relevant documents prior to being examined.

Rule 27(21) – Scope of examination

Valard Construction LP v. Yukon Energy Corporation, 2015 YKSC 11
An examination may be adjourned to require the person being examined to inform himself or herself: the overriding issue is whether a full, fair and frank examination has taken place, and not what counsel did or did not agree to when the examination was concluded.

Rule 27(28) – Application to persons outside Yukon

Toman v. Fulmer et al., 2010 YKSC 35
As a general rule, under Rules 27(13) and (28), examination for discovery should take place in Whitehorse unless it is appropriate, just and convenient to have it

take place elsewhere. The costs of travel required by the parties and their counsel will be a factor in that determination.

RULE 28 – PRE-TRIAL EXAMINATION OF WITNESS

Rule 28(1) – Order for

Harvey v. 5505 Yukon Limited, 2011 YKSC 76
Under Rule 28(1)(b) counsel with knowledge of the facts of the matter may be discovered under oath where the client is deceased. Where a lawyer acted for the company, and not for the shareholders individually, solicitor-client privilege as between shareholders and counsel does not apply, or alternatively is waived, and therefore does not prohibit examination of the lawyer under Rule 28.

RULE 29 – DISCOVERY BY INTERROGATORIES

Rule 29(1) – Purpose

Dana Naye Ventures v. Canada (Attorney General), 2011 YKSC 59
This rule broadens the traditional scope of interrogatories to reduce or eliminate the need for examination for discovery. It must be read in conjunction with the introduction of the principle of proportionality in Rule 1(6).

Fine Gold Resources Ltd. V. 46205 Yukon Inc., 2016 YKSC 67
Although subrule 29(1) expands the ambit of the traditional scope of interrogatories if they contribute to the speedy or inexpensive determination of the case, it cannot be interpreted to permit cross-examination on collateral issues. Interrogatories should not be in the nature of cross-examination on the pleadings or disclosed documents. In addition, it is objectionable to impose lengthy and detailed interrogatories on a party who is only in the background of the dispute.

Rule 29(2) – Service of and answer to interrogatories

Dana Naye Ventures v. Canada (Attorney General), 2011 YKSC 59
This rule must be considered together with R. 29(1), which broadens the traditional scope of interrogatories to be similar to examinations for discovery. The Crown, pursuant to regulations under the *Crown Liability and Proceedings Act*, may designate someone to respond to interrogatories, irrespective of to whom the interrogatories are addressed. To challenge the Crown's designation, the other party must demonstrate that the Crown deponent is not informed or is incapable of being informed. The Crown must disclose the source of information sworn by its designated deponent based on information and belief.

Rule 29(7) – Insufficient answer to interrogatory

Ross River Dena Council v. Canada (Attorney General), 2011 YKSC 56
The courts should take a liberal approach to the scope of pre-trial discovery, as parties benefit from the maximum possible disclosure being made as early as possible in litigation. Consequently, interim answers to interrogatories should be provided, even if they need to be qualified or amended later. Further, a "matter in question in the action" properly contemplates interrogatories about the position taken by a party on a legal issue, although the party is free to qualify its answers or change its position as it gathers information. In the specific context of

aboriginal litigation, the Crown has a particular duty to be open and frank in its disclosures, given its continuing fiduciary relationship with First Nations.

Ross River Dena Council v. Canada (Attorney General), 2015 YKSC 52
The failure of a person answering interrogatories to indicate whether she was answering them on the basis of personal knowledge or information and belief and, if the latter, the source of that information and belief, may constitute the requisite “insufficiency” for the court to allow the person to be subject to oral examination. There is no requirement to provide advance notice of the areas of questioning intended to be pursued during that oral examination.

RULE 31 – ADMISSIONS

Rule 31(6) - Application for order on admissions

Ross River Dena Council v Yukon (Government of), 2015 YKSC 45
In the context of a summary trial, an order for judgment on admissions may be appropriate even in circumstances that require the weighing of evidence, evaluating inferences and drawing inferences, particularly in a case where the disparity in financial resources between the parties would otherwise prevent the fair and just resolution of the dispute.

RULE 34 – EVIDENCE OF OWN EXPERTS

Rule 34(4) – Admissibility of oral testimony of expert opinion

Ross River Dena Council v. Canada (Attorney General), 2011 YKSC 88
Where an expert report is provided within the time limit specified in Rule 34 the opposing party will be deemed to have received sufficient notice of the general topic area of which the expert witness will testify.

Rule 34(5) – Form of report

M.S.Z. v. Dr. M., 2008 YKSC 74
In setting out the facts and assumptions upon which the opinion is based, while it may be preferable that an expert personally interview the subject of the opinion, depending on the factual context and issues involved, it is not a condition precedent for the opinion to be admissible.

Calandra et al. v. Henley et al., 2008 YKSC 96
The Court may take a relaxed approach to the admissibility of an expert report that does not comply with Rule 34(5) if that expert report contains sufficient detail to assist the Court.

Ross River Dena Council v. Canada (Attorney General), 2011 YKSC 87
An expert report that relies on a large volume of documents and interweaves specific facts and sources throughout the report does not violate Rule 34(5)(b) and is admissible.

RULE 36 – CASE MANAGEMENT CONFERENCE

Rule 36 – Case Management

Western Copper Corporation v. Yukon Water Board, 2010 YKSC 61
A consent order agreed to at a Case Management Conference may be reconsidered, by written request of a party, at an oral hearing before the judge.

RULE 37 – JUDICIAL SETTLEMENT CONFERENCE

Rule 37(6) – Without prejudice

Fuller v. Schaff et al., 2009 YKSC 22
The settlement privilege accorded under Rule 37(6) may be waived where a party raises an issue about their "state of mind" through the pleadings or by a party's words or conduct, but not simply through submissions of counsel. Waiver may also occur in the absence of an intention to waive, where fairness so requires. See also *Ross River Dena Council v. Canada (Attorney General)*, 2009 YKSC 4.

RULE 39 – OFFER TO SETTLE

Rule 39(7) – Time for making offer

Estate of Buyck, 2015 YKSC 46
The "7 days" referred to in the subrule are not "clear days". The calculation of the number of days excludes the first day (the date of service of the formal offer) and includes the last day before the hearing commences.

Rule 39(21) – Order on acceptance

K. v. M. and S., 2010 YKSC 04
The Court may incorporate the terms of an accepted offer to settle into an order to make the terms part of the court record and to give some finality to the precise terms, as long as there is no detriment to the parties' best interests to do so. On a future application, the onus on a party regarding the confidentiality of an assessment would not be less with the term incorporated in the order than if it were simply in a separate collateral agreement.

Rule 39(27) – Consequences of failure to accept defendant's offer for non-monetary relief

Liedtke-Thompson v Gignac, 2015 YKSC 5
Where the plaintiff's claim in one action was dismissed and defendant had previously offered to settle by both parties agreeing to discontinue their respective actions and bearing their own costs, the defendant was entitled to double costs from the date the offer to settle was delivered to the plaintiff.

Estate of Buyck, 2015 YKSC 46
If a formal offer is delivered 7 days before the trial commences, Rule 39(27)(b) is a complete code and mandatory. Double costs must be awarded from the date of the offer.

Rule 39 (41) – Settlement offer may be delivered

J.W. v. Van Bibber, 2013 YKSC 79
In a case where there were significant mutual delays in requesting and providing disclosure, the fact that disclosure of some material was not made until several months after an offer to settle was delivered pursuant to Rule 39(41) does not affect the availability of double costs, or change the date of availability from the date of delivery of the offer to the date of the disclosure.

RULE 41 – TRIAL

Rule 41 – Trial

D.M.M. v. T.B.M., 2011 YKSC 7
Application by the mother for the judge to recuse himself denied. Mother appealed that decision. Mother was applying to set her access application for trial. The Court was concerned that if the trial proceeded and the mother's appeal was subsequently successful, the trial would be a nullity. Proceeding with the trial could be a waste of judicial resources if the court of appeal decided the judge should have recused himself, putting the court in a position of having to run the access trial twice. The Court refused to set the matter down for trial at that time.

Rule 41(8) - Court may adjourn trial date, etc.

Humphrey v. Tanner, 2015 YKSC 27
Adopts the rule in *Serban v. Casselman* (1995), 2 B.C.L.R. (3d) 316 (C.A.). In an order to adjourn a trial made under Rule 41(8), the court may impose a term of an advanced payment of damages prior to the assessment of damages, if it is just in all the circumstances. There must be a proper exercise of discretion to make the order. This rule is not restricted to circumstances where the conduct of the litigation demands such an order. However, an order for advance payments should only be made in special circumstances, and only when the judge making it is completely satisfied there is no possibility that the assessment of damages will be less than the amount of the advance payments.

Rule 41(18) – Trial of one question before others

Ross River Dena Council v. Canada (Attorney General), 2013 YKCA 6
The purpose of severance is to allow proceedings to be tried efficiently and there is an interplay between this rule and Rule 1(6). Severance is exceptional and should only be ordered where it appears that efficiencies will result from having one issue determined in advance of others. In order to be severed, an issue must be one of fact or law that can be decided independently of other issues. A court should avoid the precipitous consideration of difficult legal issues where the matter could be resolved on more mundane principles.

MacNeil v. Hedmann, 2013 YKSC 81
An issue should not be severed unless there is a real likelihood of a significant saving in time or expense, and in general, courts take a cautious approach to the severance of issues. Severance may be appropriate if the issue to be tried first could be determinative, in that its resolution would put an end to the action.

Severance should generally not be ordered when the issue to be tried is interwoven with other issues in the trial.

RULE 42 – EVIDENCE AND PROCEDURE AT TRIAL

Rule 42(19) - Application to set notice aside

Ross River Dena Council v. Canada (Attorney General), 2016 YKSC 47
The court must exercise restraint in using its very limited discretion to prevent a party from calling an adverse witness, and should be very cautious about second guessing benefits a litigant may derive from calling a particular witness. Courts should not prevent a party from employing the adverse witness rule unless it would be “abusive or clearly unjust”.

RULE 43 – ORDERS

43(13) Application of which notice is not required

Fine Gold Resources Ltd. v. 46205 Yukon Inc., 2016 YKCA 15
While a *Mareva* injunction may be imposed by desk order under subrule (13), as an extraordinary remedy it requires careful scrutiny by the judge, and the injunction should rarely be granted without an *ex parte* hearing. Counsel seeking the injunction should be prepared to respond to questions and to confirm that there is nothing of concern in the application that is not immediately apparent from the materials.

RULE 47 – APPLICATIONS

Rule 47(6) – Response

Town of Faro v. Knapp, Dufresne et al., 2011 YKSC 52
In the absence of prejudice to a party, the failure to file a response to an application for an adjournment can be viewed as an irregularity and cured by the operation of Rule 1(14) or 2(1).

RULE 48 – SETTING DOWN APPLICATIONS FOR HEARING

Rule 48(2) – Definitions

Western Copper Corporation v. Yukon Water Board, 2010 YKSC 61
The definitions of who must be served as a Respondent under Rules 10 and 48 (Petitions), Rule 53 (Appeals) and Rule 54 (Judicial Review) are functionally equivalent.

Rule 48(10) – Procedure if the application is estimated to take more than 30 minutes

Town of Faro v. Knapp, Dufresne et al., 2011 YKSC 52
An outline in Form 104 is required if any of the parties anticipates an application taking more than 30 minutes. However, in the absence of prejudice to another party, this is not an omission that requires a last minute adjournment, and the failure to comply with the Rule can be cured by the operation of Rule 1(14) or 2(1).

RULE 49 – AFFIDAVIT

Rule 49(12) – Contents of affidavit

Miller et al. v. Government of Yukon et al., 2010 YKSC 22, aff'd 2011 YKCA 2
Hearsay evidence contained in affidavits is inadmissible if the deponent fails to identify the source of his or her information or belief.

Cobalt Construction Inc v, Kluane First Nation, 2013 YKSC 124
While an affiant failed to expressly depose in his affidavit that he believed certain representations of other persons to be true, the evidence of the representations was accepted: the court was satisfied on a review of the affiant's evidence as a whole on this point that he was relying on the information and therefore implicitly believed it to be true.

P.S. Sidhu Trucking Ltd. v. Yukon Zinc Corp., 2016 YKSC 40
An affidavit may contain hearsay statements based on the deponent's information and belief, even if made in respect of a final order. The ordinary hearsay exceptions apply, as does the principled approach to admissibility. In reviewing an affidavit, the court is concerned with threshold admissibility. If the evidence exhibits sufficient indicia of reliability so as to afford the trier of fact a satisfactory basis for evaluating the truth of the statement, it is admissible, subject to a final determination about ultimate reliability at the conclusion of the case.

RULE 50 – CHAMBERS

Rule 50(9) – Evidence on an application

Hy's North Transportation Inc. v Finlayson Minerals Corp., 2016 YKSC 39
The court's discretion in ordering cross-examination on an affidavit must be exercised judicially, including a consideration about whether the issue on which cross-examination is sought is relevant and whether the record indicates a conflict in the evidence on the issue. Generally, if there are facts deposed to in the affidavit that are at issue, the deponent will be ordered to attend for cross-examination. Similarly, requiring the production of a document on a chambers application requires the applicant to demonstrate that the relevance of the document outweighs the comparative prejudice.

Rule 50(14) – Orders without notice

K.P.L. v. R.W.E., 2016 YKSC 62
Notice of an application or petition is always required unless it is impracticable unnecessary or urgent. When the person is available for service, it is only in exceptional circumstances that service is not required.

RULE 51 – INJUNCTIONS

Rule 51(6) – Application for injunction after judgment

Faro (Town) v. Knapp, 2011 YKSC 43
A petition for an injunction after judgment as per Rule 51(6) is an "application authorized to be made to the court" under Rule 10(1)(a). The wording of Rule 51(6) is broad enough to include permanent, as well as interlocutory injunctions.

RULE 52 – DETENTION, PRESERVATION AND RECOVERY OF PROPERTY

Rule 52(1) – Property which is the subject matter of a proceeding

Duke Ventures Ltd v Seafoot, 2015 YKSC 14
Generally, orders which have the effect of altering the parties' rights over their property in the pre-trial period are rarely granted, but this reluctance regarding execution before judgment does not apply when the property sought to be preserved is the very subject matter of dispute.

Fine Gold Resources Ltd. v. 46205 Yukon Inc., 2016 YKCA 15 (aff'g 2016 YKSC 21 on this point)
Adopts *Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481. In making an application under this subrule for a *Mareva* injunction, the applicant should: (i) make full and frank disclosure of all matters in his knowledge which are material for the judge to know; (ii) give particulars of his claim against the respondent, stating the ground of his claim and the amount thereof, and fairly stating the points made against it by the respondent; (iii) give some grounds for believing that the respondent has assets in the jurisdiction; (iv) give some grounds for believing that there is a real or genuine risk of the assets being removed, dissipated or disposed of before judgment or the award is satisfied. As well, the applicant must give an undertaking in damages. There is a heavy onus on an applicant seeking this exercise of the court's equitable jurisdiction. The applicant must lead evidence that establishes the existence of assets and a real risk of their disposal or dissipation so as to render nugatory any judgment.

RULE 53 – APPEALS

Rule 53(1) – Application

Western Copper Corporation v. Yukon Water Board, 2010 YKSC 61
Who may apply for leave to appeal under this Rule is determined by examining the appeal provision of the Act at issue.

Rule 53(6) – Powers of court

Fox v. Northern Vision Development Corp., *et al.*, 2009 YKSC 64
Pursuant to Rule 53(6)(b) and section 9 of the *Small Claims Court Act*, R.S.Y. 2002, c. 204, as amended, a Supreme Court Justice may answer questions of fact arising on an appeal of a judgment of the Territorial Court based on the material on record, without a new trial.

RULE 54 – APPLICATION FOR JUDICIAL REVIEW

Standing

Wright v. Yukon (Utilities Board), 2014 YKSC 43
Standing to make an application for judicial review is determined in the context of the underlying statute and whether it gives an express or implied right to persons in the position of the applicant to complain about the alleged unlawful act or omission. Where the applicant was neither a party nor an intervener in tribunal proceedings, he does not have private standing to judicially review the decision in court.

Rule 54(5) – Respondents

Liard First Nation v. Yukon Government and Selwyn Chihong Mining Ltd., 2011 YKSC 29
On an application to be added as a respondent to a judicial review a "person directly affected by the Order sought" includes the Yukon Environmental and Socio-economic Assessment Board where that Board made a recommendation to the decision maker.

Silverfox v. Chief Coroner, 2013 YKCA 11
As a full respondent in judicial review proceedings quashing an inquest verdict, the Chief Coroner is a party of record with a right of appeal.

White River First Nation v. Yukon (Energy Mines and Resources), 2013 YKSC 10
An application for respondent party status in judicial review may be granted to a person who is "directly affected" by the order sought, despite that respondent's lack of participation in the underlying process. However, the relief sought by that respondent may be confined to the relief claimed in the petition.

Blackjack v. Yukon (Chief Coroner), 2016 YKSC 53
Party status is not available as a matter of right under Rule 54 where the person or organization did not have intervener status at the underlying proceeding.

Rule 54(6) – Service of notice of application

Western Copper Corporation v. Yukon Water Board, 2010 YKSC 61
A petition for judicial review must be served on any person, not already a respondent, who participated in the proceeding below. If the participant files a response to the petition, they assume full party status in the judicial review. Alternative status can be addressed in case management.

Rule 54(7) – Person affected may take part in proceeding

Bretlyn v. Yukon Medical Council, 2015 YKSC 3
Where judicial review was sought of the summary dismissal by the Medical Council of a complaint against a doctor, counsel for the doctor was permitted to take part in the proceeding.

Rule 54(19) - Material from tribunal

Cameron v. Yukon, 2010 YKSC 58
Materials that were available to, but not before, the decision-maker may be considered relevant where it is alleged that the decision-maker breached procedural fairness or committed jurisdictional error. Relevance should still be determined by reference to the grounds for judicial review set out in the application and the Court retains discretion whether to order production. See also *Silverfox et al. v. Chief Coroner et al.,* 2011 YKSC 17.

Rule 54(25) – Order

Silverfox et al. v. Chief Coroner et al., 2011 YKCA 9 (var'g 2011 YKSC 17)
In the context of a review of a coroner's inquest, where the allegation is one of procedural fairness, on application, material from the Coroner's Brief that did not form part of the inquest record can be made use of by a party. Questions of admissibility may then be raised to be resolved under the principles governing the admissibility of evidence on judicial review proceedings in the usual way.

RULE 56 – RECEIVERS

Rule 56(1) – Appointment of

Ross v. Ross Mining Limited, 2009 YKSC 55
The Court may consider “compelling commercial or other reasons” why an order appointing a receiver ought not to be made.

RULE 59 – CONTEMPT OF COURT

Rule 59(2) – Power of court to punish

Gwich'in Development Corporation v. Alliance Sonic Drilling Inc et al., 2009 YKSC 19
Civil contempt is established by demonstrating beyond a reasonable doubt that a party knowingly breached a court order. Criminal contempt requires an added element of public defiance of the court's process calculated to lessen societal respect for the courts. Imprisonment is not normally an appropriate penalty for civil contempt. It is not appropriate for fines for civil contempt to be paid to a party as the offence is against the authority of the court and the administration of justice.

B.J.G. v. D.L.G., 2010 YKSC 81
Civil contempt proceedings are quasi-criminal in nature; the strict rules of evidence apply. The applicant has the onus to prove the elements of civil contempt beyond a reasonable doubt. This standard is based on reason and common sense and is logically connected to the evidence or absence of evidence. In order for a contempt application to succeed it must specify precisely the provision of the order alleged to have been breached. Intent is not an essential element of civil contempt; all that is necessary is proof of deliberate conduct contravening the order.

RULE 60 – COSTS

Rule 60 – Costs

Knol v. Tamarack Inc., 2013 YKSC 47
In a proceeding where an order for costs is sought following a successful *certiorari* application quashing the decision of a preliminary inquiry judge in a private prosecution, the Supreme Court civil rules will guide the conduct of the application, but the proceeding remains criminal in nature and costs are only available in exceptional and remarkable circumstances.

Rule 60(1) – How costs assessed generally

Calandra v. Henley, et al., 2008 YKSC 82, aff'd 2009 YKCA 6
Special costs are appropriate when a party's conduct, pre-litigation or during litigation, is reprehensible and warrants rebuke. The inclusion of unnecessary parties leading to added costs and complexity in the action and highhanded letters written prior to commencing the action constitute reprehensible conduct.

Calandra v. Henley, 2009 YKCA 6, aff'g 2008 YKSC 82
The Court of Appeal will give considerable deference to the trial judge in exercising its discretion on costs. The decision must be patently unreasonable to be overturned.

C.M.S. v. M.R.J.S., 2009 YKSC 49
Application by the father for special costs in a family law proceeding following the conclusion of the trial in which the father was substantially successful. The mother obtained an interim Order Without Notice. No reason was presented by the mother to justify applying without giving notice to the father. The Court exercised its broad discretion by considering the lack of notice to the father and the financial circumstances of both parties. Father was awarded special costs from the date of the Order Without Notice to the date when the mother agreed to unsupervised access and party and party costs from the date of that agreement until the conclusion of the trial.

City of Whitehorse v. Darragh, 2008 YKSC 80, rev'd on other grounds 2009 YKCA 10
Special costs will not be awarded against a municipal government for putting an individual to considerable legal expense in preparing a petition which the city opposes, but the costs will follow the event.

M.P.T. v. R.W.T., 2010 YKSC 6
Special costs may be assessed by considering the pleadings, filed affidavits and the reasons for judgment. Further particulars on the issue of costs, possibly leading to a waiver of solicitor-client privilege over certain documents required to verify the account, are not relevant if they are not necessary to decide the issue.

D.M.M. v. T.B.M., 2011 YKCA 8
A recusal application in which there is no improper motive, such as delay or forum shopping, may not attract costs consequences.

Ross v. Golden Hill Ventures Limited Partnership et al., 2011 YKSC 30
In the normal course, an order for security of costs should not be varied unless there is a material change of circumstances; however where a consent order provides for further application to the court, this test is not relevant. Note that the Rules do not specifically contemplate security for costs.

Golden Hill Ventures Limited Partnership v. Ross Mining Limited and Norman Ross, 2012 YKSC 18
Conduct approaching the category of "deserving of rebuke" is not necessarily "reprehensible, scandalous or outrageous" conduct that attracts special costs. Either a lack of merit or improper motive may suffice for an award of special costs in circumstances that are reprehensible, scandalous or outrageous. As an alternative to special costs, for an award of increased costs under section 2(e) of Appendix B, the test of "unusual circumstances" does not require conduct deserving rebuke.

Fine Gold Resources Ltd. v. 46205 Yukon Inc., 2016 YKCA 15
Costs will ordinarily be assessed as party-and-party costs. Special costs are in the discretion of the judge with a view to serving the object of the Rules: to secure the just, speedy and inexpensive determination of every proceeding on its merits and to ensure that the amount of time, expense and process involved in resolving the proceeding are proportionate to the amount involved, the importance of the issues in dispute to the jurisprudence of the Yukon and to the public interest and the complexity of the proceeding. The discretion to order special costs should be exercised sparingly, recognizing the rule that ordinary costs will follow the event, so as to avoid the creation of a cost hurdle to litigants. Special costs are appropriate when the circumstances call for a rebuke, for example when a party has acted dishonestly or demonstrated reprehensible conduct.

Rule 60(2) – Costs to be reasonable

Minet et al. v. Kossler, 2009 YKSC 18
"Outside" or "out of town" counsel costs such as travel and hotel costs will not be awarded absent special circumstances such as, for example, where counsel with a speciality is required or where local counsel are not available or are in conflict.

Rule 60(4) – Expenses and disbursements

1371737 Alberta Ltd. et al. v. 37768 Yukon Inc. et al., 2010 YKSC 17
The standard of assessment by a clerk under Rule 60(4) is discretionary and requires the clerk to assess the necessity or propriety and reasonableness of the disbursement at the time it was incurred. A clerk does not have the authority to consider conflicts of interest or qualifications of a petitioner's valuators or whether a trial judge would admit a valuation report as evidence. A clerk must focus on whether such a report was necessary or proper and reasonable at the time the expense was incurred, not whether it was useful for purposes of settlement.

Rule 60(9) – Costs to follow event

Kareway Homes Ltd. v. 27889 Yukon Inc., 2012 YKSC 28
Where there is a mixed result in the judgment the party who was substantially successful is entitled to costs.

Liedtke-Thompson v Gignac, 2015 YKSC 5
Where questions of liability and damages were determined in separate phases of a trial, the term "event" meant the totality of the proceedings in determining both liability and damages. Further, financial hardship is not a basis for departing from the usual rule that costs follow the event.

Rule 60(12) – Costs of applications

Cobalt Construction Inc. v. Kluane First Nation, 2013 YKSC 124
Where the defendant sought security for costs pursuant to s. 254 of the *Business Corporations Act* and failed to meet its initial burden of establishing that it appeared that the plaintiff would be unable to pay the defendant's costs in the event that the defendant was successful at trial, the Court was satisfied that the plaintiff should be awarded costs in any event of the cause, given the relative weakness of the defendant's application.

Rule 60(32) – Review of an assessment

1371737 Alberta Ltd. et al. v. 37768 Yukon Inc. et al., 2010 YKSC 17
The standard of review on an application for a review of an assessment is that a judge should not override the clerk except on a matter of principle. The hearing is not a fresh (de novo) hearing and no new evidence may be received. The clerk's assessment should not be interfered with unless his or her decision was clearly wrong.

Rule 60(36) – Disallowance of lawyer's fees and disbursements

Dawson (Town of the City of) v. Carey, 2014 YKCA 3
Filing written submissions that advance new arguments on the day of the hearing, without notice and after numerous case management conferences, tends to undermine the case management process. It may result in a departure from the usual rule that the successful party at trial is entitled to all of its costs.

RULE 63 – DIVORCE AND FAMILY LAW

Rule 63 – Divorce and Family Law

D.T.B. v. L.A.R.A., 2011 YKSC 14
Yukon was not the appropriate jurisdiction to hear a custody and access application that originated in British Columbia when the parties themselves agreed to a dispute mechanism involving British Columbia.

Rule 63(1) - Definitions

M.W.L. v. R.K.L., 2016 YKSC 1
For the purposes of determining costs in a family law proceeding, "family law proceeding" may be interpreted broadly to include interlocutory and cross-applications, even where these applications follow a final order.

Rule 63(6) – Application to vary, suspend or rescind

K.R.G. v. R.R., 2009 YKSC 40
The father did not meet the test of proving a material change in circumstances between the making of the last order and the current application that would support the variation of an interim order.

MacNeil v. Hedmann, 2009 YKSC 63
New evidence must be presented that constitutes a change in circumstances sufficient to justify varying an existing order. When such evidence is lacking the applicant must appeal the order, not apply to vary it.

Rule 63(26) – Security for costs

AJF v MLF, 2014 YKSC 58
The *Rules of Court* expressly allow for an interim property division or advance costs in appropriate cases. The twofold test for interim property division (pursuant to the *Family Relations Act*) is (1) whether the advance is required to mount a challenge to the other spouse's position at trial, and (2) whether the advance or payment on an interim distribution basis jeopardizes the other spouse's position at trial. Where the husband had conducted matrimonial litigation in an aggressive and egregious manner, with a clear effort to dispose of or devalue assets, and clearly had the ability to pay towards the wife's litigations costs, the wife was entitled to advance costs for the purpose of the litigation generally, with $10,000 payable immediately and further requests for payment to be justified by a litigation plan.

Rules 63(47) and (48) – Searches

Coyne v. Coyne, 2013 YKSC 123
A copy of a report by the petitioner's expert prepared for an unrelated proceeding was ordered to be delivered to counsel for the parties in the present case: the application was not for dissemination of information in the report but for use restricted to the present case. There was no allegation that a significant risk of harm would occur or any suggestion the limited use of the report would cause hardship to anyone.

RULE 63A – FAMILY LAW PROCEEDING

Rule 63A(7) – If undue hardship is claimed

B.J.G. v. D.L.G., 2010 YKSC 33
In an undue hardship application it is not enough to prove hardship. The party claiming undue hardship must lead convincing evidence to show why the *Guideline* amount would cause hardship that is undue. The assumption of new family responsibilities may create hardship and a lower standard of living, but such factors do not automatically establish undue hardship.

Rule 63A(36) and (37) – Confidentiality

Coyne v. Coyne, 2013 YKSC 123
A copy of a report by the petitioner's expert prepared for an unrelated proceeding was ordered to be delivered to counsel for the parties in the case at issue on the condition that the document and the information in it be kept in confidence and not disclosed other than for the purpose of the valuation of the assets at issue, including to the parties' experts, and as evidence in the proceedings.

RULE 64 – ADMINISTRATION OF ESTATES (NON-CONTENTIOUS)

Rule 64(7) – Indian Act

Dickson (Estate of), 2012 YKSC 71
Where the estate of a deceased is subject to administration under the *Indian Act*, an application for a grant of administration under Rule 64 must contain the consent of the Minister of Indian Affairs. Where this consent has not been obtained, the Minister, at the very least, must be given notice of the application. In the absence of notice, the Minister is able to apply under Rule 50(16) to have the grant of administration set aside.

APPENDIX B – PARTY AND PARTY COSTS

2(c) Scale of costs

Ross River Dena Council v. Government of Yukon, 2013 YKCA 7
For the purpose of deciding the appropriate scale of costs to be awarded in the Supreme Court of Yukon and the Yukon Court of Appeal, while the duty to consult with First Nations about mining exploration licensing regimes is an important issue, the matter was not particularly complex**.**

2(e) – Scale of costs

Golden Hill Ventures Limited Partnership v. Ross Mining Limited and Norman Ross, 2012 YKSC 18
As an alternative to special costs, for an award of increased costs under section 2(e) of Appendix B, the test of "unusual circumstances" does not require conduct deserving rebuke.

MacNeil v Hedmann, 2014 YKSC 29
Increased costs were ordered where, in the circumstances of the case, the usual costs awarded under Scale C would have been grossly inadequate and, if left wholly uncompensated, would have created an injustice.

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APPENDIX C - FEES

SCHEDULE 1

S1(1) – Indigency status

Beaugie v. Yukon Medical Council, 2012 YKSC 96
A person is ‘indigent’ when they are possessed of such scanty means that they are needy and poor; they do not need to be a pauper. Under (a) of the indigency status rule, the party seeking an order must also satisfy the court that the proceeding discloses a ‘reasonable claim or defence’. The test to be applied is the same as under Rule 20(26), such that an application will be denied where it is plain and obvious that no reasonable cause of action is disclosed. The indigency status rule is broad enough to include an appeal, in which context the applicant must satisfy the court that the intended appeal might succeed.