2021 Annotated Rules Update

Rule	sub	Citation
1.	(4)	*R v Carlyle,* 2018 YKSC 45
	(6)	*CB v SB and SW*, 2009 YKSC 12 *Atkinson v McMillan and Liard First Nation*, 2010 YKSC 13 *DP1 Inc v. Holland,* 2016 YKSC 44 *Carlock v ExxonMobil Canada Holdings ULC,* 2017 YKSC 37 *Cardinal Contracting Ltd v Seko Construction (Vancouver) Ltd*, 2017 YKSC 70
	(8)	*Dawson (Town of the City of) v. Carey*, 2014 YKCA 3 *North America Construction (1993) Ltd v Yukon Energy Corporation* 2019 YKSC 9
	(13)	*Western Copper Corporation v Yukon Water Board*, 2010 YKSC 61 *MWL v RKL,* 2016 YKSC 1
	(14)	*Stuart v Jane Doe,* 2019 YKSC 53
2.		*Chieftain Energy Limited Partnership v Gold Resources Inc,* 2019 YKSC 22
	(3)	*Bauman v Evans,* 2016 YKSC 6
	(5)	*Nelson Drywall Interiors Alberta Inc v Dowland Contracting Ltd,* 2019 YKSC 32
	(6)	*Sparkling Creek Mining ULC v Fischer,* 2017 YKSC 71
	(9)(b)	*Ron Will Management and Construction Ltd v 10532 Yukon Ltd*, 2012 YKSC 70
3.		
4.		
5.	(8)	*St Cyr v Atlin Hospitality Ltd,* 2020 YKSC 4
	(11)	*Ross River Dena Council v Canada (Attorney General)*, 2009 YKSC 38 *Kaska Dena Council v Yukon (Government of),* 2019 YKSC 13
	(21)	*Teslin Tlingit Council v Canada (Attorney General),* 2019 YKSC 3
6.		
7.		
8.	(1)	*Brown v Canada (Attorney General),* 2019 YKSC 21
	(3)	*Wood v Yukon (Director of Occupational Health and Safety),* 2018 YKSC 24
9.		
10.	(1)	*Faro (Town) v Knapp*, 2011 YKSC 43 *Yukon (Department of Highways and Public Works) v PS Sidhu Trucking Ltd,* 2015 YKCA 5 *Brown v Canada (Attorney General),* 2019 YKSC 21
	(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)	*TMG v SDI*, 2009 YKSC 28
13.		
14.	(4)(a)	*Kornelsen v Yukon Employee's Union,* 2020 YKSC 1
	(4)(b)	*Ferrari v Feurer,* 2020 YKSC 29
15.	(5)(a)	*Liard First Nation v Yukon Government and Selwyn Chihong Mining Ltd*, 2011 YKSC 29 *Gibbons v Jane Doe,* 2019 YKSC 16 *The Hotsprings Road Development Area Residents Association v Takhini Hot Springs Ltd*, 2020 YKSC 43
16.		
17.	(16)	*TMG v SD.*, 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 *Sidhu v Canada (Attorney General)*, 2019 YKSC 36 *Mao v Grove,* 2020 YKSC 23
19.		*Ross River Dena Council v. Yukon*, 2015 YKSC 45 *Murphy v. Szulinsky,* 2016 YKSC 18
	(1)(a)	*Ó Murchú v DeWeert,* 2020 YKSC 41
	(9)(b)	*Norcope Enterprises v Yukon*, 2012 YKSC 2
	(12)	*Krafta v Densmore*, 2013 YKSC 119 *Cobalt Construction Inc v Kluane First Nation,* 2014 YKSC 40
20.		*Stuart v Doe*, 2021 YKSC 12
	(1)	*Brown v Canada (Attorney General),* 2019 YKSC 21
	(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 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
	(22)	*North America Construction (1993) Ltd. V Yukon Energy Corp.*, 2019 YKSC 42 *Stuart v Jane Doe,* 2021 YKSC 11
	(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 *Ramirez v Mooney,* 2017 YKSC 22 *Schaer v Ferbey,* 2018 YKSC 17 *Wood v Yukon (Director of Occupational Health and Safety,* 2018 YKSC 24 *Brown v Canada (Attorney General),* 2019 YKSC 21 *Vachon v Twa,* 2019 YKSC 37 *Mao v Grove,* 2020 YKSC 23 *Grove v Yukon (Ministry of Environment),* 2021 YKSC 34 *Northern Cross (Yukon) Ltd v Yukon (Energy, Mines and Resources)*, 2021 YKSC 3 *First Nation of Na-Cho Nyäk Dun v Yukon (Government of)*, 2021 YKSC 43
21.		
22.		
23.	(6)	*North American Construction (1993) Ltd v Yukon Energy Corp,* 2019 YKSC 42
	(7)	*North American Construction (1993) Ltd v Yukon Energy Corp,* 2019 YKSC 42
24.	(1)	*Ross River Dena Council v Canada (Attorney General)*, 2011 YKSC 86 *McDiarmid v Canada (Public Prosecution Service)*, 2014 YKSC 61 *North American Construction (1993) Ltd v Yukon Energy Corp,* 2019 YKSC 42 *Frost v Blake,* 2021 YKSC 33
25.	(3)	*Royal Bank of Canada v Robertson,* 2021 YKSC 1 *Chance Oil and Gas Limited v Yukon (Energy, Mines and Resources*), 2021 YKSC 44
	(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 *Cobalt Construction Inc v Parsons Inc,* 2021 YKSC 31
	(15)	*Freedom TV Inc v Holland,* 2016 YKSC 24

	(16)	*Cobalt Construction Inc v Parsons Inc.,* 2021 YKSC 31
	(20)	*Cobalt Construction Inc v Parsons Inc,* 2021 YKSC 31
	(24)	*Chieftain Energy Limited Partnership v Pishon Gold Resources Inc*, 2019 YKSC 22
26.		*Stuart v Doe*, 2021 YKSC 12
	(1)	*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
	(21)	*Valard Construction LP v Yukon Energy Corporation*, 2015 YKSC 11
	(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 *Stuart v Jane Doe,* 2019 YKSC 53
	(7)	*Ross River Dena Council v Canada (Attorney General)*, 2011 YKSC 56 *Ross River Dena Council v Yukon (Government of),* 2015 YKSC 45
30.		*Van Veen v Emblau,* 2017 YKSC 47
31.	(2)	*Hotsprings Road Development Area Residents Assn v Yukon (Minister of Energy Mines and Resources),* 2017 YKSC 14 *Ó Marchú v DeWeert,* 2020 YKSC 41
	(6)	*Ross River Dena Council v Yukon,* 2019 YKSC 26
32.		
33.		
34.		*Mercer v Yukon (Commissioner in Executive Council),* 2021 YKSC 24
	(4)	*Ross River Dena Council v Canada (Attorney General)*, 2011 YKSC 88
	(5)	*MSZ 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 *Frost v Blake*, 2021 YKSC 32
35.		
36.		*Western Copper Corporation v Yukon Water Board*, 2010 YKSC 61

37.	(6)	*Fuller v Schaff et al*, 2009 YKSC 22
38.		
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)	*JW v Van Bibber*, 2013 YKSC 79
40.		
41.		*DMM v TBM*, 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.		*Chieftain Energy Limited Partnership v Pishon Gold Resources Inc*, 2019 YKSC 22
	(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
44.		
45.		
46.		*Carey Estate (re),* 2019 YKSC 33
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 *PS Sidhu Trucking Ltd v Yukon Zinc Corp,* 2016 YKSC 40 *365334 Alberta Ltd (cob A1 Cats) v Pishon Gold Resources Inc,* 2018 YKSC 39 *Schaer v Yukon (Department of Economic Development),* 2018 YKSC 46 *Stuart v Jane Doe,* 2019 YKSC 53
50.	(9)	*Hy's North Transportation Inc v Finlayson Minerals Corp*, 2016 YKSC 39
	(12)(d)	*St Cyr v Atlin Hospital Ltd,* 2020 YKSC 4
	(14)	*KPL v RWE,* 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

	(4)	*Yukon Big Game Outfitters Ltd v Yukon (Minister of the Environment),* 2021 YKSC 16 *Schaer v Ferbey,* 2018 YKSC 17
	(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
	(16)	*Yukon Big Game Outfitters Ltd v Yukon (Minister of the Environment),* 2021 YKSC 16
	(19)	*Cameron v Yukon*, 2010 YKSC 58
	(25)	*Silverfox et al v Chief Coroner at el*, 2011 YKCA 9 (var'g 2011 YKSC 17)
55.		
56.	(1)	*Ross v Ross Mining Limited*, 2009 YKSC 55
57.	(1)	
58.		
59.	(2)	*Gwich'in Development Corporation . Alliance Sonic Drilling Inc. et al*, 2009 YKSC 19 *BJG v DLG*, 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 *CMS v MRJS*, 2009 YKSC 49 *City of Whitehorse v Darragh*, 2008 YKSC 80, rev'd on other grounds 2009 YKCA 10 *MPT v RWT*, 2010 YKSC 6 *DMM v TBM*, 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 *Wood v Yukon (Occupational Health and Safety Branch),* 2018 YKSC 29
	(2)	*Minet et al v Kossler*, 2009 YKSC 18
	(3)	*Ramirez v Mooney,* 2017 YKSC 43 *Yukonstruct Society v Connolly,* 2020 YKSC 20
	(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 *Jones v Duval*, 2020 YKSC 10
	(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
61.		
62.		
63.		*DTB v LARA*, 2011 YKSC 14
	(1)	*MWL v RKL,* 2016 YKSC 1
	(6)	*KRG v RR*, 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.		*PJS v RDS,* 2019 YKSC 54
	(7)	*BJG v DLG*, 2010 YKSC 33
	(36)	*Coyne v Coyne,* 2013 YKSC 123
	(37)	*Coyne v Coyne*, 2014 YKSC 123
64.	(7)	*Dickson (Estate of)*, 2012 YKSC 71
65.		
66.		
App B.	s. 1	
	s. 2(c)	*Ross River Dena Council v Government of Yukon*, 2013 YKCA 7
	s. 2(e)	*Golden Hill Ventures Limited Partnership v Ross Mining Limited and Norman Ross*, 2012 YKSC 18 *MacNeil v Hedmann*, 2014 YKSC 29
	s. 2(d)	*Wood v Yukon (Occupational Health and Safety Branch),* 2018 YKSC 29
	Schedule 3	*Wood v Yukon (Occupational Health and Safety Branch),* 2018 YKSC 29
App C.	Sch. 1 S1(1)	*R v Smith*, 2021 YKSC 35 *Beaugie v Yukon Medical Council*, 2012 YKSC 96

INTRODUCTION TO THE ANNOTATED RULES, 2021 EDITION

This is the fourth publication of the Annotated Rules, with currency from September 15, 2008 to September 16, 2021.

I would like to thank Justice K. Wenckebach, Stephanie Dragoman, Tess Casher and Cathy Rasmussen for their hard work in completing this project.

Chief Justice S.M. Duncan
Supreme Court of Yukon

RULE 1 – INTRODUCTION AND DEFINITIONS

Rule 1(4) – Application

R v Carlyle, 2018 YKSC 45
The Rules of Court adopted pursuant to s. 38 of the *Judicature Act* only govern the practice and procedure of this Court in civil proceedings, as opposed to criminal proceedings. The rules cannot be invoked in the context of an exclusively criminal proceeding.

Rule 1(6) – Object of rules

CB v SB and SW, 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 in family law matters 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.

Cardinal Contracting Ltd v Seko Construction (Vancouver) Ltd, 2017 YKSC 70
Rule 1(6) introduces the principle of proportionality in securing the just, speedy, and inexpensive determination of every proceeding. The Court must consider the amount of time and the expense to be incurred, to ensure it is proportionate to the dollar amount of the proceeding and the importance and complexity of the issues involved.

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(8)(l) – Case management

North America Construction (1993) Ltd v Yukon Energy Corporation 2019 YKSC 9
In most cases, following an appeal, an order for repayment would be sought from the Court of Appeal. However, as the court is granted broad discretion under rules 1(8)(l), 36(4) and 36(6), the Supreme Court of Yukon is not prevented from making such an order in 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.
(*This case was decided under the former wording of Rule 54*).

MWL v RKL, 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 1(14) – Waiver of rules

Stuart v Jane Doe, 2019 YKSC 53
The purpose of Rule 1(14) is to ensure maximum flexibility, on the facts of each case, to allow for the just, speedy and inexpensive determination of every proceeding on its merits. Rule 1(14) helps to ensure the amount of time, process and expenses incurred in resolving the proceeding are proportionate to the court's assessment of the dollar amount involved; the issues in dispute to the jurisprudence of the Yukon and to the public interest; and the complexity of the proceeding. Rule 1(14) allows for the court to order that any provision of the

Rules does not apply to that proceeding, and can be done on the court's own motion.

RULE 2 – EFFECT OF NON-COMPLIANCE

Rule 2 – 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 proceeding where it is in the interests of justice and the object of the rules that a new action commence.

Chieftain Energy Limited Partnership v Gold Resources Inc, 2019 YKSC 22
Rule 2 is discretionary, not mandatory. Rule 2 provides that a court may dismiss the proceeding where the petitioner refuses or neglects to produce or permit to be inspected any document or other property.

Rule 2(5) – Consequences of certain non-compliance

Nelson Drywall Interiors Alberta Inc v Dowland Contracting Ltd, 2019 YKSC 32
Courts have generally regarded striking an action due to non-compliance as a remedy of last resort. Furthermore, where a litigant is self-represented, courts generally grant greater leniency in terms of compliance with the Rules. Nevertheless, they are required to comply eventually. There must be fairness and an equal application of the Rules to both parties.

Rule 2(6) – Consequences of certain non-compliance

Sparkling Creek Mining ULC v Fischer, 2017 YKSC 71
Rule 2(6) permits a dismissal of a proceeding if a court direction is not complied with. The dismissal of that claim through Rule 2(6), "would be a blunt instrument of a draconian order".

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 3 – TIME

RULE 4 – FORMS AND ADDRESS FOR DELIVERY

RULE 5 – MULTIPLE CLAIMS AND PARTIES

Rule 5(8) – Consolidation

St Cyr v Atlin Hospitality Ltd, 2020 YKSC 4
There is no substantive difference in the rules between consolidation or hearing proceedings together. For the purposes of an application the court may treat consolidation or hearing proceedings together as interchangeable.

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.

Kaska Dena Council v Yukon (Government of), 2019 YKSC 13
Rule 5(11) permits one person to represent all persons who have the same interest in a proceeding, often referred to as a class action. It is settled law that Aboriginal title cannot be held by individual persons. The application of Rule 5(11) is only appropriate in the exceptional case where there is no collective Aboriginal rights holder.

Rule 5(21) – Declaratory order

Teslin Tlingit Council v Canada (Attorney General), 2019 YKSC 3
Granting a declaration pursuant to Rule 5(21) is a discretionary exercise and must be granted on a principled basis. There must be: utility in granting the declaration based on a real dispute and not a hypothetical one, and a cognizable threat to a legal interest before the courts making a declaration a useful preventive measure. Courts have a long-standing preference for negotiated settlements and avoiding court intervention.

RULE 6 – PERSONS UNDER DISABILITY

RULE 7 – PARTNERSHIPS

RULE 8 – STATEMENT OF CLAIM

Rule 8(1) – Statement of claim

Brown v Canada (Attorney General), 2019 YKSC 21
Rule 8(1) states that every proceeding shall be commenced by way of a statement of claim, except where otherwise authorized under legislation or the *Rules of Court*. In this matter the *Rules of Court* indicated that the proceeding should not have been commenced by way of petition but rather by statement of claim.

Rule 8(3) – Specific relief

Wood v Yukon (Director of Occupational Health and Safety), 2018 YKSC 24
Rule 8(3) addresses the mechanics of how a lawsuit is commenced, and does not create the right to sue.

RULE 9 – RENEWAL OF STATEMENT OF CLAIM

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 PS 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).

Brown v Canada (Attorney General), 2019 YKSC 21
If an individual is not the only person interested in the relief sought the matter should not be brought by way of petition.

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.
(*This case was decided under the former wording of Rule 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 were 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

TMG v SDI, 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 13 – SERVICE OUTSIDE YUKON

RULE 14 – APPEARANCE

Rule 14(4)(a) – Disputed jurisdiction

Kornelsen v Yukon Employee's Union, 2020 YKSC 1
If the pleadings do not allege facts that, if true, establish that the Supreme Court of Yukon would have jurisdiction over the matter, then it may be dismissed under Rule 14(4).

Rule 14(4)(b)- Disputed jurisdiction

Ferrari v Feurer, 2020 YKSC 29
The Supreme Court of Yukon has jurisdiction over proceedings that have a real and substantial connection to the Yukon. This connection can be demonstrated by the location of the facts and contractual obligations. The court should not decline to exercise jurisdiction if the proposed alternative jurisdictions are not shown to be clearly more appropriate.

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.

Gibbons v Jane Doe, 2019 YKSC 16
The plaintiff argues that the "just and convenient" test set out in Rule 15(5)(a) allows a party to be added to an existing claim even where the addition is sought after the expiry of the limitation period. While Rule 15 does not include time limitations, the *Rules of Court* must be read in conjunction with the *Judicature Act.* The "just and convenient" test does not apply to all ongoing Yukon civil litigation because s. 17 of the *Judicature Act* specifies the scope of permissible amendments to pleadings in an existing action in the Yukon.

The Hotsprings Road Development Area Residents Association v Takhini Hot Springs Ltd, 2020 YKSC 43
A determination under Rule 15(5)(a)(iii) involves an exercise of the court's discretion. In many cases a draft statement of defence will be required to be provided to the court before the court can consider whether or not to add a third party.

RULE 16 – CHANGE OR WITHDRAWAL OF LAWYER

RULE 17 – DEFAULT OF APPEARANCE OR PLEADING

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

TMG v SDI, 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 gave 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 related 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 *bona 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 it 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 4, 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.

Sidhu v Canada (Attorney General), 2019 YKSC 36
Summary judgment may be granted under Rule 18(6) where there is no merit in the whole or part of a claim. The question that needs to be asked is whether the claim is bound to fail. Issues of law or fact cannot be determined. If there is a doubt the application must be dismissed. A claim that is clearly barred by statute may be dismissed under Rule 18(6).

Mao v Grove, 2020 YKSC 23
Rule 18(6) allows the defendant to apply for summary judgment on certain conditions. The general test for summary judgment is: whether a claim is bound to fail or bound to succeed, and whether there a *bona fide* triable issue. At this stage, the court does not weigh evidence but determines whether there is a genuine issue for trial based on applicable law. If sufficient material facts have been pleaded to support every element of a cause of action, but one of those facts is contested, then the court is not to weigh the evidence.

RULE 19 – SUMMARY TRIAL

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(1)(a) – Application

Ó Murchú v DeWeert, 2020 YKSC 24
An application for a summary trial will fail in the following circumstances:

- the litigation is extensive and the summary trial hearing will take considerable time;
- it is relatively obvious that a summary determination of the issues is unsuitable;
- it is clear that a summary trial involves a substantial risk of wasting time and effort and of producing unnecessary complexity; or
- the issues are not determinative of the litigation and are inextricably interwoven with issues that must be determined at trial.

There is a correlation between summary trial procedures and improved access to justice. Courts must consider if they can find the facts necessary to decide the issues of fact or law and whether it would be unjust to decide the issues by way of summary trial.

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 is not particularly complex, and credibility is not in issue.

RULE 20 – PLEADINGS GENERALLY

Kaska Dena v Yukon, 2018 YKSC 3

Under Rule 20, the Court can order a party to clarify their legal position, such as when the legal position of the party has been pleaded in a general or vague fashion.

Rule 20(1) – Contents

Brown v Canada (Attorney General), 2019 YKSC 21
A failure to plead material facts that support a party's allegations against the opposing party constitutes a violation of Rule 20(1).

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(22) – General denial sufficient except where proving different facts

North America Construction (1993) Ltd v Yukon Energy Corp, 2019 YKSC 42
A general denial of allegations that have not been admitted is sufficient. Only where a party intends to prove material facts that differ from the facts pleaded by the opposite party should they plead their own statement of facts. A reply allows the plaintiff an opportunity to set out a version of facts that is different than those pleaded in the defence (if they have not already been pleaded in the statement of claim).

Stuart v Jane Doe, 2021 YKSC 11
It is premature for a party to make an application to amend their pleadings, which contain bald denials, prior to discoveries. The proper remedy is to bring an application to strike for failure to comply with the rules.

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 SCR 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.

Ramirez v Mooney, 2017 YKSC 22
A statement of claim can be struck under Rule 20(26) where it is “plain and obvious” that the claims are an abuse of process. The claims in this matter were found to “offend the principles of finality and integrity of the administration of justice”. There is no basis in law to strike a Statement of Defence that discloses no reasonable claim and is vexatious and an abuse of process.

Schaer v Ferbey, 2018 YKSC 17
To strike a party’s injunction application on the grounds that it violates Rule 20(26), the moving party must file an application. However, even without an application the court can take into account whether the legal question to be litigated is serious when considering the injunction application. This requires the court to consider whether on the merits the case is frivolous or vexatious.

Wood v Yukon (Director of Occupational Health and Safety, 2018 YKSC 24 app’d 2018 YKCA 16 (appeal dismissed and these points were not addressed)
Rule 20(26) addresses the mechanism by which a lawsuit is commenced. It does not create a right to sue. There is no reasonable claim (Rule 20(26)(a)) if the petition would not result in the goal the petitioner is hoping to achieve. It is vexatious (Rule 20(26)(b)) to advance a claim that has already been determined. Finally, it is an abuse of process (Rule 20(26)(c)) to commence a petition after the expiry of the limitation period.
Brown v Canada (Attorney General), 2019 YKSC 21

Abuse of process under Rule 20(26)(d) is broader than Rule 20(26)(b). Rule 20(26(d)) includes circumstances where the court is being used for an improper purpose, and which, by its inherent jurisdiction, the court may prevent.

Mao v Grove, 2020 YKSC 23
Evidence is not admissible on an application under Rule 20(26)(a). For the purposes of the application, the facts pleaded are assumed to be true. The rule is concerned with the sufficiency of pleadings and addresses matters of law. Therefore, an order that strikes a pleading under this rule cannot be a basis for a *res judicata* defence in later proceedings. A claim will only be struck if it is plain and obvious that the pleading discloses no reasonable cause of action.

Grove v Yukon (Ministry of Environment), 2021 YKSC 34
No evidence is admissible under this rule. The purpose of giving courts the power to strike a statement of claim with no reasonable prospect of success is to promote litigation efficiency. This allows for resources to be devoted to claims that have a reasonable chance of success. However, a high standard must be met for a Court to strike a pleading. Pleadings must be construed generously.

Northern Cross (Yukon) Ltd v Yukon (Energy, Mines and Resources), 2021 YKSC 3, app'd 2021 YKCA 6 (decision overturned; no error with statement of principles)
On an application to strike, the role of the court is to examine the pleadings. Evidence is neither necessary nor allowed. Any allegations that are based on speculation or assumptions, bare or bald assertions, pleadings of law, or allegations that are patently ridiculous or incapable of proof do not have to be accepted as true. In considering whether documents are included by reference the following principles apply:

- If a document is incorporated by reference into a response for demand for particulars, it can be treated as part of the particulars and therefore as part of the pleadings.
- A document that is referred to either expressly or impliedly in a pleading may be treated in a summary fashion as being a part of the pleading itself as long as it is clear that the pleading is asserting and incorporating the whole document.
- A document referred to in the pleadings that is subject to interpretative issues which cannot be resolved on an application to strike does not need to be considered.
- A document in its entirety may be considered for the purpose that it was referred to in the pleading, when the underlying facts of the document have been pleaded.

First Nation of Na-Cho Nyäk Dun v Yukon (Government of), 2021 YKSC 43
The test for striking a claim is that it is plain and obvious that the claim has no reasonable prospect of success (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42). The assessment must be done on the basis of the pleading, the particulars, and any documents that are incorporated by reference. On a motion to strike the court cannot consider what any evidence that could be adduced in the future might or might not show. The possible requirement of extensive and further evidence is not a sufficient basis for striking a claim. There is a high bar that needs to be reached to strike a claim. All facts pleaded are assumed to be true and the court must construe the pleadings generously. Only material facts that are capable of being proven need to be accepted as true. The court must overlook any deficiencies in drafting. The purpose of providing the court with the ability to strike a claim with no reasonable prospect of success is to promote litigation efficiency and to reduce time and costs.

RULE 21 – STATEMENT OF DEFENCE AND COUNTERCLAIM

RULE 22 – THIRD PARTY PROCEDURE

RULE 23 – REPLY AND SUBSEQUENT PLEADINGS

Rule 23(6) – Failure to reply

North America Construction (1993) Ltd v Yukon Energy Corp, 2019 YKSC 42
Joinder of an issue is implied when no reply is filed.

Rule 23(7) – No joinder of issue

North America Construction (1993) Ltd v Yukon Energy Corp, 2019 YKSC 42
The Rules do not permit a reply that is a simple joinder of an issue.

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.

Frost v Blake, 2021 YKSC 33
Rule 24(1) applies to amendments to originating processes. The court has broad discretion under Rule 24(1). Additionally, there are no restrictions, narrowing or limits set out in the rule.

RULE 25 – DISCOVERY OF DOCUMENTS

Rule 25(3) – Disclosure

Royal Bank of Canada v Robertson, 2021 YKSC 1
To determine if a document relates to any matter in issue in an action, the scope of preceding applications should be considered. In some cases, other requests need to be decided upon first to determine the merit of disclosure requests.

Chance Oil and Gas Limited v Yukon (Energy, Mines and Resources), 2021 YKSC 44
The test that governs document discovery between parties for a civil action is the possible relevance test. The possible relevance test must be applied in a manner that gives effect to the object and the purpose of the rules. This includes the proportionality principle which is embedded in Rule 1(6).

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.

Cobalt Construction Inc v Parsons Inc, 2021 YKSC 31
Rule 25(14) allows the court on an application, at any time, to order documents that are not privileged, and that are in the possession, control or power of a party, to be produced for inspection.

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 25(16) – Court may excuse performance

Cobalt Construction Inc v Parsons Inc, 2021 YKSC 31
This Rule provides relief from the strict application of the Rules in relation to disclosure and production. Rule 25(16) can be applied generally or in respect of one or more documents or classes of documents.

Rule 25(20) – Demand for particulars not a stay of proceedings

Cobalt Construction Inc v Parsons Inc, 2021 YKSC 31
Rule 25(20) provides that the disclosure or production of a document for inspection shall not be taken as an admission of the document's relevance or admissibility.

Rule 25(24) – Failure to deliver affidavit or produce document

Chieftain Energy Limited Partnership v Pishon Gold Resources Inc, 2019 YKSC 22
Rule 25(24) applies to civil trials and not petitions.

RULE 26 – USE OF EVIDENCE OUTSIDE THE PROCEEDING

Stuart v Doe, 2021 YKSC 12
The deemed undertaking in Rule 26 applies to all material or evidence that was obtained in pre-trial matters.

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 their ability to inform themselves, 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 themselves: 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 Rule 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.

Stuart v Jane Doe, 2019 YKSC 53
A party may serve written interrogatories that relate to a matter in question in the action as a right. The current wording of 29(2) is an error. Interrogatories are not meant to apply only to persons who hold a certain position in a company or business. The Court may order, based on Rule 1(14), that the restrictive interpretation of Rule 29(2) preventing interrogatories from being served on an individual party to an action is not applicable in a matter.
(*This case was decided under the former wording of Rule 29(2)*)

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 30 – PHYSICAL EXAMINATION AND INSPECTION

Rule 30 – Order for medical examination – Subsequent examinations

Van Veen v Emblau, 2017 YKSC 47
The purpose of having an independent medical examination is so the parties are on equal footing. An independent medical examination is conducted by a person appointed by the court; the convenience of the complainant shall be considered. However, this is one of several factors to be considered and it is not the predominant factor. An independent medical examination is almost always going to be an inconvenience to the plaintiff.

RULE 31 – ADMISSIONS

Rule 31(2) – Effect of notice to admit

Hotsprings Road Development Area Residents Assn v Yukon (Minister of Energy Mines and Resources), 2017 YKSC 14
The provisions of the Rules on notices to admit are clear. Unless the court orders otherwise the admissions are made for all purposes. The court held that a statement of defence followed by a reply to a notice to admit that admitted what had been denied earlier was not an abuse of process. An admission prevails over the words of a statement of defence. Parties are allowed to change their position on facts after receiving a notice to admit; in fact this is one of the main functions of the rule.

Ó Murchú v DeWeert, 2020 YKSC 41
If issues of credibility are a crucial issue in a matter a summary trial may not appropriate.

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 32 – INQUIRIES, ASSESSMENTS AND ACCOUNTS

RULE 33 – COURT APPOINTED EXPERTS

RULE 34 – EVIDENCE OF OWN EXPERTS

Rule 34 – Evidence of own experts

Mercer v Yukon (Commissioner in Executive Council), 2021 YKSC 24
Expert evidence must be relevant and necessary to the current issue to be admissible. To comply with Rule 34, all expert reports must establish the facts on which their opinion is based. They must describe the documents reviewed and relied on and cite their qualifications to be an expert in this matter. Expert reports must not contain an argument or statements of belief without providing their source of information. Expert affidavits should not include opinion and argument but rather should include the facts and assumptions that they have based their opinion on.

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 topics about which the expert witness will testify.

Rule 34(5) – Form of report

MSZ 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.

Frost v Blake, 2021 YKSC 32
Rule 34(5) sets out the requirements for filing an expert report. It is not ideal for expert affidavits to be introduced without fulfilling these requirements. However, it is not fatal as it is a matter that can be rectified.

RULE 35 – STATED CASE

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 38 – DISCONTINUANCE AND WITHDRAWAL

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

JW 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 40 – DEPOSITIONS

RULE 41 – TRIAL

Rule 41 – Trial

DMM v TBM, 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 BCLR (3d) 316 (CA). 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

Chieftain Energy Limited Partnership v Pishon Gold Resources Inc, 2019 YKSC 22
Rule 42 applies to civil trials and not petitions.

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 44 – ENFORCEMENT OF ORDERS

RULE 45 – EXAMINATION IN AID OF EXECUTION

RULE 46 – SALES BY THE COURT

Rule 46 – Sales by the court

Carey Estate (re), 2019 YKSC 33

Rule 46 allows for the court to provide directions that it thinks are just for the purpose of effecting a sale. This includes appointing a person who will have conduct of the sale, fixing a reserve or minimum price and authorizing an individual to enter upon any land or building for the purpose of the sale.

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.
(*This case was decided under the former wording of Rule 54*)

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.

PS 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.

Schaer v Yukon (Department of Economic Development), 2018 YKSC 46
There is some leeway where the petitioner is a self-represented litigant. Where a self-represented party attempts to lay out an argument but inadvertently expresses a statement of belief without evidence in an affidavit, the judge may decline the opposing party's request to strike out the passages containing the opinion. However, these sections will still be regarded as unsupported expressions of opinion or pure speculation and will not be given any weight.

Stuart v Jane Doe, 2019 YKSC 53
Rule 49(12) allows the use of hearsay evidence in an interlocutory application. In interlocutory proceedings a more relaxed approach to hearsay is used.

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(12)(d) – Power of the court

St Cyr v Atlin Hospital Ltd, 2020 YKSC 4
Rule 50(12)(d) has broad powers that allow the court to order a trial of a proceeding and give directions for the conduct of the trial. Additionally, pre-trial proceedings allow for a petition to be converted to an action.

Rule 50(14) – Orders without notice

KPL v RWE, 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 (BC) 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(4) – Limited to single order

Yukon Big Game Outfitters Ltd v Yukon (Minister of the Environment), 2021 YKSC 16
Rule 54(4) states that an application for judicial review is limited to a single decision unless other otherwise ordered by the court.

Schaer v Ferbey, 2018 YKSC 17
Strictly speaking an application for judicial review is limited to a single decision. However where two decisions are really different parts of one decision and there is a connection and continuum between the decisions they may be heard together.

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.
(*This case was decided under the former wording of Rule 54*)

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.
(*This case was decided under the former wording of Rule 54*)

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(16) – Additional steps

Yukon Big Game Outfitters Ltd v Yukon (Minister of the Environment), 2021 YKSC 16
As Rule 54(16) allows a party, with leave of the court, to file a supplementary record or affidavit this suggests that in certain circumstances flexibility is necessary.

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 55 – INTERPLEADER

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 57 – FORECLOSURE AND CANCELLATION

RULE 58 – RECIPROCAL ENFORCEMENT OF JUDGMENT

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.

BJG v DLG, 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.

CMS v MRJS, 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.

MPT v RWT, 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.

DMM v TBM, 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.

Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 29
Rule 60(1) allows a judge to fix costs in a lump sum amount that is different than the amount prescribed in Schedule 3. This rule generally grants a judge discretion to set costs in any matter.

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(3) – Review of an Assessment

Ramirez v Mooney, 2017 YKSC 43
The fact that the plaintiff was self-represented taken into account when assessing special costs.

Yukonstruct Society v Connolly, 2020 YKSC 20
The defendants conduct did not rise to the "reprehensible status" required for an award of special costs under Rule 60(3).

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.

Jones v Duval, 2020 YKSC 10
Generally, financial hardship of a litigant is insufficient on its own to justify departing form the general 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 their 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 61 – MONEY IN COURT

RULE 62 – SITTINGS AND HEARINGS

RULE 63 – DIVORCE AND FAMILY LAW

Rule 63 – Divorce and Family Law

DTB v LARA, 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

MWL v RKL, 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

KRG v RR, 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

BJG v DLG, 2010 YKSC 33
In an undue hardship application it is not enough to show 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.

RULE 65 – ADMINISTRATION OF ESTATES (CONTENTIOUS)

RULE 66 – TRANSFER OF PROCEEDINGS TO AND FROM TERRITORIAL COURT

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(d) – Scale of costs

Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 29
Where the parties have a lengthy, litigious and ultimately expensive history, App. B s. 2(d) is not appropriate.

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.

3 – Schedule 3

Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 29
Schedule 3 may be applied by a judge who orders lump sum costs under Rule 60(14)(b) as a means of calculating those costs. It does not limit a judge to only setting lump sum costs pursuant to Rule 60(14)(b).

APPENDIX C – FEES

SCHEDULE 1

S1(1) – Indigency status

R v Smith, 2021 YKSC 35
There is not a specific test that is set out in the *Rules* to determine indigent status. The purpose of indigency status has been interpreted by courts to ensure that those with arguable cases and inadequate finances have access to justice.

> [7] A balance is to be struck between ensuring that a claim is sufficiently meritorious to justify a litigant not paying fees or costs of transcripts and ensuring that a person, without financial resources can pursue litigation. "Sufficiently meritorious" has been described as having some prospect of success (*Tan v Yukon*, 2005 YKSC 19). "Without financial resources" has been described as a person having so few resources that they may be considered needy (*Griffith v Canada (Royal Canadian Mounted Police)*, 2000 BCCA 371). At para. 3 of that case the Court referred to the leading case on the meaning of the word "indigent"- *National Sanitarium Association v the Town of Mattawa*, [1925] 2 DLR 491 (ONCA) "a person is possessed of some means but such scanty means that he is needy or poor."

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.