

2026 Annotated Rules Update

Rule	sub	Citation
1.	(4)	<u>R v Carlyle, 2018 YKSC 45</u>
	(6)	<u>CB v SB and SW, 2009 YKSC 12</u> <u>Atkinson v McMillan and Liard First Nation, 2010 YKSC 13</u> <u>Freedom TV v Holland, 2016 YKSC 44</u> <u>Carlock v ExxonMobil Canada Holdings ULC, 2017 YKSC 37</u> <u>Cardinal Contracting Ltd v Seko Construction (Vancouver) Ltd, 2017 YKSC 70</u> <u>Qiu's Restaurant Inc v Wen, 2021 YKSC 56, aff'd 2022 YKCA 6</u>
	(8)	<u>Dawson (Town of the City of) v Carey, 2014 YKCA 3, var'g 2012 YKSC 59</u>
	(1)	<u>North America Construction (1993) Ltd v Yukon Energy Corporation 2019 YKSC 9</u>
	(13)	<u>Western Copper Corporation v Yukon Water Board, 2010 YKSC 61</u> <u>MWL v RKL, 2016 YKSC 1</u>
	(14)	<u>Stuart v Doe, 2019 YKSC 53</u> <u>AB v Yukon (Government of), 2022 YKSC 69</u>
2.		<u>Chieftain Energy Limited Partnership v Pishon Gold Resources Inc, 2019 YKSC 22</u>
	(3)	<u>Bauman v Evans, 2016 YKSC 6</u>

	(5)	<u>Nelson Drywall Interiors Alberta Inc v Dowland Contracting Ltd, 2019 YKSC 32</u>
	(6)	<u>Sparkling Creek Mining ULC v Fischer, 2017 YKSC 71</u>
	(9)(b)	<u>Ron Will Management & Construction Ltd v 10532 Yukon Ltd, 2012 YKSC 70</u>
3.		
4.		
5.		<u>GX v Yukon (Government of), 2023 YKSC 22</u>
	(8)	<u>St Cyr v Atlin Hospitality Ltd, 2020 YKSC 4</u> <u>Green v Ward, 2025 YKSC 29</u>
	(11)	<u>RRDC v The Attorney General of Canada, 2009 YKSC 38</u> <u>Kaska Dena Council v Yukon (Government of), 2019 YKSC 13</u>
	(21)	<u>Teslin Tlingit Council v Canada (Attorney General), 2019 YKSC 3</u>
6.		
7.		
8.	(1)	<u>Brown v Canada (Attorney General), 2019 YKSC 21</u>
	(3)	<u>Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 24, aff'd 2018 YKCA 16</u>
9.		
10.	(1)	<u>Faro (Town) v Knapp, 2011 YKSC 43</u> <u>Yukon (Department of Highways and Public Works) v PS Sidhu Trucking, 2015 YKCA 5, aff'ing Yukon (Department of Highways and Public Works) v PS Sidhu Trucking et al, 2013 YKSC 105</u>

		<u>Brown v Canada (Attorney General), 2019 YKSC 21</u> <u>Yukon (Government of) v Information and Privacy Commissioner, 2025 YKSC 75</u>
	(5)	<u>Western Copper Corporation v Yukon Water Board, 2010 YKSC 61</u>
11.	(9)	<u>Faro (Town of) v Knapp, 2014 YKSC 72</u>
12.	(7) Repealed OIC 2022/168	<u>Champion v First Nation of Nacho Nyak Dun, 2015 YKSC 47</u>
	(11)	<u>TMG v SDI, 2009 YKSC 28</u>
13.		
14.	(4)(a)	<u>Kornelsen v Yukon Employee's Union, 2020 YKSC 01</u>
	(4)(b)	<u>Ferrari v Feurer, 2020 YKSC 29</u>
15.	(5)(a)	<u>Liard First Nation v Yukon Government and Selwyn Chihong Mining Ltd, 2011 YKSC 29</u> <u>Gibbons v Jane Doe, 2019 YKSC 16</u> <u>The Hotsprings Road Development Area Residents Association v Takhini Hot Springs Ltd, 2020 YKSC 43</u>
16.		
17.	(16)	<u>TMG v SDI, 2009 YKSC 28</u> <u>Block on Block Builders Inc. v Sule, 2025 YKSC 15</u>
	(17)(a)	<u>Connective Support Society v Melew, 2025 YKSC 49</u>
	(17)	<u>Canada (Attorney General) v Menzies, 2014 YKSC 73</u>

18.		<i>Estate of Malik et al v Estate of Sidat and Malik et al v Security National Insurance Company</i>, 2009 YKSC 43
	(1)	<i>Griffis v Fireweed Plumbing & Heating Inc</i>, 2013 YKSC 62
	(3)	<i>Maraj v Commissioner of the Yukon Territory</i>, 2022 YKSC 3
	(6)	<i>Ross v Golden Hill Ventures Limited Partnership</i>, 2010 YKCA 04 , <i>aff'g Golden Hill v Ross Mining Limited and Norman Ross</i>, 2009 YKSC 80 <i>Carlick v Canada (Attorney General)</i>, 2012 YKSC 92 <i>Carlick v Canada (Attorney General)</i>, 2013 YKSC 115 <i>McDiarmid v Yukon (Government of)</i>, 2014 YKSC 31 <i>Sidhu v Canada (Attorney General)</i>, 2019 YKSC 36 <i>Mao v Grove</i>, 2020 YKSC 23
19.		<i>Norclope Enterprises Ltd v Government of Yukon</i>, 2012 YKSC 25 <i>Ross River Dena Council v Yukon (Government of)</i>, 2015 YKSC 45 <i>Murphy v Szulinszky</i>, 2016 YKSC 18
	(1)(a)	<i>Ó Murchú v DeWeert</i>, 2020 YKSC 41 <i>Lavoie v Ewert</i>, 2023 YKSC 25
	(9)(b)	<i>Norclope Enterprises v Government of Yukon</i>, 2012 YKSC 25
	(12)	<i>Krafta v Densmore</i>, 2013 YKSC 119 <i>Cobalt Construction Inc v Kluane First Nation</i>, 2014 YKSC 40

20.		<u>Kaska Dena Council v Yukon (Attorney General), 2018 YKSC 3</u> <u>AB v Yukon (Government of), 2022 YKSC 69</u>
	(1)	<u>Brown v Canada (Attorney General), 2019 YKSC 21</u> <u>McLaughlin v Canada (Attorney General), 2024 YKSC 5</u>
	(9)	<u>Estate of Malik et al v Estate of Sidat and Malik et al v Security National Insurance Company, 2009 YKSC 43</u>
	(10)	<u>Estate of Malik et al v Estate of Sidat and Malik et al v Security National Insurance Company, 2009 YKSC 43</u>
	(17)	<u>Fuller v Schaff et al, 2009 YKSC 22</u> <u>Knapp v O'Neill, 2015 YKSC 22</u>
	(18)	<u>Ross River Dena Council v The Attorney General of Canada, 2009 YKSC 57</u>
	(22)	<u>North America Construction (1993) Ltd v Yukon Energy Corporation, 2019 YKSC 42</u> <u>Stuart v Doe, 2021 YKSC 11</u>
	(26)	<u>Estate of Malik et al v. Estate of Sidat and Malik et al v Security National Insurance Company, 2009 YKSC 43</u> <u>Golden Hill v Ross Mining Limited and Norman Ross, 2009 YKSC 80, aff'd Ross v Golden Hill Ventures Limited Partnership, 2010 YKCA 4</u> <u>Dana Naye Ventures v Canada (Attorney General), 2011 YKSC 20</u> <u>Ausiku v Hennigar, 2011 YKCA 5, aff'g DKA v TH, 2010 YKSC 63</u> <u>Ausiku v Yukon Human Rights Commission, 2012 YKCA 5</u>

		<p><u>Silverfox v Chief Coroner, 2012 YKSC 36</u></p> <p><u>McClements v Pike, 2012 YKSC 84</u></p> <p><u>Wright v Yukon Utilities Board and Yukon Energy Corporation, 2014 YKSC 43</u></p> <p><u>Ross (Guardian ad litem) v Equinox Outdoor Learning Centre and Spirited Adventures, 2014 YKSC 15</u></p> <p><u>McDiarmid v Yukon (Government of), 2014 YKSC 31</u></p> <p><u>McDiarmid v Canada (Public Prosecution Service of Canada - Yukon), 2014 YKSC 61</u></p> <p><u>Sidhu v Canada (Attorney General), 2016 YKCA 6, aff'g Sidhu v Canada (Attorney General), 2015 YKSC 53</u></p> <p><u>Ramirez v Mooney, 2017 YKSC 22</u></p> <p><u>Schaer v Yukon (Government of), 2018 YKSC 17</u></p> <p><u>Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 24, aff'd 2018 YKCA 16</u></p> <p><u>Brown v Canada (Attorney General), 2019 YKSC 21</u></p> <p><u>Mao v Grove, 2020 YKSC 23</u></p>
	(26)(a)	<p><u>Vachon v Twa, 2019 YKSC 37</u></p> <p><u>Mao v Grove, 2020 YKSC 23</u></p> <p><u>Northern Cross (Yukon) Ltd v Yukon (Energy, Mines and Resources), 2021 YKSC 3, rev'd on other grounds 2021 YKCA 6</u></p> <p><u>First Nation of Na-Cho Nyäk Dun v Yukon (Government of), 2021 YKSC 43</u></p>

		<p><u>Wright v Yukon (Director of Public Safety and Investigations), 2021 YKSC 54</u></p> <p><u>Smith v Potvin, 2021 YKSC 59</u></p> <p><u>AB v Yukon (Government of), 2022 YKSC 69</u></p> <p><u>38274 Yukon Inc. v Borealis Fuels & Logistics Ltd., 2024 YKSC 17</u></p>
	(26)(b)	<p><u>Vachon v Twa, 2019 YKSC 37</u></p> <p><u>Smith v Potvin, 2021 YKSC 59</u></p> <p><u>AB v Yukon (Government of), 2022 YKSC 69</u></p>
	(26)(c)	<p><u>Smith v Potvin, 2021 YKSC 59</u></p> <p><u>AB v Yukon (Government of), 2022 YKSC 69</u></p>
	(26)(d)	<p><u>Golden Hill v Ross Mining Limited and Norman Ross, 2009 YKSC 80, aff'd Ross v Golden Hill Ventures Limited Partnership, 2010 YKCA 4</u></p> <p><u>Brown v Canada (Attorney General), 2019 YKSC 21</u></p> <p><u>Vachon v Twa, 2019 YKSC 37</u></p> <p><u>Qiu's Restaurant Inc v Wen, 2021 YKSC 56, aff'd Qiu's Restaurant Inc v Wen, 2022 YKCA 6</u></p> <p><u>Smith v Potvin, 2021 YKSC 59</u></p>
21.		
22.		
23.	(6)	<p><u>North America Construction (1993) Ltd v Yukon Energy Corporation, 2019 YKSC 42</u></p>

	(7)	<u>North America Construction (1993) Ltd v Yukon Energy Corporation, 2019 YKSC 42</u>
24.	(1)	<u>Ross River Dena Council v Attorney General of Canada, 2011 YKSC 86</u> <u>McDiarmid v Canada (Public Prosecution Service of Canada - Yukon), 2014 YKSC 61</u> <u>North America Construction (1993) Ltd v Yukon Energy Corporation, 2019 YKSC 42</u> <u>Frost v Blake, 2021 YKSC 33</u>
25.		<u>GX v Yukon (Government of), 2024 YKSC 13</u> <u>Royal Bank of Canada v Robertson, 2021 YKSC 1</u> <u>Chance Oil and Gas Limited v Yukon (Energy, Mines and Resources), 2021 YKSC 44</u>
	(3)	
	(6)	<u>Spencer v Marshall, 2012 YKSC 13</u>
	(14)	<u>Ross River Dena Council v The Attorney General of Canada, 2009 YKSC 04, aff'd Ross River Dena Council v Canada (Attorney General), 2009 YKCA 8</u> <u>Coyne v Coyne, 2014 YKSC 20</u> <u>Cobalt Construction Inc v Parsons Inc, 2021 YKSC 31</u>
	(15)	<u>Freedom TV Inc v Holland, 2016 YKSC 24</u>
	(16)	<u>Cobalt Construction Inc v Parsons Inc, 2021 YKSC 31</u>
	(20)	<u>Cobalt Construction Inc v Parsons Inc, 2021 YKSC 31</u>
	(24)	<u>Chieftain Energy Limited Partnership v Pishon Gold Resources Inc, 2019 YKSC 22</u>

26.		<u>Silverfox v Chief Coroner et al, 2010 YKSC 39</u> <u>Stuart v Doe, 2021 YKSC 12</u> <u>Chance Oil and Gas Limited v Yukon (Energy, Mines and Resources), 2022 YKSC 76</u>
	(6)	<u>Ross River Dena Council v Canada (Attorney General), 2015 YKSC 52</u>
27.	(5)(b) Repealed O.I.C. 2022/168	<u>Spencer v Marshall, 2012 YKSC 13</u>
	(8)	<u>Qiu's Restaurant Inc v Wen, 2021 YKSC 56, aff'd 2022 YKCA 6</u>
	(13)	<u>Toman v Fulmer et al, 2010 YKSC 35</u>
	(18)	<u>Valard Construction LP v Yukon Energy Corporation, 2015 YKSC 11</u>
	(21)	<u>Valard Construction LP v Yukon Energy Corporation, 2015 YKSC 11</u>
	(28)	<u>Toman v Fulmer et al, 2010 YKSC 35</u>
28.	(1)	<u>Harvey v 5505 Yukon Limited, 2011 YKSC 76</u>
29.	(1)	<u>Cheng v Glencore, 2023 YKSC 52</u> <u>Dana Naye Ventures v Canada (Attorney General), 2011 YKSC 59</u> <u>Fine Gold Resources, Ltd v 46205 Yukon Inc, 2016 YKSC 67</u>
	(2)	<u>Dana Naye Ventures v Canada (Attorney General), 2011 YKSC 59</u> <u>Stuart v Doe, 2019 YKSC 53</u>

	(7)	<i>Ross River Dena Council v The Attorney General of Canada</i>, 2011 YKSC 56 <i>Ross River Dena Council v Yukon (Government of)</i>, 2015 YKSC 45
30.		<i>van Veen v Emblau</i>, 2017 YKSC 47
31.	(1)	<i>Sidhu v Canada (Attorney General)</i>, 2023 YKSC 33
	(2)	<i>The Hotsprings Road Development Area Residents Association v Yukon (Government of)</i>, 2017 YKSC 14 <i>Ó Murchú v DeWeert</i>, 2020 YKSC 41
	(4)	<i>Sidhu v Canada (Attorney General)</i>, 2023 YKSC 33
	(6)	<i>Ross River Dena Council v Yukon (Government of)</i>, 2015 YKSC 45
32.		
33.		
34.		<i>Mercer v Commissioner in Executive Council (The)</i>, 2021 YKSC 24 <i>Yukon (Government of) v Norcope Enterprises Ltd</i>, 2021 YKSC 63
	(4)	<i>Ross River Dena Council v Attorney General of Canada</i>, 2011 YKSC 88
	(5)	<i>MSZ v Dr M</i>, 2008 YKSC 74 <i>Calandra et al v Henley et al</i>, 2008 YKSC 96 <i>Ross River Dena Council v The Attorney General of Canada</i>, 2011 YKSC 87 <i>Frost v Blake</i>, 2021 YKSC 32
	(18)	<i>Yukon (Government of) v Norcope Enterprises Ltd</i>, 2021 YKSC 63

35.		
36.		<i>Western Copper Corporation v Yukon Water Board</i>, 2010 YKSC 61 <i>VinAudit Canada Inc v Yukon (Government of)</i>, 2023 YKSC 39 <i>Maraj v Commissioner of the Yukon Territory</i>, 2023 YKSC 40 <i>KS v JF</i>, 2025 YKSC 68
37.	(6)	<i>Fuller v Schaff et al</i>, 2009 YKSC 22
38.		
39.		<i>North America Construction (1993) Ltd. v Yukon Energy Corporation</i>, 2022 YKSC 65
	(7)	<i>Estate of Buyck</i>, 2015 YKSC 46
	(21)	<i>K v M and S</i>, 2010 YKSC 04
	(27)	<i>Liedtke-Thompson v Gignac</i>, 2015 YKSC 5 <i>Estate of Buyck</i>, 2015 YKSC 46
	(41)	<i>JW v Van Bibber</i>, 2013 YKSC 79
40.		
41.		<i>DMM v TBM</i>, 2011 YKSC 7
	(8)	<i>Humphrey v Tanner, et al & McDougall</i>, 2015 YKSC 27
	(18)	<i>Ross River Dena Council v Canada (Attorney General)</i>, 2013 YKCA 6, <i>rev'g Ross River Dena Council v The Attorney General of Canada</i>, 2012 YKSC 4 <i>MacNeil v Hedmann</i>, 2013 YKSC 81

42.		<i>Chieftain Energy Limited Partnership v Pishon Gold Resources Inc</i>, 2019 YKSC 22
	(19)	<i>Ross River Dena Council v The Attorney General of Canada</i>, 2016 YKSC 47
	(44)	<i>Yukon (Government of) v Information and Privacy Commissioner</i>, 2025 YKSC 75
43.	(13)	<i>Fine Gold Resources, Ltd v 46205 Yukon Inc</i>, 2016 YKCA 15, <i>var'g</i> 2016 YKSC 21
44.		
45.		
46.		<i>Estate of Carey (Re)</i>, 2019 YKSC 33 <i>Fuerstner v Foote</i>, 2023 YKSC 70
47.	(6)	<i>Fitzgerald v AADWP</i>, 2025 YKSC 23 <i>Town of Faro v Knapp, Dufresne et al</i>, 2011 YKSC 52
48.	(2)	<i>Western Copper Corporation v Yukon Water Board</i>, 2010 YKSC 61
	(10) Rule 48(10)(d)(ii) repealed O.I.C. 2022/168	<i>Town of Faro v Knapp, Dufresne et al</i>, 2011 YKSC 52
49.	(12)	<i>Mercer v Yukon (Government of)</i>, 2023 YKSC 59 <i>Miller et al v Government of Yukon et al</i>, 2010 YKSC 22, <i>aff'd</i> <i>Miller v McMillan</i>, 2011 YKCA 2 <i>Cobalt Construction Inc v Kluane First Nation</i>, 2013 YKSC 124 <i>PS Sidhu Trucking Ltd v Yukon Zinc Corporation</i>, 2016 YKSC 40

		<u>365334 Alberta Limited v Pishon Gold Resources Inc, 2018 YKSC 39</u> <u>Schaer v Yukon (Government of), 2018 YKSC 46, aff'd 2019 YKCA 11</u> <u>Stuart v Doe, 2019 YKSC 53</u> <u>First Nation of Na-Cho Nyäk Dun v Yukon (Government of), 2023 YKSC 5</u>
50.	(1)	<u>Cheng v Glencore, 2023 YKSC 52</u>
	(3)	<u>Cheng v Glencore, 2023 YKSC 52</u>
	(5)	<u>Block on Block Builders Inc. v Sule, 2025 YKSC 15</u>
	(9)	<u>Cheng v Glencore, 2023 YKSC 52</u> <u>Hy's North Transportation Inc v Finlayson Minerals Corporation dba Yukon Zinc Corporation, 2016 YKSC 39</u> <u>SEP v DPP, 2022 YKSC 6</u>
	(12)(d)	<u>St Cyr v Atlin Hospitality Ltd, 2020 YKSC 4</u>
	(14)	<u>KPL v RWE and SE, 2015 YKSC 62</u>
51.		<u>Legend Land Services, LLC v McNeil, 2025 YKSC 20</u> <u>Faro (Town) v Knapp, 2011 YKSC 43</u>
	(6)	
52.	(1)	<u>Duke Ventures Ltd v Seafoot, 2015 YKSC 14</u> <u>Fine Gold Resources, Ltd v 46205 Yukon Inc, 2016 YKCA 15, var'g 2016 YKSC 21</u>
	(4)	<u>Rock Ranger Inc v 16142 Yukon Inc, 2023 YKSC 58</u>

53.	(1)	<u>Western Copper Corporation v Yukon Water Board, 2010 YKSC 61</u>
	(6)	<u>Fox v Northern Vision Development Corp, Northern Vision Development Limited Partnership and Lanix Property Management Ltd as agent for the Landlord Northern Vision Development, 2009 YKSC 64</u> <u>Maraj v Commissioner of the Yukon Territory, 2022 YKSC 3</u>
54.	Standing	<u>AB v Yukon (Government of), 2022 YKSC 69</u>
		<u>Wright v Yukon Utilities Board and Yukon Energy Corporation, 2014 YKSC 43</u>
	(1)	<u>First Nation of Na-Cho Nyäk Dun v Yukon (Government of), 2023 YKSC 5</u>
	(4)	<u>Yukon Big Game Outfitters Ltd v Yukon (Government of), 2021 YKSC 16</u> <u>Schaer v Yukon (Government of), 2018 YKSC 17</u>
	(5)	<u>Liard First Nation v Yukon Government and Selwyn Chihong Mining Ltd, 2011 YKSC 29</u> <u>Silverfox v Chief Coroner, 2013 YKCA 11, rev'g 2012 YKSC 74</u> <u>White River First Nation v Yukon (Energy Mines and Resources), 2013 YKSC 10</u> <u>Blackjack v Yukon (Chief Coroner), 2016 YKSC 53</u> <u>Duncan (Litigation Guardian of) v Yukon (Government of), 2022 YKSC 32</u> <u>Spurvey v Melew, 2024 YKSC 30</u>
	(6)	<u>Western Copper Corporation v Yukon Water Board, 2010 YKSC 61</u>
	(7)	<u>Bretlyn v Yukon Medical Council, 2015 YKSC 3</u>

	(16)	<u>Yukon Big Game Outfitters Ltd v Yukon (Government of), 2021 YKSC 16</u>
	(19)	<u>Cameron v Yukon, 2010 YKSC 58</u>
	(25)	<u>Silverfox v Yukon (Chief Coroner), 2011 YKCA 9, var'g Silverfox, et al v Chief Coroner et al, 2011 YKSC 17</u>
55.		
56.	(1)	<u>Ross v Ross Mining Limited, 2009 YKSC 55, variation of receivership order Norman Ross v Ross Mining Limited et al, 2010 YKSC 20</u>
57.		
58.		
59.	(2)	<u>Gwich'in Development Corporation v Alliance Sonic Drilling Inc et al, 2009 YKSC 19</u> <u>BJG v DLG, 2010 YKSC 81</u>
60.		<u>Knol v Tamarack Inc, 2013 YKSC 47</u> <u>Cheng v Glencore plc, 2022 YKSC 59</u> <u>AB v Yukon (Government of), 2023 YKSC 34</u> <u>Yukon (Government of) v Norcope Enterprises Ltd., 2024 YKCA 6</u>
	(1)	<u>Calandra v Henley, et al., 2008 YKSC 82, aff'd Calandra v Henley, 2009 YKCA 6</u> <u>Calandra v Henley, 2009 YKCA 6, aff'g Calandra v Henley, 2008 YKSC 82</u> <u>CMS v MRJS, 2009 YKSC 49</u> <u>City of Whitehorse v Darragh, 2008 YKSC 80, rev'd on other grounds Whitehorse (City) v Darragh, 2009 YKCA 10</u>

		<p><u>MPT v RWT, 2010 YKSC 6</u></p> <p><u>DMM v TBM, 2011 YKCA 8</u></p> <p><u>Ross v Golden Hill Ventures Limited Partnership et al, 2011 YKSC 30</u></p> <p><u>Golden Hill Ventures Limited Partnership v Ross Mining Limited and Norman Ross, 2012 YKSC 18</u></p> <p><u>Fine Gold Resources, Ltd v 46205 Yukon Inc, 2016 YKCA 15, var'g 2016 YKSC 21</u></p> <p><u>Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 29</u></p>
	(1.1)	<p><u>Cheng v Glencore plc, 2022 YKSC 59</u></p> <p><u>Yukon (Government of) v Norcope Enterprises Ltd, 2023 YKSC 17</u></p> <p><u>AB v Yukon (Government of), 2023 YKSC 34</u></p> <p><u>Community Cannabis Inc. v Cannabis Licensing Board, 2024 YKSC 60</u></p>
	(1.2)	<p><u>Cheng v Glencore plc, 2022 YKSC 59</u></p> <p><u>Sidhu v Canada (Attorney General), 2023 YKSC 33</u></p>
	(1.3)	<p><u>AB v Yukon (Government of), 2023 YKSC 34</u></p>
	(2)	<p><u>Minet et al v Kossler, 2009 YKSC 18</u></p>
	(3)	<p><u>Ramirez v Mooney, 2017 YKSC 43</u></p> <p><u>Yukonstruct v Connolly, 2020 YKSC 20</u></p>
	(4)	<p><u>1371737 Alberta Ltd et al v 37768 Yukon Inc et al, 2010 YKSC 17</u></p>

	(6)	<u><i>Sidhu v Canada (Attorney General)</i>, 2023 YKSC 33</u>
	(9)	<u><i>Kareway Homes Ltd v 37889 Yukon Inc</i>, 2012 YKSC 28</u> <u><i>Liedtke-Thompson v Gignac</i>, 2015 YKSC 5</u> <u><i>Jones v Duval</i>, 2020 YKSC 10</u> <u><i>Frost v Blake</i>, 2021 YKSC 62</u> <u><i>North America Construction (1993) Ltd V Yukon Energy Corporation</i>, 2022 YKSC 65</u>
	(12)	<u><i>Cobalt Construction Inc v Kluane First Nation</i>, 2013 YKSC 124</u> <u><i>Wright v Yukon (Director of Public Safety and Investigations)</i>, 2022 YKSC 38</u>
	(13)	<u><i>Wright v Yukon (Director of Public Safety and Investigations)</i>, 2022 YKSC 38</u>
	(32)	<u><i>1371737 Alberta Ltd et al v 37768 Yukon Inc et al</i>, 2010 YKSC 17</u>
	(36)	<u><i>Dawson (Town of the City of) v Carey</i>, 2014 YKCA 3, var'g 2012 YKSC 59</u>
61.		
62.		
63.		<u><i>DTB v LARA</i>, 2011 YKSC 14</u>
	(1)	<u><i>MWL v RKL</i>, 2016 YKSC 1</u>
	(6)	<u><i>KRG v RR</i>, 2009 YKSC 40</u> <u><i>MacNeil v Hedmann</i>, 2009 YKSC 63</u>
	(26)	<u><i>AJF v MLF</i>, 2014 YKSC 58</u>

	(47)	<u>Coyne v Coyne, 2013 YKSC 123</u>
	(48)	<u>Coyne v Coyne, 2013 YKSC 123</u>
63A.	(7)	<u>BJG v DLG, 2010 YKSC 33</u>
	(36)	<u>Coyne v Coyne, 2013 YKSC 123</u>
	(37)	<u>Coyne v Coyne, 2013 YKSC 123</u>
64.	(7)	<u>Dickson (Estate of), 2012 YKSC 71</u>
65.		
66.		
App B.	s. 1	
	s. 2(c)	<u>Ross River Dena Council v Government of Yukon, 2013 YKCA 7</u>
	s. 2(d)	<u>Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 29</u>
	s. 2(e)	<u>Golden Hill Ventures Limited Partnership v Ross Mining Limited and Norman Ross, 2012 YKSC 18</u> <u>MacNeil v Hedmann, 2014 YKSC 29</u> <u>North America Construction (1993) Ltd v Yukon Energy Corporation, 2022 YKSC 65</u>
	s. 10	<u>Cheng v Glencore plc, 2022 YKSC 59</u> <u>AB v Yukon (Government of), 2023 YKSC 34</u>
	s. 11	<u>Cheng v Glencore plc, 2022 YKSC 59</u> <u>AB v Yukon (Government of), 2023 YKSC 34</u>

	Schedule 3 Repealed O.I.C. 2022/168	<i>Wood v Yukon (Occupational Health and Safety Branch), 2018 YKSC 29</i> <i>Maraj v Commissioner of the Yukon Territory, 2022 YKSC 40</i>
App C.	Sch. 1 S1(1)	<i>Beaugie v Yukon Medical Council, 2012 YKSC 96</i> <i>R v Smith, 2021 YKSC 35</i> <i>Boles v Yukon Residential Tenancies Office, 2025 YKSC 46</i>

INTRODUCTION TO THE ANNOTATED RULES, 2026 EDITION

This is the fourth publication of the Annotated Rules, with currency from September 15, 2008 to December 31, 2025.

I would like to thank Justice K. Wenckebach, Tess Casher, Cathy Rasmussen, Anna Starks-Jacob and Constance Jacquest 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.

[Freedom TV 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.

[Carlock v ExxonMobil Canada Holdings ULC, 2017 YKSC 37](#)

Rule 1(6) sets out the object of the *Rules* which is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

[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.

[Qiu's Restaurant Inc v Wen, 2021 YKSC 56](#), aff'd [2022 YKCA 6](#)

Rule 1(6) is not the correct basis for bringing a misappropriation action. Rule 1(6) can support an application for a stay of proceedings, but it cannot serve as the sole basis for a stay.

Rule 1(8) – Case management

[Dawson \(Town of the City of\) v Carey, 2014 YKCA 3](#), var'g [2012 YKSC 59](#)

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)(I) – 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)(I), 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.

[AB v Yukon \(Government of\), 2022 YKSC 69](#)

The court may exercise its discretion under Rule 1(14) to allow a matter that would normally be subject to Rule 54 (Application for Judicial Review) to proceed by way of an action. This may be done where the interests of justice would not be served by having two parallel proceedings with the same parties and the same underlying facts. Judicial economy is a factor the court may consider when exercising this discretion.

RULE 2 – EFFECT OF NON-COMPLIANCE

Rule 2(3) – Non-compliance with rules

[Bauman v Evans, 2016 YKSC 6](#)

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

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

[Chieftain Energy Limited Partnership v Gold Resources Inc, 2019 YKSC 22](#)

Rule 2(5)(c), which provides that a court may dismiss a proceeding where a party refuses or neglects to produce or permit to be inspected a document or property is permissive, not mandatory.

[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 the dismissal of a proceeding if a court direction is not complied with. The dismissal of that claim through Rule 2(6) is 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.

[Green v Ward, 2025 YKSC 29](#)

The purpose of both consolidation and trying together is to save judicial resources, reduce multiplicity of proceedings, save costs and time for all participants, and avoid inconsistent results. The court has the ultimate discretion to decide whether separate actions will be heard together. This decision should be based on the Rules of Court, the jurisprudence, what is most convenient for the parties and what in the best interest of the administration of justice. A key criterion for these decisions is what is just and fair in the circumstances.

Rule 5(11) – Representative proceeding

[RRDC 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.

[GX v Yukon \(Government of\), 2023 YKSC 22](#)

The Yukon does not have comprehensive legislation that governs class proceedings. R. 5(11) assists in establishing the rules of practice and procedure for class actions.

[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. Because 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(3) – Specific relief

[Wood v Yukon \(Director of Occupational Health and Safety\), 2018 YKSC 24,](#)
aff'd [2018 YKCA 16](#)

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

[*Yukon \(Government of\) v Information and Privacy Commissioner, 2025 YKSC 75*](#)

A petition is the proper process for challenging the decision of the Yukon Information and Privacy Commissioner to issue a summons.

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).

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 [repealed by O.I.C. 2022/168]

[*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.

[Block on Block Builders Inc. v Sule, 2025 YKSC 15](#)

To determine if a default judgement should be set aside, the test to be used, as set out in *Evans v Bauman*, 2016 YKSC 71 at para 21, is:

- a) The applicant did not wilfully or deliberately fail to file a defence to the claim (or counterclaim);
- b) The application to set aside the default judgement was made as soon as reasonably possible after knowledge of the default judgement; or an explanation for any delay was provided;
- c) The applicant has a meritorious defence or a defence worthy of investigation; and
- d) These requirements will be established to the court's satisfaction through affidavit material.

The bar for proving the third part of the test is a low one. A defence “worthy of investigation” means that there must be “more than an allegation”. There also needs to be enough detail to “enable the judge to exercise their mind as to whether there is such a defence” (*Evans*, at para. 19).

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 17(17)(a) -Alternative methods of assessment

[Connective Support Society v Melew, 2025 YKSC 49](#)

This rule provides the court with wide discretion to proceed summarily by affidavit instead of by trial when assessing unliquidated damages. Factors which support proceeding by way of affidavit include:

- a) The amount of damages is relatively small;
- b) The matter can be disposed of by the principal of the plaintiff;
- c) The affidavit material in support of the application has been served upon the defendant, and they have not appeared to contest the matter;
and
- d) Proceeding by affidavit will not be patently unjust because there are no matters of opinion or judgement that may raise questions about the evidence being affected by self-interest.

(Rutherford et al v Knutsson, 2004 BCSC 1021 at paras. 14-15)

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(3) - Continuing proceedings after summary judgment

[*Maraj v Commissioner of the Yukon Territory*, 2022 YKSC 3](#)

Rule 18(3) applies to actions and not appeals brought before the Supreme Court of Yukon.

Rule 18(6) – Summary judgment for defendant

[*Ross v Golden Hill Ventures Limited Partnership*, 2010 YKCA 4](#), aff’g [*Golden Hill v Ross Mining Limited and Norman Ross*, 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 is 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

[Norcope Enterprises Ltd v Government of Yukon, 2012 YKSC 25](#)

The court adopted the following principles regarding summary trials from *Inspiration Management Ltd v McDermid St Lawrence Ltd* (1989), 36 BCLR (2d) 202 (CA):

- a) judges should be careful but not limited in using Rule;
- b) in deciding whether it would be unjust to give judgment, the court may consider the amount of money involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other relevant matters that arise;
- c) in determining whether an issue in the action should be determined by summary trial, the court should consider whether deciding that critical issue will assist the parties to reach an accommodation on other questions;
- d) if the court can find the facts, then it must give judgment, unless for any proper judicial reason it would be unjust to do so;
- e) conflicts in the affidavit evidence can be resolved by considering other admissible evidence;
- f) the right to summary judgment plays an increasingly important role in the efficient disposition of litigation and its use is not limited to simple or straight forward cases; and
- g) there is a heavy onus on the party seeking to dismiss a summary judgment application to demonstrate that the issues should not be decided summarily.

[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.

[Lavoie v Ewert, 2023 YKSC 25](#)

Rule 19 allows for single issues to be resolved by way of summary trials. The court must use caution when determining whether to resolve one issue by way of summary trial. In addition to the factors cited in *Norcope Enterprises v Yukon*, 2012 YKSC 25, the court may address the following questions when determining if a summary trial of a single issue is appropriate:

- a) whether the court can find the facts necessary to decide the issues of fact or law;
- b) whether it would be unjust to decide the issues by way of summary trial, considering amongst other things:
 - i. the implications of determining only some of the issues in the litigation, which requires consideration of such things as:
 - (1) the potential for duplication or inconsistent findings, which relates to whether the issues are intertwined with issues remaining for trial;
 - (2) the potential for multiple appeals; and
 - (3) the novelty of the issues to be determined;
 - ii. the amount involved;
 - iii. the complexity of the matter;
 - iv. its urgency; v. any prejudice likely to arise by reason of delay; and
 - vi. the cost of a conventional trial in relation to the amount involved.

Rule 19(9)(b) – Preliminary Orders

[Norcope Enterprises v Government of 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 Council v Yukon \(Attorney General\), 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.

[AB v Yukon \(Government of\), 2022 YKSC 69](#)

Under Rule 20, pleadings should consist of material facts and if necessary, points or conclusions of law. Pleadings should not include arguments. Pleadings should be drafted in a concise and streamlined manner.

Rule 20(1) –Contents of pleadings

[McLaughlin v Canada \(Attorney General\), 2024 YKSC 5](#)

It is the responsibility of the plaintiff to set out all the material facts of their claims, or in other words, all the facts necessary to support each of their claims in the Statement of Claim. Per *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227:

What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. The plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. ...the requirement for adequate material facts to be pleaded is mandatory. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars” (at paras 19-20).

Bald assertions of conclusions unsupported by material facts are conclusory statements that should be struck. These requirements also apply to *Charter* cases.

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 O’Neil*, 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 Doe, 2021 YKSC 11](#)

A court should not order that a defendant amend their statement of defence, which contains bald denials, prior to discoveries.

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

[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.

[Golden Hill v Ross Mining Limited and Norman Ross, 2009 YKSC 80](#), aff'd [Ross v Golden Hill Ventures Limited Partnership, 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.

[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 [DKA v TH, 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 and Yukon Energy Corporation, 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 Outdoor Learning Centre and Spirited Adventures Ltd., 2014 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](#), aff’g [2015 YKSC 53](#)

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.

[Wood v Yukon \(Occupational Health and Safety Branch\), 2018 YKSC 24](#) aff'd [2018 YKCA 16](#)

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 which the court by its inherent jurisdiction may prevent. The court may strike pleadings which attempt to use court process for an improper purpose.

Rule 20(26)(a) - no reasonable claim or defence

[Vachon v Twa, 2019 YKSC 37](#)

Evidence is not admissible under Rule 20(26)(a).

[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 \(Government of\), 2021 YKSC 34](#), rev'd on other grounds [Grove v Yukon \(Ministry of the Environment\), 2022 YKCA 8](#)

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.

[Grove v Yukon \(Ministry of the Environment\), 2022 YKCA 8](#), rev'g [Grove v Yukon \(Government of\), 2021 YKSC 34](#).

Courts must guard against frustrating the development of the common law in favour of pursuing trial efficiencies. The presence of complex and competing arguments may suggest that it is not obvious that a claim will not succeed.

[Northern Cross \(Yukon\) Ltd v Yukon \(Energy, Mines and Resources\), 2021 YKCA 6](#), rev'g in part [2021 YKSC 3](#)

The principles applicable in determining whether documents are incorporated by reference in statements of claim include:

1. On an application to strike, a judge's task is to examine the pleadings. Evidence is neither necessary nor allowed.
2. A document, referred to expressly or impliedly in a pleading, may be treated in a summary fashion as being a part of the pleading itself, if it is clear that the pleading is asserting and incorporating the whole document, such as an agreement.
3. It is problematic to consider a selected statement from a document referred to in a pleading, and treat the statement as a fact in the pleading, while not treating other statements in the same document in the same manner.
4. A document referred to in the pleadings that is the subject to interpretive issues that cannot be resolved on an application to strike need not be considered.
5. A document may be considered in its entirety for the purpose it was referred to in the pleading when the underlying facts associated with that 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.

[Wright v Yukon \(Director of Public Safety and Investigations\), 2021 YKSC 54](#)

It is appropriate to bring an application to strike for no reasonable cause of action on the basis that the petitioner does not have standing to bring the claim.

[Smith v Potvin, 2021 YKSC 59](#)

For a claim to be dismissed under Rule 20(26)(a), it must be plain and obvious that there is no reasonable prospect of success. This assessment is conducted based on the pleadings, the particulars and any documents that are incorporated

by reference. The facts that are in the pleadings must be read generously; they are assumed to be true. However, any allegations that are based on speculation or assumptions, bare allegations or bald assertions that do not have a factual foundation, pleadings of law, or allegations that are patently ridiculous or incapable of proof do not have to be accepted as true.

The court must overlook any defects that are the result of drafting deficiencies. The court cannot consider any evidence that could be adduced in the future. The pleadings should not be struck solely based on the complexity of the issues, the novelty of the claim(s) or the apparent strength of the defences to the claim. The purpose of providing the court with the power to strike a claim under Rule 20(26)(a) is to promote litigation efficiency and to reduce time and cost. This allows for court resources to be devoted to claims with a reasonable chance of success.

[AB v Yukon \(Government of\), 2022 YKSC 69](#)

Evidence is not admissible on a motion to strike under Rule 20(26)(a). The application proceeds on the basis that the facts as pleaded are true unless they are manifestly incapable of being proven (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42). The claimant cannot rely on the possibility that new facts may arise. The power of the court to strike a claim allows the parties and the court to focus on the real issues between the parties and the claims that have a reasonable chance of success.

[38274 Yukon Inc. v Borealis Fuels & Logistics Ltd., 2024 YKCA 17](#)

Whether a pleading discloses a reasonable claim is generally considered to be a question of law subject to review on a correctness standard.

The rule plays a valuable housekeeping function by separating “hopeless claims” from claims with “some chance of success”. Claims should not be struck unless it is plain and obvious the claim discloses no reasonable cause of action, has no reasonable prospects of success, or is certain to fail. The court must read the statement of claim generously and consider it as it might reasonably be amended (*Nevsun Resources Ltd. v. Araya*, 2020 SCC 5). The threshold for successfully striking a claim is therefore high. Reviewing courts should “err on the side of permitting a novel but arguable claim to proceed to trial” (*R. v. Imperial Tobacco Canada*, 2011 SCC 42).

Subrule 20(26)(b) - unnecessary, scandalous, frivolous or vexatious

[McDiarmid v Yukon, 2014 YKSC 31](#)

A pleading is “frivolous” or “vexatious” if it is groundless or manifestly futile, it is not in an intelligible form, or it was instituted without any reasonable grounds whatsoever or for an ulterior purpose.

[Sidhu v Canada \(The Attorney General\), 2015 YKSC 53](#)

A pleading is “unnecessary” or “vexatious” if it does not go to establishing the plaintiff’s cause of action or does not advance any claim known in law. A

pleading is “frivolous” if it is obviously unsustainable, not because it lacks an evidentiary basis, but because of the doctrine of estoppel.

[Vachon v Twa, 2019 YKSC 37](#)

The test under Rule 20(26)(b) may be met if a statement of claim is difficult to understand and follow, and there is a lack of connection between what is included in the statement of claim and the claim at issue.

[Smith v Potvin, 2021 YKSC 59](#)

The test for an unnecessary, scandalous, frivolous or vexatious pleading requires the defendant to demonstrate that the pleading is groundless or manifestly futile, that it is not in an intelligible form, or that it was instituted without any reasonable grounds whatsoever or for an ulterior purpose. The no evidence rule in Rule 20(29) applies only to Rule 20(26)(a), not to (b), (c) or (d).

Subrule 20(26)(c) – prejudice, embarrass or delay the fair trial or hearing of the proceeding

[Sidhu v Canada \(The Attorney General\), 2015 YKSC 53](#)

“Embarrassing pleadings” include pleadings that are so confusing that it is difficult to understand what is being pleaded or is so irrelevant that it will involve the parties in useless expense and will prejudice the trial of the action by involving them in a dispute apart from the issues.

[Smith v Potvin, 2021 YKSC 59](#)

The no evidence rule in Rule 20(29) applies only to Rule 20(26)(a), not to (b), (c) or (d).

Subrule 20(26)(d) - otherwise an abuse of the process of the court

[Golden Hill v Ross Mining Limited and Norman Ross, 2009 YKSC 80](#), aff’d [Ross v Golden Hill Ventures Limited Partnership, 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.

[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.

[Vachon v Twa, 2019 YKSC 37](#)

A finding of abuse of process generally allows the court to prevent a claim from proceeding. An abuse of process is typically found if allowing the claim to continue would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice.

[Qiu's Restaurant Inc v Wen, 2021 YKSC 56](#), aff'd [2022 YKCA 6](#)

An application to strike or stay a claim on the grounds of abuse of process may be brought when a party alleges that the court's process is being used in bad faith or with an ulterior motive. A pleading is an abuse of process if made knowing there is no factual basis for the allegations, or if the allegations are made for some improper or collateral purpose. Considerations of efficiency do not apply when determining whether to grant an interim stay because of abuse of process.

[Smith v Potvin, 2021 YKSC 59](#)

Abuse of process has been interpreted broadly by the court. It arises where the proceedings involve a deception of the court or constitute a mere sham; the court process is not being used fairly or honestly; the court process is being used for an ulterior or improper purpose; or the proceedings have no foundation or serve no useful purpose. The court has an inherent and residual discretion to prevent the court process from being used in a manner that would bring the administration of justice into disrepute. Generally, if the court finds an abuse of process it can prevent the matter from proceeding if doing so would violate the principles of judicial economy, consistency, finality and the integrity of the administration of justice (*Toronto (City) v Canadian Union of Public Employees (CUPE), Local 79*, 2003 SCC 63). A civil action which is commenced with the objective of proving the plaintiff is not guilty of a criminal charge is a collateral attack on a criminal proceeding and an abuse of process. The no evidence rule in Rule 20(29) applies only to Rule 20(26)(a), not to (b), (c) or (d). Evidence is admissible on an abuse of process application.

RULE 21 – STATEMENT OF DEFENCE AND COUNTERCLAIM

RULE 22 – THIRD PARTY PROCEDURE

RULE 23 – REPLY AND SUBSEQUENT PLEADINGS

[*North America Construction \(1993\) Ltd v Yukon Energy Corp, 2019 YKSC 42*](#)

The purpose of a reply is to permit the plaintiff an opportunity to set out a version of facts different from that pleaded in the defence, if it has not already been pleaded in the statement of claim. It is not, however, necessary to plead each and every fact upon which the party intends to rely upon at trial.

Filing of a reply responding to certain parts of a statement of defence does not require the party filing to join issue with every paragraph of the statement of defence in order to preclude an argument that they have impliedly admitted those paragraphs.

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 Attorney General of Canada, 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 \(Public Prosecution Service of Canada - Yukon\), 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.

[North America Construction \(1993\) Ltd v Yukon Energy Corporation, 2019 YKSC 42](#)

Rule 24(1) allows for amendments to be made to pleadings without leave of the court up to 90 days before trial. However, if there is a history of issues between the parties the court may order that any amendments to pleadings are to be provided in draft form to both the court and the other party at a case management conference.

[Frost v Blake, 2021 YKSC 33](#)

Rule 24(1) applies to amendments to originating processes, including petitions. The court has broad discretion under Rule 24(1).

The court’s discretion is completely unfettered, subject only to the general rule that is to be exercised judicially, in accordance with the evidence adduced and such guidelines as may appear from the authorities.

The factors that may be considered include: the length of delay, the reasons for delay and expiry of the limitation period, the presence or absence of prejudice, and the extent of the connection between the existing claim and the proposed new cause of action. No one factor should be accorded overriding importance, in the absence of a clear basis for doing so (*Teal Cedar Products (1977) Ltd v Dale Intermediaries Ltd (1996)*, 71 BCAC 161 (BCCA) at para 67).

RULE 25 – DISCOVERY OF DOCUMENTS

[GX v Yukon \(Government of\), 2024 YKSC 13](#)

Privilege is to be construed narrowly in the context of a civil action to the extent that it can only operate if all the component parts that make up the privilege are present.

Rule 25(3) – Disclosure

[Royal Bank of Canada v Robertson, 2021 YKSC 1](#)

Whether a document is relevant is determined by reference to the pleadings.

[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 The Attorney General of Canada, 2009 YKSC 04](#), aff'd [Ross River Dena Council v Canada \(Attorney General\), 2009 YKCA 8](#)

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. Parties may be permitted to redact an otherwise relevant document if the redacted material is irrelevant; and there is good reason for favouring redaction.

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*](#)

Although the rule of production requires that every document which directly or indirectly may enable a party to advance his own case or harm the other party, or which may lead to a train of enquiry, must be disclosed, the court may place some limits on the requirement to produce documents.

The court has the discretion to excuse performance, as long as that discretion is exercised justly, balancing the interests in question fairly.

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

[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.

[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.

[Chance Oil and Gas Limited v Yukon \(Energy, Mines and Resources\), 2022 YKSC 76](#)

If documents that had been previously produced are found to be clearly irrelevant to the action before the court, a party is not entitled to retain and search these documents for the purpose of cross-examining, or otherwise challenging, the producing parties' witnesses/representatives in the proceeding.

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. [repealed by O.I.C. 2022/168]

[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

[Cheng v Glencore plc, 2023 YKSC 52](#)

Proposed interrogatories should not be framed in a way that is aimed at obtaining a legal opinion rather than the material facts and circumstances of a matter.

[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](#)

The requirements and limitations on the use of interrogatories includes:

1. Interrogatories must be relevant to the matter in issue;
2. Interrogatories must not be in the nature of cross-examination;
3. Interrogatories must not include a demand for discovery of documents;
4. Interrogatories should not duplicate particulars;
5. Interrogatories are narrower in scope than examination for discovery;
6. The purpose of interrogatories is to enable the party delivering them to obtain admissions of fact in order to establish their case and provide a foundation upon which cross-examination can proceed when examination for discoveries are held; and
7. Interrogatories are only one form of discovery. The court may permit the party interrogated to defer its response until other discovery processes have been completed, including examinations for discovery.

Asking for the name of relevant witness in an interrogatory is not objectionable.

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 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 The Attorney General of Canada, 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 Yukon \(Government of\), 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. Nonetheless, an independent medical examination is conducted by a person appointed by the court; the convenience of the complainant shall be considered in determining who should perform the independent medical examination. 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. It may be appropriate for the court to consider appointing a specialist other than the proposed examiner but only where the plaintiff demonstrates, on a preponderance of evidence, sufficient grounds to justify the court in concluding that its discretion should not be exercised in favour of the appointment of the defendant's nominee.

RULE 31 – ADMISSIONS

Rule 31(1) – 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.

Rule 31(2)- Effect of Notice to Admit

[*Ó Murchú v DeWeert*, 2020 YKSC 41](#)

A reply to a Notice to Admit is improper and inadequate if it does not deny the truth of the facts sought to be admitted nor set out reasons in detail for not making the admissions. In such circumstances, it is mandatory that the facts are deemed admitted.

Rule 31(4) - Unreasonable refusal to admit

[*Sidhu v Canada \(Attorney General\)*, 2023 YKSC 33](#)

Pursuant to Rule 31(4) if a party unreasonably denies or refuses to admit the truth of a fact, costs can be awarded against them. Factors in determining whether the failure to admit the truth of a fact is reasonable include:

- (a) the truth of the fact is subsequently proved;
 - (b) the fact was relevant to a material issue in the case;
 - (c) the fact was not subject to privilege;
 - (d) the notice to admit was not otherwise improper;
 - (e) the notice to admit was reasonably capable of evaluation within the time required for response; and
 - (f) the refusing party had no reasonable grounds for believing that it would prevail on the matter.
- (*Ceperkovic v MacDonald*, 2016 BCSC 939)

If there is a reason to challenge the truth of the fact at trial then that is a reasonable basis to deny the Notice to Admit.

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 Commissioner in Executive Council \(The\), 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 and assumptions upon which their opinion is based. They must describe the documents reviewed and relied on and cite their qualifications to be an expert in the matter.

[Yukon \(Government of\) v Norcope Enterprises Ltd, 2021 YKSC 63](#)

Rule 34 sets out the regime for expert reports. The overriding duty of an expert is to the Court. If the impartiality of an expert is questioned, the admissibility of the report shall be addressed in two stages (as set out in *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23):

Stage 1- determine whether the opinion meets threshold admissibility requirements; and

Stage 2- gatekeeping stage- the court must be satisfied that the risks associated with expert evidence do not outweigh the benefits.

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

[Ross River Dena Council v Attorney General of Canada, 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 The Attorney General of Canada*, 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 34(18) – Experts to Confer

[*Yukon \(Government of\) v Norcope Enterprises Ltd*, 2021 YKSC 63](#)

Once experts have met in accordance with Rule 34(18), any contact between the expert and counsel should be communicated to the other party. Communications involving questions about the process of civil litigation are not objectionable.

RULE 35 – STATED CASE

RULE 36 – CASE MANAGEMENT CONFERENCE

[KS v JF, 2025 YKSC 68](#)

Through case management, the court ensures a matter moves forward in a timely fashion by overseeing and giving directions on the different steps of litigation and determining, clarifying and streamlining the process for the trial.

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.

[VinAudit Canada Inc v Yukon \(Government of\), 2023 YKSC 39](#) and

[Maraj v Commissioner of the Yukon Territory, 2023 YKSC 40](#)

Rule 36 sets out case management powers of the Court and allows for applications to be decided in the case management context. If an application is going to be brought during a case management conference written notice of the application(s), their scope and the basis of the application must be clearly articulated.

Rule 36(7) -Case management judge may preside

[KS v JF, 2025 YKSC 68](#)

As long as it does not violate Rule 37(8), the determination of whether a case management judge will be the trial judge is discretionary and may be made by the case management judge or the Chief Justice. A case management judge may be best placed to hear the trial on the merits in cases where the pre-trial process has been complex or the case management judge has otherwise developed familiarity with the issues.

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

[North America Construction \(1993\) Ltd v Yukon Energy Corporation, 2022 YKSC 65](#)

The Court adopted the principles set out in *Catalyst Paper Corporation v Companhia de Navegação Norsul*, 2007 BCSC 1595. These principles are:

- Rule 39 is a complete code;
- Rule 39 should be uniformly applied;
- the purpose of Rule 39 is to encourage settlement of litigation through prescribed cost consequences;
- an offer to settle must be clear and unambiguous. The determination of whether an offer is uncertain is based on an objective standard which takes into account the legal context in which the offer is made;
- the party receiving the offer cannot claim ignorance of Rule 39 to avoid the legal implications of the rule; and
- the reasonableness of a monetary offer is not a matter for judicial consideration in applying this rule.

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.

Where the formal offer is made less than 7 days before the trial commences, double costs are not mandatory, they are discretionary.

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 the 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, et al & McDougall, 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](#), rev'g [Ross River Dena Council v The Attorney General of Canada, 2012 YKSC 4](#)

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 The Attorney General of Canada, 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 42(44) - Order setting aside subpoena

[Yukon \(Government of\) v Information and Privacy Commissioner, 2025 YKSC 75](#)

Once an application has been brought under Rule 42(44), the party who originally requested the subpoena has the onus of establishing that it is likely the proposed witness will have material evidence on an issue. The purpose of this threshold is to prevent fishing expeditions through the issuance of multiple and unnecessary subpoenas.

If the party has met this threshold, then the subpoena will issue on a *prima facie* basis, unless the person seeking to quash it can provide a good reason for quashing it. Examples of such reasons include oppressiveness and abuse of power.

RULE 43 – ORDERS

43(13) Application of which notice is not required

[*Fine Gold Resources Ltd v 46205 Yukon Inc*, 2016 YKCA 15](#), var'g [2016 YKSC 21](#)

In applying for a *Mareva* injunction, the applicant for an order without notice should make full and frank disclosure of all matters in their knowledge which are material for the judge to know. They should give particulars of their claim against the respondent, including the ground of their claim and amount thereof, and fairly stating the points made against by the respondent. The applicant should 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. Finally, the applicant must give an undertaking in damages.

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.

[Fuerstner v Foote, 2023 YKSC 70](#)

In family law matters, if a sale of real property is not necessary, it will only be expedient if it is in the interests of both parties (*Reilly v Reilly* (1992), 99 DLR (4th) 47 at para. 35 (*Reilly*)). Factors that may be used to determine whether to order a sale include:

1. whether the sale will promote early settlement,
2. whether the sale will defeat the spouse or common law partner's claim for reapportionment,
3. the effect of the sale on children (if any) and
4. whether selling the property will be inevitable or whether the spouse or common law partner may be able to retain the property once assets are divided.

(see *GJU v LJU*, 2017 BCSC 1352, at para. 57)

The courts at times favour the status quo if there are any doubts about whether the sale should be ordered on an interim application. However, the courts must also consider whether “the status quo for one spouse may be the perpetuation of an injustice for another” (*Reilly* at para. 35).

RULE 47 – APPLICATIONS

[Fitzgerald v AADWP, 2025 YKSC 23](#)

In uncontested probate proceedings, it is appropriate to bring an application under Rule 47 to validate a will that does not comply with legal formalities even though no statement of claim has been filed. Successful applications under this rule do not result in a grant of probate; the applicant must still apply for probate.

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 [Rule 48(10)(d)(ii) repealed by O.I.C. 2022/168]

[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

[Mercer v Yukon \(Government of\), 2023 YKSC 59](#)

Affidavits should contain relevant facts only; and should only include statements that would be permitted as evidence at trial. Opinion evidence is generally not acceptable from non-expert witnesses. Argument should not be included in an affidavit. If something is not a fact, then it should be reserved for written or oral submissions.

Hearsay evidence can be included in an affidavit, if it is on information and belief, and is submitted as part of a pre-trial record or it is admitted with leave of the Court. Hearsay evidence provided in an affidavit may also be admissible under the principled exception to hearsay.

[Miller et al v Government of Yukon et al, 2010 YKSC 22](#), aff'd [Miller v McMillan, 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 Corporation, 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.

[365334 Alberta Limited v Pishon Gold Resources Inc, 2018 YKSC 39](#)

The requirement that an affidavit contain only information that is admissible at trial unless the affidavit contains statements as to the deponent's information and belief is subject to the permission of the Court under Rules 42(53)(a) or 50(9)(e).

[*Schaer v Yukon \(Government of\)*, 2018 YKSC 46](#), aff'd [2019 YKCA 11](#)

Where a self-represented party's affidavit contravenes the requirements of R. 49(12), the court may decline the opposing party's request to strike out the offending passages. However, these sections may not be given any weight.

[*Stuart v 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.

[*First Nation of Na-Cho Nyäk Dun v Yukon \(Government of\)*, 2023 YKSC 5](#)

Lay opinion evidence is admissible if: the witness has personal knowledge of observed facts; they are in a better position than the trier of fact to draw the inference; they have the necessary experiential capacity to draw the inference; and the opinion is a compendious mode of speaking, and the witness could not as accurately, adequately and with reasonable facility describe the facts they are testifying about (*Ganges Kangro Properties Ltd v Shepard*, 2015 BCCA 522).

RULE 50 – CHAMBERS

Rule 50(1) – Applications to be heard in chambers

[Cheng v Glencore plc, 2023 YKSC 52](#)

The right to cross-examine a deponent on an affidavit filed in support of an application is not automatic. Rule 50(1), (3) and (9) of the Rules of Court provides the court with discretion to grant leave to cross-examine on affidavit evidence as the Court directs.

The Court adopted the factors set out in *Stephens v Altria Group Inc*, 2021 BCCA 396, to be considered when exercising this discretion. These factors are:

1. whether there are material facts in issue;
2. whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application; and
3. whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue.

The question is not whether there are conflicting affidavits, but whether there are conflicting material facts. As a result, the conflict may also be grounded in the pleadings.

Other factors the Court can consider are: whether the information sought is available through other means; and whether the cross-examination will produce unreasonable delay or generate unreasonable expense.

The court must, in making its determination, be sensitive to the context in which the application is brought. If the underlying application, if successful, would result in the plaintiff's claim being struck without any consideration of its merits, this may weigh in favour of granting cross-examination.

Rule 50(5) -Chambers

[Block on Block Builders Inc. v Sule, 2025 YKSC 15](#)

A reconsideration application may be brought during an appearance day appearance, and without a formal application.

For an order to be reconsidered the applicant must meet the test set out in *First West Credit Union v Bizarro*, 2024 BCSC 2047 at paras. 45-46:

- a) The applicant must not be guilty of any wilful default in respect of the nonappearance.
- b) The application to be set aside must have been made as soon as reasonably possible.
- c) The applicant must show there is a meritorious defence to the action or at least a defence worthy of investigation.

A judgement may also be set aside if a serious miscarriage of justice would result if the application were not permitted.

Rule 50(9) – Evidence on an application

[Hy's North Transportation Inc v Finlayson Minerals Corporation dba Yukon Zinc Corporation, 2016 YKSC 39](#)

Cross-examination of a deponent on an affidavit is not a matter of right, but of discretion. The court's discretion in ordering cross-examination on an affidavit must be exercised judicially, including considering 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.

[SEP v DPP, 2022 YKSC 6](#)

Parties are not entitled to cross-examine on an application, but rather, it is at the discretion of the court. Cross-examination may be beneficial in family law applications where there are material facts in dispute. However, the court should be cautious to employ tools such as cross-examination, as they entrench the parties in adversarial positions. Cross-examination should play a limited role and be permitted sparingly. Typically, cross-examination should only be permitted in circumstances where the safety or security of the child or party is in question, for example in cases of family violence or where substance abuse has an impact on the safety of the child. The court may take into account whether there are major differences on relevant facts in the affidavits filed; cross-examination is necessary to challenge facts deposed to by a party and those facts are central and critical to proper determination of the issue in question; and/or it is necessary to elicit additional relevant information that will clarify or qualify affidavit material. The court may also consider the history of the family law proceedings and whether cross-examination may serve to perpetuate negative dynamics between the parties. Ultimately whether cross-examination will be permitted will turn on the facts of the case.

Rule 50(12)(d) – Power of the court

[St Cyr v Atlin Hospital Ltd, 2020 YKSC 4](#)

The court has broad powers under R. 50(12)(d), including allowing for a petition to be converted to an action.

Rule 50(14) – Orders without notice

[KPL v RWE, 2015 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

[Legend Land Services, LLC v McNeil, 2025 YKSC 20](#)

The test for interlocutory injunctions from *RJR-MacDonald v Canada (Attorney General)*, [1994] 1 SCR 311 applies to applications made under Rule 51. In order to meet this test applicants must prove:

- a) There is a serious question to be tried;
- b) The applicant will suffer irreparable harm if the injunction is not granted; and
- c) The balance of convenience, taking into account the public interest, must favour the injunction.

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](#) (var'g [2016 YKSC 21](#) but 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 52(4) - Recovery of specific property

[Rock Ranger Inc v 16142 Yukon Inc, 2023 YKSC 58](#)

R. 52(4) codifies the principles of replevin. An order under R. 52(4) should be granted where the plaintiff shows the facts upon which it bases its claim, and these facts afford substantial grounds for the plaintiff's claim. The "substantial grounds" test for interim recovery of property requires a high degree of assurance that the plaintiff will be successful at trial. Cases with clear documentation which support the plaintiff are more likely to meet the substantial grounds test. Cases in which straight issues of credibility will determine the action are less likely to meet the test (*Gault v Cowden*, 2023 ABKB 178).

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., Northern Vision Development Limited Partnership and Lanix Property Management Ltd. as agent for the Landlord Northern Vision Development, 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.

[*Maraj v Commissioner of the Yukon Territory, 2022 YKSC 3*](#)

Rule 53(6) permits this Court to provide directions or make orders on various procedural matters, including time limits and whether an appeal may be disposed of summarily.

RULE 54 – APPLICATION FOR JUDICIAL REVIEW

[AB v Yukon \(Government of\), 2022 YKSC 69](#)

Challenges to administrative action that seek relief in the nature of declarations, injunctions or mandamus shall be brought by way of a petition. *Charter* challenges are not immune from applications for judicial review.

[Wright v Yukon Utilities Board and Yukon Energy Corporation, 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(1) – Application of Rule

[First Nation of Na-Cho Nyäk Dun v Yukon \(Government of\), 2024 YKCA 5,](#)

rev'ing in part, [2023 YKSC 5](#)

In accordance with *SA v Metro Vancouver Housing Corp*, 2019 SCC 4, declaratory relief is discretionary and may be granted where: the court has jurisdiction to hear the issue; the dispute is real and not theoretical; the party raising the issue has a genuine interest in its resolution; and the responding party has an interest in opposing the declaration being sought. Additionally, in accordance with *Newfoundland and Labrador (Attorney General) v Uashaunnaut (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4, a declaration will only be granted if it will have practical utility, meaning that it will settle a live controversy between the parties.

Rule 54(4) – Limited to single order

[Schaer v Yukon \(Government of\), 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.

[Yukon Big Game Outfitters Ltd v Yukon \(Government of\), 2021 YKSC 16](#)

If there are continuing acts or decisions, they may be reviewed together without offending the rule that an application for judicial review is limited to a single decision, as long as the acts do not involve two different parties, two different factual situations, two different types of relief sought and two different decision-making bodies.

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, rev’g 2012 YKSC 74](#)

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.

[Duncan \(Litigation Guardian of\) v Yukon \(Government of\), 2022 YKSC 32](#)

Rule 54(5) requires a determination of whether the tribunal seeking party status has been directly affected by the order sought in the application. Generally, if a third party to the dispute has its legal rights or financial position affected or is affected by the precise outcome of the matter between the main parties, they will be directly affected. The intent of this rule is to ensure all proper parties to a hearing are before the court. The Court quoted the British Columbia Court of appeal in *Global Securities Corp v British Columbia (Executive Director, Securities Commission)*, 2006 BCCA 404, at para. 60: “The standing of administrative tribunals on reviews of their own decisions must be considered contextually rather than by reference to an a priori rule”.

In the absence of a statutory direction the participation of a tribunal participation is in the court's discretion. The importance of hearing useful, important information and analysis has to be balanced against the principles of impartiality and finality (*Ontario (Energy Board) v Ontario Power Generation Inc*, 2015 SCC 44 at para. 52). Some factors for the Court to consider when exercising its discretion are: the nature of the problem, the purpose of the legislation, the tribunal's expertise, and the availability of another party to respond to the attacks on the tribunal's decision.

[*Yukon \(Government of\) v Yukon Environmental and Socio-economic Assessment Board, 2024 YKSC 42*](#)

Case management is the starting point for resolution of any issue surrounding the appropriate respondent in an application for judicial review. Its determination is a discretionary task guided by the Rules and jurisprudence. Discretion requires a consideration of numerous factors, including the nature of the interest of the entity seeking to be a respondent – is it directly affected; is it a public or private interest; is it a decision-maker; the number of other respondents and the nature of their interest; the entity’s role in the decision-making process; and the implications of the decision under review.

Rule 54(6) – Service of application for judicial review [title updated O.I.C. 2022/168]

[*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 \(Government of\), 2021 YKSC 16*](#)

The record is flexible and can change depending on the type of decision that is being reviewed, who is making the decision, the process leading up to the decision, and the grounds of judicial review. Flexibility is necessary in certain circumstances, for which reason this rule permits parties to file a supplementary record or affidavit, with leave of the court.

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.

[*Yukon Big Game Outfitters Ltd v Yukon \(Government of\)*, 2021 YKSC 16](#)

The general principles applicable to document disclosure in judicial reviews are: documents that may have affected the making of the challenged decision by the decision-maker are obviously relevant; a document is relevant if it may affect the decision the court will make on the application for judicial review; the relevance of the documents requested must necessarily be determined in relation to the grounds of review; materials that were not before the decision-maker may be considered relevant where it is alleged that the decision-maker breached procedural fairness or committed jurisdictional error; relevancy will also be determined by reference to the grounds for judicial review set out in the application but the court has discretion whether to order production; the rules of production in judicial review are to ensure that the record that was before the decision-maker is before the court; and, demands for disclosure of additional documents must be justified by evidence to show relevance, or by arguments that they fall under one of the exceptions. These principles also apply to Rules 54(19) and (25).

Rule 54(25) – Order

[*Silverfox v Yukon \(Chief Coroner\)*, 2011 YKCA 9](#), var'g [*Silverfox, et al v Chief Coroner et al*, 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*](#), receivership order var'd [*Norman Ross v Ross Mining Limited et al, 2010 YKSC 20*](#)

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 59(4) –Special Costs

[*Spurvey v Melew*, 2024 YKSC 30](#)

Contempt of court is unquestionably reprehensible conduct deserving of a special costs award. It also compensates a party forced to bring contempt proceedings to have a court order obeyed. Therefore, such an award should be concomitant to a finding of contempt (*Langford (City) v dos Reis*, 2016 BCCA 460 at para 28).

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.

[Cheng v Glencore plc, 2022 YKSC 59](#)

While the new Rules have brought in modifications to Rule 60, the general underlying principles guiding an award of costs remain the same.

[AB v Yukon \(Government of\), 2023 YKSC 34](#)

The *Rules* do not contemplate an award of interim costs. However, the court has a residual discretion to award interim costs where warranted. In public interest litigation, the test to determine whether an award of interim costs is warranted was set out by the Supreme Court of Canada in *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, at para. 40:

1. The party seeking interim costs genuinely cannot afford to pay for the litigation, and no other realistic option exists for bringing the issues to trial -- in short, the litigation would be unable to proceed if the order were not made.
2. The claim to be adjudicated is *prima facie* meritorious; that is, the claim is at least of sufficient merit that it is contrary to the interests of justice for the opportunity to pursue the case to be forfeited just because the litigant lacks financial means.
3. The issues raised transcend the individual interests of the particular litigant, are of public importance, and have not been resolved in previous cases.

[Yukon \(Government of\) v. Norcope Enterprises Ltd., 2024 YKCA 6](#)

The purpose of an award of costs is to ensure that the justice system works fairly and efficiently. Costs awards are highly discretionary and should only be set aside on appeal if the judge made an error in principle or if the award is plainly wrong (*Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKCA 16 at para. 40). There is no principled basis to conclude that a trial judge does not have the discretion, absent a specific prohibition from doing so in the Rules, to award a tariff item for the attendance of two counsel at the trial of a proceeding if it is reasonable to do so.

Rule 60(1) – How costs assessed generally

[Calandra v Henley, et al, 2008 YKSC 82](#), aff'd [Calandra v Henley, 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 [Calandra v Henley et al, 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 [Whitehorse \(City of\) v Darragh, 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](#), var’g [2016 YKSC 21](#)

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.

(Note- decided under previous wording of rule. O.I.C. 2022/168 added Rule 1.1 – Special Costs)

[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 fix costs in another manner.

Rule 60(1.1) – Special costs

[Cheng v Glencore plc, 2022 YKSC 59](#)

Special costs may be awarded when a party has acted in a reprehensible, scandalous, or outrageous manner. Special costs should be awarded sparingly and are awarded to sanction reprehensible conduct that is deserving of the court’s rebuke.

[Yukon \(Government of\) v Norcope Enterprises Ltd, 2023 YKSC 17](#)

Special costs do not automatically follow from a failed allegation of fraud or dishonesty. The purpose of special costs is “...to chastise a spectrum of misconduct that the court considers to be reprehensible or otherwise deserving of judicial rebuke” *Mayer v Osborne Contracting Ltd*, 2011 BCSC 914.

[AB v Yukon \(Government of\), 2023 YKSC 34](#)

Rule 60(1.1) specifically contemplates that the court may award special costs “when a party’s conduct is reprehensible, scandalous or outrageous and the circumstances call for a rebuke.” Special costs are punitive in nature; they have an element of deterrence. They are a tool available to the courts when they feel they need to distance themselves from a party’s misconduct.

[Community Cannabis Inc. v Cannabis Licensing Board, 2024 YKSC 60](#)

Per *Mayer v Osborne Contracting Ltd*, 2011 BCSC 914 at para. 11, examples of reprehensible conduct which could lead to special costs include:

- a) where a party pursues a meritless claim and is reckless with regard to the truth;
- b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- c) where a party has displayed “reckless indifference” by not recognizing early on that its claim was manifestly deficient;
- d) where a party made the resolution of an issue far more difficult than it should have been;
- e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
- f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;
- g) where a party brings a proceeding for an improper motive;
- h) where a party maintains unfounded allegations of fraud or dishonesty; and
- i) where a party pursues claims frivolously or without foundation.

Special costs may be awarded when allegations of fraud and dishonesty were made only on belief or speculation, or when the party has access to information that allows them to conclude the allegations were false. This is because such allegations have the potential to be very damaging for the person they were made against. However, such costs should only be awarded by the court if an “examination of all the circumstances of the case show the allegations of fraud were unwarranted and completely unfounded” (*Chaplin v Sun Life Assurance Co of Canada*, 2004 BCSC 116 at para 28).

Rule 60(1.2) – Increased costs

[Cheng v Glencore plc, 2022 YKSC 59](#)

The court may order increased costs when it is of the view that, due to unusual circumstances, an award of costs on a given scale may be inadequate or unjust.

Rule 60(1.3) – Lump sum costs

[AB v Yukon \(Government of\), 2023 YKSC 34](#)

The overriding principle in fixing lump sum costs is reasonableness. In fixing lump sum costs, courts are not following a mathematical approach of multiplying the number of hours spent by an hourly rate. Factors that may be considered in determining whether to fix lump sum costs include: that the purpose of costs is to indemnify, to a certain extent, the successful party; to sanction or discourage inappropriate behaviour by litigants in their conduct of the proceeding; and to encourage settlement (*Frost v Blake*, 2021 YKSC 62). If a proceeding is a public interest matter, then that may also be a relevant consideration in fixing lump sum costs. As well, the applicable tariff and appropriate scale on which party and party costs would be assessed provides some guidance in fixing lump sum costs.

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.

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 valuers 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(6) - Judge to assess costs

[Sidhu v Canada \(Attorney General\), 2023 YKSC 33](#)

Rule 60(6) permits the court to order costs for a particular issue or part of a proceeding.

The purpose of increased costs is to indemnify the party seeking costs, not to punish the party paying costs. A finding of misconduct is not necessary to award increased costs. Factors that may support an award of increased costs include: positions or behaviour that add complexity to the litigation; the importance of the proceedings to a party; a party's misbehaviour which adds expenses to the party claiming costs; and the extent of the disparity between the Scale B costs calculation and the actual legal fees incurred (*Globalnet Management Solutions Inc v Aviva Insurance Company*, 2020 BCSC 1361).

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. As a general rule substantial success occurs when a party succeeds on 75% of the matters in dispute (*Fotheringham v Fotheringham*, 2001 BCSC).

[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 from the general rule that costs follow the event.

[Frost v Blake, 2021 YKSC 62](#)

Unless the court orders otherwise, costs of, and incidental to a proceeding, follow the event (subject to subrule 12 when applicable). The traditional rationale for costs following the event are:

1. the compensatory purpose: based on a belief that the case has a winner and a loser, and out of fairness to the winner the loser pays some of the winner's costs;
2. the punitive purpose: to sanction or discourage inappropriate behaviour by litigants in their conduct of the proceeding; and
3. to encourage settlement.

Under the second purpose a successful party may be denied costs because of their misconduct.

In public interest litigation, the compensatory purpose of the costs rules may be modified because of the benefit to the public of the resolution of the issues raised in the litigation, or because of access to justice considerations.

[*North America Construction \(1993\) Ltd v Yukon Energy Corporation, 2022 YKSC 65*](#)

A party who substantially succeeds on the matters in dispute is entitled to costs unless otherwise ordered. Substantial success is measured objectively, considering all the matters in dispute, their weight or importance to the parties and the relative success or failure of the parties with respect to those matters. As a general rule, substantial success occurs when a party succeeds on 75% of the matters in dispute (*Fotheringham v Fotheringham*, 2001 BCSC, adopted in *Kareway Homes Ltd v 37889 Yukon Inc*, 2012 YKSC 28). The court may also consider if there are reasons to order that the winning party be deprived of costs. Substantial success does not mean the court has to conduct a detailed mathematical examination of the matters in dispute and assign a percentage to each matter. Substantial success is meant to serve as a rough guide when all the matters in dispute are considered globally (*Fotheringham*).

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.

[*Wright v Yukon \(Director of Public Safety and Investigations\), 2022 YKSC 38*](#)

It is preferable to have one assessment of costs at the end of the litigation, so that all aspects of the litigation may be considered. However, the discrete nature of an application that is severable from the remaining claims may justify an order for costs in any event in the cause.

Rule 60(13) - When costs payable

[*Wright v Yukon \(Director of Public Safety and Investigations\), 2022 YKSC 38*](#)

The general rule is that costs that follow the event are not payable forthwith unless otherwise ordered by the court. Circumstances where costs may be ordered to be paid forthwith are: where the matter is not likely to process to trial;

or the party paying costs has engaged in unnecessary and unreasonable conduct.

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](#), var'g [2012 YKSC 59](#)

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(27) – Security for costs [subrule number updated O.I.C. 2022/168]

[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(57) – Search of files and (58) - Search of exhibits [subrule numbers updated O.I.C. 2022/168]

[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(37) – Confidentiality [subrule number updated O.I.C. 2022/168]

[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. (decided under previous wording of rule. O.I.C. 2022/168 removed the word “grossly”).

[North America Construction \(1993\) Ltd v Yukon Energy Corporation, 2022 YKSC 65](#)

Three conditions must be met for increased costs to be awarded:

1. unusual circumstances;
2. unusual circumstances must result in an award of costs that are grossly inadequate or unjust; and
3. the increase cannot be applied only because there is a difference between the actual legal expenses and the scale costs.

Misconduct of a party may justify an award of increased costs, but punishment of misconduct is not the sole purpose of s. 2(e) of Appendix B. Increased costs can

also be used to indemnify a party against high costs caused by unusual circumstances such as unnecessarily delayed or lengthened trial. Section 2(e) of Appendix B provides an alternative to special costs. Unusual circumstances is a lower threshold and does not necessarily require misconduct.

[*Sidhu v Canada \(Attorney General\)*, 2023 YKSC 33](#)

The purpose of increased costs is to indemnify the party seeking costs, not to punish the party paying costs. A finding of misconduct is not necessary to award increased costs. Factors that may support an award of increased costs include: positions or behaviour that add complexity to the litigation; the importance of the proceedings to a party; a party's misbehaviour which adds expenses to the party claiming costs; and the extent of the disparity between the Scale B costs calculation and the actual legal fees incurred (*Globalnet Management Solutions Inc v Aviva Insurance Company*, 2020 BCSC 1361).

10- Transitional- orders, settlements and costs before the coming into force of updated Rules

[*Cheng v Glencore plc*, 2022 YKSC 59](#)

The new *Rules* apply to a determination of costs made after the coming into force of the new *Rules* even if the costs application was made and/or heard prior to October 31, 2022.

[*AB v Yukon \(Government of\)*, 2023 YKSC 34](#)

The transitional provisions are clear: Appendix B of the new *Rules* applies to costs orders made on or after October 31, 2022. Appendix B of the previous *Rules* of Court continues to apply to costs orders made prior to October 31, 2022.

11 - Transitional- orders, settlements and costs on or after coming into force of updated Rules

[*Cheng v Glencore plc*, 2022 YKSC 59](#)

The new *Rules* apply to a determination of costs made after the coming into force of the new *Rules* even if the costs application was made and/or heard prior to October 31, 2022.

[*AB v Yukon \(Government of\)*, 2023 YKSC 34](#)

The transitional provisions are clear, Appendix B of the new *Rules* applies to costs orders made on or after October 31, 2022. Appendix B of the previous *Rules* of Court continues to apply to costs orders made prior to October 31, 2022.

3 – Schedule 3 [repealed by O.I.C. 2022/168]

[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).

[Maraj v Commissioner of the Yukon Territory, 2022 YKSC 40](#)

An increased fixed costs award is appropriate to award in a situation where there is an application to strike an entire claim based on a technicality, and the merits of the technicality are questionable.

APPENDIX C – FEES PAYABLE TO TERRITORIAL TREASURER

SCHEDULE 1

S1(1) – Indigency status

[Beaugie v Yukon Medical Council, 2012 YKSC 96](#)

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

[R v Smith, 2021 YKSC 35](#)

The purpose of indigency status has been interpreted by courts to ensure that those with arguable cases and inadequate finances have access to justice.

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.”

[Boles v Yukon Residential Tenancies Office, 2025 YKSC 46](#)

When considering whether an applicant is indigent courts should not be “overly rigorous” but do need to recognize that granting such an application “may be affording an unfair advantage to that litigant vis-à-vis the other party” (*Tan v Yukon (Government of)*, 2005 YKSC 19 at para 8). Before status will be granted, applicants also have to establish that they have a “reasonable claim” (S1(1)(a)) which is not “scandalous, frivolous, or vexatious” (S1(1)(b)). The threshold for both is low and will be satisfied if the applicant can prove they have a chance of succeeding. However, if the claim can be considered an abuse of process it will be denied. Abuse of process cases are those which would clearly be unjust to one party, or which would bring the administration of justice into disrepute.