

SUPREME COURT OF YUKON

Citation: *[BC] v Director of Yukon
Maintenance Enforcement Program,*
2026 YKSC 60

Date: 20260724
S.C. No.: 26-B0035
Registry: Whitehorse

BETWEEN

[B.C.]

PLAINTIFF

AND

Director of Yukon Maintenance Enforcement Program

DEFENDANT

Corrected Decision: The citation number of the decision was corrected and change was made on July 24, 2026.

Before Chief Justice S.M. Duncan

Endorsement

[1] The proposed plaintiff in this matter, [B.C.], has brought a requisition for an order without notice to the Court Registry. She seeks a declaration of indigent status for this proceeding, resulting in a waiver of court filing fees. Her proposed action is a claim against the Director of the Yukon Maintenance Enforcement Program (MEP) for a stay of enforcement for no less than two years of three orders for child support made against her by courts in Ontario and British Columbia in 2010 and 2017. The fee to file a statement of claim is \$140. She also seeks an order without notice for a stay of enforcement actions on an interim basis until the hearing date.

Indigent status

[2] There is no test for indigent status in the Supreme Court of Yukon *Rules of Court (Rules)*. Courts have found the purpose of granting indigent status is to ensure that

those with arguable cases, but inadequate finances, have access to justice (*Trautmann v Baker*, [1997] BCJ 452 (BCCA) at para. 4). The Supreme Court of Yukon in a number of decisions (*Tan v Yukon (Government of)*, 2005 YKSC 19 (*Tan*), *Huggard v Huggard*, 2005 YKSC 23, *R v Smith*, 2021 YKSC 35 (*Smith*), and *Boles v Yukon Residential Tenancies Office*, 2025 YKSC 46 (*Boles*)) has adopted the meaning of the word indigent set out in the leading case of *National Sanitarium Assn. v Mattawa (Town)*, [1925] 2 DLR 491 (ONCA) “a person possessed of some means but such scanty means that he is needy or poor.” The Court in *Tan* added that the term indigent “means a person who is not penniless, but who has such few resources that they may be considered needy.” In that case, the Court also noted that “while the courts should not be ‘overly rigorous’ in approaching such application, it must be recognized that giving a litigant indigent status may be affording an unfair advantage to that litigant vis-à-vis the other party.”

[3] If a finding of indigency is made, the court may order that no court filing fees are payable unless the claim or defence is sufficiently meritorious and not otherwise an abuse of process.

[4] In this case, the first step is to decide whether [B.C.] is indigent. I have reviewed the financial statements she has provided. Her expected annual income for the child support guidelines table amount is \$49,068. She has a spouse and they share two children. Additional social assistance payments are received by her for other members of the household in the amount of \$30,492. This is deducted from her income for the purpose of the child support guidelines table amount but still constitutes income for the household. Her income is from Social Assistance and the Child Tax Credit.

[5] In her affidavit, [B.C.] describes her disability, the medical condition of her wife, and the diagnoses of their children. She is concerned about MEP's cancellation of her driver's licence as part of their enforcement action, because she says she is the only reliable and stable driver in the family and needs to provide transportation to medical appointments and emergencies for her children.

[6] In her monthly expenses form, there are some non-negotiable basic living expenses such as groceries, rent, water and hydro, and telephone. However, some expenses she has listed are discretionary – meals outside the home (\$60), entertainment and recreation (\$60), tobacco (\$80). Clothing at \$200 a month, every month, seems high.

[7] In the other cases where the Court found the applicants to be indigent, their income was much lower than that of [B.C.] (*Smith*- \$12,000 per year; *Boles* – less than \$100 for living expenses and she was homeless; *Tan*- monthly income of \$800 before taxes/\$750 after taxes for an annual income of approximately \$9000). Although none of these individuals had dependants, even if their income were grossed up for comparison purposes, they would all still have less income than [B.C].

[8] I find as a result that although [B.C.] and her family likely experience financial stress and are living a very basic life, she does not meet the test of indigency as set out in the caselaw.

[9] Given this finding, it is not necessary for me to proceed to the next step of determining whether the claim is meritorious.

[10] I deny the requisition for an order of indigent status.

Interim stay without notice

[11] Orders without notice are exceptional. As stated in *Rule* 50(14) “If the nature of the application or the circumstances render service of a petition or application impracticable or unnecessary, or in case of urgency, the court may make an order without notice.”

[12] There are no circumstances in this case that render service of a statement of claim on MEP impracticable or unnecessary.

[13] I recognize [B.C.] is of the view that being without a driver’s licence is urgent, but it does not meet the level of urgency normally reserved for granting orders without notice. Examples where orders without notice have been granted are where children are being withheld from a custodial parent in violation of a court order, or where an individual is not able to be served with court documents and a substitutional service order is needed.

[14] If [B.C.] seeks an interim stay of all enforcement actions, it must be done on notice to MEP, so that the Court may hear their submissions before deciding the matter.

DUNCAN C.J.