

Changing a Divorce Order When Other Party Resides Outside Yukon: Step-by-Step

Family Law Self-Help Guide



©iStockphoto.com

Yukon Government Legal Information Resources

Family Law Information Centre

867-456-6721, or toll free 1-800-661-0408 ext. 6721, www.yukonflic.ca

Court Registry

867-667-5441, or toll-free 1-800-661-0408 ext. 5441

Law Library

867-667-3086, or toll-free 1-800-661-0408 ext. 3086

Maintenance Enforcement Program (Information Line)

867-667-5437, or toll-free 1-800-661-0408 ext. 5437, www.yukonmep.ca

Sheriff's Office

867-667-5365, or toll-free 1-800-661-0408 ext. 5365

Non-Government Legal Information Resources

The Law Line (Yukon Public Legal Education Association – YPLEA)

867-668-5297, or toll free 1-800-668-5297, www.yplea.com

Legal Aid (Yukon Legal Services Society – YLSS)

867-667-5210, or toll free 1-800-661-0408 ext. 5210, www.legalaid.yk.ca

Lawyer Referral Service (Law Society of Yukon)

867-668-4231, www.lawsocietyyukon.com

Family Support Services

Many Rivers Counseling and Support Services

867-667-2970, call collect from outside of Whitehorse, www.manyrivers.yk.ca

Victoria Faulkner Women's Centre

867-667-2693, www.vfwc.net

Family Violence Prevention Unit

867-667-3581, or toll free 1-800-661-0408 ext. 3581, www.justice.gov.yk.ca/prog/cor/vs

Kids Help Line

1-800-668-6868

Changing a Divorce Order When Other Party Resides Outside Yukon: Step-by-Step



IMPORTANT!

This guide has been produced by the Yukon Department of Justice, Court Services Branch, with financial assistance from Justice Canada. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication of March 2014.

Changing a Divorce Order

A court Order, or simply an "Order", is a decision made by a judge that the people named in it must follow. A "Divorce Order" as referred to in this guide, is a type of Order made under the authority of the *Divorce Act* (Canada), dealing with issues such as spousal support, child support, custody, access and divorce. This guide provides step-by-step instructions for both applying to and responding to an application to change a Divorce Order at the Supreme Court of Yukon.

Basic Information on Changing Divorce Orders

Changing a court order is often called "varying" an Order. Either party may apply to change (vary) a Divorce Order and both parties have the right to agree with the other's application or to oppose it. When you are applying to change an existing Order, you will have to provide evidence that your situation is now significantly different from when the Order was made.

When you are responding to an application to change a Divorce Order you will have to provide evidence that supports your case. The judge will make a decision based on the information (evidence) provided by both parties and the laws that apply to your situation.

Note: A lawyer can help you to determine if you have a strong enough reason to make an application to vary, or agree or oppose the application, what evidence you need and the possible outcomes of your application.

Whenever possible, work together to try to come to an agreement before going to court. You may not be able to agree on every issue, and can still go to court to ask a judge to decide about the things you can't agree on. When you have settled as much as you can with the other party outside of court, you are more likely to get an Order that will work in the best interests of your changing family.

The steps in this self-help guide are generally appropriate for situations where the parties do not agree.

If at any step in your family law proceeding you and the other party come to an agreement, you can apply for a Consent Order. Information and instructions for requesting a Consent Order can be found in the **Family Law Self-Help Guide: Consent Orders** available at the **Family Law Information Centre**.

If both parties reside in different provinces or territories in Canada, there are three ways to apply to vary a Divorce Order:

1. Both parties agree to the changes and file an application by consent, asking the court to grant a "Consent Order";
2. Both parties agree to go to court in the Canadian province or territory where one of them resides; or
3. Either party can make application to a court, in the province or territory where her or she resides, under the *Divorce Act* (Canada), asking that court to grant an order called a Provisional Order. A Provisional Order is then subsequently confirmed, or brought into force, by a final order called a "Confirmation Order", by a court in province or territory where the other party resides.

It is the process described in situation 3 that is the focus of this guide. This process is applicable to situations where one party lives in Yukon, the other party lives in another province or territory, and the parties are not in agreement.

PROCESS OVERVIEW:

1. The applicant files documents in the province/territory where he/she resides and a hearing is held with the applicant. The Court makes Provisional Order. The Provisional Order and all evidence filed in support of the application, is then sent to the province or territory where the other party resides. **A Provisional Order has no legal effect until it has been confirmed.**
2. A hearing to confirm the Provisional Order is scheduled in the province/territory where the other party resides and this party is advised of the hearing and given copies of the Provisional Order and evidence from the court that made the Provisional Order. This party files their evidence, the hearing is held and a Confirmation Order is made that either confirms, varies or denies the Provisional Order.

Changing (Varying) a Divorce Order: Step-by-step

Step 1: Research the laws and rules that apply to your divorce matter

Before you begin, you should research the laws and rules that apply to your situation. Read the other publications produced by the Department of Justice, Court Services Branch that apply to your family law matter, as well as the Supreme Court of Yukon **Rule 63: Divorce and Family Law and Rule 63A: Financial Disclosure**. (Rules can be found on the Supreme Court of Yukon website at www.yukoncourts.ca). You can also read the *Divorce Act* (Canada). You should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

Other publications produced by the Yukon Department of Justice, Court Services Branch, provide more information on family law that can help you understand your legal issue and court procedures. Contact the **Family Law Information Centre** at 867-456-6721, toll free 1-800-661-0408 ext 6721, or visit their website at www.yukonflic.ca for more information and links to publications.

Step 2: Collect your supporting documents

Make sure that you have a copy of the original Order. If you do not have a copy, contact the Court Registry either in person at courthouse in Whitehorse or by calling 867-667-5937, toll free 1-800-661-0408 ext. 5937.

If you are required to submit a **Financial Statement - Form 94**, you will need to provide documents to support the income, debt, special expenses and assets you are reporting. You will also need to collect any other documents that you will be submitting as evidence.

Step 3: Prepare and complete forms

To apply to change a Divorce Order, or respond to an application to change a Divorce Order, you will need to fill out forms to submit to the Court Registry with information specific to your case. Supreme Court forms can be found at www.yukoncourts.ca under Supreme Court, Yukon Rules and Forms.

The staff at the **Family Law Information Centre** can help you to complete your Supreme Court forms either over the telephone or at their office. They cannot provide legal advice or tell you what to write in your court forms, but they can provide guidance on the rules for completing the forms and provide access to a computer.

Many of the forms come with instructions throughout the body of the document on how to fill them out. You should not delete the instructions. If you are removing any content from a form that does not apply to your situation, do not change or reset the numbering or lettering for any other paragraph.

IMPORTANT! When preparing your documents, remember that family law issues are adult problems. Do not involve your children when drafting affidavits or reviewing court documents.

Generally, the forms you will need to file when **applying** to change a Divorce Order are:

- A) Requisition – Form 4** (if required)
- B) Notice of Application - Form 52**
- C) Notice of Hearing - Form 103**
- D) Affidavit - Form 59**
- E) Financial Statement - Form 94** (if required under Rule 63A)

Generally, the forms you will need to file when **responding** to an application to change a Divorce Order are:

- B) Affidavit - Form 59**
- C) Financial Statement - Form 94** (if required under Rule 63A)
- F) Notice of Self-representation – Form 14**

Completing your forms:

Note: The Supreme Court File Number assigned to the original application does not change. Record the number on all your forms.

A) Requisition – Form 4 (if required)

This form is required to commence your proceeding if a Yukon Supreme Court action does not exist. If the divorce originated in Yukon, or a previous application was made in Yukon regarding your divorce matter, and a Supreme Court file exists, you are not required to use this form. If this is the case, you must complete forms B through E (listed above), using the same file number and names as stated in the original file.

B) Notice of Application - Form 52

This form lists what orders you are asking the Court to grant, the laws (statutes and regulations) you will be relying on (*Divorce Act* (Canada), Rules of Court), and lists the affidavits you are filing with the Notice of Application - Form 52.

Note: As a Transcript of the court proceedings of the application will be required, you should state on the Notice of Application - Form 52 that a Provisional Order is being requested.

C) Notice of Hearing - Form 103

This form sets the date and time of the court hearing. Contact the clerk of the Supreme Court at 867-667-5937 or toll free 1-800-661-0408 ext. 5937 to obtain a hearing date to enter into the form.

D) Affidavit - Form 59

An Affidavit is the document that states any information that you want the judge to know. Filing an Affidavit is a way to give written evidence to the court. You can file additional affidavits as long as they are filed within reasonable time before the hearing. Your Affidavit and all exhibits must be sworn. (See **Step 5: Have your Financial Statement and Affidavits notarized**). Do not sign your document until you are having it sworn before a Notary Public or other qualified person!

The Affidavit is a very important document because it contains most of your evidence. There are special rules for preparing an Affidavit. For example, if you have more than one supporting document (exhibit) to attach to any Affidavit, you must place consecutively numbered tabs on the first page of each exhibit. Also, each page of an individual exhibit must be numbered consecutively. For more information on rules for Affidavits, see **Rule 49: Affidavits**.

The Yukon Department of Justice has published an information sheet entitled **Preparing an Affidavit (Family Law)** to help you complete an Affidavit.

AN IMPORTANT CAUTION: Be sure that your evidence is complete, accurate, clear and relevant to your application. You must, in all cases, tell the truth. In your Affidavit you can only say things that you know personally to be true or things that you believe to be true (but you must give a reason for that belief). There are serious legal consequences for not telling the truth in a sworn document. The other party or other party's lawyer can cross-examine you about anything you include in your Affidavit.

E) Financial Statement - Form 94 (if required under Rule 63A)

This form is used to report income, debt, special expenses and assets for calculating child support, spousal support, and division of property. Additional information on the Rules of Court for financial disclosure can be found in Rule 63A. You may or may not be required to complete this form depending on your situation. However, a judge may request that you file the form even if you are not required to under Rule 63A. The form contains very specific instructions for filling it out. Only complete the sections that are right for your situation. Your completed Financial Statement and supporting documents must be sworn. Do not sign your document until you take an oath or make an affirmation before a Notary Public or other qualified person. (See **Step 5: Have your Financial Statement and Affidavits notarized**).

Note: Each page of the supporting documents that you are filing with the Financial Statement must be numbered consecutively and attached to the form.

F) Notice of self-representation – Form 14

This form is required to advise the Court that you will be representing yourself and informs the Court of your address for delivery and contact information.

Step 4: Make copies of all your forms and documents

You will need two sets of your forms to submit for filing. The original filed document will always remain on the court file and the other set of filed copies will be returned to you to keep for your own records.

Step 5: Have your Financial Statement and Affidavits notarized

The Financial Statement - Form 94 and all Affidavits must be sworn. Bring all copies of your documents and proof of identification with you to be sworn by a Notary Public or someone else who is allowed to hear an oath, such as a lawyer, justice of the peace or a commissioner of oaths. Some government staff members are Notaries Public, including those working in the Court Registry, Sheriff's Office and the **Family Law Information Centre**.

Step 6: File your forms with the Supreme Court

When you mail or bring your forms to the Court Registry for filing, the clerk of the Supreme Court will review your forms before accepting them. The clerk will look to see that you have followed the Rules of Court but will not provide advice or comment on the content of your documents. Your forms will be stamped by the clerk with the date that they were filed.

When you file forms with the Court Registry, fees generally apply. You can find a list of fees online at www.yukoncourts.ca, Supreme Court, as "Appendix C: Fees" on the Yukon Rules and Forms page. You can also contact the **Family Law Information Centre** to find out how much money you will need to pay. If you send your forms by mail, you must include the filing fees or your forms will be returned. The Court Registry will accept payment by cash, cheque, debit card (if you come in person to the office in Whitehorse) or by Visa or MasterCard.

Step 7: Go to court for the hearing of the application

Court Services has published **Representing Yourself: A guide to representing yourself in the Yukon** to help you to prepare for court. You can pick up a copy at the **Family Law Information Centre**, the Court Registry or download the guide online from the Court Services page of the Justice website at www.justice.gov.yk.ca.

Bring all your files and supporting documents, as well as a pen and paper with you to court. Unless the judge specifically asks you to, do not bring your children with you. On the day of court, check the Chambers List to find your courtroom number. These lists are posted in the atrium of the Law Courts Building. The list is posted just outside the Court Registry office. If you are uncertain about where to go, ask the Court Registry staff to confirm the courtroom number.

Your last name will appear on the Chambers list. Your name will be called when it is time for your application to be heard. Be sure to be in court at the start time of the list. Even if your name is further down the list, you may be called earlier if hearings before yours proceed quickly or are cancelled.

You will be asked to present your case to the Court. The only facts that you can discuss in court are the ones that are included in your Affidavits or Affidavits from the other party. Be prepared to answer questions from the judge.

NOTE: In a family law court proceeding, where child support is at issue, the Court will first determine a person's income level and then set the amount of child support payable based on that person's level of income and what is in the best interests of the child or children involved. If a person does not provide sufficient financial information to allow the Court to make this two-step determination, the Court may impute income and then set child support payable based on this amount.

The judge will refer to the *Federal Child Support Guidelines* (the "*Guidelines*") when making a decision about child support. The *Guidelines*, adopted under the *Divorce Act* (Canada), provide rules for how child support is calculated as well as tables setting out basic levels of child support for children across Canada. (For more information about the *Guidelines* contact the **Family Law Information Centre**).

Step 8: Prepare and submit the Order for filing

After a judge makes a decision, you must prepare an **Order - Form 44**, unless the judge orders someone else (e.g. court clerk) to do it. The Order must be titled either as "Provisional Order" or "Confirmation Order". If it is a Provisional Order, it must state within the body: "this Provisional Order has no legal effect until it is confirmed in a proceeding under section 19 of the *Divorce Act* (Canada)".

To prepare the order you can review your notes, or the notes of a person that you may have brought with you to court, or you can purchase a copy of the court clerk's notes from the Court Registry.

Besides other details set out by the judge in your particular case, if your Order provides for child support, the *Guidelines* say that such Orders must include:

- the names of the people paying and receiving child support;
- the names and birth dates of the children to whom the Order relates;
- the income of people whose income is used to determine the amount of the child support;

- the *Guidelines* table amount determined for the number of children to whom the order relates;
- the amount determined for a child the age of majority or over;
- the particulars of expenses, the child to whom the expense relates, the amount of the expense or, where the expense cannot be determined, the proportion to be paid in relation to the expense; and
- the date on which the lump sum or first payment is payable and the day of the month or other time when subsequent payments are to be made.

You must sign the Order, unless the judge instructs otherwise. Signing the Order does not mean that you agree with it. It means that you agree that the terms of the Order as written are substantially the same as what the judge said in court. For more information on Orders, read **Rule 43: Orders**.

Finally, take the original and two copies of the Order to the Court Registry for filing. If the Order is filed, the copies will be returned to you but the original Order will always stay on the court file. Sometimes the Court Registry will ask that changes be made to your Order before it can be filed. When that happens, you will need to make the changes and submit a new signed original with copies.

If you are the Applicant, the court clerk will ask you to complete a “Statement of Information” form which includes contact information about the other party. Once you have completed and returned this form to the clerk, the clerk will forward it and the evidence (usually Affidavit(s) that was filed in support of the application), Transcript, Provisional Order, and all other filed documents to the Attorney General who will forward it to the province or territory where the other party resides.

Step 9: Wait for a response from the Court in the other province or territory

When Yukon court documents are received in the other province or territory, a court date is scheduled. The other party is served with the documents and is given time to submit their evidence to the court. The other party can oppose (fight or counter) your Notice of Application - Form 52 by filing responding forms. A hearing is held and the other party may appear at the hearing.

At the hearing, all evidence is reviewed and an Order is made that either confirms the Provisional Order (called a Confirmation Order) or another Order is made. The other court will send this Order to the Yukon court that made the Provisional Order, and they will forward it to you.

Step 10: Prepare responding Affidavits

If, after your hearing, the Court requires more information, you can file an **Affidavit - Form 59**. After you have completed your Affidavit, you will have to repeat Steps 3-8.

The other party may, in turn, respond to your response. This process can be repeated.

Note: It is important to remember that the judge will make his or her decision based upon the evidence. Responding to documents filed with the Court is a way to present additional information as evidence, not a means to “argue” with the other party.

NOTES

NOTES

NOTES

© 2014 Government of Yukon

ISBN 978-1-55362-677-0

For more information, or to obtain copies of these publications, please contact:

Government of Yukon, Department of Justice

Court Services

Andrew A. Philipsen Law Centre

Second Avenue (between Wood Street and Jarvis Street)

Box 2703, Whitehorse, Yukon Y1A 2C6

www.justice.gov.yk.ca

Funding provided by Justice Canada