

Applying to Change a Family Order

Family Law Self-Help Guide



3

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

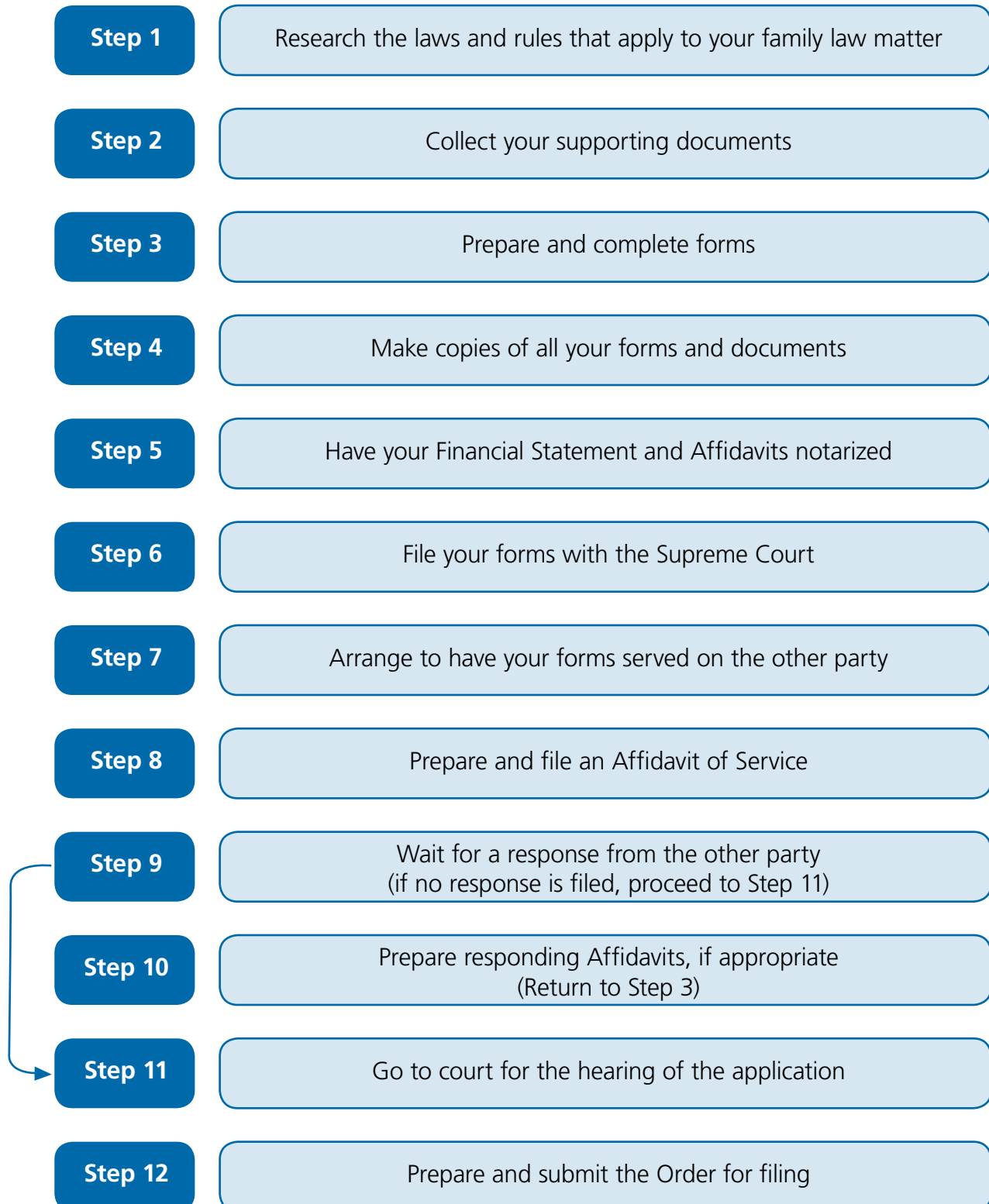
Family Violence Prevention Unit

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

Applying to Change a Family Order : 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 2009.

At the time of publication, the Yukon *Family Property and Support Act* had not yet been updated to include same-sex relationships. However, the Supreme Court of Yukon changed the definition of marriage to mean "the voluntary union for life of two persons to the exclusion of all others" in 2004, (*Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)* 2004 YKSC 54). The terms "married" and "common-law" throughout the self-help guides refer to either opposite sex or same-sex unions.

At the time of publication of this guide, the *Child and Family Services Act*, the successor to the *Children's Act*, had not been proclaimed. Following proclamation, references in this guide to the *Children's Act* can be taken to refer to the new legislation.

Applying to Change a Family Order

A court order is a decision made by a judge that the people named in it must follow. This guide provides step-by-step instructions for applying to the Supreme Court of Yukon to change a court order that deals with matters that are covered by the *Family Property and Support Act*, the *Children's Act* or the *Divorce Act* (Canada), such as divorce, spousal support and child support, custody and access.

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

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. Additional tools, information and publications on family law and child support can be found on the **Family Law Information Centre** website at www.yukonflic.ca.

Basic Information on Changing a Family Order

Changing an order is often called “varying” an order, and an order that has been changed is often called a “Variation Order.” Either party may apply to change a family order, and both parties have the right to agree with the other’s application or to oppose it. When you are applying to change (vary) an existing order, you will have to provide evidence that your situation is now significantly different from when the order was made. The judge will make a decision based on the information (evidence) provided by both parties and the laws that apply to your situation, including the Child Support Guidelines if children are involved.

A lawyer can help you to determine if you have a strong enough reason to make an application to vary, 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.

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**.

Child Support

Child support is a child’s right and a parent’s responsibility under the law. If children are involved in your family law matter, understand the law before you begin. The federal **Child Support Guidelines** came into effect in May 1997 as regulations under the Canada *Divorce Act*. The Yukon introduced the **Yukon Child Support Guidelines**, a regulation under the Yukon’s *Family Property and Support Act*, in April 2000. Your situation determines which guidelines apply to you. The judge will refer to the federal or territorial Child Support Guidelines when making a decision about child support. The Child Support Guidelines are designed to reduce conflict about child support and to protect the best interests of children by making sure that child support is fair, predictable and consistent.

At some point in time after an order is made, a parent’s financial situation may change so that the support amount is no longer fair. This can happen when the paying parent’s income increases or decreases, or when other circumstances cause a financial hardship (called an “undue” hardship) that either makes it difficult to pay the ordered amount or to raise a child on the ordered amount. When this happens, either parent can apply to change the order.

In a 2006 decision, the Supreme Court of Canada said that it is the responsibility of the paying parent to report increases in income and make child support payments that reflect his or her income amount. If a paying parent's income increases and his or her support payments do not increase to reflect that income, a judge may order a retroactive award.

Inter-jurisdictional Support Orders

If the other party lives outside the Yukon, you may be able to make an application for an **Inter-jurisdictional Support Order (ISO)** to deal with child support only. Inter-jurisdictional Support Orders enable a person living in the Yukon to obtain or vary a support order when the other person involved lives outside the Yukon. This process can result in a support or variation order being made in the other person's jurisdiction without having a court hearing in the Yukon. This process does not apply to support orders under the federal *Divorce Act*, or where both parties live in the Yukon. ISO cannot deal with custody, access or arrears (amount ordered that has not been paid).

In the Yukon, ISO applications are received and transmitted by the Maintenance Enforcement Program. To find out more about Inter-jurisdictional Support Orders, contact the MEPLine at 867-667-5437 or toll free in Yukon at 877-617-5347, or visit their website at www.yukonmep.ca.

Applying to Change (Vary) a Family Order: Step-by-step

Step 1: Research the laws and rules that apply to your family 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 *Family Property and Support Act*, the *Children's Act*, and the *Divorce Act* (Canada). You should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

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 the office in the courthouse in Whitehorse or by calling 867-667-5937, toll free 1-800-661-0408 ext. 5937 to get one. A photocopying fee will apply.

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 family 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 in Microsoft Word format 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 on one of the workstations 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 help with using Microsoft Word.

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 in drafting affidavits or reviewing court documents.

Generally, the forms you will need to file when applying to change a family order are:

- A) **Notice of Application - Form 52**
- B) **Notice of Hearing - Form 103**
- C) **Affidavit - Form 59**
- D) **Financial Statement - Form 94** (if required under Rule 63A)
- E) **Notice to File a Financial Statement - Form 95** (if required under Rule 63A)

Completing your forms:

The Supreme Court file number assigned to the original application does not change. Record the number on all your forms.

A) **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, and lists the affidavits you are filing with the Notice of Application - Form 52.

The table below has been provided to help you to identify the laws that apply to your situation.

Situation	LEGISLATION		
	Canada <i>Divorce Act</i>	Yukon <i>Family Property and Support Act</i>	Yukon <i>Children's Act</i>
Divorcing			
Married without children	divorce, spousal support	property	
Married with children	divorce, spousal and child support, access	property	guardianship
Separating			
Married without children		property, spousal support	
Married with children		property, spousal and child support	custody, access, guardianship
Common-law without children		spousal support	
Common-law with children		spousal and child support	custody, access, guardianship

B) Notice of Hearing - Form 103

This form informs the other party of the date and time of the court hearing. Contact the clerk of the Supreme Court at 867-667-5937, toll free 1-800-661-0408 ext. 5937, or the Family Law Information Centre at 867-456-6721 or 1-800-661-0408 ext. 6721 to obtain a hearing date to enter into the form. If possible, confirm that the other party will be available on that date.

C) 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 at any time throughout your proceeding as long as the other party has been served with reasonable notice before a 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 the Notary Public or other qualified person!

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.

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 affidavit is a very important document because it contains most of your evidence. There are special rules for preparing an affidavit. The Yukon Department of Justice has published an information sheet titled **Preparing an Affidavit (Family Law)** to help you complete an Affidavit – Form 59.

D) 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 order 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. (See **Step 5: Have your Financial Statement and Affidavits notarized**). Do not sign your document until you are having it sworn before the Notary Public or other qualified person!

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

E) Notice to File a Financial Statement - Form 95 (if required under Rule 63A)

If, under Rule 63A, you are entitled to receive Financial Statement - Form 94 from the other party, you must file and serve a Notice to File a Financial Statement - Form 95 along with the pleading or application materials.

Step 4: Make copies of all your forms and documents

You will need four sets of your forms to submit for filing. The original filed document will always remain on the court file and the three sets of filed copies will be returned to you. Keep one set for your own records, serve one set on the other party and attach one set to the Affidavit of Service.

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 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** at 867-456-5721 or toll free 1-800-661-0408 ext. 6721 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: Arrange to have your filed forms served on the other party

According to the Rules of Court, none of the forms for applying to change a family order are required to be served on the other party by someone other than the applicant (person applying for the order). However, it is strongly recommended that you have someone else serve your documents for you. If you deliver the documents yourself, there may be a greater risk of conflict between you and the other party.

Whenever you file documents or forms with the court, you always have to provide the other party with a copy. The Sheriff's Office (867-667-5451 or toll free 1-800-661-0408, ext. 5451) can provide a list of process servers, or they may be able to serve your documents for you. A fee is usually charged for this service.

Step 8: Prepare and file an Affidavit of Service

The person who serves your documents must sign and swear an **Affidavit of Service - Form 7** for filing with the court. Depending on who you choose to serve your documents, you may have to prepare an Affidavit of Service for the server. Once completed, a copy of all documents served will be attached as exhibits to the Affidavit of Service. The Affidavit of Service must be sworn in the same way your other affidavits and financial statement were sworn (see **Step 5**). Be sure to make a copy of the completed Affidavit of Service before filing it with the court. You do not have to provide the other party with the Affidavit of Service.

It is important to file the Affidavit of Service with the court registry before the court date so that if the other party does not show up on the court date, the judge has proof that he or she was notified about it.

Step 9: Wait for a response from the other party

The other party can oppose (fight or counter) your Notice of Application - Form 52 by filing responding forms. The amount of time the other party is given to respond is set out in the Notice of Application form you completed. Follow the instructions provided to the other party set out in the forms to figure out how much time to allow for a response.

If no Appearance, Statement of Defence (Family Law) or Counterclaim (Family Law) is filed, the family law proceeding can proceed on an uncontested basis. When no response is filed, proceed to Step 11.

Step 10: Prepare responding Affidavits

If, after you receive responding forms from the other party, there is more information that you would like the court to know, you can file your own **Response - Form 11** along with an **Affidavit - Form 59**. After you have completed your responding Affidavit, you will have to repeat Steps 3-8.

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

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.

Step 11: Go to court for the hearing of the application

Court Services has published **Representing Yourself** to help you to prepare for court. You can pick up a copy at 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. Unless the judge specifically asks you to, do not bring your children with you to court.

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 on Second Avenue in Whitehorse. The list is posted just outside the Court Services office. If you are uncertain about where to go, ask the at Supreme Court counter to confirm the courtroom number.

Your 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 judge. 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 and from the other party or the other party's lawyer.

The judge will make a decision based on the evidence provided by both parties and the laws that apply to your situation, including the Child Support Guidelines if children are involved.

Step 12: Prepare and submit the Order for filing

After a judge makes a decision, as the applicant/plaintiff, you must prepare an **Order - Form 44**, unless the judge orders someone else (e.g. the other party's lawyer) to do it. To do this 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 Child Support Guidelines say that child support 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 Child Support 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.

If both parties were present for the hearing, they must both sign the order, unless the judge said that one or the other of them did not need to. Signing the order does not mean that you or the other party agrees with it. It means that you both 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 by the clerk of the court. 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 draft 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 the judge orders it, you will have to serve the filed order on the other party. Usually the other party can obtain his or her own copy of the order from the court registry.

Remember, the judge will refer to the Child Support Guidelines when deciding about child support. The amount of child support awarded will be the amount in the Child Support Guidelines tables unless there are special circumstances.

Additional Steps

If your matter involves a claim for custody, access or child support, the court requires both parties to take the parenting workshop called For the Sake of the Children. (See **Supreme Court Practice Direction 37** about Parent Education after Separation or Divorce on the Supreme Court page, www.yukoncourts.ca). If you have already attended the workshop, you do not need to go again, but should be prepared to provide your certificate of completion. The requirement does not apply to parents who do not live within 30 km of a community where the workshops are offered, when the parties involved have filed a written agreement settling the issues between them, or when all children are 16 years of age or older. For more information or to register for the For the Sake of the Children workshop, contact the **Family Law Information Centre**.

While you are not required to participate in a Family Law Case Conference to change an existing order, you can request one. Contact the Trial Coordinator at 867-667-3442 or toll free 1-800-661-0408 ext. 3442, to schedule a family law case conference. If you live outside of Whitehorse, you can ask for permission to attend by telephone or by videoconference.

If you and the other party work out an agreement in the Family Law Case Conference, you can prepare and file a **Family Law Case Conference Order – Form 109**.

NOTES

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

Government of Yukon, Department of Justice

Court Services

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www.justice.gov.yk.ca

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