



Civil Litigation - Suing or Being Sued

What is Civil Litigation?

Civil litigation refers to legal disputes between two or more Parties that seek money damages or for someone to fulfil a promise (“*specific performance*”), rather than criminal sanctions. Common types of disputes in civil litigation are: personal injury claims, employment disputes and breach of contract disputes.

In a civil litigation matter, the Plaintiff must prove their claim on a “*balance of probabilities*”, by convincing the court that their claims are more likely to be true than not.

Plaintiff: the person who starts a lawsuit.

Defendant: the person who is sued in a lawsuit.

Parties: the Plaintiff(s) and the Defendant(s).

Pleading: the beginning stage of a lawsuit in which Parties formally submit their claims and defenses.

STEPS IN CIVIL LITIGATION

- 1) **Demand Letter** Before a Plaintiff sues someone, they should send a demand letter to the Defendant formally explaining what they think the Defendant did wrong and what they can do to resolve the situation to avoid being sued.

Before taking the next steps, a Plaintiff should consider the strength of their case, the time and cost involved in a lawsuit, the potential for the dispute to be public, and the chances of recovering any money from the Defendant even if they win.

- 2) **Which Court?** A Plaintiff must first determine which court the action should be started in. Claims for \$25,000 or less should be started in [Small Claims Court](#). Claims for more than \$25,000 should be started in the [Supreme Court of Yukon](#). The process described in this guide applies to actions started in the Supreme Court of Yukon, excluding family law disputes. Lawsuits in Supreme Court of Yukon can be complex so it is usually best to retain a lawyer. All referenced court forms and the Rules of Court are [online](#). Detailed [guides to Small Claims Court](#) and [fillable forms](#) are available online or from the court registry.
- 3) **Filing a Statement of Claim** A lawsuit usually starts by the Plaintiff filing a [Statement of Claim \(Form 1\)](#) describing the facts relied on and what is being asked for (“*relief*”). It is important to file a Statement of Claim at the court registry before the applicable [limitation period](#) expires. A lawyer is in the best position to advise when the limitation period expires. You must file multiple copies of your documents. The Statement of Claim must be [served](#) on the Defendant(s) after filing.
- 4) **Responding to the Claim** The Defendant must file an [Appearance \(Form 9\)](#) within 7 days of being served the Statement of Claim. An Appearance indicates that the Defendant or their lawyer is responding to the lawsuit. After filing and [delivering](#) an Appearance to the Plaintiff, the Defendant must file a [Statement of Defence \(Form 10\)](#) within 14 days of the due date for the Appearance. If the Defendant has a claim against the Plaintiff [a [Counterclaim \(Form 19\)](#)] or someone else [a [Third Party Notice \(Form 21\)](#)], it may be included with the Statement of Defence.

- 5) **Reply** If the Statement of Defence raises new matters not already in the Statement of Claim, then the Plaintiff can file a [Reply \(Form 22\)](#) within 7 days of getting the Statement of Defence. If the Defendant included a Counterclaim, then the Plaintiff must file a [Statement of Defence to the Counterclaim \(Form 23\)](#). A Party can ask for more information (“*demand particulars*”) if a Pleading fails to adequately define the facts or issues in controversy.

If a Defendant does not file an Appearance (Form 9) or Defences (Form 23 or Form 10), they may not get notice of any further steps or could be found responsible for the damages described in the Statement of Claim or Counterclaim.

Small Claims Court

yukoncourts.ca/courts/smallclaims.html

Yukon Supreme Court Rules and Forms

yukoncourts.ca/courts/supreme/ykrulesforms

Yukon Supreme Court Registry

667-5937

- 6) **Close of Pleadings** Where no Reply to a Statement of Defence, to a Statement of Defence to a Counterclaim, or to a subsequent pleading is delivered within the time allowed, the pleadings are closed and the Parties move into the “Discovery” phase of a lawsuit. Within 30 days of the close of pleadings, the Parties must deliver to every other Party an [Affidavit of Documents \(Form 110 or 111\)](#) that lists all documents that are, or were, in that Party’s possession and that are relevant to any matter in issue in the lawsuit. Unless disclosed, a Party cannot rely on a document (unless it is a public document) at the trial or hearing in that case.
- 7) **Examinations for Discovery** A Party can choose to examine the opposing Party either orally or through written questions (“*interrogatories*”). Oral examinations involve each Party, or their lawyers, asking the other Parties questions relevant to the dispute in front of a court reporter. The questioning is done under oath or by the person being questioned affirming they will tell the truth. The court reporter creates a written transcript of the questioning. A Party’s answers can be used as evidence against them in court. The person asking the questions can also make additional requests for information or documents.
- 8) **Procedural Direction** At any time, a Party can apply to the court for a ruling or directions from a judge on a procedural issue, such as to exclude certain evidence from being used, to preserve assets, to establish timelines or to delete irrelevant parts of pleadings. This may be done by filing a [Notice of Application \(Form 52\)](#) or requesting a [Case Management Conference](#) from the trial-coordinator. Parties often provide [Affidavits \(Form 59\)](#), which are written statements made under oath or affirmation, for use as evidence in court for any applications or a trial.

The Parties can reach a settlement agreement during any of these steps. Settlement often lowers legal costs, provides certainty by avoiding appeals and gives the Parties control of the outcome. Parties can also request or be ordered by a judge to attend a [Judicial Settlement Conference](#) in front of a judge to help them resolve their issue, without agreeing to a binding order from a judge.

- 9) **Setting Down for Trial** If the Parties do not settle, a Party can contact the trial coordinator to set the matter down for trial. In certain circumstances, where there are no issues of credibility or a need to weigh evidence, a [Summary Trial](#) may be used, where most evidence is provided in the form of Affidavits (Form 59) and witnesses do not testify before a judge.
- 10) **Trial** Both, or all, Parties will often call witnesses or experts to testify before a judge. A Party will often have the chance to question the other Party’s witnesses and experts on their testimony. The judge will make a decision at the end of the trial. If a Party loses at trial, they may also be responsible for paying the other Party’s [costs](#) or a portion of their costs. In certain cases, a Party may be able to [appeal](#) a judge’s decision to the [Court of Appeal](#).

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