

PART 50 Orders To Obtain Information From Judgment Debtors

PART 50

Scope of this Part and interpretation 50.1

50.1

This Part contains rules which provide for a judgment debtor to be required to attend Court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him.

Order to attend Court 50.2 - 50.11

50.2

A judgment creditor may apply for an order requiring:

- (1) a judgment debtor ; or
- (2) if a judgment debtor is a company or other corporation, an officer of that body;

to attend Court to provide information about:

- (a) the judgment debtor's means; or
- (b) any other matter about which information is needed to enforce a judgment or order .

50.3

An application under Rule 50.2 may be made without notice.

50.4

The application must be made by filing an application notice in Form P50/01 if the application is to question an individual judgment debtor , or Form P50/02 if the application is to question an officer of a company or other corporation.

50.5

The application notice must:

- (1) state the name and address of the judgment debtor ;
- (2) identify the judgment or order which the judgment creditor is seeking to enforce;
- (3) if the application is to enforce a judgment or order for the payment of money , state the amount presently owed by the judgment debtor under the judgment or order ;
- (4) if the judgment debtor is a company or other corporation, state:
 - (a) the name and address of the officer of that body whom the judgment creditor wishes to be ordered to attend Court ; and
 - (b) his position in the company;
- (5) if the judgment creditor wishes the questioning to be conducted before a Judge, state this and give his reasons;
- (6) if the judgment creditor wishes the judgment debtor (or other person to be questioned) to be ordered to produce specific documents at Court , identify those documents; and
- (7) if the application is to enforce a judgment or order which is not for the payment of money, identify the matters about which the judgment creditor wishes the judgment debtor (or officer of the judgment debtor) to be questioned.

50.6

An application under Rule 50.2 may be dealt with by the Registrar without a hearing.

50.7

If the application notice complies with Rules 50.4 and 50.5, an order to attend Court will be issued in the terms of Rule 50.9.

50.8

The Registrar :

- (1) may, in any appropriate case, refer an application under Rule 50.2 to a Judge ; and
- (2) will refer it to a Judge for consideration, if the judgment creditor requests the judgment debtor

(or officer of the judgment debtor) to be questioned before a Judge .

50.9

A person served with an order issued under Rule 50.7 must:

- (1) attend Court at the time and place specified in the order;
- (2) when he does so, produce at Court documents in his control which are described in the order;
and
- (3) answer on oath such questions as the Court may require.

50.10

The order will normally provide for questioning to take place before the Registrar . The order will provide for questioning to take place before a Judge only if the Judge considering the request decides that there are compelling reasons to make such an order.

50.11

An order under Rule 50.7 will contain a notice in the following terms:

“You must obey this order. If you do not, you may be fined for contempt of Court.”

Service of order 50.12 - 50.14

50.12

An order to attend Court must, unless the Court otherwise orders, be served personally on the person ordered to attend Court not less than 14 days before the hearing.

50.13

Service of an order to attend Court for questioning must be carried out by the judgment creditor (or someone acting on his behalf).

50.14

The judgment creditor must inform the Court not less than 7 days before the date of the hearing if

he has been unable to serve the order to attend Court .

Travelling expenses 50.15 - 50.16

50.15

A person ordered to attend Court may, within 7 days of being served with the order, ask the judgment creditor to pay him a sum reasonably sufficient to cover his travelling expenses to and from Court .

50.16

The judgment creditor must pay such a sum if requested.

Judgment creditor's affidavit 50.17 - 50.18

50.17

The judgment creditor must file an affidavit or affidavits :

- (1) by the person who served the order giving details of how and when it was served;
- (2) stating either that:
 - (a) the person ordered to attend Court has not requested payment of his travelling expenses; or
 - (b) the judgment creditor has paid a sum in accordance with such a request; and
- (3) stating how much of the judgment debt remains unpaid.

50.18

The judgment creditor must either:

- (1) file the affidavit or affidavits not less than 2 days before the hearing; or
- (2) produce it or them at the hearing.

Conduct of the hearing 50.19 - 50.25

50.19

The person ordered to attend Court will be questioned on oath.

50.20

The questioning will be carried out by the Registrar unless the Court has ordered that the hearing shall be before a Judge .

50.21

The Registrar will ask a standard series of questions, as set out forms in Schedules A and B to this Part. The form in Schedule A will be used if the person being questioned is the judgment debtor , and the form in Schedule B will be used if the person is an officer of a company or other corporation.

50.22

The judgment creditor or his representative may either:

- (1) attend Court and ask questions himself or through his legal representative ; or
- (2) request the Registrar to ask additional questions, by attaching a list of proposed additional questions to his application notice .

50.23

The Registrar will:

- (1) make a written record of the evidence given, unless the proceedings are tape recorded;
- (2) at the end of the questioning, read the record of evidence to the person being questioned and ask him to sign it; and
- (3) if the person refuses to sign it, note that refusal on the record of evidence.

50.24

Where the hearing takes places before a Judge , the judgment creditor or his legal representative must attend and conduct the questioning, and the standard questions in the forms in Schedules A and B will not be used.

50.25

Where the hearing takes places before a Judge , the proceedings will be tape recorded and the Court will not make a written record of the evidence.

Adjournment of the hearing 50.26**50.26**

If the hearing is adjourned, the Court will give directions as to the manner in which notice of the new hearing is to be served on the judgment debtor .

Failure to comply with order 50.27 - 50.34**50.27**

Where a judgment debtor was ordered to attend before the Registrar , if a person against whom an order has been made under Rule 50.7:

- (1) fails to attend Court ;
- (2) refuses at the hearing to take the oath or to answer any question; or
- (3) otherwise fails to comply with the order;

the Registrar will refer the matter to a Judge .

50.28

If the Registrar refers to a Judge the failure of a judgment debtor to comply with an order under Rule 50.7, he will certify in writing the respect in which the judgment debtor failed to comply with the order.

50.29

That Judge may, subject to Rules 50.31 and 50.32, make a committal order against the person.

50.30

Where a judgment debtor was ordered to attend before a Judge , if a person against whom an order has been made under Rule 50.7:

- (1) fails to attend Court ;
- (2) refuses at the hearing to take the oath or to answer any question; or
- (3) otherwise fails to comply with the order;

the Judge may, subject to Rules 50.31 and 50.32, make a committal order against the person.

50.31

A committal order for failing to attend Court may not be made unless the judgment creditor has complied with Rules 50.15 to 50.18.

50.32

If a committal order is made, the Judge will direct that:

- (1) the order shall be suspended provided that the person:
 - (a) attends Court at a time and place specified in the order; and
 - (b) complies with all the terms of that order and the original order; and
- (2) if the person fails to comply with any term on which the committal order is suspended, he shall be brought before a Judge to consider whether the committal order should be discharged.

50.33

Where Rule 50.32 applies, the appointment specified will be:

- (1) before a Judge , if:

(a) the original order under Rule 50.7 was to attend before a Judge ; or

(b) the Judge making the suspended committal order so directs; and

(2) otherwise, before the Registrar .

50.34

Rules 50.12 to 50.14 (service of order), and Rules 50.17(1) and 50.18 (affidavit of service), apply with the necessary changes to a suspended committal order as they do to an order to attend Court .

Schedule A

Schedule B