

## **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**