

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 52 – COMMITTAL

Remarks

1. Committal for contempt of court (O. 52, r. 1)

The power of the Court or of the Court of Appeal to punish for contempt of court may be exercised by an order of committal made by a single Judge or by a single justice of appeal. (See App. A, Form No. 85)

(HK)2. Grant of leave to apply for committal (O. 52, r. 2)

(HK)(1) No application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registrar and must at the same time lodge with the Registrar copies of the statement and affidavit.

(HK)(4) The judge may determine the application for leave without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; and in any case the Registrar shall serve a copy of the judge's order on the applicant.

(HK)(5) Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal within 10 days after such order.

(HK)(6) Without prejudice to the powers conferred by Order 20, rule 8, the judge hearing an application for leave may allow the applicant's statement to be amended on such terms, if any, as the judge thinks fit.

(HK)(7) If the judge grants leave he may impose such terms as to costs and as to giving of security as he thinks fit.

3. Application for order after leave to apply granted (O. 52, r. 3)

(1) When leave has been granted to make an application for an order of committal, the application shall be made ~~by motion~~ **by originating summons** to a judge and unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the ~~notice of motion~~ **originating summons** and the day named therein for the hearing. (L.N. 125 of 1991)

Rule 40
Rec 14

(1A) The ~~notice of motion~~ **originating summons** shall state the grounds in respect of which leave for making an application for an order of committal has been granted. (L.N. 108 of 2002)

(2) Unless within 14 days after such leave was granted the ~~motion~~ **originating summons** is entered for hearing the leave shall lapse.

(3) The ~~notice of motion~~ **originating summons**, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court under Order 65, rule 4, the Court may dispense with service of the ~~notice of motion~~ **originating summons** under this rule if it thinks it just to do so.

5. Saving for power to commit without application for purpose (O. 52, r. 5)

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court of First Instance or the Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of court. (25 of 1998 s. 2)

6. Provisions as to hearing (O. 52, r. 6)

- (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say –
- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
 - (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Ordinance (Cap. 136);
 - (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
 - (d) where it appears to the Court that in the interests of the administration of justice or for reasons affecting the security of Hong Kong the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state –

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) the length of the period for which he is being committed.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds as stated in the ~~notice of motion~~ **originating summons** under rule 3(1A). (L.N. 108 of 2002)

Rule 41
Rec 14

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

7. Power to suspend execution of committal order (O. 52, r. 7)

(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

8. Discharge of person committed (O. 52, r. 8)

(1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as

it thinks fit.

9. Saving for other powers (O. 52, r. 9)

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the Court of First Instance, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

(25 of 1998 s. 2)

(Enacted 1988)