

Rules of the High Court (Amendment) Rules 2008

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

Order 54 – APPLICATIONS FOR WRIT OF HABEAS CORPUS

Remarks

1. Application for writ of habeas corpus ad subjiciendum (O. 54, r. 1)

(1) An application for a writ of habeas corpus ad subjiciendum shall be made to a single judge in court, except that –

- (b) at any time when no judge is sitting in court, it may be made to a judge otherwise than in court; and
- (c) any application on behalf of a minor must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made ex parte and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

2. Power of Court to whom ex parte application made (O. 54, r. 2)

(1) The judge to whom an application under rule 1 is made ex parte may make an order forthwith for the writ to issue, or may – (See App. A, Forms No. 87, 88)

- (a) where the application is made otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefor be made by ~~originating motion~~ **originating summons** to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by ~~originating motion~~ **originating summons**.

(2) The summons ~~or notice of the motion~~ must be served on the person against whom the issue of the writ is sought and on such other persons as the judge may direct, and, unless the judge otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

(3) An originating summons under this rule must be in Form No. 87 in Appendix A.

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3. Copies of affidavits to be supplied (O. 54, r. 3)

Every party to an application under rule 1 must supply to every other party on demand copies of the affidavits which he proposes to use at the hearing of the application.

4. Power to order release of person restrained (O. 54, r. 4)

Without prejudice to rule 2(1), the judge hearing an application for a writ of habeas corpus ad subjiciendum may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any superintendent of a prison, constable or other person for the release of the person under restraint.

5. Directions as to return to writ (O. 54, r. 5)

Where a writ of habeas corpus ad subjiciendum is ordered to issue, the judge by whom the order is made shall give directions as to the judge before whom, and the date on which, the writ is returnable.

6. Service of writ and notice (O. 54, r. 6)

(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a superintendent of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in Appendix A) stating the judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

7. Return to the writ (O. 54, r. 7)

(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the judge before whom the writ is returnable.

8. Procedure at hearing of writ (O. 54, r. 8)

When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then counsel for the Crown, and then one counsel for the person restrained in reply.

9. Bringing up prisoner to give evidence, etc. (O. 54, r. 9)

(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on affidavit to a judge in chambers.

10. Form of writ (O. 54, r. 10)

A writ of habeas corpus must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.

(Enacted 1988)