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Government of the Republic of Trinidad and Tobago

EQUAL OPPORTUNITY TRIBUNAL COURT OPERATIONS SERVICE BY ELECTRONIC MEANS Practice Direction No. 5

This Practice Direction is issued pursuant to Part 26 of the Equal Opportunity Tribunal Rules 2016 (as amended) (hereinafter called “The EOTR”).

The objective of this Practice Direction is to provide clear guidance to the Tribunal including attorneys-at-law, members of court staff, litigants and other stakeholders as to the procedure to be adopted in the service of documents by electronic means.

EFFECTIVE DATES

Accordingly, the following measures shall take effect from 30th October, 2020 and continue until further notice or otherwise superseded (this period).

ELECTRONIC MAIL

1. Electronic service of electronically filed documents may be effected through the electronic mail ('e-mail') address of a party.
2. An e-mail address is presumed to be a valid electronic service address for a party if the party-
 - a. files electronic documents or acknowledges service of any document, from that e-mail address;
 - b. includes an email address in the address for service of a filed document; or
 - c. files and serves a notice containing the e-mail address at which electronic service can be effected;unless that party has filed and served notice that the e-mail address is no longer valid.

PROOF OF SERVICE

3. A document served to an e-mail address that is presumed valid under clause 2 above, is considered served on the date and time that it is sent electronically, unless the Chairman/Judge directs otherwise.
4. A party that receives a document that is served electronically and is unable to view or download the document must promptly notify the party effecting service. Where notice is given to the Tribunal Registry that a party is unable to view or download an electronically filed document, the Tribunal Registry shall take all reasonable steps to provide the party with a copy of that document.
5. Electronic confirmation of delivery may serve as proof of service for all documents served electronically.

Dated this 28th day of October 2020

/sgd/ HH Donna Allison Prowell-Raphael, CEOT
Judge.



Government of the Republic of Trinidad and Tobago

EQUAL OPPORTUNITY TRIBUNAL
COURT OPERATIONS
HEARINGS BY ELECTRONIC MEANS
Practice Direction No. 6

This Practice Direction is issued pursuant to Part 26 of the Equal Opportunity Tribunal Rules 2016 (as amended) (hereinafter called “the EOTR”).

The objective of this Practice Direction is to provide clear guidance to the Tribunal including attorneys-at-law, members of court staff, litigants and other stakeholders as to the procedure to be adopted in the conduct of hearings by electronic means as well as to establish:

- (a) Mechanisms that promote the use of technology and the dispensation of justice by electronic means, consistent with provisions of the EOTR;
- (b) A uniform and reliable approach to hearings by electronic means and the methodology for the arrangement and conduct of such hearings;
- (c) A feasible and workable alternative to in-person hearings which may be utilized both in the course of normal operations as well as in times of crisis;
- (d) Access to justice; and
- (e) To bring the EOTR in line with the practices and procedure established by the Judiciary.

EFFECTIVE DATES

Accordingly, the following measures shall take effect from 30th October, 2020 and continue until further notice or otherwise superseded (this period). This Practice Direction supersedes and replaces Subrules 8-16 of Practice Direction No. 3 published in Trinidad and Tobago Gazette Vol. 59 No. 120 dated July 10, 2020 and titled Court Operations Electronic and In-Person Hearings

PRACTICE DIRECTION No. 6
EQUAL OPPORTUNITY TRIBUNAL—HEARINGS BY ELECTRONIC MEANS—Continued

DEFINITIONS

1. For the purpose of this Practice Direction:
 - a. “*designated officer*” refers to the assigned contact person at the Tribunal for a particular matter authorised by the Honourable Judge/Chairman to perform such duties;
 - b. “*electronic means*” includes by teleconference, video-link, internet link, or any other matter of instant communication between the Tribunal and the parties, facilitated by the use of technology under management of the Equal Opportunity Tribunal.
 - c. “*hearing*” includes any hearing fixed for the consideration of an application or matter (including trials) before the Tribunal.

E-MAIL ADDRESS AND TELEPHONE NUMBER

2. Subject to paragraphs 5 and 6, the primary e-mail address and telephone number provided by an attorney-at-law or party in an application and/or filing form shall be utilised by the court office for the arrangement and conduct of hearings by electronic means. Every attorney-at-law and party is responsible for the accuracy of the information provided.

CONSIDERATION OF HEARINGS BY ELECTRONIC MEANS

3. The general rule is that during this period hearings shall be conducted by electronic means only except as otherwise provided for by these directions.
4. Notwithstanding paragraph 3, and unless otherwise provided for by any Act, Regulation or Rule, the Tribunal may, at its own instance, or upon the application of a party, consider and/or fix a hearing other than by electronic means or a specific electronic means.
5. An attorney-at-law or a party may apply to the Tribunal for a matter to be dealt with other than by electronic means or a specific electronic means on any of the following grounds:
 - a. That the attorney-at-law/party has no access to a specific electronic means;
 - b. That the attorney-at-law/party is unable to use electronic means or a specific electronic means by reason of disability or otherwise; or
 - c. That electronic means are not appropriate having regard to the nature of the matter, the issues at hand or the interests of justice.
6. An application under paragraphs 4 or 5 above may be made by notice contained in the substantive application to be dealt with by the Tribunal, or by a separate application, and must be supported by evidence.

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PRACTICE DIRECTION No. 6
EQUAL OPPORTUNITY TRIBUNAL—HEARINGS BY ELECTRONIC MEANS—Continued

NOTIFICATION TO PARTIES

7. Where the Tribunal fixes a hearing of a matter by electronic means, the court office shall notify the parties of:
 - a. The date and time of hearing;
 - b. The specific electronic means to be utilised;
 - c. The telephone number and/or e-mail address for the designated officer;
 - d. The telephone numbers and/or e-mail addresses provided by the parties to the matter; and
 - e. Any other pertinent information to enable access and/or communication via the specific electronic means (including login information, instructions or details on transmission of any web link which may be necessary).
8. Every attorney-at-law or party shall provide such further information requested by the court office necessary for arranging the hearing within the time period provided by the court office.
9. An attorney-at-law or a party may make an application under paragraph 4 subsequent to being notified of a hearing by electronic means, provided that such application is made no later than seventy-two (72) hours prior to the time fixed for the hearing; and that notice of such application is given to all parties expected to participate in the said hearing. The Tribunal may abridge this time for matters which are deemed urgent.

ARRANGEMENT OF HEARINGS

10. Where a hearing is to take place by electronic means, every attorney-at-law or party shall be present upon premises that are private, professional and conducive to good acoustics.
11. For hearings involving a video-link, the technical setup and operating systems should be kept as simple as possible. Hardware shall generally include a laptop/desktop connected to a camera and microphone. The camera must be positioned so that the attorney-at-law is facing the Tribunal and where evidence is being taken, so that the Tribunal has a clear and unobstructed view of the entire room. Where a laptop/desktop computer is not being used, the device must be stationary and must support the specific electronic means identified by the Tribunal Registry.
12. Hearings will be conducted by pre-approved electronic means used and supported by the Judiciary.
13. For hearings involving use of the internet, every attorney-at-law or party must ensure access to a reliable internet connection (*20 Mbps minimum download and upload speed*) so that connectivity remains throughout the hearing. It is preferable that an Ethernet cable connection and not Wi-Fi be utilised.

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PRACTICE DIRECTION No. 6
EQUAL OPPORTUNITY TRIBUNAL—HEARINGS BY ELECTRONIC MEANS—Continued

14. For *inter partes* hearings, attorneys-at-law or parties must contact each other prior to the time of the hearing and test the acoustics and connectivity with each other. Once proper connectivity is established between the parties, the designated officer should be notified via email, whereupon the designated officer may give instructions to the parties on any further testing which may be required.
15. Any technical and/or connectivity issues must be immediately reported to the designated officer and confirmed to them as soon as is practicable by email correspondence copied to all other parties to the matter.
16. A hearing by electronic means shall be conducted as if the attorneys-at-law and/or parties are physically present in a Courtroom of the Equal Opportunity Tribunal. The hearing will be conducted in accordance with the EOTR and established practice and procedure applicable to a Court of similar jurisdiction constituted in the Republic of Trinidad and Tobago, save and except where otherwise provided below.
17. Every attorney-at-law and party must be prepared for a hearing by electronic means in advance of the time fixed. This may include ensuring the availability of documents, persons, equipment, information technology support or otherwise, as well as ensuring the proper functioning of all hardware.
18. Every attorney-at-law and/or party shall be seated and must be attired in a manner customary to that which is adopted when physically present in a Court of similar jurisdiction.
19. Every attorney-at-law and/or party participating in the hearing orally must speak clearly and directly into the microphone/receiver, but not too quickly in the event that a time lag arises. The rustling or handling of papers near microphones/receivers should be minimized or eliminated. Microphones/receivers should be kept clear of papers, books or other material and should not be covered in any way. Background noise must be avoided.
20. Every person participating in a hearing which involves a video-link must look directly into the camera where applicable, and generally conduct themselves in a civil and respectful manner.
21. Every attorney-at-law and/or party should make it clear when they have finished dealing with a point.
22. Save for where the Judge/Chairman gives express permission, an attorney-at-law and/or party should not move out of the range of a camera or microphone while a hearing is in progress.
23. If the Judge/Chairman wishes to interject, the Judicial Officer may say ‘*Stop*’ and hold up a hand.

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PRACTICE DIRECTION No. 6
EQUAL OPPORTUNITY TRIBUNAL—HEARINGS BY ELECTRONIC MEANS—Continued

24. If it is necessary for an attorney-at-law to interject, they should say ‘*Judge*’ and hold up a hand.
25. If an attorney-at-law and/or party wishes to refer to a document not already in the possession of the Tribunal by using a ‘*share screen*’ option on a computer, the attorney-at-law and/or party must have the document open on his/her laptop and obtain the permission of the Judge/Chairman before sharing screens with the Tribunal and with every other attorney-at-law and/or party to the proceedings.
26. Save for where the Judge/Chairman gives its express permission, the only persons allowed in any room where a hearing by electronic means is being conducted are the attorney-at-law and the parties and, for the Tribunal, any necessary support persons.
27. A hearing by electronic means **shall not be recorded** by any attorney-at-law and/or party to the proceedings or by any third party not being a designated officer. Proceedings held *in camera* must not be broadcast, recorded or reported by an attorney-at-law or a party in any manner. Attorneys-at-law and/or parties may be required to give undertakings to the Court in this regard. Hearings by electronic means (other than *in camera* hearings) may be streamed on the Tribunal’s electronic platforms.
28. In the event that the connection is lost or in any way interrupted during a hearing by electronic means, the attorneys-at-law and/or parties must immediately notify the designated officer stating the precise time and second at which such connectivity was either lost or interrupted. This must be confirmed as soon as is practicable by email correspondence to the designated officer and copied to all other parties to the matter.
29. Where this Practice Direction is silent on any issue, the Judge/Chairman may give directions or make any order, which is necessary and just in the circumstances, for the purpose of the due conduct of a hearing by electronic means.
30. The Judge/Chairman may terminate a hearing by electronic means at any time in the event of any non-compliance with this Practice Direction by an attorney-at-law or a party, or where it is otherwise necessary to preserve justice in the matter.

TAKING OF VIVA VOCE EVIDENCE IN HEARINGS BY ELECTRONIC MEANS

31. In managing hearings by electronic means, the Judge/Chairman may direct a witness to give evidence from a specific location and by specific means, including from the court building.
32. *Viva voce* evidence may be taken in person at a court building where the Tribunal deems it necessary in the interest of justice to require the physical presence of the witness. Such circumstances include-

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PRACTICE DIRECTION No. 6
EQUAL OPPORTUNITY TRIBUNAL—HEARINGS BY ELECTRONIC MEANS—Continued

- a. Where hard copies of documents or physical exhibits must be tendered in evidence by a witness and there is no agreement between the parties as to the tendering of same electronically;
 - b. Where identification is a material issue in dispute; or
 - c. Where the witness has no available means to appear electronically.
33. Any witness required to give *viva voce* evidence in person shall be heard at pre-scheduled times, save and except for urgent matters that may arise. The Judge/Chairman shall schedule times for in person *viva voce* hearings to ensure that there is no congregating of persons and will provide persons with the scheduled time for their appearance.
34. All other parties to a matter where a witness is required to give *viva voce* evidence in person need not appear in person or in the same room or at the same location unless directed by the Judge/Chairman.
35. Each witness is required to comply with the sanitisation policies of the court.

Dated this 28th day of October 2020

/sgd/ HH Donna Allison Prowell-Raphael, CEOT
Judge.