

Turks and Caicos Islands

## Court of Appeal: Practice Direction 2 of 2021 Government Notice 704 of 2021

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# Turks and Caicos Islands

## Court of Appeal: Practice Direction 2 of 2021

### Government Notice 704 of 2021

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**Assented to on 15 July 2021**

**Commenced on 15 July 2021**

*[This is the version of this document from 16 July 2021.]*

**AUTHORITY:** This Practice Direction is issued by the President of the Court of Appeal pursuant to section 21 of the Court of Appeal Ordinance, Rule 4(1) of the Court of Appeal (Practice and Procedure) Rules and the inherent jurisdiction of the Court.

**INTRODUCTION:** This Practice Direction is issued in response to the COVID-19 pandemic and the continuing restrictions on international travel. It is aimed at protecting the health and safety of court personnel and court users through sittings of the Court of Appeal proceeding by way of audio or video-conference. The protocols herein contained establish guidelines and security measures for the conduct of court business electronically, and enable sittings of the court remotely.

**DURATION:** This Practice Direction will be in force from 15 July, 2021 until 31 December, 2021 unless sooner varied, revoked or replaced by the President of the Court of Appeal.

**WHEREAS** section 21 of the Court of Appeal Ordinance vests power in the President of the Court of Appeal to make rules with respect to all matters of practice and procedure in relation to the exercise of the jurisdiction of the Court, for prescribing all such matters as are required to be or may be prescribed under the provisions of that Ordinance;

**WHEREAS** the Court Live Link (Remote Participation) Ordinance 2020 provides for the conduct of remote hearings;

**WHEREAS** it remains necessary to limit, reduce, or remove human to human contact;

**WHEREAS** the rule of law must be upheld at all times, access to justice must remain unrestricted, and the duty of the courts to ensure the proper administration of justice must be carried out in a safe and healthy environment;

**AND WHEREAS** the duty of the courts to ensure the proper administration of justice in a safe and healthy environment remains paramount.

**NOW THEREFORE** the following directions are made for the electronic conduct of court business and to enable remote court hearings by the Court of Appeal in the Turks and Caicos Islands:

1. **Interpretation:**

"Chief Justice's Practice Direction" means the [Practice Direction No 6 of 2020](#) Re-issued by the Hon. Chief Justice Mrs. Mabel M. Agyemang dated 23 December, 2020;

"Court" means the Court of Appeal of the Turks and Caicos Islands;

"document" or "electronic document" means any order, notice of appeal, motion, summons or originating process, record of appeal, submission, authority in support of a submission, affidavit, and includes all other documents for use in the hearing of an appeal or in the course of hearing an appeal;

"necessary person" in relation to an appeal includes any person whose presence is needed for the purpose of hearing an appeal;

"Ordinance" means the Court of Appeal Ordinance Cap 2:01;

"Registrar" means the Registrar of the Court of Appeal;

"Rules" means The Court of Appeal (Practice and Procedure) Rules.

## 2. **General matters**

The President and Justices of Appeal will appear and preside together in the courtroom where the Court of Appeal will be convened on Providenciales, Turks and Caicos Islands, remotely by audio or video-links from the locations of the President and Justices of Appeal in their respective countries of residence in Jamaica, Commonwealth of the Bahamas and the Republic of Trinidad & Tobago. However, the President may from time to time if necessary permit a Justice or Justices of Appeal to appear by audio or video-link from a location outside of his usual country of residence.

- 1) The place from which a Justice of Appeal sits shall for all purposes be deemed a part of the courtroom and the Justice of Appeal may sit at any place to conduct or participate in court proceedings.
- 2) The choice of platform, such as Microsoft Teams or Zoom, is within the discretion of the President.
- 3) Court hearings shall be held either remotely in accordance with the provisions of the Court Live Link (Remote Participation) Ordinance 2020, in person, or in a hybrid remote and in person manner.
- 4) These directions are not meant to do away entirely with in-person hearings.
- 5) Persons and Counsel appearing before the Court shall unless otherwise directed by the court, appear by video or audio link.
- 6) Participation in the proceedings will be by link-access. Parties and their attorneys must obtain these details from the Registrar beforehand and permit adequate time for testing.
- 7) Proceedings will commence at 10:00 am, local time.
- 8) The Registrar and IT Technician will be present in the Courtroom, or in a room designated for the purpose at the Court building, where they will provide necessary administrative and technical support to the Court.
- 9) If a technological problem arises during the course of a hearing, counsel or parties may use a telephone (either voice or text messaging including WhatsApp) or email to immediately alert the Registrar to the problem.
- 10) The Registrar will start, allow access into, end and record the proceedings. For the avoidance of doubt, no other person present at the proceedings may record the proceedings.
- 11) Counsel or parties may request from the Registrar a copy of the recording upon payment of a prescribed fee and supplying the necessary storage medium.
- 12) It is the prerogative of the Registrar to grant access to members of the media upon their request in writing submitted not less than twenty-four hours before the hearing, other than those held in camera, but they are not entitled to participate in the hearing.
- 13) Save what may traditionally be reported of court proceedings by the media, members of the media shall not reproduce the hearing on social media or broadcast the hearing electronically.
- 14) Except in family matters, the proceedings will be in open court and deemed to be public proceedings
- 15) So far as is practicable, proceedings will be live-streamed to a particular location where the public can be provided with access.

## 3. **General protocols for court attendance**

Paragraph 8 of the Chief Justice's Practice Direction shall apply with any necessary modifications.

#### 4. **Format of electronic documents for the hearing**

- 1) A filed text document in electronic form must be identical to the hard copy and must be in fully text searchable and annotatable PDF format, except for a draft of an order sought, which must be in Microsoft Word format. No document is to be password protected.
- 2) Every document, including records of appeal, written submissions and bundles of authorities, must be fully legible, organised and filed in PDF format only. Any document filed, inclusive of annexures and exhibits, must be properly indexed, paginated in ascending order, bookmarked, hyperlinked and otherwise organised to enable perusal without difficulty. A document must not be scanned upside down or sideways or otherwise than in the order in which the document is to be read.
- 3) Any document in any other format, such as JPEG or EXCEL for example, must be converted to PDF format and included in the appropriate place in the main document of which it is a part. As an example, a JPEG or EXCEL document may be placed as an object in a Word document and the resulting complete document must then be converted to PDF format.
- 4) Any document scanned for inclusion in the record of appeal or any other parent document must be scanned with a minimum resolution of 300 DPI or, preferably, 600 dpi.
- 5) Records of appeal, core bundles, submissions and bundles of authorities are each to be filed as separate single PDF documents.
- 6) Pagination must begin with the first page of the first document and should be continued throughout the entire series of documents. New pagination must NOT be used for separate documents or folders within the single PDF. When referring to documents Attorneys should first refer to the page number on the electronic document.
- 7) Each document must be uploaded separately and labelled clearly.
- 8) It will also be necessary, where this is different, to refer to the hard copy bundle number. The hard copy bundles should bear the same page numbering as the electronic document as well as any internal page numbering. The internal page numbering should appear at the foot of the page on the right.
- 9) The Index to the Record of Appeal and the written submissions must refer to the electronic page of the PDF document being referred to allow quick and easy location of that page. The written submissions are to be full submissions and must also refer to the bundle, tab and page of the hard copy, again for ease of reference for those using the hard copy.
- 10) Where electronic core volumes or other individual documents exceed 10 megabytes in size, they must be submitted on a memory stick or other electronic storage medium previously approved by the Registrar, clearly marked or labelled with the title of the appeal and the identity of the party.
- 11) The Registrar may permit filing in a different or additional format (e.g. Excel) for good reason.
- 12) The contents of documents:
  - i. filed in hard copy must also be filed in the Registry by electronic means; and
  - ii. filed by electronic means, where permitted, must also be filed in the Registry in hard copy
- 13) Nothing in this Practice Direction removes the requirement of filing in the Registry the required number of hard copies of documents, including written submissions and supporting authorities.

#### 5. **Filing of documents**

Paragraph 16 of the Chief Justice's Practice Direction shall apply with any necessary modifications and subject to the provisions of Paragraph 4 of this Practice Direction.

#### 6. **Physical filing of documents**

Paragraph 17 of the Chief Justice's Practice Direction shall apply with any necessary modifications.

**7. Payment of filing fees**

Paragraph 21 of the Chief Justice's Practice Direction shall apply with any necessary modifications.

**8. Service of process and documents**

Paragraph 18 of the Chief Justice's Practice Direction shall apply with any necessary modifications.

**9. Addresses for filing of process and documents**

Paragraph 19 of the Chief Justice's Practice Direction shall apply with any necessary modifications

**9. Affidavits and other sworn documents**

Paragraph 17 of the Chief Justice's Practice Direction shall apply with any necessary modifications.

*[Please note: numbering as in original.]*

**10. Court dress**

Counsel are not required to robe for the remote court appearance, but shall be attired in accordance with Rule 35 of the Code of Professional Conduct contained in the Legal Profession Ordinance.

**11. Applications on the papers**

At the discretion of the Court, an uncontested application may be determined on the papers without the need for an oral hearing and Paragraph 26 of the Chief Justice's Practice Direction shall apply with any necessary modifications.

**13. Criminal Appeals**

- 1) Subject to the directions of the Court, as the case may require, Appellants will appear before the Court and participate by way of video-link. Their attorneys may appear in person or by way of video-link.
- 2) The technology will allow for Appellants and their attorneys to consult in private with the leave of the Court by way of "break out rooms".
- 3) Counsel for the Crown may appear in person or by way of video-link.

*[Please note: numbering as in original.]*

**14. Bail pending appeal**

A person applying for bail pending appeal shall in the first instance apply to the Chief Justice of the Supreme Court under the provisions of Sections 14, 19 and 20 of the Ordinance

**15. Family appeals**

The parties and their attorneys will appear by way of video-link except with the leave of the Court limited to one party and one attorney on each side appearing in person.

**16. Civil Appeals**

The parties and their attorneys will appear by way of video-link except with the leave of Court limited to one party and one attorney on each side appearing in person.

Issued by:

C. Dennis Morrison

President

Court of Appeal

Turks and Caicos Islands

Date: 15 July, 2021