

2018

*“When we lose the right to be different,  
we lose the privilege to be free”*



**EQUAL  
OPPORTUNITY  
TRIBUNAL**  
Trinidad & Tobago

H.H. Donna Prowell-Raphael

Equal Opportunity Tribunal

9/14/2018

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EQUAL OPPORTUNITY TRIBUNAL  
STATEMENT BY THE CHAIRMAN/JUDGE  
ON THE OPENING OF THE 2018/2019 LAW TERM

*“When we lose the right to be different, we lose the privilege to be free.”*

*Charles Evans Hughes, 11th Chief Justice of the United States*

***“Who We Are”***

The Equal Opportunity Tribunal (the Tribunal) has the exclusive jurisdiction to adjudicate certain defined claims of discrimination, victimization and offensive behaviour initiated under the Equal Opportunity Act (the Act). Like the High Court and the Industrial Court, it is a superior court of record and has the powers and jurisdiction of such a court and has power to impose fines, make orders for damages and or grant injunctions.

The Tribunal (though often mistaken for it) is not the same entity as, or a part of, the Equal Opportunity Commission (the Commission). The Tribunal's functions are judicial. They are independent and distinct from the conciliatory role and functions of the Commission. The Commission receives complaints of discrimination for conciliation under the Act. Complaints that cannot be resolved by conciliation or those that remain unresolved after conciliation can be referred by the Commission to the Tribunal for judicial adjudication and determination.

The Tribunal consists of a Judge of status of a High Court Judge, and two Lay-Assessors. The Judge who is also Chairman of the Tribunal makes and delivers all the decisions of the Tribunal. The Act prescribes a limited appeal as of right of the decisions of the Tribunal, to the Court of Appeal on matters of law (akin to that of the Industrial Court (IC)).

The Tribunal is empowered to make its own rules. In 2016 the Tribunal's first set of Rules and Procedure were published. These Rules and Procedure are available on the Tribunal's website. Hard copies of the Rules and Procedure are available for purchase at the Tribunal's Chaguanas Registry.

Since the Tribunal began hearings in 2015, it has delivered 12 judgments. The judgments will be available on the Tribunal's website. A first Volume of Reports containing these judgments has been produced. We hope (finance being available) to have hard-copies of the Report available for purchase by the end of 2019.

Within the recent past we have seen a rapidly growing number of matters coming before the Tribunal. Notwithstanding daunting and potentially paralyzing financial constraints, several initiatives have been put in place to handle the case load in a judicious, timely and effectual manner.

These initiatives include: -

### *Facilities*

With the staff going beyond the bounds of duty, we have been able to complete a total physical upgrade of our Chaguanas Registry. With some creativity we have been able to re-designate/redistribute our limited floor space. We are particularly proud of the establishment of a Registrar's Court to handle Case Management and assessments, Library, and Attorneys Conference Room. Aesthetics and décor have not been ignored, and we have been receiving good comments on our new image and amenities.

### *Human Resources*

As an adjunct to the physical upgrade, we have restructured and reorganized our human resources to better utilize and deploy their expertise in the work of the Tribunal. By so doing we have been able to create and train a dedicated Court and Registry staff. Our Protocol/Communications Unit is a work in progress. With the optimistic availability of funds, we hope to be able to create a permanent legal research and support unit for the Tribunal.

### *Tribunal Time table and scheduling*

Mindful of the imperative to have a ready determination of the matters before it, the Tribunal is working with the objective of a 1-year turn-around for the disposition of complaints. To accomplish this optimistic and formidable goal, we require the active understanding and commitment of attorneys and parties, who may notice a robust response by the Tribunal to repeated requests for extensions of time and or adjournments.

We have implemented a pilot time-table to manage the expansion in the increasing number of complaints as follows:-

<b>PERIOD</b>	<b>SITTINGS</b>
<b>2018</b>	
June	Case Management
October	Trials/Hearings (Trinidad)
November	Trials/Hearings (Tobago)
December	Case Management
<b>2019</b>	
March	Decisions
April	Trials/Hearings
June	Case Management
July	Decisions

*(Injunctions and urgent matters are not included in the Time-Table.)*

At the end of this court year the Tribunal will examine the efficacy of the time-table and adjust it as required to ensure the appropriate disposition of matters. We welcome feedback from our stakeholders.

#### ***Digital Database***

Another proud innovation is the attainment of a digitized Database (-RMØ). All the matters of the Tribunal are now stored digitally. Information on matters is now available at the touch of a button. The historical process for each matter can now be recorded in detail and readily available.

#### ***Email Reminders***

With the introduction of RM, has come the ability to provide automated Email reminders to attorneys of court deadlines and hearings. These will be issued 4 days before the event.

#### ***Video-Conferencing***

Not only can we provide electronic reminders, but we are very excited to announce that video conferencing facilities for case management would soon be available. Cognisant of our financial

and other constraints we have set a roll out date of January 7, 2019. We hope that in lieu of the Port of Spain Registry coming on stream for this court term as we envisaged, that this facility will provide some relief for attorneys coming out of Port of Spain, Tobago and outlying areas.

This state-of-the-art system will allow us to provide a video link to attorneys that will permit them to access and attend video- conferences out of their chambers - on their desk-tops, lap-tops, tablets, or even cell phones.

### ***Website***

We have been assured by our IT Specialist that the Tribunal's new upgraded website will be accessible by October 1<sup>st</sup>. 2018. The website will feature among other good things such as our Rules and Judgments - the Tribunal's monthly timetable and calendar where court dates and sittings may be accessed online.

### ***Court Transcripts***

In addition to voice recordings, from October 2018 the Tribunal will have verbatim transcripts of the trials. These can be requested within 2 weeks of the end of a trial and will be made available in soft or hard copy at a nominal cost.

### ***Tribunal***

Upon the retirement of the former Chairman/Judge His Honour Rajmanlal Joseph J. in September 2017, I was appointed in April 2018 to replace him. The term of office of our Lay-Assessors ended in May 2018. Her Excellency, the President has kindly conveyed her permission for Ms. Leela Ramdeen to continue in office pending her appointment of new Lay-Assessors, who we are looking forward to having with us by the end of 2018.

### ***Going forward***

#### ***Legal Research Unit***

A top-grade, state of the art legal research unit is the engine room of a viable, modern judicial entity. It is mandatory and indispensable. In the absence of a Legal Research Unit the Tribunal will have to secure temporary make-shift arrangements reliant on the good-will of its friends and stakeholders to push through its immediate commitments. The establishment of a permanent Legal Research Unit (finance permitting) is essential if the Tribunal must meet its mandate.

### ***Port of Spain Registry***

The reassertion of a presence in Port of Spain through the establishment of a Port of Spain Registry remains a priority item for the Tribunal. We have been working with the Ministry of Public Administration and remain in regular communication with its offices to make the POS Registry an early reality. We are optimistic that suitable office space will be located, and (finance permitting) the Registry can be established.

### ***Electronic Filing***

Another major priority for the Tribunal is the establishment of electronic filing. We have found that the location of the present Registry, the vagaries of travelling there, and unpredictability of the weather have been a challenge to attorneys to meet deadlines for filing. We are considering several options and hope (finance permitting) to be able to have an electronic filing system in place, if not before, by the end of this court year.

### ***In closing***

The Tribunal acknowledges with gratitude the stewardship of His Honour Rajmanlal Joseph J. from 2009-2017. Joseph J. has steered the Tribunal through its embryonic stages, navigating the trials and challenges of its early life with restraint, astuteness and wisdom. He has left a legacy of thought-provoking judgments that will be the foundation of the jurisprudence of the Tribunal. As Joseph J. moves on to re-enter private practice, the Tribunal extends its best wishes for long and healthy life and an enduring and fulfilling continued career.

The President of the Industrial Court has made the IC a sister to the Tribunal in many ways. She has shared the IC's resources and given unstintingly of her knowledge and time. We are indebted to her and give her a loud '*shout out*' and resounding *ōThank Youō* for her kindness and generosity.

We also record our appreciation to Mr. Jones P. Madeira for his invaluable guidance (pro bono) in the establishment of our Protocol Unit.

I acknowledge with thanks the support and assistance of the Registrar Mr. Narendra Lalbeharry and staff of the Tribunal since my appointment. I am cognizant not only of their hard work but their trust and forbearance. Their willingness to put on jeans and dust masks, lift furniture,

clean draperies, make magic with available funds, accept new roles, or just do things differently without rancour or resistance has facilitated the implementation of the many initiatives we have recently implemented or a work in progress. I applaud them and look forward to their continued good work and support.

In *Damian Morris v. Comptroller of Accounts* CV 2015-03606 while postulating that the Act has provided a parallel legal remedy for redress in the defined areas of discrimination, Seepersad J, lamented -

*“...In this land of diversity, where issues of discrimination and unequal or unfair treatment are not unusual, the legislature, to its credit, has laid the necessary legislature framework for citizens to challenge certain defined classes or types of discrimination before the Equal Opportunity commission and the Equal Opportunity Tribunal to encourage and ensure that there is equality of opportunity. It is rather unfortunate that the services provided under the Act seem to be underutilized and citizens should be encouraged to avail themselves to recourse under the Act...”*

The Tribunal respectfully adopts the words of the learned judge as we encourage persons to avail themselves of the services provided under the Act. The Tribunal welcomes attorneys, litigants and other stakeholders to its forum. We are encouraged (if not emboldened) by the promise of the government that social justice will be a pillar of its administration. We are energized and eager to be the flagship, and to partner, in the growth of this important emerging area of social jurisprudence.

H.H. Donna Prowell-Raphael

9/2018