



Practice Guide for Electronic Hearings

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Introduction

The national situation at present and looking towards the future has accelerated the reliance in most sectors of society on existing audio and visual conferencing platforms and technologies.

The Judiciary of the Republic of Trinidad and Tobago has expended all available human and technological resources to ensure that there is enhanced service delivery and continued access to justice using electronic means. Remote access to the courts has, by necessity, become a viable alternative to in-person hearings. Indeed, as at the time of issue of this Practice Guide, most Divisions of the Supreme Court, that is, the Court of Appeal, the High Court (Criminal), the High Court (Civil), the Family and Children Division and the District Criminal and Traffic Courts have successfully conducted electronic hearings.

Access to justice is the responsibility of all stakeholders in the administration of justice. Indeed, as an alternative to in-person hearings, our remote capacity will remain of vital significance to the good administration of justice long after the Covid-19 crisis abates, particularly where the reduction in the backlog of trials has now suffered abrupt disruption, and where there are continued constraints for physical space at all court locations.

Transparency remains central to the basic tenets of justice and the maintenance of public trust and confidence. Where hearings are to be done in open court, provisions have been made to make the electronic hearings as accessible as possible to the public and also to the media, unless ordered otherwise by the Court.

Hearings by electronic means are governed by the Practice Directions on Electronic Hearings. However, as we navigate this new working environment as the preferred option and as an alternative to in-person hearings when the current pandemic abates, this Guide is intended to provide assistance for all court users. The 8 High Level Principles are not novel and build upon established concepts of effective advocacy and fairness. They have been drawn from the experience of Judicial Officers and Court Administrators locally and internationally who already have had significant practice with hearings by electronic means and bear resemblance to similar international publications¹.

¹ The Inns of Court College of Advocacy

8 High Level Principles

1. Advance Liaison

When the Court has scheduled a matter for hearing by electronic means, parties must ensure that they are adequately prepared. You are therefore encouraged to:

- a. Be familiar with the relevant Rules of Court and case management tools.
- b. Refer to the Practice Directions and guidance from the Judiciary. (For a list of useful links to applicable Practice Directions and Rules, see Appendix 1.)
- c. Confirm with the Judicial Support Officer (JSO) the scheduling, special arrangements and hearing protocols including the technology platform to be used.
- d. Ensure that the Court and the JSO have your up-to-date email address and telephone number.
- e. Agree to a core bundle in advance and ensure that all parties are in possession of an indexed electronic core bundle prior to the hearing. Formal Admissions should be used in an effort to focus judicial consideration on matters in issue.

2. Knowledge about the technology

An integral component of preparation is the ability to understand and navigate the technology used for electronic hearings. You are therefore encouraged to:

- a. Test the technology prior to the hearing, including the camera, microphone and sound settings. Know how to turn the camera on and off, how to mute the microphone and to adjust the volume.
- b. Ensure you are located in a private, quiet location with a stationary backdrop away from open windows and sources of noise or distractions.
- c. Ensure adequate overhead and frontal lighting to illuminate your facial features.
- d. Be aware that sometimes the camera/video will be turned off and the sound muted by default when you are admitted entry into the hearing.
- e. Decide how many screens you prefer to use during the hearing. Large screens are encouraged. Some find that a single screen is adequate to allow them to simultaneously take notes and navigate documents while maintaining visibility of the Court. Some



judicial officers and attorneys prefer to use three screens: one for video, one for notes and a third for electronic documents.

- f. Join the hearing at least fifteen minutes before it is due to start in order to confirm that there are no connectivity issues.
- g. Always enter your full name on joining the hearing so that you are properly identified to the court and others participating in the hearing.
- h. Be aware of the Court's protocol for breakdown in communication and ensure that you have provided up-to-date contact information for yourself and/or your witnesses, prior to the hearing. In the event of such a breakdown, a protocol should be in place for anyone affected, including witnesses and third parties, to contact the Court or JSO by additional means to alert them to the problem, e.g. telephone, text, email.
- i. Pause in the event something goes wrong (for example, where a participant drops offline or some connection fails), until it is resolved. It may be necessary to repeat a point or a question.
- j. Have an alternative method of communication that is not reliant on the internet or Wi-Fi connection in the event of a disruption. Seek guidance from the Judicial Officer or JSO on the preferred alternative. As is the case with in-person hearings, if there is a technical failure that cannot be resolved, be aware that the hearing may have to be stood down or adjourned.

3. Conduct of the Hearing

Procedural propriety must be preserved in electronic hearings. Normal rules of practice and procedure apply subject to the Court's discretion as it thinks necessary and just in the circumstances. You are therefore encouraged to:

- a. Establish a speaking protocol at the outset. This may involve participants, when introduced, acknowledging the introduction by raising their hand rather than speaking. This is preferable to a brief nod, which may be imperceptible on small thumbnail videos.
- b. Be aware that, as obtains for in-person hearings, the Court's Audio Visual Recording System (ADRS) will record the hearing and remote listeners will listen during the hearing for quality assurance purposes. You are not permitted to record the hearing and will be required to give an undertaking to that effect at the start of the hearing.
- c. Ensure that you mute your microphone when you are not addressing the Court. Remember to unmute your microphone when it is your turn to speak and do so directly into the microphone. Where multiple devices are in use, mute all microphones and unmute only the relevant one, as and when required.



- d. Be aware that the use of headsets and in-ear headphones is permissible and can assist with sound quality.
- e. Avoid setting your device to the highest volume, since this is likely to cause feedback when you are speaking. You may need to make adjustments after the start of the hearing.
- f. Raise your hand when desirous of interrupting a speaker, or otherwise use an appropriate facility to do this on the software in use. One example might be to give an indication in the meeting chat.
- g. Arrange for the appearance of your witnesses, as you would for an in-person hearing. Seek the guidance of the Judicial Officer for any special arrangements when you are in doubt.
- h. Prepare your witnesses for the electronic hearing. The oath or affirmation will take the standard form in law. Enable witnesses to give their best evidence. Provided that the technology functions properly and witnesses are given the same advice as other parties about presentation, sound and lighting, there is no empirical research to support the contention that any witness is less effective when giving evidence remotely than when appearing in-person. Attorneys must ensure that all witnesses are as comfortable as possible when giving evidence. Indeed, all participants should be vigilant to non-verbal signals in this regard.
- i. Remind witnesses that they must not communicate with third parties while they are giving evidence and may not consult documents without the leave of the Court. It is common in taking evidence by live link video to ask a witness to identify anyone who is in the room with them and to show a panoramic view of the room at the beginning of their evidence. A Judicial Officer can determine the suitability of any location from which a witness may give evidence and may wish to assign a designated Court officer to be present at that location.
- j. Manage issues relating to third parties such as interpreters or intermediaries who may be required to assist the Court and/or parties. Issues regarding discreet and separate channels of communication ought to be resolved in advance of the hearing. When third parties are used to assist witnesses, this adds to the possibility of participants speaking over one another. Third parties should therefore be reminded of speaking protocols where necessary.
- k. Be mindful that accused persons in the Criminal Division and the District Criminal and Traffic Courts may attend the hearing online from a remand facility and may have difficulty hearing the proceedings. It is imperative that all participants have good audio and visual contact. Any issues should be brought promptly to the attention of the Judicial Officer. In this regard prior to the commencement of all electronic hearings, questions will be asked of all participants as to their capacity to hear and to see the



proceedings. The Judicial Officer may from time to time enquire of all parties as to their ability to hear and see the proceedings.

- l. Ensure that you are clearly visible by maintaining a reasonable distance from the camera, to show your head and upper body. If you are too close your image may blur and fill the screen, if you are too far you will appear distant and detached from the hearing. Some cameras zoom in and out depending on the movement of the subject. This should be avoided. As far as possible, maintain eye contact with the camera. This will ensure you appear to be looking at your audience. If you are using the camera on your laptop, typing when you are visible is liable to cause the camera (and your image) to shake. Try to use a separate keyboard or a separate camera mounted away from the laptop.
- m. Note that the camera may record a wider area than one sees on one's own screen and even when you are sharing your screen, for example to display a document, you remain visible.
- n. Remember that some hearings are open to the public and that others may be observing even if you cannot see them. In cases involving multiple participants, thumbnail video images may appear on screen, but these thumbnails often move off screen to allow participants to see the face of the person talking, or the document being shared. The media may also be present.
- o. Carefully consider the suitability of your environment and background. Ensure that your environment is well lit by natural or artificial light. Avoid sitting with your back to a window or other light source. This can result in only your silhouette appearing on screen. A neutral background is best. Avoid revealing personal or distracting items, such as photographs, ornaments and paintings. The camera may show more of the room than you expect.
- p. Close the door to the room in which you are appearing. This will prevent unanticipated visitors, sights and sounds from interfering with the hearing. This and appropriate use of the mute button will suppress the noise of coughs, sneezes, doorbells, coffee machines, dishwashers, dogs barking, typing, rustling of papers etc.
- q. Dress professionally for the hearing. Remember that you are present before the Court. Bands are advisable but you may not need to wear robes, unless specifically asked to do so. Witnesses should also be reminded to dress appropriately for Court.
- r. Ascertain the court's preference with regard to whether you and your witness may remain seated during the hearing. Most hearings take place with parties seated. If in doubt, check with the Court. When moving from your seated position or leaving a hearing, even if going to another room, ensure that the microphone is muted, and the video is off. Alternatively, and only with the leave of the Court, you may leave the meeting and re-join. Additionally, only with leave of the court you may remove from the view of the camera.



4. Use of documents

Documents are of equal importance in electronic hearings and in-person hearings. Advance preparation of a core bundle of documents you will be referring to frequently or you anticipate will be necessary during the hearing is advised. You are therefore encouraged to:

- a. Ensure that your documents filed electronically are in accordance with the relevant Practice Directions. Whichever cloud or storage you use, it is advisable to store documents systematically so you can find them easily.
- b. Download an app such as Acrobat DC or PDF Expert to enable you to mark up the bundle. Keep a clean duplicate of your bundle, so that you have one clean bundle in addition to any other that is marked up. This way, if the Judicial Officer asks for a document to be shared electronically, you have a clean copy ready at hand.
- c. Use an agreed indexed electronic bundle of documents that can be referred to between relevant parties by section, page and paragraph number without the need to share the document on the screen or to hold up physical documents.
- d. Minimize the size of the core bundle. Larger files may have to be split, as they are harder to handle and cause all sorts of other problems (e.g. rejection by email filters and difficulty in downloading). Refer to the relevant Practice Direction for the upper limits when uploading documents. That goes for authorities, too, of course. You are encouraged to use hyperlinks in submissions.
- e. Ensure you can find documents you need at quick speed. Attorneys are advised to have a list of key documents, or a hyperlinked index. Bookmark critical documents. Make sure all references in your notes are accurate and precise and that references in the skeleton argument are to the pages in the electronic bundle, not some historic paper version. Preparation is imperative.
- f. Be able to provide, without delay, the reference to the documents to which you want to refer. Always give the reference, not just the description, and allow parties time to find the document.
- g. Ensure that you can access two documents simultaneously (e.g. on different devices or windows). You will often need both to follow a document that someone else is referring to and find another document for your own purposes.
- h. Manage your documents in a manner that enables you to use them effectively. If you have a point to make about a document, you nearly always need to make sure that you, the witness, and the Judicial Officer all have that document in front of them. Summaries are never as effective. Seek the indulgence of the Court as you navigate this process. Agreed core bundles, which are properly referenced, are likely to make this exercise more manageable.

- i. Be aware that if you unexpectedly need to share a document that is not in the electronic bundle with the Court and other participants, but which cannot be made visible to all observers by sharing on screen, agreement must be reached as to the appropriate channel of communication to be used, e.g. sending the document to the Court and other parties by email.

5. Written Arguments

Written arguments are an effective tool in addressing matters in issue and it is likely that more weight will fall on the written argument in electronic hearings than arguments conducted in person. You are therefore encouraged to:

- a. Use the written argument to provide a clear road-map of the key issues and how you expect to approach them.
- b. Use the written argument to provide a way of finding any key document, especially if you are dealing with a complex body of evidence. Recognise that it is harder to follow a remote presentation, and that the Judicial Officer may well need an aide memoire that can be consulted before and after the hearing.
- c. Avoid the temptation to shoehorn a mass of material of secondary importance into the written argument. If anything, this is even worse when the oral hearing is compressed, because it is likely to leave your written argument disconnected from your oral presentation.
- d. Give careful thought to which parts of the argument will require oral presentation or expansion, and how you are going to do that. It may be that you can rely entirely on the written argument.
- e. Mark documents in written arguments for ease by agreeing a key with the other side e.g. [1/a/i] = bundle 1, tab 1, page 1, unless specifically stipulated as for example by the relevant Practice Direction on Electronic Filing. Bear in mind that Judicial Officers may prefer a specific format.

6. Preparation and remote advocacy

Preparation by all parties needs to be more meticulous than it might have been for an in-person hearing. In an electronic hearing, time is at a premium, particularly when the video-conference facility may be booked for other electronic hearings. The extent of your preparation will affect the quality of your advocacy. Thorough case management is encouraged. Much of what follows is general good advice for advocacy, but the requirement is heightened for electronic hearings. You are therefore encouraged to:

- a. Write a detailed script for submissions and cross-examination questions.
- b. Anticipate questions that the Judicial Officer is likely to raise, or points that your opponent may develop orally, and discuss them with your team and/or client in advance.
- c. Make sure that your cross-examination is focused on the main issues. Have clear objectives, and plan to achieve just those objectives. Expect the pace to be slower than you are used to. Do not rely on any cross-examination technique that depends on high pace or pressure. Flamboyance does not necessarily translate to effective advocacy.
- d. Keep questions short when questioning a witness. Make sure each is a single question, and use clear questioning cues to show when a question is finished. Avoid multiple questions. Avoid questions that are phrased as statements and depend on inflection. Bear in mind that if the audio is distorted, you may need to repeat or paraphrase a question.
- e. Simplify your arguments, remembering that if the Judicial Officer or witness stops "following you", you are less likely to notice than during an in-person hearing.
- f. Concentrate on the substance and issues as much of non-verbal communication and style are not apparent when working remotely. Remember that brevity and precision are key. In the event that either sound or video quality is interrupted during a question or submission, repetition may be required, a process far easier to complete with succinct questions or submissions.
- g. Present your case in a courteous and measured way.
- h. Be aware that electronic hearings may be more taxing to some participants than others. Ask for breaks if necessary.

7. Interruptions and Interjections

In electronic hearings and depending on the connectivity variables, a brief delay may occur between the video image of the person speaking and their voice being heard. This connection delay may lead participants to believe a person has finished speaking before they have in fact done so and can result in participants inadvertently speaking over one another. As the hearing progresses, a rhythm is likely to develop, thereby minimizing this risk. You are therefore encouraged to:

- a. Be patient with the technology.
- b. Avoid interrupting a speaker. Let the speaker finish before you attempt to do so. Be especially careful not to interrupt a witness's answer or a Judicial Officer's question.
- c. Allow pauses for judicial questions while you are speaking. You may even want to invite them.
- d. Pause if you are speaking and become aware that someone else wishes to interject. If you become aware of this before the Judicial Officer, you may wish to bring this to their attention, so the Court may call on the other participant to unmute their microphone as you mute yours.
- e. Avoid the temptation to fill pauses. Gaps between speakers (e.g. while waiting for a witness to answer or for parties to locate a document) are more common with remote communication than during an in-person hearing.
- f. Raise your hand if you feel compelled to interrupt, as an indication that you wish to do so.

8. Confidentiality

Confidentiality during electronic hearings must be carefully managed in order to protect the privacy and security of the parties and the proceedings. You are therefore encouraged to:

- a. Ensure that you turn off or close any communication media that are not related to the hearing in progress (example, Facebook, WhatsApp etc.).
- b. Be especially vigilant when you share your screen. When you do so, everything at that time on your screen becomes visible to all other participants, including pop-up notifications, screensavers, minimized connections, etc. For your own privacy and security, ensure that your screen is clear of material you prefer not to share and that notifications are disabled. Remember that documents can be used quite easily without needing to share your screen, when through good case management, there is an agreed core bundle.
- c. Determine in advance what method to use in order to communicate with your own team, during the hearing if necessary. Try to keep that communication limited to only what is necessary to the hearing.
- d. Note that the need to take unanticipated instructions during an electronic hearing can create a challenge. In the Criminal Division and the District Criminal and Traffic Courts, where resources are limited, taking instructions from a client in custody at any stage is usually a challenge. Communication and confidentiality issues are a reality and must be carefully managed. Where possible, a secure telephone line may be used and the sitting paused, including the Court's ADRS. It may be best that attorneys and their clients in police custody or on remand are at the same location. Attorneys are encouraged, as far as possible, to take full instructions in writing in advance. Unanticipated situations will have to be resolved on a case by case basis by the Judicial Officer, who may use their discretion to adjourn the hearing, as a last resort.
- e. Be aware that some software allows the user to leave the main hearing and enter a separate virtual meeting 'room' to have a conference with a client. You may wish to use these breakout facilities if you are confident and with the leave of the Court.
- f. Consider that it may be an option, with the leave of the Court, to conduct a separate private meeting by temporarily leaving the hearing and physically moving to another room to conduct a private conversation. Some police stations outfitted with video conference facilities may prove to be more suitable venues for the hearing in this regard. This can be discussed in case management conferences.

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Chief Justice

APPENDIX 1

List of useful links to Rules of Court and Practice Directions

Rules of Court
Civil Proceedings Rules, 1998 (as amended) http://www.ttlawcourts.org/jeibooks/books/ConsolidatedCivilProceedingsRules2016.pdf
Family Proceedings Rules, 1998 (as amended) http://www.ttlawcourts.org/index.php/rules-a-practice-directions/family-court
Criminal Procedure Rules, 2016 (as amended) http://www.ttlawcourts.org/index.php/component/attachments/download/4500
Children Court Rules, 2018 (as amended) http://www.ttlawcourts.org/index.php/component/attachments/download/5504

Practice Directions	Dated
Hearings by Electronic Means http://www.ttlawcourts.org/index.php/component/attachments/download/7021	26 th March 2020
Filing by Electronic Means http://www.ttlawcourts.org/index.php/component/attachments/download/7025	2 nd April, 2020
COVID 19 Emergency Directions http://www.ttlawcourts.org/index.php/component/attachments/download/7028	6 th April, 2020
Filing by Electronic Means – Criminal Division and District Criminal and Traffic Court http://www.ttlawcourts.org/index.php/component/attachments/download/7028	6 th April, 2020
Filing by Electronic Means- Family Court http://www.ttlawcourts.org/index.php/rules-a-practice-directions/supreme-court	7 th April, 2020
Filing by Electronic Means – Children Court http://www.ttlawcourts.org/index.php/rules-a-practice-directions/supreme-court	7 th April, 2020