



ATTORNEY GENERAL'S CHAMBERS



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Joint Public Statement by Hon. Attorney General, the Director of Public Prosecutions and the Bar Council

The Courts' response to the Coronavirus (COVID-19) pandemic

On 11th March 2020, the World Health Organisation (WHO) declared the Coronavirus (COVID-19) outbreak a pandemic. Thereafter, the Caribbean Public Health Agency (CARPHA) upgraded the risk of disease transmission to the Caribbean from high to very high. The TCI Government took early action on 10th March 2020 under the Public and Environmental Health Ordinance to list COVID-19 as an infectious and notifiable disease and put in place measures considered necessary to prevent, control or mitigate the potential impact of COVID-19. In keeping with the urgency being applied by all countries who are monitoring this pandemic given that the pace of change is rapid, with the number of confirmed cases across the region increasing each day, the TCI imposed further restrictions under the Public and Environmental Health Ordinance on 18th March 2020. On 20th March 2020 a state of emergency was declared in the Islands and regulations were made to ramp up measures to prevent the spread of COVID-19 in the Islands and to manage the fall out of the disease and the measures in the Islands. The rapid transmission rate of COVID-19 required an equally rapid response.

As the TCI continues to deal with the impact of the COVID-19 pandemic, the priority of the Court was to ensure the health and safety of all its stakeholders. In the face of a national curfew imposed in the Islands on 26th March 2020, the Acting Chief Justice Hon. Mr. Justice Shiraz Azziz issued Practice Direction No. 2 of 2020 (COVID-19 Practice Directions) on 25th March 2020 suspending nearly all matters before the courts and encouraging the use of video and teleconferencing means to continue certain matters but reserving certain other matters for in person appearances, subject to social distancing advice from public health officials. However, as in many jurisdictions, the Court is constantly reviewing strategies with a view to implementing measures to reduce exposure of judges, magistrates, court personnel and court users while still providing a means for the citizens and residents within the TCI to access justice as an essential service in the Islands.

The new Chief Justice Hon. Madam Justice Mabel Agyemang took up her office on 1st April 2020 and despite the circumstances she met upon her arrival in the Islands, she immediately engaged public and private sector stakeholders (including the Commissioner of Police, the Superintendent of Prisons and us) to provide input on protocols to ensure access to justice by seeking a means of reopening the courts through the use of electronic means and to provide access to the administration of justice in the essential areas, even while minimizing risk to the health of members of staff, the jurors, the attorneys, defendants,

other members of the public, police and prison officers, probation officers and other representatives of the various agencies who must interact with the Courts for the delivery of justice.

The Hon. Attorney General, the Director of Public Prosecutions and the Bar Council promote the Rule of Law in the TCI. We recognize that in the resultant state of public emergency that the Government has sought to act in a manner it considered proportionate and necessary to safe guard public health and wellness of the TCI while striking a balance with the rights of the people.

The Rule of Law provides for scrutiny by House of Assembly of the acts of the Government; allows informed criticism and debate without fear or stifling; allows for independence of the Judiciary and the legal profession. We therefore welcome the fact that although the emergency powers regulations have been made at speed, they have been subjected to Parliamentary scrutiny through the laying and debating of those regulations in the House of Assembly. We further welcome work to improve access to justice.

It is, essential that the Judiciary is able to function and normal due process and access to justice is maintained even as we deal with the pandemic. Continuing access to speedy justice, to the extent that the state of emergency would permit, is an important right of those who are brought before the Court. The COVID -19 pandemic should not grind the wheel of justice to a halt. It is in this context that the new Chief Justice has put forward proposals, firstly, to deploy to the largest extent, the use of audio video technology to continue the business of the Court and secondly, in doing so, to avoid unduly exposing persons to the risk of exposure to the COVID-19 virus.

In considering the legal framework, the Hon. Chief Justice quickly noted that the current provisions in the TCI, unlike in other Overseas Territories and Commonwealth jurisdictions, only permit the making of Rules and the issue of Practice Directions in so far as provision is not expressly made by the Supreme Court Ordinance, the Civil Procedure Ordinance or the Criminal Procedure Ordinance.

In putting these proposals forward, the Chief Justice sought our views as well as other key stakeholders. She has received constructive and helpful feedback. By Friday 10th April 2020, having had preliminary feedback from stakeholders showing support in principle for the majority of the proposals to reopen the courts, but not in favour of the option of a blanket suspension of jury trials in criminal matters, the Hon. Chief Justice confirmed to us that she would press ahead with giving effect to those protocols, save for the blanket approach to criminal trials. Ongoing trials would continue to be adjourned and new criminal trials would be considered on a case by case basis within the terms of the existing statutory regime. The situation as a whole would be kept under review. The protocols proposed by the Hon. Chief Justice seek to secure enabling legislation through the use of emergency powers regulations so that rules and practice directions can be made to –

(a) facilitate the continuation of court proceedings in the TCI through the filing, service and disposition, of matters which are not presently available under the existing law; and

(b) apply to all Civil (including Commercial), Criminal, and Family proceedings before the Courts.

The Hon. Attorney General, the Director of Public Prosecutions and the Bar Council support the Hon. Chief Justice in establishing protocols to ensure that the important principles of the Rule of Law and access to justice are maintained in the Turks and Caicos Islands even in the midst of the COVID-19 pandemic with maintaining public confidence in the administration of justice and the independence of the judiciary at the core of such decisions. We appreciate and commend the proactive and consultative approach taken

by the Hon. Chief Justice in putting these protocols in place. We will continue to provide feedback to the Hon. Chief Justice and to carry out our respective independent roles to support the proper administration of justice in the Turks and Caicos Islands.

ISSUED ON 13TH APRIL 2020

BY

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