

PRACTICE DIRECTION (NO 5) OF 2020
SUPREME COURT OF JUDICATURE OF JAMAICA AND THE REVENUE COURT
OF JAMAICA
SITTINGS IN THE EASTER TERM FROM JUNE 1, 2020 – JULY 31,2020

This Practice Direction is issued by the Honourable Chief Justice and is intended to govern sittings in the Civil and Commercial Division of the Supreme Court of Judicature of Jamaica as well as the Revenue Court during the shortened Easter Term (June 1, 2020 to July 31, 2020) following the outbreak of the COVID-19 pandemic. It supersedes Practice Direction COVID-19 Emergency Directions dated March 23, 2020, Practice Direction Second COVID – 19 Emergency Directions dated April 30, 2020, and Practice Direction Third COVID-19 Emergency Directions dated May 4, 2020.

General

1. This Practice Direction is effective immediately and may be revised during the period June 1, 2020 to July 31, 2020.
2. As of Monday, June 1, 2020 all civil registries will revert to their regular opening hours (i.e. 9:00 a.m. to 4:00 p.m. on Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays).
3. The health, safety, and well-being of all court users are of paramount concern.
4. This Practice Direction covers phase one (1) of the resumption of normal operations of the Supreme Court and the Revenue Court which lasts from Monday, June 1 to Friday, July 31, 2020.
5. This period, Monday, June 1 to Friday, July 31, 2020, will involve a gradual resumption of open court trials and chamber hearings which will be done in a manner consistent with the guidelines of the Ministry of Health and Wellness, and those issued by the court on Wednesday, May 27, 2020.
6. Where possible, the court will make every effort to facilitate evidence/submissions being given from a remote location.

7. Litigants are strongly encouraged to have as many applications as possible disposed on paper.
8. In instances where it is proposed that evidence be given from a remote location the court must be advised no later than seven (7) clear days before such evidence is to be given. The notification must be sent to the email addresses listed in paragraph 9 below with a copy to the other parties. The court will endeavour to facilitate the request in the absence of an objection. See also paragraphs 37 and 38 below.
9. Parties who wish to have any matter listed to announce a settlement are to contact the appropriate registry and arrangements will be made to accommodate the request. There is no need to file an application supported by an affidavit. An email sent to the relevant official registry address will be sufficient. The email addresses for the various registries are as listed below:
 - (i) for the civil registry (HCV) – the email address is civilregistry@supremecourt.gov.jm;
 - (ii) for the matrimonial division – the email address is matrimonial@supremecourt.gov.jm;
 - (iii) for the probate division – the email address is probate@supremecourt.gov.jm;
 - (iv) for the commercial division – the email address is commercialregistry@supremecourt.gov.jm;
 - (v) for the Revenue Court – the email address is revenuecourt@supremecourt.gov.jm.
10. Where requested, the Registrar will make arrangements for the announcement of settlements to be accommodated.
11. Open court trials will only take place in court rooms 9 and 10 on Public Building East (“PBE”).
12. Court room 12 is reserved for the delivery of judgments each Monday and Wednesday between 9:00 am and 4:00 pm with taxation of costs by Registrar of the Supreme Court on Tuesdays, Thursdays, and Fridays. If no judgments are

being delivered on the days stated then the Registrar may hear taxation of costs on those days.

13. Assessment of damages will take place in court room 14 on the Public Building North ("PBN").

14. Chamber hearings will be dealt with in the following manner:

a. on the PBN:

(i) court rooms 18, 19, and 20 will accommodate hearings and trials in chambers which exceed two hours;

(ii) court rooms 15, 16, and 17, will accommodate hearings under two hours and case management conferences;

b. on the Public Building East:

(i) court room 11 can only be used when so indicated by the Chief Justice or the Registrar of the Supreme Court.

15. These arrangements are subject to change at short notice.

16. All counsel and self-represented litigants must include in the footnote in all documents filed in the registries a current:

(i) e-mail address;

(ii) civic address; and

(iii) telephone numbers (i.e. landline(s) and cellular phone(s)),

so that the court can communicate with the parties or their witnesses.

17. No part of any proceedings in open court or in chambers is to be recorded without the written approval of the Chief Justice upon a written application being made to record the proceedings or any part thereof.

18. In none of the circumstances covered by these guidelines is the judge, or any of the parties, or their attorneys-at-law permitted to make any arrangements for hearing of any matter in open court or in chamber, or for the hearing of matters without such arrangements being made by an authorized officer.

19. There shall be no private communication between the judge and any of the parties or their attorneys-at-law in respect of any matter.
20. All communication between the judge and the parties and/or their attorneys-at-law in respect of any matter must be done through the Registrar or Deputy Registrar of the Supreme Court, the Deputy Registrar of the Revenue Court, or an authorized officer.

Definitions

21. “Authorized Officer” means the Registrar of the Supreme Court, Deputy Registrar of any Division of the Supreme Court, Registrar of the Revenue Court, and any clerk in any registry authorized by the Registrar or Deputy Registrar of any Division of the Supreme Court, and the Revenue Court.
22. “Judge” in this Practice Direction means Judge of the Supreme Court, Master-in-Chambers, and Registrar of the Supreme Court.
23. “Paper hearing” means a matter where the Judge determines the matter without oral submissions.
24. “Remote delivery” means a judge handing down a judgment to counsel and/or parties in open court from a separate location or handing down a judgment where neither the parties nor the judge are present in a courtroom or in chambers but are able to see and/or hear each other.
25. “Remote hearing” means proceeding taking place by means of telephone conference call, video-conferencing or any other form of electronic communication.
26. “Remote location” means any place other than inside the court room or chambers where a trial or hearing is taking place.
27. “Short List” means the inventory of cases for hearing in open court created after:
 - a. an assessment by the case management Judge: and
 - b. the agreement of the litigants for the matter to be placed in the inventory on the basis that:

- (i) all the parties have agreed to be available to conduct the trial at two (2) days' notice; and
- (ii) the trial, inclusive of final submissions, should not last longer than three (3) days.

Sittings in Open Court

- 28.** Sittings in Open Court will resume on a phased basis, with the first phase being from June 1, 2020 to July 31, 2020. There will be two civil courts sitting each week from 10:00 a.m. to 4:00 p.m.
- 29.** During this period, only cases meeting the following criteria will be listed for trial:
- (i) trials involving three parties or less (one claimant and two defendants; two claimants and one defendant)
 - (ii) matters not involving viva voce evidence (for example, judicial review and constitutional claims) and where no more than six counsel are involved.
- 30.** All trial matters that do not meet the criteria in paragraph 29 must be rescheduled by a Judge in Chambers who will conduct a case management conference.
- 31.** Where the Judge conducting the case management conference believes the circumstances of the case so permit, he/she may invite the parties to consider having their matter placed on the Short List.
- 32.** All registries will continue the current practice of rescheduling trials that were fixed for hearing during the period March 23, 2020 to May 29, 2020 by offering available dates to counsel for their agreement via electronic mail.
- 33.** For trials previously scheduled for hearing during the period March 23, 2020 to May 29, 2020 which have already been re-scheduled by the Registrar, and counsel considers the date set too distant based on the age of the parties (whether elderly or minors) or for some other compelling reason an earlier date is desirable, counsel may request an earlier date by filing an application supported by an affidavit of urgency. Any change in dates will not be granted as

a matter of course but will be dependent on the availability of resources (staff and technology) to accommodate the request.

- 34.** Other than the witness who is evidence all persons present in the court room are required to wear face covering. The physical distancing requirement of a minimum of six (6) feet between each person in court must be observed. In that regard, the customary practice will be waived to allow for seating of all counsel to begin from the bench reserved for Queen's Counsel.
- 35.** Where a witness is to give evidence from a remote location counsel must arrange for the swearing of the oath or making of the affirmation at the remote location and representatives of all parties must be present unless waived by any party. In addition, counsel must ensure that there is a facility by which the witness can be shown exhibits such as a document camera and/or a screen at the remote location that is linked to the court
- 36.** Where the witness is to give evidence from a remote location on the Court building, the process will be facilitated by any appropriate platform that can be accommodated by the court.
- 37.** In matters involving witnesses giving evidence overseas, the requirement for a formal application to proceed by video-link will be waived during this period. Parties need only make a request by email in the manner provided at paragraph 8 above and 38 below but without prejudice to the right to object to the witness giving evidence by video-link.
- 38.** At least twenty (20) clear days that an overseas witness intends to testify by way of video-link is to be given to all other parties.
- 39.** Notwithstanding this Practice Direction, attorneys-at-law may contact the Registrar concerning any urgent trial matters that they wish to be heard, and which have been or would otherwise be vacated based on the criteria set out herein. An affidavit of urgency is to be filed.
- 40.** Public access to observe proceedings in open court will continue to be restricted.

Assessment of Damages

41. Sittings of the Assessment Court will resume as of June 1, 2020, with a minimum of four (4) matters being listed each day.
42. Where the assessment is contested then the criteria for open court trials apply.
43. The Registrar will fix case management conferences for assessment cases that should have been heard between Monday, March 23, 2020 and Friday, May 29, 2020, which have to be rescheduled. This will facilitate directions for witness statements, admission of expert reports, and any other orders thereby shortening the length of the assessment trial. This arrangement applies to the cases affected within the abovementioned period only. These case management conferences will be held on Fridays for the period Monday, June 1, 2020 to Friday, July 31, 2020.

Delivery of judgments

Judge present in court

44. Where judgments are to be delivered in open court, prior communication must be made with the attorneys-at-law of the parties or the parties themselves, where they are self-represented, so that they can be present when judgment is being delivered.
45. Physical distancing and other measures must be maintained in open court whenever the parties and/or their attorneys-at-law are present during the delivery of judgment.
46. In the event that any or all of the parties decline or are unable to attend in person, every effort should be made to have any or all of them present by remote hearing.

Judge not present in court (remote delivery)

47. Where the Judge is not able to be present in court room, the Judge must be connected remotely to enable delivery of the judgment in the court room.
48. Every effort must be made to have both video and audio broadcast in the court room.

49. In the event that video broadcast is not possible, then there must be an audio broadcast of the judgment in the designated court room where the Judge would have been had the Judge been physically present in court.
50. Whether there is video and audio broadcast or audio broadcast alone, the technology used must enable two-way communication between the Judge and the parties.
51. In the circumstances of paragraphs 48 and 49, the parties and/or their attorneys-at-law may be present in the court room in which the judgment is being delivered.
52. If neither the parties nor their attorneys-at law are able to be present or they decline to be present in the court in which the judgment is being delivered, then they must be connected in a manner that enables two-way communication between themselves and the Judge.

Chamber hearings

53. There will be a resumption of hearings in chambers, that is, from 10:00a.m. to 4:00p.m. as of June 1, 2020. The matters may be conducted in-person and/or by remote hearing.
54. The case management conferences to reschedule open court trial will be by way of in-person, and/or remote hearings. Each case management conference should last no more than twenty five (25) minutes.
55. Counsel is required to connect to the virtual hearing room at least 10 minutes before the scheduled time slot.
56. Where the litigants do not have access to the required technology, this should be indicated by counsel at the case management conference.
57. Subject to the filing of an affidavit of urgency as outlined in paragraph 33 above, trials in chambers involving children, elderly persons, and patients as defined in the Mental Health Act will be rescheduled to the Michaelmas Term 2020, the remainder will be given dates in 2021 and beyond.
58. In final hearings of applications for restrictive covenants, counsel desirous of presenting the Duplicate Certificate of Title for consideration by the Masters-in-Chambers, must obtain a certified copy of the Duplicate Certificate of Title from

the Office of the Registrar of Titles and lodge same at the civil registry no later than three (3) days before the hearing.

Chamber hearings on paper

59. Parties desirous of having their matters considered on paper should indicate this by placing in bold at the top of the application the following words: **TO BE HEARD ON PAPER.**

60. Matters meeting the following criteria are suitable for paper hearings:

- (i) the hearing can conveniently be dealt with on paper;
- (ii) all the material to be considered by the judicial officer is captured in the affidavit and/or other relevant documents;
- (iii) no oral evidence including amplification of any sworn evidence is necessary;
- (iv) no cross examination is necessary;

61. The parties are to submit an electronic bundle with only the documents and written submissions relevant to the application.

62. Each electronic bundle should be paginated and indexed.

63. The electronic bundle must be prepared in Portable Document Format (PDF) which must be searchable. The bundle should be sent by email, at least three days before the hearing to the appropriate email address listed at paragraph 9.

64. Where the parties or any of them is self-represented and an electronic bundle cannot be prepared, then the bundle is to be filed at the registry at least three days before the hearing.

65. Where the party making the application is represented by counsel an electronic bundle must be filed.

66. Where the party is self-represented every effort must be made to file an electronic bundle. A paper bundle may be filed if all good-faith effort to file an electronic bundle has failed. The paper bundle must be filed a minimum of three days before the scheduled hearing.

Revenue Court and Commercial Division

- 67.** All interim proceedings in the Revenue Court and the Commercial Division are to be heard remotely unless the presiding Judge otherwise permits.
- 68.** Trials in the Revenue Court and Commercial Division will be scheduled having regard to the demand for and availability of court rooms.

Hearings before the Master in Chambers

- 69.** All matters before the Master in Chambers shall be by remote hearing unless the Master decides otherwise after hearing from the parties

Dated this 29th day of May 2020

A handwritten signature in black ink that reads "Bryan Sykes". The signature is written in a cursive style with a large initial 'B' and 'S'.

Bryan Sykes OJ, CD

Chief Justice