



OPENING STATEMENT OF THE LAW TERM **EMBRACING CHANGE, STRENGTHENING FOUNDATIONS**



INSIDE THIS ISSUE

- **Equal Opportunity For All**
- **Year in Review**
- **“Project Green Gavel”**
- **Hate Speech/Offensive Behaviour**
- **Age Discrimination**
- **In Appreciation.**

October 1, 2024

Equality for all

1. Today we mark the start of the sittings of the Equal Opportunity Tribunal ('Tribunal') for the 2024-2025 law term. We do so with a profound sense of pride and reflection. In 2025, we will commemorate the 25th anniversary of the enactment of the Equal Opportunity Act^[1] ('EOA'). This landmark legislation, passed by Parliament in 2000, established the Tribunal with the groundbreaking mission of resolving discrimination complaints to combat discrimination and advance equal opportunity.

2. In 1996, the Law Commission of Trinidad and Tobago insightfully opened its working paper on Equality legislation by pointing out:

“In a society rich in diversity such as ours, it is important to safeguard the integrity of different races, social groups and men and women from unjust and unequal treatment and the denial of equal opportunity. Equally important is the need to arrest institutionalized and historically entrenched patterns of discrimination all of which are evident in Trinidad and Tobago society in varying degrees.”



Her Honour Madama Justice
Donna Prowell-Raphael
Chairman and Judge

3. As we pause to reflect today, we must acknowledge that these words have not lost significance. Within an aspirational global community that continues to pursue mechanisms to mainstream equality and non-discrimination, the Law Commission's words are a lodestar, underscoring the enduring importance of the Tribunal's mission.

4. Although the respective Constitutions of this country (1962 and 1976), through their entrenched Bills of Rights provisions, have shielded individuals from state-based or public-sector discrimination since 1962, the EOA was a transformative leap forward. For the first time, the right to be protected from discriminatory acts within the private sector was recognised in law and guarded.

5. Unlike our constitutions that only protected against discrimination by State agencies, the EOA ensured individuals had equal protection under civil law from discrimination in both the public and private sectors, in specified areas. It provided additional safeguards against victimization, hate speech, and offensive behaviour. Moreover, the EOA broadened and entrenched the legal foundation for diversity, equity, and inclusivity ('DEI') principles, which are quickly becoming the touchstone for societal transformation in many developing countries.

Role of the Tribunal

6. The preamble of the EOA postulates that it is –

“An Act to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal and for matters connected therewith.”

7. In this regard, the Tribunal plays an essential role as a judicial intervenor, actively prohibiting discrimination and promoting a culture of equal opportunity.

Judicial Intervenor

8. Part VIII of the EOA establishes the Tribunal as a superior court of record for the purpose of judicially determining complaints that were referred to it by the Equal Opportunity Commission ('Commission'). The Tribunal includes 2 lay-assessors who assist the Chairman in proceedings.

9. The Tribunal is an independent judicial institution and carries out its functions separately and distinctly from the Commission. It has superior judicial status like that of the High Court. The Tribunal is chaired by a Judge, of equal stature to a High Court Judge, who is the sole decision maker in proceedings before the Tribunal.

10. The EOA tasks the Commission with receiving, investigating and conciliation of the complaints it receives. If conciliation is unsuccessful at the Commission they are brought before the Tribunal, the Tribunal holds formal hearings and trials to determine these complaints.

11. The procedure follows the same steps as the High Court. The Tribunal carefully examines evidence, hears testimony from witnesses, and weighs the arguments presented by the parties and it considers and applies relevant legal principles and precedents. With fairness and impartiality, the Tribunal makes decisions, which can include granting injunctions, orders for compensation, damages, or other remedies for the complainant if they are successful or dismissal of the action if the respondent wins, together with orders for costs. Decisions of the Tribunal are enforceable by the High Court, with a limited right of appeal to the Court of Appeal.

12. The judgments of the Tribunal can be found on its website www.equalrightscourt.org, major libraries and more recently, some are also available in some Law Reports.

Year in Review

13. Despite facing numerous challenges since its establishment, the Tribunal's resilience and determination to fulfil its mandate has remained steadfast resolutely turning obstacles into stepping stones for advancement and laser focussed on realising its vision. We are aware that in a fast paced digital world, the Tribunal's capability, processes and structures, must be adapted and transformed to meet the demand for its effective and efficient delivery of services.

14. The past year has been a transformative period of growth and resilience for the Tribunal and its dedicated staff. Amidst challenges, we have come together, united in our commitment to fulfilling the Tribunal's mandate. Our ability to adapt and innovate has shone through, as we successfully transitioned to remote operations, overcoming potentially crippling disruption and ensuring uninterrupted service. We take special pride in being a leader among our superior courts in conducting all of our hearings virtually and offsite, with bare-bone capacity, and at the same time successfully delivering complex judgments without any appeals in the period under review.

15. Our initiatives during the past year include the following-

a. The Tribunal continues to produce a monthly Internal Newsletter as well as a quarterly Newsletter that is distributed among external stakeholders providing real time information on the work of the Tribunal.

b. The staff has utilised the remote flexibility to engage in extensive online training personally and with other government entities as the State moves to strengthen and digitalise its managerial processes.

c. In April 2024, the Tribunal accepted the invitation of the National Advisory Committee on Constitutional Reform to present proposals for relevant Constitutional Changes.

d. Presently the Tribunal has a bi-monthly newspaper article in the Trinidad Guardian Newspapers where it provides information and clarity on the rights that can be enforced at the Tribunal and the process for so doing, with plans to do a similar broadcast series underway.

e. The Tribunal has initiated discussions with major stakeholders and international bodies, paving the way for transformative partnerships in education and human rights promotion.

f. As we approach this formidable 25-year milestone, the Tribunal has embarked on a bold journey of transformation. It is now proactively engaged in digitalising its operations, expanding its accessibility and reach, relocating to a physical space that will provide fit for purpose amenities, and revamping its governance structure through Project Green Gavel, an ambitious retooling initiative.

g. In alignment with the Tribunal's progression to E-technology our HR Unit is nearing completion of our work-from-home policy to support the initiative of the State for remote work remote work.

h. In keeping with our strategy of transformation the Tribunal has commenced introductions of Project Green Gavel to key state stakeholders. The Tribunal intends to continue to engage stakeholders to include diverse voices in the evolution of Project Green Gavel.

16. Our learned Chief Justice and head of the Judiciary, in his address at the formal opening of this year's law term last Friday (20th September 2024), lamented the deficiencies in the alignment of essential resources that were impacting the judiciary's administration and delivery of justice. I join his submission as they relate to the Tribunal, with the fervent hope that by CJ highlighting this issue, we will all benefit from a more strategic and timely allocation of resources. Such support would be pivotal in fuelling the progress of Project Green Gavel and our transformation, ensuring the Tribunal can expeditiously and effectively advance amidst the changing landscape.

"Project Green Gavel"

17. Project Green Gavel is more than just a rebranding initiative – it is a comprehensive transformation of the Tribunal, designed not only to shrink our paper footprint, but to make us more inclusive, efficient, effective and sustainable in the administration of equality and non-discrimination law. It is about more than just modernising the Tribunal – it is about creating an accessible and impartial institution where all feel welcome, heard, and protected. As we approach this milestone anniversary, we are committed to shedding past perceptions and building a future where the Tribunal is embraced as an essential tool for a progressive and forward-thinking nation, ensuring that the principles of equality and non-discrimination are upheld for the benefit of all.

18. At the heart of Project Green Gavel is our commitment to improving and advancing the efficacy of our complaint determination, increasing awareness and access to the Tribunal and ensuring that its services are commonly available and sustainable. Whether through cutting-edge technological capabilities, our relocation into the court fraternity in Port of Spain, our revamped governance and streamlined management processes, or our expanded outreach, every aspect of this initiative is designed with a single goal in mind: ensuring that all individuals can fully access the Tribunal's services and have their discrimination complaints resolved in an effective, impartial and timely manner.

19. We have already opened our virtual doors with live streaming capacity, electronic filings and virtual hearings. We eagerly anticipate our upcoming relocation within the court community in Port of Spain, where we can adapt our facilities to provide amenities that are fit for purpose and aligned with our mission of providing fair and impartial adjudication of discrimination complaints for all. Our planned relocation and digital transformation will allow individuals to engage with us from anywhere, at any time, reducing delays in the hearing and determination of complaints and enhancing the overall efficacy of our operations.

20. Project Green Gavel includes as well strengthening our governance, broadening our networks and deepening our ties to the community. We are undertaking a review of our internal architecture, with the objective of strengthening our transparency and accountability. We are forging new partnerships with our stakeholders and external institutions, recognising that the promotion and pursuit of equality is a shared responsibility.

21. Our progress on Project Green Gavel, including completing modelling and inviting tenders for customized software, positions us for future success. We warmly welcome our 'Change Champions' to the Transformation Team. Your wholehearted willingness to generously donate your time will undoubtedly be invaluable in shaping the future of the Tribunal.

Hate Speech/Offensive Behaviour

22. The proliferation of unregulated online platforms has created new vectors for unrestrained expression of hate and bias. A less understood and invoked jurisdiction of the Tribunal is its judicial authority to determine complaints involving offensive behaviour, which straddles the corrosive effects of hate speech.

23. Offensive behaviour includes any acts which cause "words, sounds, images or writing to be communicated to the public", that "offend, insult, humiliate or intimidate another person or a group of persons" which is "done with the intention of inciting gender, racial or religious hatred". In an era where divisive rhetoric can all too easily cross the line into incitement, our authority to address hate speech should not be minimised or remain underutilised. In appropriate cases the Tribunal can grant orders to restrain the impugned behaviour, make orders for compensation for persons whose reputation may be compromised and generally stand as the safeguard against a slide into a society where any group can be targeted, demeaned and their safety jeopardised by offensive behaviour.

Age Discrimination

24. Recent global events have shone a spotlight on the pervasive issue of an individual's fitness to work as they advance in age placing age discrimination, particularly in the realm of employment on the front burner. As life expectancy increases our older adults ought not to be denied access to opportunities and or gradually excluded from full participation in social and economic life because of their age. Life expectancy in this country has increased significantly over 60 years half a century ago to well over 70 years today. It is not uncommon for global CEOs and politicians as well as national trailblazers to showcase their intellectual prowess and leadership, continuing to contribute meaningfully in the highest arenas of governance and enterprise well after the years that would previously have been considered their prime.

25. This tendency to relegate older adults to secondary positions has resulted in many fit and able retired persons, with a wealth of experience and knowledge, struggling to secure fair employment opportunities. Older adults, through their life experience and wisdom, enrich us all. Yet, they are often among the most vulnerable to age-discrimination, facing marginalisation that can deny them the right to live decently.

26. As we strive to build a more just and inclusive society that values the potential of all individuals regardless of age, it is imperative that we revisit and address the issue of age discrimination especially in employment. Making age discrimination unlawful would be a pivotal step towards ensuring that career opportunities remain available and or open to all who are willing and able to contribute. We must address age discrimination more robustly in our jurisprudence, recognising the value of our older adults and the unique challenges that they face.

In Appreciation

27. I extend heartfelt gratitude to our internal and external friends and partners and our invaluable team - your collaboration has been instrumental in our continued success. May the momentum of progress endure and may the energy it generates continue to inspire and guide the Tribunal's evolution.

October 1, 2024.

