

PROCEDURAL RULES

EMERGENCY POWERS REVIEW TRIBUNAL 2018

1. ESTABLISHMENT OF TRIBUNAL

On the 18th day of January, 2018 The Emergency Powers Review Tribunal (*“the Tribunal”*) was established pursuant to **Regulation 38** of the Emergency Powers Regulations 2018 (*“The Regulations”*) after a Proclamation by His Excellency the Most Hon. Sir Patrick Allen, Governor-General of Jamaica, declaring a state of public emergency. These Regulations were enacted pursuant to The Emergency Powers Act (*“the Act”*).

2. COMPOSITION OF TRIBUNAL

Pursuant to the Constitution of Jamaica (*“the Constitution”*), the Act and the Regulations, respectively, the following persons were appointed to the Emergency Powers Review Tribunal (*“the Tribunal”*): **Ian G. Wilkinson, Q.C.**, Attorney-at-Law, Chairman (*appointed on the 24th day of January, 2018 by the Hon. Justice Zaila McCalla, OJ Chief Justice of Jamaica*); **Mr. Justice Lloyd Hibbert, CD** retired Judge of the Supreme Court and **Dr. David Henry**, Attorney-at-law (*both appointed on the 19th day of January, 2018 by His Excellency the Most Hon. Sir Patrick Allen, Governor-General of Jamaica.*

3. JURISDICTION

The jurisdiction of the Tribunal to review any order made by the *“Competent Authority”* covers matters mentioned in Sections 13

(9), 13 (10) and 13 (11), respectively, of the Constitution and, in particular, the following Regulations:

Regulation 22 – An order made by the “**Competent Authority**” restricting a person’s access to any area;

Regulation 32 - An order made by the Minister of National Security (“**The Minister**”) confining any person to his place of residence or in a place specified by the Minister where the person has no fixed place of abode; and

Regulation 33 – Any detention order made by the Minister of National Security.

4. COMPETENT AUTHORITY

Regulation 2 (1) defines the “**Competent Authority**” as the Governor-General (*or anyone duly appointed by the Governor-General for the purposes of any particular regulation*), the Minister, the Chief of Defence Staff, the Commissioner of Police, each Deputy Commissioner of Police or the Senior Officer of Police in each parish.

5. MATTERS TO BE HEARD BY THE TRIBUNAL

The Tribunal will schedule for hearing matters covered by Sections 13 (9), 13 (10) and 13 (11), respectively, of the Constitution, and in particular the above-mentioned Regulations after formal objections have been filed (*pursuant to Regulation 38 (6) of the Regulations*) by persons (“**Objectors**”) against whom any of the above-mentioned orders have been made.

6. **SECRETARIAT FOR THE TRIBUNAL**

- (a) The Tribunal **will be establishing** a Secretariat at which location all correspondence (*including objections*) are to be delivered or filed **unless stated otherwise**.
- (b) The Secretariat will be opened between 10:00 am and 3:00 pm Monday to Friday each week.
- (c) **Details of the location of the Secretariat will be published as soon as possible.**

7. **NOTICE OF OBJECTION**

- (a) Objections should be in writing in the form (***“Notice of Objection”***) provided, dated and signed by the Objector, or by an Attorney-at-Law representing the said Objector;
- (b) A copy of the relevant order, and any *“necessary particulars”* provided to the Objector pursuant to **Regulation 38 (12)** of the Regulations, should be submitted with the Notice of Objection; and
- (c) Objections are to be submitted to the Tribunal’s Secretariat at the address stated herein by hand delivery or post or, alternatively, by e-mail to ***eprtsecretariat@gmail.com***.

8. **PLACE OF HEARING**

The Tribunal hearings will be at the same location as its Secretariat unless otherwise stated by the Tribunal. **Details of the venue will be published as soon as possible.**

9. **SCHEDULING HEARINGS**

- (a) The Tribunal will schedule a hearing for an Objector as soon as reasonably practicable after receipt of the objection.
- (b) Regarding the date and time of the hearing the Tribunal will give the Objector and the Competent Authority, respectively, reasonable notice of the said hearing.

10. **DOCUMENTS FOR THE HEARINGS**

- (a) As soon as is reasonably practicable the Tribunal shall forward to the Competent Authority, by email or otherwise, each Notice of Objection received by the Tribunal.
- (b) Upon receipt of a Notice of Objection the Competent Authority shall indicate to the Tribunal if it is opposing the said objection.
- (c) If the Competent Authority is opposing the said objection this must be communicated to the Tribunal in writing at least a day before the hearing by the Tribunal.
- (d) A copy of any notice issued or published by the Competent Authority pursuant to **Regulation 39 (1)** of the Regulations

shall be delivered by the Competent Authority to the Tribunal's Secretariat at least one day before the hearing of an objection to which the said notice is relevant.

11. NOTICE OF WITNESSES

Where the Competent Authority or the Objector intends to call any witness to support its position at any hearing before the Tribunal, notice of this must be given to the Tribunal at least one day before the hearing. This notice must include the name of the witness and the specific purpose of his evidence.

12. PROCEDURE AT HEARINGS

Unless the Tribunal indicates otherwise, the following shall be the procedure at hearings:

- (a) Hearings shall be held *in camera* (that is, in private) unless otherwise authorized by the Tribunal.
- (b) The Objector's case shall be presented first with an oral address to the Tribunal by the Objector directly or through an Attorney-at-Law.
- (c) After the presentation of the Objector's case the Tribunal, if it deems it necessary, may call upon the Competent Authority to respond either directly or through its Attorney-at-Law.
- (d) After the response by the Competent Authority the Tribunal, in its sole discretion, will determine if there shall be any further presentations, including rebuttal from either party.

(e) Where appropriate the Tribunal will indicate to each party the time allotted for the presentation of its case.

(f) The Tribunal, in its sole discretion, will determine whether other persons (*including witnesses for the Objector and/or the Competent Authority*) will be allowed to speak at the hearing.

(g) At the end of the presentations by each side the Tribunal will adjudicate on the matter at a time and place convenient to the Tribunal.

13. REPORTING THE TRIBUNAL'S DECISIONS/FINDINGS

The Chairman of the Tribunal shall report to the Minister the Tribunal's findings or ruling on each objection and may give directions to the said Minister pursuant to **Section 13 (11)** of the Constitution and **Regulation 38 (8)** of the Regulations, respectively.

14. The Competent Authority (*more specifically the Minister*) upon receiving the Tribunal's said findings or ruling on an objection and any directions from the Tribunal to the Minister shall, as soon as reasonably practicable thereafter, inform the Objector in writing of the Tribunal's said findings, ruling and directions.

15. As soon as is reasonably practicable a copy of any decision made by the Competent Authority (*more specifically the Minister*) pursuant to **Regulation 38 (9)** of the Regulations shall be delivered to the Objector and the Tribunal's Secretariat, respectively.

16. These rules are not exhaustive and the Tribunal will resolve any matter not covered herein as best as possible.

17. Any questions may be directed to the Tribunal in writing at the above-mentioned Secretariat or e-mail address.
18. Pursuant to **Regulation 38 (5)** of the Regulations the Tribunal has the authority to regulate its proceedings subject to **Sections 13 (9), 13 (10) and 13 (11)**, respectively, of the Constitution. These Rules are promulgated thereunder.

February 11, 2018

Ian G. Wilkinson QC, Attorney-at-Law (Chairman)

Justice Lloyd Hibbert, CD (Retired)

Dr. David Henry, Attorney-at-Law