
# ADDRESS

delivered by

## Her Honour Mrs. Deborah Thomas-Felix

## President of the Industrial Court of Trinidad and Tobago

at the

Special Sitting for the Opening of the

2019-2020 Law Term

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INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

Since the last opening of the law term there has been several developments internationally which I believe may have direct impact on the workplace globally and in Trinidad and Tobago.

One such development is the new International Labour Organisation's (ILO) Convention which was adopted in Geneva, Switzerland, in June this year.

As with all conventions, this convention will enter into force twelve (12) months after two Members States have ratified it.

The Convention, Convention 190 titled Violence and Harassment Convention 2019 along with the Violence and Harassment Recommendation No. 206 speak to the elimination of violence and harassment in the world of work.

For the first time, violence and harassment in the world of work are covered together in international labour standards.

This year the ILO, marks one hundred (100) years as an organisation. The adoption of Convention 190 with its Recommendations together with ILO's Centenary Declaration for the Future of Work are central to its centenary celebrations. These two initiatives are very important developments in the world of work and the hope is that they will assist to guide the transformational changes that are occurring globally in the workplace.

There are some key features of Convention 190 which I will like to discuss.

In the past, there has not been a universal definition of sexual harassment. However, in Convention 190 the term "violence and harassment" in the world of work is defined as "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment." The term "gender-based violence and harassment" is defined as "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and include sexual harassment".

In my respectful view, these definitions potentially cover physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things. The Convention also takes into account the fast changing nature of the world of work, the erosion of the traditional employment contract and the fact that nowadays work does not always take place at a physical workplace; so, for example, it covers work-related communications, including those enabled by Information and Communications Technology. Moreover, this Convention protects persons in the world of work, including employees as defined by national law and practice, persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer. The Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.

The Convention's focus on inclusivity is very important. It means that everyone who works or is working a job is protected, irrespective of contractual status, and includes persons exercising the authority of an employer.

Interestingly, Convention 109 applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work: (a) in the workplace, including public and private spaces where they are a place of work; (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; (c) during work-related trips, travel, training, events or social activities; (d) through work-related communications, including those enabled by information and communication technologies; (e) in employer-provided accommodation; and (f) when commuting to and from work.

We know that some groups, and workers in certain sectors, occupations and work arrangements are acknowledged to be especially vulnerable to violence and harassment; for example, persons working in education, domestic workers, those working at night for example workers in casinos and fast food outlets, in the health sector or those who work in isolated areas.

Gender-based violence and harassment is specifically highlighted in the Convention, and the approach also takes into account third parties (e.g. clients, customers, service providers and patients) because they can be victims as well as perpetrators.

A very interesting and important feature of this Convention is the impact of domestic violence on the world of work. The Convention has taken a significant step to treat with the issue of domestic violence and how it has impacted not only on life in the personal capacity, but also in the workplace by setting out practical measures to protect the victim including leave for victims, flexible work arrangements and awareness raising although the violence may not have occurred in the workplace.

This is a significant step in bringing domestic violence out of the shadows, and encouraging a change of attitude towards this problem.

I remember in my past incarnation when I presided upon domestic violence cases, one of the first ingredient which a victim has to establish was that there existed a degree of relationship between the victim and the offender which constituted a domestic relationship to qualify for protection under the Act. For victims who are in "visiting" relationships in this country, they must first establish that the visiting relationship was subsisting for a period exceeding twelve months before they can obtain an Order of Protection from the Court. Many of us have spoken out on this issue in the past but this provision has not been amended.

Now that domestic violence is brought out of the shadows, and it is included in a Convention which deals with issues at the workplace, one wonders if the prescribed period for a visiting relationship, as defined by our Domestic Violence Act, will be repealed to afford every victim of domestic violence protection under the law. Further, if this country ratifies Convention 109, one can only hope that new legislation emerges which addresses all issues related to violence and harassment in this society. It is very important, that we deeply consider the debilitating effect of violence and harassment at all levels, and how violence can affect productivity, economic stagnation and lead to social discord, whether it is violence in the workplace, at the home, or in the street.

I pause to say, that if we as a nation seek to address the problem of violence and human security in the country, we may want to examine the issue of inclusion. Inclusion is the only sure and safe pathway to a peaceful Trinidad and Tobago; exclusion, on the other hand, is a dangerous path which can only lead to a violent and chaotic society.

The second initiative which is of importance to us, is the ILO's Centenary Declaration for the Future of Work, 2019.

It has been stated that this Declaration draws inspiration from the ILO's founding principles to renew the social justice mandate and reinvigorate the ILO to shape a future of decent work for all.

As we know, the world of work is experiencing transformative changes, driven by technological innovations, demographic shifts, climate change and globalisation. Those changes together with labour market fragmentation, the emergence of the GIG platform economy and crowdwork, the care economy and the green/blue economy are part of the future of work.

In response to these challenges, a Centenary Declaration for the Future of Work was adopted in this year at the 108th session of the International Labour Conference. There are two approaches; a human centred approach and a call to action. The "human-centred approach" focuses on three areas of action namely: (i) increasing investment in people's capabilities, (ii) increasing investment in the institutions of work, (iii) Increasing investment in decent and sustainable work.

The Declaration issues a call to action for all member States to: ensure all people benefit from the changing world of work, ensure the continued relevance of the employment relationship, ensure adequate protection for all workers; and promote sustained, inclusive and sustainable economic growth, full employment and decent work.[1]

The other continuing international development which I want to address briefly is the issue of migration and its impact on the world of work. This country welcomed a large number

[1] ILO Centenary Declaration for the Future of Work, 2019

of migrants this year. Permit me to repeat what I have stated on this issue before, which is that a "key national development issue that the Tripartite Council may wish to take notice of with a view to tabling it for an inclusive discussion and debate, relate to migrant labour.

The issue of labour migration and migrant workers is a very topical issue that affects us all. Tripartism will be a very useful way to approach this issue in its different dimensions. The reality is that workers may find themselves interfacing with new colleagues from a different country, business owners may now find that they are faced with a different workforce, and Union leaders may find themselves representing a transformed clientele with potentially diverse concerns, we will all bear witness to the effect of globalisation writ large.

In this modern era where people and information travel and move faster than ever before, it is incumbent upon all social partners to be proactive and to work in tandem with each other to address the various and complex challenges and the opportunities that may arise from cross-border labour migration. In this context, it is critical that we do so within the framework of well-crafted policies and creative mechanisms that will allow all social partners - Labour, Business and Government - to contribute and benefit from this phenomenon."

## INDUSTRIAL COURT'S YEAR IN REVIEW

I will now turn to the work of the Court.

For the period September 2018 to September 2019, 1410 new cases were filed at the Industrial Court, 237 more cases than those filed for the same period in 2017/2018 which recorded 1173 cases. Additionally, the Court disposed of 858 matters in the year in review which was 213 less than the 1071 matters disposed of for the same period, 2017/2018.

Of the total matters filed at the Court for this year, 2018/2019, Trade Disputes remain the largest number of matters filed, followed by Retrenchment and Severance Benefits and Occupational Safety and Health.

## Financial Challenges

For the 2018-2019 financial year, the Industrial Court requested TT$65 million in recurrent expenditure and was allocated TT$40 million which is - 38% less than the amount needed for the Court to function optimally. The allocation of TT$40 million comprises of TT$26 million for salaries and TT$14 million for goods and services to operate the Court which includes payment of security services and utilities. Further, to exacerbate an already difficult situation, the release of these funds has been inconsistent and inadequate. There were times when there was no release of funds with respect to goods and services for months at a time. Even after the funds have been released, approval is sometimes required to print cheques for payment. This situation has been ongoing for the past few years and it is becoming increasingly difficult for the Court to meet its financial and service obligations and to have basic supplies such as ink and paper. The reduction in the Court's budget and the lack of funds have impacted negatively the Courts ability to deliver key initiatives including our flagship stakeholder event 'Meet With the Court Symposium, the hearing of disputes in Tobago, which has assisted in alleviating the expense and inconvenience for access to justice for Tobagonians. Also affected have been training for Judges to continuously improve capacity and efficiency in the determination of disputes and the production of key publications by the Court such as the Trends in Labour and Industrial Relations Bulletin, the Industrial Court Law Report and the Court's Annual Law Report. With respect to the 'Meet with the Court' Symposium and the training for Judges, it is the first year that the Court has been unable to deliver these critical initiatives for our internal and external stakeholders.

On behalf of the Judges of the Industrial Court, I wish to thank the staff of the Industrial Court for their unwavering support and service especially in these difficult times.

## Shortage of Court Reporters

The ongoing problem of shortage of court reporters continues to plague the Industrial Court. To date, there are 20 vacant Verbatim Reporter 1 positions, out of a total of 22. The Court has attempted to meet this huge shortfall by engaging the services of retired Reporters, however, financial constraints limit the number of persons the Court can

contract to serve. This continuous lack of an adequate complement of Court Reporters to meet the increasing demand by Judges and stakeholders for notes of evidence and outstanding judgments, poses a daily challenge for the Court. As expected, the situation has become increasingly difficult as the volume of work continues to increase and this has hindered the Court's ability to fulfil requests for notes and judgments in a timely manner. For example, this year a total of 399 judgments were reserved for decision by the Court. Of these reserved judgments 214 remain outstanding due to the fact that Notes cannot be prepared and given to Judges for their decisions and the backlog which was cleared in 2014 has returned.

## Establishment of Court in Tobago

The Court has not presided in Tobago for the past three years due to a lack of funds and it has been difficult for litigants from Tobago to attend Court in Trinidad. As stated in my previous reports, the Industrial Court is in the process of opening a Tobago branch at Sandy Hall Building in Scarborough.

National Insurance Property Development Company Limited (NIPDEC) has been retained as the Project Manager for the refurbishment work on the building and the Court has received and approved the architectural drawings. It is my hope that the Court will receive the necessary funds this financial year to complete this project in 2020.

## Towards an E-Court

Over the years, I have been giving you, the stakeholders, updates as the Industrial Court continues to work steadily to improve its court technology management system. This is a part of the initiative to transform the Court into an e-Court. Some key initiatives implemented thus far were:

- The introduction of electronic kiosks.
- Video Conferencing services from Port of Spain to San Fernando and outside of Trinidad and Tobago
- Expansion of the e-Court technology in all courtrooms such as For-the-Record, Real-Time transcription and Voice-to-Text Technologies.

- A file tracking software known as a Radio Frequency Identification system
- Scanning of all documents filed in the Registry
- Expansion of the storage space to manage the Court's data
- Installation of a wireless system to improve service to our stakeholders and allow Judges to communicate with our databases and court management software
- Digitization of judgments in the Library. Currently, 61.5% of the judgment collection from 1965 to present has been digitized.
- Upgrade of the Court's website

We have also been reviewing court management software systems with a view to adopt one that better meets the current demands and functionalities required by the Court.

The hope is that there will be E-filing and all the modern technology systems at the Industrial Court going forward. The Registrar of the Court, Mr. Noel Inniss and I returned from New Orleans on Saturday where we attended a National Center for State Courts Technology Conference. At the conference we examined software which can improve the Court's case management system and more importantly address the current transcriptionist problems which we have been experiencing for the past few years. I do hope we are granted the financial resources in this financial year to acquire the much needed court technology.

## Training

Nineteen (19) members of staff benefited from the training services provided by the Public Service Academy of the Ministry of Public Administration in the year in review.

## Meet With the Court Symposium

When I became President of the Industrial Court, I instituted a stakeholder forum which is known as the annual "Meet with the Court Symposium". The raison d'être of this symposium was to provide employers, Unions, and government representatives with a platform to meet with the Industrial Court and to examine the judgments, the processes

and the working of the Court along with the jurisprudence and to have discussions on these and other issues in a more relaxed informal setting.

Each year the Court invites three hundred stakeholders to attend this symposium and to participate in the discussions. Those who have attended the symposium can testify that this forum is a useful platform to clarify issues affecting the social partners and to have transparent and healthy discussions on the judgments, the jurisprudence of the Court, and of economic trends and national issues.

Unfortunately, we have not been able to host the Symposium this year due to the budgetary constraints. However, the feedback we receive each year is extremely positive and I personally view it as a useful mechanism to facilitate healthy criticism and discussions among all the stakeholders.

Among the speakers at the symposium were specialists from the ILO in the persons of Mr. Shingo Miyake, Mr. Rainer Pritzer and Ms. Yuka Ujita, from the University of the West Indies were of Dr. Leighton Jackson, Dean of the Faculty of Law - Mona, Mr. Jefferson Cumberbatch, Law Lecturer - Cave Hill, Dr. Andrew Downes, Pro Vice Chancellor – Cave Hill, and Economists Professor Compton Bourne and Dr. Ralph Henry. I thank all presenters for their contributions over the years.

## Members at the Court

This year, six (6) new Members were appointed to the Industrial Court. They are Their Honours Ms. Wendy Ali, Mr. Vincent Cabrera, Mrs. Angela Hamel-Smith, Mrs. Indra Rampersad-Suite, Ms. Elizabeth Solomon and Mrs. Jillian Joy Bartlett-Alleyne. On behalf of the Industrial Court, I wish to welcome all the new Members and to wish each of them a successful career at the Court.

My sincerest congratulations to His Honour Mr. Herbert Soverall on his elevation to Vice President of the Industrial Court.

Over the past year, the terms of office came to an end for former Vice President, His Honour Mr. Ramchand Lutchmedial, and His Honour Mr. Mahindra Maharaj. I take this

opportunity to thank them for their service and contribution to the work of the Court and wish them all the best in their future endeavours.

In this part of my speech today I could not help but to recall the words of John Adams the second President of the United States of America which were quoted by President Barack Obama and these words are “Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.”

In the year in review, several questions have been raised in the public domain about the impartiality of the Industrial Court, the relevance of the institution, the Court’s judgments and interestingly, on what the composition of Judges at the court should look like. I wish to remind stakeholders and the public in general that the Industrial Relations Act provides that the Judges of the Court must be qualified Economists, Attorneys at Law, Accountants and Industrial Relations experts. There is no provision in the Act for the Judges to be selected from the employer group or from the trade Union movement. I have spoken to some of these issues in the past, and I do not intend to revisit them. However, I have noted with interest that the thinking which has been very public lately is the thinking that the Industrial Court does not allow employers to “fire” workers. This in my mind shows a lack of understanding of the work of the Court.

From time to time there are employers who may decide to bring an end to the employment relationship, with a worker, for one reason or another, to use layman’s language the employer fires the worker.

However, these employers would afford the worker the opportunity to be heard, they would allow the worker a fair hearing on the particular issue, and they would also follow the process stipulated by the laws of this country. The worker is then dismissed as a result of their findings. The decision to dismiss workers in these circumstances are routinely upheld by the Industrial Court, time and time again. This is not an exception, it is the norm. When the dismissal of a worker is regular, lawful and it is done in accordance with the principles and practice of good industrial relations and the laws of the country, the Court always upholds these decisions.

As a matter of fact, some of these cases do not always reach to the open Court for hearing. The Industrial Court may direct the Union and the employer to resolve these matters bilaterally or they may be resolved in Case Management or at Conciliation at the Court. In some of these cases the Court renders written judgments, others are disposed of by oral judgments or by Orders and additionally, due to the guidance from the Court the Union may withdraw its case against the employer. It is therefore very misleading to say that the Industrial Court does not allow employers to 'fire' workers.

Then there are employers who simply do not take part in the process. These employers ignore the several Summonses and Orders sent by the Court. They will not attend Case Management hearings nor do they attend open Court hearings. As a result, these cases are heard in the absence of the employers and the Court renders its judgment. When the judgment is rendered, if it is in favour of the union, the union has to take steps to enforce it. In some instances the Union may go to the Supreme Court to have the Order enforced or they may return to the Industrial Court with an application for contempt against the employer. These instances where the employer does not participate and the case is determined in their absence are not a few isolated instances, this is a regular occurrence at the Industrial Court.

The Industrial Relations Act provides for decisions of the Industrial Court to be appealed to the Court of Appeal on points of law. Anyone who is aggrieved with a decision of the Court, has the right to appeal that decision to the Court of Appeal, and to further appeal to the Privy Council for final determination.

However, and I have said this in the past, while I believe that criticisms about the operations of the Industrial Court are healthy as we continue to develop as a nation fifty-seven (57) years after attaining independence, what I will not accept is that someone can stand and say publicly that "there is corruption, the Union is in co-hoots with the Industrial Court and the going price is seventy-five thousand dollars". Those types of comments are disturbing, they are alarming and simultaneously sad. Sad because it shows a lack of understanding of the work of the Industrial Court and also because they are direct attacks on the integrity of the institution.

If the popular view is that there is need to look at the Industrial Court – with a view to implement reform, to strengthen it, to change it, to change it to adapt to the times, to amend the laws, to adopt different procedures or to remove it entirely, then that is a very healthy debate with which I think the public is entitled to be engaged.

However, when the criticism impugns the integrity of the Judges and staff of the Court – that is not only sad but dangerous and disingenuous. I have said in the past that when we criticise, we have to be very careful that we do not dismantle institutions.

I will repeat my statement that "in seeking to advance the arguments regarding the orientation of the Court that have been put forward, it is critical that we also take stock of the importance of independent institutions. Constructive criticism is always welcomed but an overarching concern is that the boundary between criticising and seeking to influence outcomes may become blurred far too often and far too quickly. This, we must all guard against. One may disagree with some rulings of the Court, but to seek to impugn its impartiality, its integrity or to diminish the importance of its role and function, is simply not the way to go."

It is noteworthy, that former Prime Minister, Dr. Eric Williams, in the 1960s lamented the numbers of strikes, lock outs and sit outs and some cases violence which characterised the industrial relations landscape of this country at the time. Dr. Williams and the government of the day, thought that it was wise to establish a regulatory framework to resolve disputes in a formal setting instead of the informal setting where Unions and employers resolve issues on their own. As a result, the Industrial Court was established 54 years ago. The regulatory framework which was established acknowledged the need to balance the competing interests of employers, workers, and trade unions within the broader framework of the national interest to prevent strikes, lockouts and industrial unrest that would impede productivity and economic growth.

That was 54 years ago, presently, it may well be that the prevailing view is that there is no need for the Industrial Court and that unions and employers should return to the model which existed in the 1960s where unions and employers resolved issues on their own. Whatever is contemplated or conceptualized for a new industrial relations framework in

Trinidad and Tobago, we the members of the Industrial Court will accept and embrace it. However, until a new framework is fashioned, the Judges of this Court will collectively continue to uphold the principles of good industrial relations without fear or favour, malice or ill will.

No system is perfect. In fact, each system reflects societal norms at a given time. In my view, Courts are not designed to create a perfect system. Courts are designed to remove injustice, they are designed to protect citizens from injustice. The Industrial Court as I said in the past, will continue to uphold and adhere to international best practices in the workplace. We will not support practices which are contrary to the principles of good Industrial Relations in Trinidad and Tobago. We certainly will not subscribe to the flagrant abuse and violation of the rights of any one of the social partners. We will continue to be steadfast in our duty to contribute to the national efforts for realising social justice and inclusive, equitable growth to improve the quality of life of all citizens.

This is the time for the social partners to stop the finger pointing and the blaming and to assist in taking this country forward. It is important to recognise that we are all doing different jobs for the same common purpose, which is, to assist in the sustainable development of Trinidad and Tobago.

I urge that stakeholders not forget that the employers, the workers and the unions have an underlying common purpose, which is, to ensure the success of businesses, so that employees can get decent wages and pensions and business owners can make profits while they both simultaneously assist in the building and development of the economy. This common purpose can only be successful in an atmosphere of collaboration, tripartism and mutual respect; as the African saying goes “one head cannot hold all wisdom”.

As we begin a new law term I reaffirm my commitment to the ideals and the tenets of the Industrial Court resolute in my love for this country and resolute in my love for **all** its people.

May God bless you all and thank you for listening.