THE ROLE OF THE INDUSTRIAL COURT IN A CHANGING INDUSTRIAL LANDSCAPE IN TRINIDAD AND TOBAGO

Delivered by

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Good morning, Ladies and Gentlemen and welcome to the 4th Symposium hosted by the Industrial Court of Trinidad and Tobago.

I have chosen as the topic for my speech, the Role of the Industrial Court in a Changing Industrial Landscape in Trinidad and Tobago**.**

The first part of my speech will be devoted to putting this changing industrial climate into context with a brief overview of some important developments in energy markets and the global economy and how these are impacting labour market conditions and the industrial relations climate. The remainder of the speech focuses on the role that the Court plays in adjudicating and settling tensions in the industrial relations climate which is so important for the maintenance of the rule of law and ultimately for social cohesion and economic stability.

A. The Changing Global Economic Landscape and the Impact on the Labour Market

Let me begin by saying that the global economy is not improving as fast as many of us truly want.

The recent prognosis on the global economy in the IMF's World Economic Outlook (WEO) paints a picture of a relatively slow pace of recovery.

The world economy grew by a modest 3.1 per cent in 2015 and growth is expected to hover in the vicinity of just around 3.2 per cent in 2016. Of more importance though is the fact that the IMF has lowered its projections for global growth in 2016 from 3.4 per cent to 3.2 per cent. Much of this restraint in the global growth trajectory has come from the slower pace of economic growth in China and in some key emerging economies like Brazil as well as the continued economic stress in several advanced countries in Europe.

This subdued growth which has been accompanied by weaker global demand and substantially lower commodity prices - especially for oil and natural gas, has created substantial turbulence in the economies of commodity exporters all around the world, including Trinidad and Tobago. There are also fears that, with the lifting of sanctions in Iran and the increased supply of oil on global markets, energy prices could fall even further. In fact, the IMF's WEO indicate that oil prices fell by roughly 50 per cent between 2014 and 2015 and are expected to decline by another 10 per cent in 2016.[1]

[1] See page 15 of IMF's World Economic Outlook

This instability in the energy market is leading to some sharp downward adjustments in public and private sector spending as well as in investments in commodity exports on all the major continents with negative consequences for job creation and the industrial relations climate. A few examples may serve to highlight the magnitude of the adjustments that are already taking place in some countries.

On the European continent, Russia, the largest non-OPEC producer, has been forced to cut public spending by around 10 per cent. In Nigeria, the largest economy on the African continent, foreign exchange reserves have dwindled and the unemployment rate is hovering in double-digit (9.9%) territory. Closer to home, in Venezuela, government revenues have declined sharply and a 60-day economic emergency has been announced to manage the emerging economic crisis. The overall unemployment rate in Venezuela is now around 7.5 per cent with youth unemployment twice this level (roughly 16 per cent).

I have provided these examples to make the point that all energy exporting countries are experiencing varying degrees of economic challenges which are already spilling over into the labour market. It should therefore come as no surprise that the ILO now predicts a further increase of at least 2.3 million in global unemployment in 2016.

In Trinidad and Tobago, we have begun to experience our own share of economic difficulties and the industrial relations climate has consequently become more tense as employers avail themselves of all possible options (including retrenchment and layoffs) to cut costs, remain economically viable and survive as our labour market adjusts to the new realities in our economic environment. Figures at the Industrial court show that there were twelve (12) disputes filed under the Retrenchment and Severance Benefit Act in 2015.

However, from January 2016 to date, fourteen (14) matters have been filed so far. In this process economic adjustment however, it is important that both employers and employees do not abuse the law and the principles and practice of good industrial relations even as they adjust to the changing economic times. It is also equally important that all parties clearly understand the role that the Court plays in adjudicating fair and equitable outcomes and in ensuring that the rule of law prevails to maintain the harmonious and efficient functioning of the labour market which is vital for labour productivity and economic growth.

B. The Role of the Court in Adjudicating Labour Disputes

Let me elaborate on the role that the Court plays in our labour market as it relates to the resolution of disputes in this country.

The Industrial Court of Trinidad and Tobago is a superior court of record which has a mandate to make better provision for the stabilisation, improvement and promotion of industrial relations in this country. Its objective is the maintenance of good industrial relations principles and practices and the preservation of industrial peace and economic stability in the labour market.

The Court is part of a regulatory framework for industrial relations which acknowledges the need to balance the competing interest of employers, workers and trade unions within the broader framework of the national interest. This framework includes the International Labour Organisation (ILO) standards and international best practices in the workplace.

It is useful at this juncture to remind that Trinidad and Tobago has ratified twenty one (21) ILO Conventions including the eight fundamental conventions. The ILO has maintained and developed a system of standards which are aimed at promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity. These standards are an important component in the international framework for ensuring that the growth of the global economy provides benefits to all.

The legislative framework for labour relations in Trinidad and Tobago has positioned the Industrial Court as guardian of the national standards of what constitutes good industrial relations principles and practice. The Court therefore plays a key role in issuing guidance to shape proper practices in the work place and in so doing assists in the preservation and promotion of industrial peace and stability.

Fifty-one (51) years ago when this Court was established, critics were very vocal in labeling it as a Court for the employer and the elite class. Over the years this criticism has changed and the Court has been labeled a Court for workers.

Lately that criticism has been repeatedly articulated in the industrial relations echo chamber in this country and in some instances by persons who have had no interaction with the Court or proper insight of the working of the Court.

I note with interest a comment from an economist in the daily newspapers that “the process of the Court is inherently adversarial and is essentially a win-lose situation. The underlying disputes may not in fact be settled and the parties may have to return to the shared space of the workplace and continue to work together……. is any wonder then that our

workplaces become toxic environments and suspicious, confrontational and disputatious at the slightest problems".

This week, the Newsday reported of a discussion among members of the business sector, where speakers reportedly portrayed the Industrial Court as an obstacle to their ability to run their businesses profitably and maintain the necessary discipline, the employers allegedly claimed "that the judgments coming out of the Court favoured the worker at the expense of the employer and the survival of the business as a going and profitable enterprise".

To respond first to the win/lose comment, let me say that the Industrial Court is a superior court of record and therefore it stands to reason if there is a trial someone will emerge a winner and someone will lose. Like in all Courts in this country, a party who is dissatisfied with a ruling has the right to appeal to the Court of Appeal. The statistics at the Court shows that for the period 2011-2015, out of the 2,744 cases determined by the Industrial Court, only 34 appeals were filed at the Court of Appeal. In fact, I don't know of any other Court in this country, which as a policy, encourages bilateral discussions between parties and which adjourns matters time and time again for parties to meet and talk. I also don't know of any other Court which offers parties conciliation at the very start of proceedings before Case Management. I don't know of any Court which intervenes before the open Court hearings in a number of disputes when it appears that these disputes are not well founded. Due to the pretrial intervention of the Court, a number of these disputes are withdrawn.

The statistics at the Court also reveal that of the total number of matters disposed (2,744) at the Court over the period 2011 – 2015, 27%

(747 matters) were from judgments which was disposed by the adversarial process. Of these 747 matters, 230 judgments which represent 30% were in favour of employers. An examination of the statistics for our non-adversarial process shows that 15.6% (427 matters) were disposed by conciliation, 19.6% (539) matters were disposed bilaterally, while 24.9% (683 matters) were withdrawn. This means that 60.1% of the matters were determined in a non-adversarial environment during the period. When you examine the matters which are withdrawn, which is 24.9% (683), you will note that they were withdrawn by unions; therefore simply put, the employer won.

If you do the math it will answer the question whether the judgments of the Court favour workers.

It is important to know however, that the disputes which go to open Court for hearing are those which can only be resolved by a panel of judges. In several of those cases, the conduct by the employer is so egregious that it goes against the grain of what is acceptable, fair and just and what is good Industrial Relations principles and practices in the workplace. Those are the cases you will read about in the newspapers, the cases which the employer loses, the cases where the Court has determined that the conduct of the employer is harsh and oppressive and is not in accordance with good Industrial Relations principle and practices.

It will be remiss of me not to mention that there are several companies in this country which are unionised, and harmoniously work with the unions to resolve issues. They value their human resources and understand that parties in the workplace have a common purpose which is best achieved from the practice of good Industrial Relations. These companies have very few matters, if any, filed at the Court.

It is my view that with the current stagnation in the economy and the announcement of a recession which has created panic throughout the population, several persons are searching for answers and in so doing they look to see where to put the blame**.** Some of the blame is leveled at the Court. You fire sixty-eight (68) workers without the blink of an eye, you blame the Court; you close up shop without giving a thought to what is due to workers and the rights of workers, you blame the Court; you curse workers in the most vile and despicable manner, and you blame the Court. You place your workers in situations where their health and safety are compromised, you blame the Court; you fire union officials with a view of dismantling the union, and, of course, you blame the Court.

We at the Industrial Court uphold and adhere to the ILO standards and international best practices in the workplace. We therefore 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 citizens.

Moreover, 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 criticizing 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 or diminish the importance of its role and function, is simply not the way to go.

I wish to further underscore that a strong, just Industrial Court is one pillar among several key national institutions that work in concert to support stronger governance and the system of standards that supports all in their quest for Decent Work.

Indeed, for these institutions to thrive and survive, they must be robust and inviolable, since the strengthening of our democratic systems of governance is a work in progress and a process of which the Court is an indelible part and will continue to play a unique role.

If you wish to examine the operations of the Court functions, then permit me to suggest that you take a closer look at the challenges which the Court faces on a daily basis. The challenges for space, for staff, for stationery, for office equipment and for parking, and then you may conclude like I have, that the Judges of the Court and the staff of the Court have been performing remarkably well despite these challenges. I want to commend the judges and the staff for ensuring that the wheels of justice continue to turn in a time of myriad challenges.

Critically, I want to emphasize that this issue of lack of resources is sadly not unique to the Court. While I am clearly cognisant of the change in our economic circumstances, I wish to strongly caution that the way we resource the institutions that serve as pillars of our evolving democracy illustrates the importance or lack thereof, we accord them. Whether it is sustained access to training, enhanced facilities, recruitment or succession planning, we need to do more and do better.

Against the backdrop of these trying circumstances, the Court has continued to and will continue to discharge its duties impartially, faithfully and consistently, in keeping with its mandate.

The national discussion on Industrial Relations tells me that there is a need for everyone at the workplace, the practitioners of Industrial Relations and social partners alike, to familiarize themselves with, and in some cases, to refresh their minds of the rights, duties and obligations of employers and the rights, duties and obligations of workers, especially in this time of global economic challenges and depressed energy prices. We have seen that these global conditions have impacted on employment on many sectors of the economy. This is therefore an opportune time for the social partners to collaborate to devise new and innovative ways to be productive and to remain economically viable. This is also the time for reasonableness in the approach to negotiations and bilateral discussions, and for adjustment on both sides.

Moreover, there is also a need for public education on what is a recession and how global economic developments are impacting this country. Citizens are in panic mode and each person seems to have a different view and interpretation of what is a recession. There is dispute about whether we are experiencing a recession and about what should be done in households and at the workplaces to treat with this situation. I submit that these are the discussions which we should be having if we are interested in cushioning the effects of the global economic turbulence.

Don’t blame the Industrial Court, begin the discourse.

I thank you for listening.