

BOON OR BANE?
THE PERFORMANCE OF THE INDUSTRIAL
COURT OF TRINIDAD AND TOBAGO 2015-2016

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BOON

Something extremely
useful, helpful, or
beneficial; a blessing or
benefit

2

BANE

Something causing misery

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**Business
Chambers call
for industrial
relations
reform**

“If we are going to be **globally competitive**, we need to reverse the current trend in declining productivity. One of the most important elements needed to **increase productivity** is a **dynamic labour market** and a **supportive industrial relations environment**.”

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**FLEXIBILITY,
DIALOGUE
VS.
ENTRENCHED
INTERESTS**

“We need an industrial relations system that promotes **flexibility** and **open dialogue** between employers and employees, rather than a system that just **protects entrenched interests.**”

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**EXISTING
INDUSTRIAL
RELATIONS
SYSTEM IS
ANTI-
COMPETITIVE**

“The reality is that the **existing industrial relations system** and climate will not lead to sustainable jobs, job security, or **competitiveness** for our people and our country.”

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**Business
Chambers call
for industrial
relations
reform**

**“We therefore need a new
industrial relations
system.”**

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**OUTMODED
ROLE OF
UNIONS**

“Unions must become **partners** in improving the level of productivity in the workplace with a **shared accountability with employers** in improving the competency of the workforce.

Unions must support employers in ensuring **ethical work practices**, aligned to **global standards....”**

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ILO COMMITMENTS

EFFECTIVE
PROTECTION

ECONOMIC
GROWTH

“[I]n accordance with our international commitments to the International Labour Organisation (ILO), the new industrial relations system must provide effective protection for employees, whilst simultaneously creating space **for employers to deliver the growth** that will ultimately lead to more jobs and an expanded economy.”

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PROF. DENSIL WILLIAMS

Executive
Director, UWI
Mona School of
Business and
Management

***COMPETITIVENESS OF
SMALL NATIONS:
WHAT MATTERS?***

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THE BOTTOM LINE

The bottom line for the economic management of a country is to improve the prosperity of its people.

Achieving this economic prosperity, however; seems very elusive for some countries, especially those of the English-speaking Caribbean

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DRIVERS OF PRODUCTIVITY

- Understanding the drivers of economic competitiveness is very critical to laying the foundation for strong economic growth especially in small states.
- “Prosperity is not built by having traditional factor inputs such as land, labour and capital as the economic models developed by the late 19th century and the early 20th century economists would have us believe.”

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The Porter Diamond Framework

- Information
- Incentives
- Competition policies
- Public institutions
- Macroeconomic environment such as:
 - Government debt
 - Inflation
 - Saving rates
- Microeconomic factors such as
 - Taxes
 - Trade restrictions

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DRIVERS OF PRODUCTIVITY

“IT IS THESE FACTORS THAT WILL HELP DRIVE THE LEVEL OF PRODUCTIVITY IN ANY NATION.”

“Indeed, one could easily identify the determinants of competitiveness as those institutions, policies and microeconomic factors that create the level of productivity of a country.”

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Motivation is ownership - self-worth and dignity – and ultimately self-existence

“Employment is the major instrument for the creation and distribution of the economic resources of the state. It is perhaps the most significant space where the ordinary citizen finds meaning of citizenship, self-expression, self-worth and dignity – and ultimately self-existence - within the State when the citizen not only participates but is rewarded. *Employment and labour law stands for a sense of co-ownership of the State shared with fellow citizens.* When viewed in this manner labour law and industrial relations are pivotal to social change and the Industrial Court as the regulatory institution stands at the apex of transformation and change.”

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The pivotal jurisprudence of the IRA is s.10(3)

Notwithstanding anything in this Act or in any rule of law to the contrary, the Court in the exercise of its powers shall –

- (a) Make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
- (b) Act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.

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Section 10(5)

An order under subsection (4) may be made where, in the opinion of the Court, a worker has been dismissed in circumstances that are **harsh and oppressive** or not in accordance with the **principles of good industrial relations practice**; and in the case of an order for compensation or damages, the Court in making an assessment shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion **fair and appropriate**.

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Section 9(1)

In the hearing and determination of any matter before it, the Court may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the Evidence Act, but the Court may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence in regard thereto.

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Section 10(6)

The opinion of the Court as to whether a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of food industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to subsection (5) shall not be challenged, appealed against, reviewed, quashed or called into question in any Court on any account whatsoever.

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Section 18(1)

Subject to subsection (2), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award) – shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatsoever; and shall not be subject to prohibition, mandamus or injunction in any Court on any account whatever.

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The dispensation of justice in the Industrial Court

- Not bound by tradition
- A pragmatic exercise
- Super-wide jurisdiction
- Broad objectives as stated in the IRA
- The doctrinal structure of industrial relations jurisprudence based on increased prosperity in its broadest connotation
- Through increased productivity
- A close consideration of many disparate issues
- Considerations and sectorial concerns
- Ideas must be drawn from many areas

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TRINIDAD
AND TOBAGO
IRA IS THE
MOST
ADVANCED,
FLEXIBLE,
DEMOCRATIC
LEGISLATION
EXISTING

Epitomises good governance through system of participation, transparency and accountability.

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RE- CONSTRUCTION OF RELATIONSHIPS

“Indeed in a phrase the ultimate function of the Industrial Court is in fact a reconstitution of relationships in the society, not only the relationship between persons in diverse roles but also the relationship between organisations, government and governmental institutions, within the context of economic efficiency and fundamental social and economic rights, voluntary sources and particular institutions as well as the overarching concern with meeting international standards which our country has committed itself to as a matter of international law.”

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CONTEXT MATTERS

- “While general principles can provide a blueprint for growth, context matters.”

- PROFESSOR DENSIL WILLIAMS (p.1-2)

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THEMES

- Flexibility
- Open Dialogue Between Employers And Employees
- Not a system that just protects entrenched interests

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BOON OR BANE?

Something causing misery

OR

Extremely useful, helpful, or beneficial; a blessing or benefit

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**The Industrial
Court is the
Boon to
Productivity
in Trinidad
and Tobago**

“A competitive economy is one which has in place factors that drive productivity enhancements on which future prosperity will be built. A large number of economic and other variables are used to determine the productivity of a nation.”