



INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

Speech delivered by
Her Honour Mrs. Deborah Thomas-Felix
President of the Industrial Court of Trinidad and Tobago

At the
**Special Sitting of the Industrial Court for the
Law Term 2014-2015**

**Monday 22nd September, 2014
at 10:00 am**

**First Court
Ground Floor, Industrial Court Building
Corner Queen and St. Vincent Streets
Port of Spain**

It seems like it was just yesterday that we gathered in similar fashion, for the 2013 opening of the law term. However, it has indeed been one year. As globalisation continues to produce a new level of interdependence and integration among nations, it is fitting that we ponder on some of the key developments that have played out on the world and the domestic stage during the year in review, given their implications for economic and social policies, industrial relations and future actions for promoting industrial peace. In the June 2014 edition of its Global Economic Prospects, the World Bank indicated that:

“...The global economy is expected toexpand by 2.8 percent this year, strengthening to 3.4 and 3.5 percent in 2015 and 2016, respectively. High-income economies [are expected to account for] about half of global growth in 2015 and 2016, compared with less than 40 percent in 2013. ”

On the domestic front, the International Monetary Fund (IMF) in its September 2014 Article IV Consultation Report on the Trinidad and Tobago highlighted that:

“Trinidad and Tobago is embarking on sustained growth after several years of weak performance, attributable to the global [financial] crisis and energy sector supply-side slowdowns”. ...T&T’s growth, which was estimated at

1.6 percent for 2013, was buoyed by 2.5 percent growth in the non-energy sector. Headline inflation dropped to 5.6 percent in 2013,¹ while core inflation remained within a narrow range of 2 to 3 percent. Recorded unemployment dropped to a record low of 3.7 percent in the first quarter of 2013 ... although a substantial amount of underemployment still goes unreported.”

Certainly, the upward trajectory in the country’s annual growth is a welcome achievement. However, the question is: how tangibly are these developments likely to contribute towards improving the social well-being of our citizenry now, and in the future? Apart from the red flag raised by the IMF with respect to the substantial underemployment that continues to go unrecorded and by extension, unaddressed by public policy, history has taught us that economic gains can be transitory. Positive advances in our economic performance have, and can again be adversely impacted by internal and external shocks - such as a decline in the price of petroleum and petrochemical products. Uncertainty in the global economy due to recent geopolitical developments, including tensions in US-Russian and EU-Russian relations and the fall-outs of the world financial crisis, are not

¹ Partly due to a change in methodology that eliminated a significant upward bias to food price inflation as of April 2013.

without implications for the global economy and by extension, our Twin-Island Republic.

Recent developments on the world geopolitical stage serve as a constant reminder to us all, that political stability, the ability of institutions to provide a transparent and predictable climate for long-term investments, the rule of law and the integrity of our legal system are prerequisites for sustainable growth and people-centred development. However, are we any closer today to satisfying these preconditions for attaining sustainable and inclusive development?

If we look at the area of industrial relations, we see that a number of collective agreements have expired between September 2013 and September 2014, and negotiations are ongoing between employers and trade unions for new collective agreements. Over this review period, twenty-five (25) matters related to the breakdown of negotiations were filed at the Industrial Court, compared with 22 in the comparative period in 2013.

Indeed, it may be posited that the increase in the number of matters is possibly an indication that the demands of one or both parties to the negotiations have been unrealistic and unreasonable. Whatever the underlying reasons for the observed increase in the number of filings, it is

difficult to escape the following facts:- (1) the industrial relations climate in Trinidad and Tobago remains volatile; (2) the global financial crisis continues to have adverse repercussions on labour markets in many parts of the world including the Caribbean region; and (3) more needs to be done to ensure that where there is economic growth, it is inclusive and creates productive enterprises and good job opportunities in the formal economy; this is critical for addressing the underemployment challenge, referred to, earlier.

It is important to note that the key prerequisites to achieving the long-term development objectives of our nation include, a harmonious industrial relations climate, institutional strengthening and adherence to the Rule of Law. In addressing the subject of the long-term development goals of our country, the Government of Trinidad and Tobago has indicated that it holds fast to:

“..... the attainment of sustainable development through the leveraging of resources and application of efforts in such a way that the country produces more than it consumes, that the fundamental principles of environmental sustainability are integrated into its development strategy,

and that the well-being of the present generation is improved without severely undermining that of future generations...²

Indeed the theme of the recent 2015 Budget Statement which was presented by Senator the Honourable Larry Howai, Minister of Finance and the Economy is *“Empowering Our People through Sustained Economic Growth and Prosperity”*. It is noteworthy that this Budget Statement speaks to the importance of social justice and inclusiveness, among other things, as priorities identified for Trinidad and Tobago’s social and economic development.

I subscribe to the view that as a country, we need to pursue policies and practices that promote sustainable development in its three dimensions - namely, the economic, the social and the environmental. This is essential if we are to build resilience to internal and external economic shocks and if we are to put the well-being of our people at the heart of our country’s sustainable development objectives.

Our public policies must be inclusive, benefiting all groups, in particular, those that are most vulnerable. Our policies must lay the foundations for a legacy of hope and prosperity for future generations. The success we

² Ministry of Planning and Economy, “Working for Sustainable Development in Trinidad and Tobago” June 2012

achieve in meeting these needs will depend on the coherence of our social, economic and environmental policies; they will depend on our collective actions, including by those of us involved in matters relating to the labour market and who have a key role to play in labour relations. Social dialogue and the effectiveness of our labour market institutions are critical for fostering an environment that is conducive to enterprise and job creation, respect for rights at work, productive investment and long-term sustainable development.

Good governance and the rule of law are prerequisites for attaining equitable economic growth and sustainable development in any country. Unfortunately, we continue to witness a progressive and wanton disregard for the rule of law by all sections of society. Little regard or credence is paid to the old adage which states that there can be no development without peace and no peace without development.

The Secretary-General of the United Nations Mr. Ban Ki-Moon, in support of this philosophy declared that:

“Lasting peace and sustainable development cannot be fully realized without respect for human rights and the rule of law”.

It is clear that judicial institutions including this Court, the Judiciary and all the other Courts in this country, have a crucial role to play in maintaining that peace, stability and prosperity of our Twin-Island Republic. The rule of law is at the core of any effective judicial system, and is essential to ensuring a stable industrial relations climate. In addition, the effective and efficient administration of the rule of law is vital to reducing violence, ensuring accountability, and to addressing issues such as transnational crime, including drug trafficking and money laundering. Moreover, the rule of law provides the much needed avenues for alleviating poverty, as evidenced in the provisions of the Minimum Wages Act and the robust industrial relations framework in this country. This framework provides the basis for pursuing the principles of equity and fairness for all, inclusive, sustainable economic growth and development, and better employment opportunities. It ensures transparency, the regulation of the labour market and respect for rights at work as Human Rights.

It is incumbent upon us all to recognise that the fundamental role of the Industrial Court is to promote inclusive growth and social justice. It is in acknowledgment of this fact that I hereby remind all stakeholders, that strict observance of the Orders, the Rulings and the Judgments of the Court is critical to maintaining the rule of law in this country. The rule of law is

important for addressing inequalities and empowering our citizens so that they can enjoy the fundamental human rights we possessively guard today. What is more, an efficient, effective and impartial judicial system is a necessary precursor to securing social dialogue, industrial peace and the confidence of foreign and domestic investors, and inclusive economic growth.

Any judicial institution committed to upholding the Rule of Law in a consistent and even-handed manner must operate within and support the key principles of independence, integrity, and competence. If the Industrial Court is to effectively perform its role in maintaining the Rule of Law, then it too must meet these three requirements. At this juncture therefore, I wish to address you on a pressing matter.

At present, the Judges of the Industrial Court do not enjoy security of tenure and they have to endure “nail biting” moments, wondering if they will have a job at the expiration of the term of their contract. This is simply untenable.

The 2014 Publication of the Ministry of Labour and Small and Micro Enterprise Development “(MOLSMED) At Work”, noted that, the Industrial Relations Advisory Committee has recommended “*strengthening the role of*

the Industrial Court and the tenure of its Judges."³ This has been the recommendation of many over the decades. However, we are yet to see this translate into reality.

It is my ardent hope that in 2015, when the Industrial Court will celebrate its 50th anniversary as an institution, the Members of this superior court of record will be accorded the security of tenure they deserve.

The learned Chief Justice in his address at the opening of the Law Term for the Judiciary, very eloquently and adequately addressed the budgetary constraints courts' face annually. I completely endorse the sentiments of the Chief Justice, so there is no need for me to address you on this issue today except to say we wanted to celebrate the Court's 50th Anniversary by hosting a number of events, projects and activities. We sought five (5) million dollars under the development programme vote, however we received one point nine (1.9) million dollars. Obviously, this will severely affect the Court's ability to execute a number of these planned projects and activities. As a result, we will have to now determine which projects and activities we can embark upon.

³ Ministry of Labour and Small and Micro Enterprise Development, MOLSMED At Work, "Meeting and exceeding the expectations of our stakeholders"

DEVELOPMENT AT THE COURT

Three years ago I shared with you my vision for the strategic development of the Industrial Court in a new century, so that it can continue to play that critical role in the socio-economic growth and the advancement of industrial relations in this country. I crave your indulgence to provide an update of where we are with respect to achieving this.

JUDGMENTS

When I assumed office in December 2011 there were sixty-eight (68) outstanding judgments that dated as far back as 2008. At the opening of the law term in 2012 I indicated that the clearing of this backlog was one of my main areas of focus. I have been providing stakeholders and the public with updates on the delivery of these judgments at each opening, and I am very happy to report that there are no reserved judgments at the Industrial Court for any period prior to 2014. The only matters for which judgments are yet to be delivered are matters which have been determined in 2014. I know that I had set what some may regard as stringent timelines for the delivery of judgments but I wish to thank all of the judges for their efforts in clearing the backlog and all the members of staff who provided the logistical support to facilitate the judges' efforts. We have no example in

our recent history where there were only outstanding judgments for a current year at the Court. The judges of the Court remain committed to working assiduously to deliver all judgments within the shortest possible timeframe, without of course sacrificing the quality of output.

REFORM OF THE CASE MANAGEMENT/DIRECTIONS PROCESS

Over the years, the process for the pre-trial Hearing/Directions/Case Management Conference (Directions) at the Court was as follows:

The Union, Employer or Minister may refer a matter to the Court (in most cases by means of a Certificate of Unresolved Dispute) and the Registry would send a notice to the parties (Union and Employer) informing of the date for Directions.

At Directions, parties are given the timetable for the filing, exchange and replies of Evidence and Arguments and the filing of Witness Statements. This means that the parties would have to attend Court for Directions before any filing of documents can take place. I met with some of the stakeholders in February 2014 to explain the challenges of the Case Management System and to discuss proposals for improving it.

A new system was introduced, with effect from May 2014. Under this system, when parties refer a matter to the Court, they are required to fill out and submit a Case Management Form, on which they indicate, whether they are engaged in bilateral discussions, or whether parties wish to have a conciliation hearing at the Court.

Thereafter the Registry sends a notice to the parties providing the dates for the filing and exchange of the Evidence and Arguments and Witness Statements and a date is given in that notice for Directions hearing at the Court.

This new system allows for the matter to progress further before the parties meet at Directions; and it affords the Court the opportunity to examine the documentary evidence in the dispute before meeting with the parties.

BULLETIN

In my first speech as President I said that I believed that the collection of data and wages and productivity computation were important components of a Court such as the Industrial Court and that the issuance of a statistical Bulletin by the Court was important. I am proud to say that the Industrial Court has produced a Wage and Productivity Bulletin which will be made

available to the public this month. My sincere thanks to Her Honour Mrs. Janice Christopher-Nichols, Her Honour Mrs. Kathleen George-Marcelle, Mrs. Diedra Clapham and the staff of the Court's Office of Economic and Industrial Research for their hard work in making this Bulletin a reality.

MEET WITH THE COURT

The Court held its second symposium at the Hyatt Regency Hotel on May 17th, 2014 as it continues its informal meetings with stakeholders. The Presenters were Dr. Leighton Jackson, Mr. Jefferson Cumberbatch, Professor Compton Bourne, Dr. Yuka Ujita, Mr. Mahindra Ramesh Ramdeen, Mr. Keston Nancoo, and Mr. Michael Annisette. I wish to express my sincere gratitude and thanks to the presenters for their contributions; thank you to the stakeholders for their attendance and support. The positive reviews which we have received with regard to the two symposia we have hosted have been very encouraging. We remain committed to hosting these types of events where important issues can be discussed by stakeholders in an inclusive and transparent manner.

ACCESS TO JUSTICE FOR TOBAGO

The Industrial Court held its third vacation sitting in Tobago, once again, the Honorable Chief Justice Mr. Ivor Archie has graciously allowed us the use of the Supreme Court building in Scarborough. His Honour Mr. Lawrence Achong, Her Honour Miss Bindamattie Mahabir and I presided over the hearing of Trade Disputes for three days from 3rd to 5th September 2014. We completed hearings and delivered judgments in nine (9) Trade Disputes.

Chief Justice, we thank you for your continued support. Thanks to His Honour Mr. Lawrence Achong and Her Honour Miss Bindamattie Mahabir for foregoing part of their vacation to preside at these sessions in Tobago. Special thanks to Attorneys-at-Law - Mr. Derek Ali, Ms. Fayola Cooper, Consultants - Mr. Codrington Winchester, Mr. Ken Davis, Mr. Anthony Wells, and Industrial Relations Officers - Mr. Gary Andrews, Ms. Valerie Philip-Paul and Ms. Nydia Joseph, for their attendance and contributions. Thanks to the staff of the Court for their continued support to this Tobago initiative. The Industrial Court remains committed to facilitating access to justice for the people of Tobago by convening Court regularly in Tobago.

BUILDING CAPACITY

The training of all Staff continues to be a priority for me as President as we strive to improve the level of competency and enhance our offering to stakeholders and to the public. During the period in review fifty-five members of the administrative staff were trained locally and abroad in their respective subject areas.

In August this year the third Judicial Education Retreat was held for all Judges, the Registrar and the Assistant Registrar. The area of study was Occupational Health and Safety. Special thanks to Dr. Leighton Jackson for his excellent presentation and his insightful contribution to this training.

Her Honour Mrs. Heather Seale and His Honour Dr. Selwyn Samaroo received training in the area of Gender at the ILO's International Training Centre in Turin, Italy; I wish to thank the ILO for the opportunity which was afforded to these members.

As in 2013, four more Judges were trained in Judgment and Opinion Writing this year. His Honour Mr. Herbert Soverall and His Honour Mr. Kyril Jack received training in Logic and Opinion Writing at the National Judicial College in Nevada, USA and His Honour Mr. Brian Dabideen and Her

Honour Mrs. Sandra Ramparas attended the said National Judicial College for Training in Judicial Writing.

SUPPORT TO THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS

The Government of the British Virgin Islands (BVI) is working to establish its first Labour Dispute Tribunal. To this end it has sought the technical support and advice of the ILO. On the invitation of the ILO, the Registrar and I visited with the authorities of the BVI to lend technical support and advice for this initiative.

There were also study visits from personnel of the BVI to Trinidad and Tobago; the first of these visits was in December 2013 by Mr. Ronald Smith-Berkeley, Permanent Secretary of the Ministry of Labour. In July this year, we were pleased to welcome the newly appointed Chairman of the Labour Dispute Tribunal, Mr. Paul Barrington Dennis, Queen's Counsel and the Labour Commissioner, Mrs. Janice Rymer to Trinidad. Both the Chairman and the Labour Commissioner met with the Honourable Chief Justice of Trinidad and Tobago, the Honourable Minister and key officials from the Ministry of Labour, Small and Micro Enterprise Development, the personnel of the ILO and the staff and Members of the Court. I want to

personally thank Dr. Giovanni Di Cola and his team for the role which the ILO has played in this initiative.

The Court is honoured to be a part of this important and pivotal milestone in the BVI's history and will continue to lend support whenever needed to our Caribbean neighbour.

STUDY VISIT TO THE ADVISORY CONCILIATION AND ARBITRATION SERVICES IN ENGLAND AND THE LABOUR RELATIONS COMMISSION IN IRELAND

Over the last few years, there has been an increase in the number of matters that have come to the Court for conciliation. This increased demand for the Court's conciliation services has driven the Court to seek out strategies and best practices that can be implemented to improve the existing services and effectively meet this growing demand.

As part of this ongoing exercise, the Registrar and I visited the Advisory Conciliation and Arbitration Services (ACAS) in England and the Labour Relations Commission (LRC) in Ireland to examine the operations, procedures and practices of these organisations. These organisations focus mainly on conciliation and mediation, and they offer advisory services

and training. They also have a history of relationship and association with the Industrial Court of Trinidad and Tobago. The information which was gained and the observations which we made during this visit have been very useful. We have identified specific aspects of the operations which can be adapted to meet the unique needs of our Court and we intend to engage persons from the LRC in the near future to build the capacity of local staff in critical areas.

CONCILIATION

There is the perception by employers that the judgments of the Court are skewed to favour Trade Unions; Trade Unions argue to the contrary and say that the judgments are in favour of employers.

A large part of the work of the Court goes unnoticed because several disputes are resolved and withdrawn by parties, not at open Court hearings but in chambers behind closed doors. Apart from bilateral settlements, disputes are withdrawn when the Court advises parties that no useful purpose can be served in pursuing such action. Most of the matters are withdrawn by Trade Unions. These disputes are recorded in the Court's annual statistics as matters which have been withdrawn. Last year two hundred and seventy one (271) matters were withdrawn, and this year, so

far, two hundred and fifty one (251) have been withdrawn. The withdrawal of matters bears testimony to the effectiveness of the mechanisms of the Court and the social dialogue processes that are available for dealing with them.

Conciliation is a very integral part of the Court's offering to stakeholders; it provides an amicable solution to disputes. More and more parties are requesting conciliation services from the Court. Currently there are one hundred and ninety six (196) requests for conciliation pending and this year we have been able to settle one hundred and twenty two (122) disputes by conciliation.

There is need to strengthen and formalise the Court's Conciliation services and in this regard establishment of a Conciliation Unit at the Court is worth considering.

The data on disputes which are withdrawn combined with those of disputes which have been determined by conciliation and open court hearings provide a more complete picture of the disposal of disputes at the Court.

NEW MEMBERS OF THE INDUSTRIAL COURT

The complement of judges at the Court has increased from 22 to 25. This increase allows for the San Fernando branch of the Court to be operational on a daily basis beginning from this term. My thanks the Honourable Attorney-General for his support for efforts in this regard.

The new Members of the Court are: Their Honours Mrs. Janice Christopher-Nicholls, Mrs. Kathleen George-Marcelle, Mr. Mahindra Maharaj, Mr. Krishnendeo Narinesingh, Mr. Melvin Daniel, Mr. Roger Jugmohan and Mr. Neil Mohammed.

I wish to personally welcome each new member and to wish you great success in your career at the Industrial Court.

DEPARTURE OF MR. ASHBY

His Honour Mr. Vernon Ashby demitted office in December, 2013. Mr. Ashby joined the Industrial Court as a Member of the Essential Services Division on 17th April, 1989. On 8th February 2010 he was appointed the Chairman of the Essential Services Division and he served in that capacity until December 2013.

Mr. Ashby has delivered a record three hundred and fifty one (351) Judgments during his twenty four (24) year tenure at the Court. On behalf of the Court I thank Mr. Ashby for the excellent and significant contribution he made to the Court and to the development of Industrial Relations jurisprudence in Trinidad and Tobago. I join the Members, management and staff of the Industrial Court to wish him a happy retirement.

TRIBUTE TO HER HONOUR MRS. VICTORIA HARRIGIN

On a sad note we mourn the passing of a sitting member of this Court, Her Honour Mrs. Victoria Harrigin. Her Honour Harrigin joined the Court in December 2003 and presided in the Essential Services Division until her untimely demise in December 2013. We, who have loved and respected her, honour her memory. On behalf of the Members and Staff of the Industrial Court I wish to extend our prayers and deepest condolences to her family.

CONCLUSION

The past three years I have focused on strengthening our processes and improving the competency at the Industrial Court so that we can deliver

high-quality and timely services and demonstrate the continued relevance of this institution.

The ongoing initiatives to modernise the Library, Court Technology and the Registry and to provide training opportunities for Judges and staff, bear testimony to the commitment to enhance institutional capacity, improve the quality of services and ensure effective delivery and results. The positive feedback from users of the Court's services with regard to the changes made to date is encouraging. These are ongoing processes. I therefore seek your support as stakeholders, as we reinforce the changes made so far and pursue improvements in other areas, so that the Industrial Court can contribute to national efforts for realising social justice, and inclusive, equitable growth to improve quality of life in Trinidad and Tobago.

Thank you for listening, may God bless you all.

Her Honour Mrs. Deborah Thomas-Felix
President
Industrial Court of Trinidad and Tobago