



Sept. 18, 2018

FEATURE ADDRESS

delivered by

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

at the

**Special Sitting of the Industrial Court
for the 2018/2019 Law Term**

TUESDAY 18th SEPTEMBER, 2018

@ 10:00 AM

FIRST COURT, INDUSTRIAL COURT BUILDING

#7 ST. VINCENT STREET, PORT OF SPAIN

Permit me to extend warm greetings to each and every one of you as you join us today for the opening of the 2018/2019 Law Term of the Industrial Court. Your ongoing support to the Court is invaluable and it speaks to the importance you ascribe to the Court's role and function as an objective arbiter and pillar of this country's industrial relations governance.

In 2017, I spoke at length on the impact of our economic challenges and the role I saw for each of the social partners in ensuring our twin-island Republic weathered the storm. This year, in view of the prevailing winds we have been buffeted by in recent times, I thought it imperative that I refocus our time together on the profound significance of tripartism in labour relations and how we can collectively benefit as a country if we put into practice the tripartite approach to which we have committed in principle.

Social dialogue, as it is called, is the collaboration and the coming together of business, labour and the government on issues of common interest relating to economics and social policy. Through tripartism, unions and employers lend their voices and expertise in different areas to manage competing demands in labour- management relations and find common ground for advancing national development goals.

Today I seek your indulgence and invite you to ponder for a while on the importance of tripartism and coherence in the following areas: Occupation Safety and Health; Disaster Risk Reduction; labour migration policies; and policies for harassment in the workplace. The common theme in all of these is ensuring the safety, security and protection of workers in the workplace, as well as enhancing governance structures to strengthen productivity, resilience and the growth of businesses that are competitive and create jobs.

When I speak of coherence, it is in the context of policy dialogue, policy making and institutional cooperation for implementation in the aforementioned areas. I accept that ultimately it is the decision of government whether or not to accept and to implement recommendations from the social partners, however the importance of the tripartite process, the importance of the coming together of the minds of the three partners, cannot be overstated.

Two years ago, in my address at the opening of the law term of the Industrial Court, I spoke about the importance of adopting, promoting and fostering proper safety and health policies and practices at the workplace. Since then a number of natural hazards and safety and health issues, regionally and globally, have given us cause to reflect on the importance of tripartism and partnerships for dealing with the impacts of such incidents on societies and economies.

In our backyard, hurricanes Maria and Irma ravaged Dominica, Barbuda, Puerto Rico and the British Virgin Islands last year. More than three weeks ago, on 21 August, Trinidad and Tobago experienced a 6.9 magnitude earthquake that was also felt throughout the Southern Caribbean.

Although this country has escaped relatively unscathed, citizens are still traumatised by that experience. However I daresay that it has heightened our awareness of the need for cooperation, and coherent policies and action in all aspects of disaster risk reduction which encompasses disaster preparedness, mitigation and management. Disaster risk reduction applies to all sectors, including the workplace.

Whether hazards result from natural events or human action, they can have implications for: occupational safety and health; skills to deal with the different aspects of disaster risk reduction and management; the continuity of business operations and the safety of communities. Tripartite cooperation and coherence are therefore critical to addressing hazards in different spheres given their significance for the country's efforts to achieve sustainable development.

In my respectful view, the time has come for disaster risk reduction and OSH to be given priority among the agenda items for tripartite discussions as a means of strengthening our response to hazards which may affect various sectors, including the workplace.

There are already institutional arrangements to facilitate such tripartite dialogue. Trinidad and Tobago established the National Tripartite Advisory Council (NTAC) in March 2016. The mandate of this *Council* "is to give effect to commitments, ...with regard to facilitating

tripartite engagement, dialogue and consultation and to promote consensus building and democratic involvement among key stakeholders on national development issues.”¹

The International Labour Organization (ILO), of which Trinidad and Tobago is one of its 187 members, viewed the establishment of this Council as a major step. The ILO in its Caribbean News made the following observation: *“The establishment of the National Tripartite Advisory Council (NTAC) in Trinidad and Tobago in March 2016 brought with it the hope of tripartite dialogue and a willingness by all parties to work towards social justice. Mechanisms such as the NTAC are meant to be a forum in which governments can engage workers’ and employers’ representatives to help translate the DWA (Decent Work Agenda) into national policies and programmes. The proper functioning of such a Council is meant to ensure that the interests of all parties are heard. Furthermore it is meant to be a forum which is consistently used to ensure that input and perspectives feed into policy decisions.”*

The NTAC is still in the embryonic stage. So far, it has discussed the issue of productivity and has examined possible amendments to the Industrial Relations Act and the Retrenchment and Severance Benefit Act. These are very important topics of discussion.

However, I urge, that due consideration be given at the tripartite level for discussions on the existing policies and framework for occupational safety and health, and disaster risk reduction. These issues are of relevance to national development and therefore social dialogue on the topic can only redound to an integrated response.

While we are on the topic of collaboration and co-operation, I wish to take the opportunity to highlight the need for greater coherence among government agencies which have labour-related inspection functions.

¹ The Ministry of Labour and Small Enterprise Development website under the heading “Key Relationships” National Tripartite Advisory Council

For example, there is the National Insurance Board which has labour inspection functions relating to Social Security issues; the OSH Authority has inspection functions pursuant to the provisions of the OSH Act, the Labour Inspectorate Unit of the Ministry of Labour and Small Enterprise Development has inspection functions with regard to specific issues such as child labour, minimum wages and maternity protection; and there are also the maritime labour inspectors.

What currently happens in Trinidad and Tobago is that a Labour Inspector of a particular agency may go to a place of employment to see if there is compliance in one specific area and then an Inspector from a different government agency will visit the same business premises on another day to look for compliance in another area. For example, the National Insurance Board Inspector may go into a business's premises and conduct inspection and then someone from the Labour Inspectorate Unit of the Ministry of Labour and Small Enterprise Development will go into the same business enterprise sometime subsequently and conduct an inspection and then OSH Authority may go in and conduct another inspection. When these different inspections are done, is there a sharing of information among the Labour inspectors? Do the various inspectors meet and discuss issues and exchange ideas on best practices? Employers' and workers' representatives would no doubt also benefit from a more coherent approach to these important inspection functions, including those relating to the maritime sector.

Other key national development issues that the Tripartite Council may wish to take notice of with a view to tabling them for an inclusive discussion and debate, relate to migrant labour and the Government's current thrust toward addressing harassment in the workplace.

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.

The Caribbean and indeed, Trinidad and Tobago, has always been a region and a country that has welcomed and embraced people of different faiths, cultures and origins. A practice, which is rooted in the historical movement of people from one Caribbean country to another. 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.

With respect to the issue of harassment in the workplace, I applaud the initiative taken by the Government to work assiduously toward the completion of long overdue legislation and policies. Much has been said on this topic, by me and by others in many other fora; therefore, today I will not delve into great detail on the issue. It is self-evident that the #metoo movement in the US has ushered in a much-needed discussion on sexual harassment of women and men, whether in the world of work, in our schools, our places of worship or our streets.

The National Tripartite Advisory Council is well-positioned to lend its collective voice and expertise to this debate. I urge you the stakeholders, to seize this opportunity and to build on the current momentum such that we create workplaces and workspaces in all spheres that are safe for everyone. After all, it has been said that the measure of a society and its people, is not how it treats those who can advocate for themselves, but rather, how it treats those who are voiceless. You have a privileged forum from which to influence policies and action, thereby bringing about meaningful change; I urge you to use it and use it wisely.

I will now turn to the work of the Industrial Court for the year under review.

THE WORK OF THE COURT (SEPTEMBER 2017 TO SEPTEMBER, 2018)

For the period September 2017 to September 2018, 1173 new cases were filed at the Industrial Court, 99 cases less than those filed for the previous year, 2016/2017, which recorded 1272 cases. Additionally, the Court disposed of 1066 matters which is 87 cases more than matters disposed of for the same period in 2016/2017. The disposal rate in 2017/2018 is 90.9%, which is over 13.9 percentage points higher than the period 2016/2017 when the disposal rate was 77%. The 1066 cases were disposed in the following manner: 302 judgments were delivered, 336 cases were withdrawn, 400 cases were settled through the conciliation and bilateral process and 28 cases were dismissed by the Court.

Trade Disputes remain the largest number of cases filed at the Court for the period 2017/2018 and they amounted to 779. There were 80 Retrenchment and Severance Benefit cases filed which is 16 more than the number filed the previous year and 52 Occupational Safety and Health cases were filed.

Under prevailing economic conditions it is not unlikely that there will be the temptation of some, in certain quarters, to call into question the objectivity and fairness of the Industrial Court.

May I therefore take this opportunity to reiterate that which I have said in the past about the role of the Court and to recall some official statistics which show how and in whose favour, judgements have been made by the Court in recent years. It is my sincere hope that the facts would serve to dispel the misconceptions and unfounded statements that tend to be repeated and amplified in this regard.

The Industrial Court plays a key role in adjudicating and settling matters that could either create or exacerbate tensions in the country's industrial relations climate. Respect for the rule of law and the maintenance of good industrial relations are essential for an economic environment that is stable, favourable to local and foreign investment and conducive to social stability.

The country's regulatory framework for industrial relations is shaped by international labour standards to which Trinidad and Tobago subscribes as one of the 187 members of the International Labour Organisation (ILO). Labour standards are not imposed. They are adopted voluntarily and with the consent of the social partners. Moreover, just as we refer to international best practices when we want to benchmark different aspects of economic performance, so too in the industrial relations field, reference is made to international best practice with respect to industrial relations, taking into account, of course, local circumstances and situations in comparable contexts.

Statements claiming that there is bias in the decisions of the Industrial Court therefore need to be considered with reference to the statistical evidence. As I have noted in the past, of the total number of cases disposed (2,744) at the Court over the period 2011 - 2015, 27% (that is, 747 matters) were from judgments disposed by the adversarial process. Of those 747 matters, 30% were in favour of employers.

With respect to non-adversarial matters, 15.6% (427 cases) were disposed by conciliation, 19.6% (539) cases were disposed bilaterally that is, settled between both parties, and 24.9% (683 cases) were withdrawn. In short, 60.1% of the matters were determined in a non-adversarial environment during that period.

This trend has continued. Indeed when you examine the number of matters which are withdrawn for the period 2011 -2015 which is 24.9% (683) and the number withdrawn for 2017-2018 which is 336 (31.5%) you will note that they were withdrawn by unions. As I said earlier, the Court also dismissed 28 cases which were filed by Unions this year for want of prosecution. In short, those outcomes were in the employers' favour. These are not the outcomes that are widely repeated, although they reflect the reality of the work of the Court. Similarly, it must be acknowledged that the companies that value their human resources, respect the country's labour laws and policies and maintain the practice of good industrial relations, are unlikely to be involved in matters which are not settled in a manner agreeable to all parties.

Let me emphasize that the Court has always carried out its duties in a fair and balanced manner. We will never violate the rights of any one of the social partners and we are committed to fulfilling the mission of the Court to uphold "... the principles and practices of good industrial relations as pillars of industrial peace, economic and social development." We are fully aware of the importance of these conditions for social justice, economic stability and sustainable development.

TRAINING

The Court continues to promote the conciliatory approach to resolving disputes. Last week 12 Judges and the Assistant Registrar of the Court received training in Negotiation and Conciliation. This training was facilitated by Mr. Rainer Pritzer from the ILO Decent Work Team and Office for the Caribbean and His Honour Mr. Albert Aberdeen of Industrial Court. The Chairman of the Equal Opportunity Tribunal Mrs. Donna Prowell-Raphael and the Registrar of that tribunal, Mr. Narendra Lalbeharry, also participated in the training. This is the third conciliation training for Judges in Conciliation since Conciliation training for Judges began in 2012. I wish to sincerely thank Mr. Pritzer and His Honour Mr. Aberdeen for the excellent job which they did as facilitators of the training.

ACCESS TO JUSTICE IN TOBAGO

I remain resolved in the commitment which I made in 2012 that persons who live in Tobago have proper access to the Industrial Court. Each year, from 2012 to 2016 Judges of the Court agreed and gave up one week of their annual vacation to preside upon cases in Tobago. This resulted in the hearing and the determination of 109 disputes in 47 days. For the past 2 years we have been unable to preside in Tobago due to budgetary constraints. As you know two years ago, the Industrial Court acquired the building formerly known as "Sandy Hall" at Court Street, Scarborough, Tobago, a building which requires restorative work and to be outfitted as a Court. I am pleased to announce that on 6th September 2018 the Industrial Court and NIPDEC formerly executed a contract to begin work on the first phase of the restoration project. It is my hope that the entire project will be completed by the end of next year.

MEET WITH THE COURT SYMPOSIUM 2018

The Court's flagship event The Meet with the Court Symposium was held on the 19th May 2018, for the sixth year. This year the discussions focused on the importance of Due Process in the industrial relations context and best practices as they relate to progressive discipline in the workplace. The fairly new and interesting concept of social media and its effect on the contract of employment was also examined. This Symposium, provides a platform for dialogue involving all our stakeholders, and it remains an essential space to discuss prevailing labour relations issues in the country.

Many thanks to the International Labour Organization Decent Work Team and Office for the Caribbean for their support over the years, special thanks Mr. Shingo Miyake, Labour Law and International Labour Standards Specialist of the ILO Decent Work Team. My sincere thanks also to Dr. Leighton Jackson, Dean of the Faculty of Law of the University of the West Indies (UWI), Mona Campus and Mr. Jeff Cumberbatch, Law Lecturer at UWI Cave Hill, Barbados for their continued contributions and support for this event.

CHALLENGES

Staffing

The operations of the Industrial Court continue to be stymied by the continued depletion of the number of Court Reporting staff. This is an issue which I have addressed each year for the past three years. Attorneys and industrial relations experts alike write to the Court daily requesting notes of evidence and outstanding judgments. I must admit that it is really difficult for me to repeat the same narrative each time a request is made for Notes of Evidence and outstanding Judgments. The reality is that due to the shortage of reporters, Notes of Evidence are not prepared and given to the Judges in a timely manner, as a result Judges cannot deliver their judgments within a short period of time. Additionally, notes of evidence cannot be made available and given to the parties promptly on their requests. There is nothing further I can say on the issue except that the reduced number of Court Reporters continues to affect the efficiency of the Court.

SPACE

We are still unable to provide adequate space for staff at the Port of Spain Branch of the Court. The staff continue to work in spaces which are far from ideal. The third floor of the Court is still occupied by another agency which is not the Industrial Court. I again ask the competent authorities to address this problem urgently.

My heartfelt thanks to members of staff, and Judges of the Industrial Court for their hard work, unstinting support and commitment to duty in these challenging times.

CONCLUSION

In closing, I again urge stakeholders to actively pursue meaningful social dialogue in the areas I have identified today and in other areas of national development. Tripartism is an important framework which can provide a long-term basis for policy dialogue involving the three partners, employers, trade unions and Government. It provides a structured approach which allows the social partners to express their views, which can be taken into account in policymaking and the drawing up of coherent implementation plans to deal with various issues which affect employers and workers.

Disaster risk reduction, OSH, labour migration and harassment in the workplace add to the complex challenges affecting the industrial relations climate in Trinidad and Tobago today. These challenges, in my view, can only be properly addressed when the social partners come together and work together. I respectfully submit that dialogue and the search for solutions be pursued in the National Tripartite Advisory Council, which is supposed to facilitate “... *tripartite engagement, dialogue and consultation, and promote consensus building and democratic involvement among key stakeholders on national development issues.*”

Please remember, when you stand alone you can do very little, when you stand together you can do so much.

May God bless you. Thank you for listening