INDUSTRIAL COURT
of Trinidad and Tobago

Opening Remarks

by

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A PLATFORM FOR PROGRESS
Shaping the Future of Industrial Relations in Trinidad and Tobago

at the

Arthur Lok Jack Graduate School of Business
IR Seminar 2025
Beyond Bargaining: *Building Sustainable Workplaces in T&T*

Lok Jack GSB Campus
Max Richards Drive
Uriah Butler Highway North West
Mount Hope, Trinidad W.I.
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9:45 AM – 4:15 PM

INTRODUCTION

Thank you for your kind invitation to deliver opening remarks on behalf of the Industrial Court, especially since this year we are celebrating the Court's diamond anniversary. This is indeed a timely initiative and I commend you for putting together such a comprehensive programme for participants today.

In attempting to predict the future, we must first take cognisance of our present reality. My approach to my task this morning will be, in the time allotted, to touch on labour law reform in Trinidad and Tobago, and to suggest certain reforms that may be desirable given the direction that the world seems to be heading. A world of inclusivity and greater access to justice. A world of uncertainty, from weather patterns to fast paced technological changes. If our industrial relations climate is to keep pace with societal changes, reform of our labour laws would be essential.

The main laws that engage the attention of the Industrial Court are:-

- The *Industrial Relations Act*, Chapter, 88:01
- The *Retrenchment and Severance Benefits Act*, Chapter 88:13
- The *Maternity Protection Act*, Chapter 45:57
- The *Minimum Wages Act*, Chapter, 88:04
- The *Occupational Safety and Health Act*, Chapter 88:08
- *The Children Act,* Chapter, 46:01.

In addition, the Special Tribunal, which is comprised of the Chairman of the Essential Services Division and two Members drawn from that Division, has jurisdiction in respect of persons governed by the following Acts:-

- *The Civil Service Act, Ch.23:01;*
- *The Education Act, Ch:39:01;*
- *The Police Service Act, Ch: 15:01;*
- *The Supplemental Police Act, Ch.15:02;*
- *The Fire Service Act, Ch.35:50;*
- *The Prison Service Act, Ch.13:02; and*
- *The Central Bank Act, Ch.79:02.*

As the opportunity presents itself and since the Special Tribunal has been so much in the news in recent times, I wish to draw attention to what seems not to be widely known or perhaps what may be overlooked, that is, the Special Tribunal in the hearing and determination of any dispute referred to it, is empowered by virtue of section 21 (6) of the *Civil Service Act,* in addition to taking into account any submissions, arguments and evidence presented or tendered by or on behalf of the appropriate recognised association and the Chief Personnel Officer, in its judgment it shall be guided by the considerations set out in section 20(2)(a) to (f) of the *Industrial Relations Act*. These considerations are:-

a) the necessity to maintain and expand the level of employment;

b) the necessity to ensure to workers a fair share of increases in productivity in enterprises;

c) the necessity for the establishment and maintenance of reasonable differentials in rewards between different categories of skills;

d) the necessity to maintain and improve the standard of living of workers;

e) the necessity to preserve and promote the competitive position of products of Trinidad and Tobago in the domestic market as well as in overseas markets;

f) the need to ensure the continued ability of the Government of Trinidad and Tobago to finance development programmes in the public sector.

LABOUR LAW REFORM

The International Labour Organisation (ILO) in a Subregional Labour Law Training Workshop in 2023,[1] addressed the reasons for labour law reform and what they recommend as the best approach.

Some of the reasons they posited for labour law reform, and with which I agree were:-

[1] Session 6, Subregional Training Workshop, Nadi Figi, November 8, 2023

a) Labour laws may be failing to achieve their objectives because they do not 'fit' well with labour market conditions. This may be because they were inherited or borrowed.

b) To address concerns/ problems that have emerged in the labour market because of changes to employment practices (e.g., growth in indirect, temporary employment) and that need to be addressed through law reform

c) To reflect changes in societal values (e.g., discrimination at work, work/ family balance)

d) To address deficiencies in the law that have been highlighted by legal cases or practices

e) To improve compliance with fundamental and ratified ILO Conventions.

The ILO in the same session indicated that in its experience labour law reforms that have been crafted through an effective process of tripartite consultation prove more sustainable because this approach allows for consideration the complex set of interests at play in the labour market. In addition, they can ensure a balance between the requirements of economic development and the social needs.

When I look at the presenters and panellists at today's forum, I see that for the most part, the tripartite approach has been catered for, which would certainly enrich our discussions and conversations.

In our attempts to reform our labour laws we should consider exactly whom we are targeting when we set out to draft these reforms. While the obvious answer is the workforce. This consideration is important because of the generational differences in the workforce today. As many Human Resource Managers and those in HR know, the needs of all of these generations differ.

If I am to go by research in this area[2] as well as from my own experience and observation, the workforce is currently made up of four generations:-

a) The Baby boomers, those born between the years 1946 to 1964;

b) Generation X, 1965-1980;

c) Generation Y, the Millennials 1981 -1994; and

d) Generation Z, those born between 1995 and 2009.

Therefore, I would suggest that when we embark upon any legislative reforms of our labour laws, we include representation from each of the generations that currently make up the labour force. And if we are tardy in the area of implementation, as regrettably we often are, we may well have to include Gen Alpha also.

The current workforce, then, is made up primarily of the four generations. However, research has shown that more people are working after retirement age and this may well be a feature of our future workforce with implications for HR and IR policies.

The ILO in a publication entitled *Latin America and the Caribbean: Three decades of labour transformations, progress and persistent challenges*[3] pointed out that:-

> *"The region is characterized by high labour force participation among persons beyond the legal retirement age, mainly driven by economic needs. In the context of accelerated population ageing, policies must be designed to support voluntary extension of working life, and modernized employment strategies, labour institutions and social security systems."*

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[2] **Generational Differences in the Workplace: Boomers, Gen X, Gen Y, and Gen Z Explained**

https://www.trinet.com/insights/generations-in-the-workplace-boomers-gen-x-gen-y-and-gen-z-explained
Accessed June 15, 2025

[3] 17 April 2025 - https://www.ilo.org/resource/news/latin-america-and-caribbean-three-decades-labour-transformations-progress

The contemporary realm of labour law stands as a reflection of society's evolving values, dynamics, and the intricate interplay between employers and employees (Li, 2023).[4]

Therefore, the need to reform our labour laws arises from current realities in the wider society and emerging trends in the workplace, from which we are not immune in this country. We do not have to look very far back to see the way in which societal realities or events affect the world of work. The COVID-19 Pandemic is one such example.

While, in my view, the Public Health laws could have been viewed as adequate to regulate and protect the public in that crisis, there were no specific laws or codes of conduct regulating the labour market in such an event. In the absence of specific laws and policies, the cases brought before the Industrial Court were all determined in keeping with the wider principles and practices of good industrial relations.[5] However, since scientists predict there are likely to be similar health events in the future, I would suggest, this is one area that should engage the attention of law makers to ensure that the burden is not borne disproportionately by any one class or sector of the economy. This is especially so since changes in weather patterns and climate change on the whole can have a disruptive impact on all sectors of the economy and on all of the Tripartite partners.

The ILO publication referred to earlier, stated of climate change :-

> *"Climate change poses a dual challenge: adapting to protect occupational safety and health amid extreme climate events, and managing labour transitions to ensure that workers, communities, and sectors dependent on high-emission industries are not left behind. Coordinated labour, training,*

[4] *International Journal of Management & Entrepreneurship Research*, Volume 6, Issue 3, March 2024

[5] ESD-TD Nos 81 & 82 of 2021 *Public Services Association of Trinidad and Tobago v WASA* delivered on March 24, 2023- Job abandonment relating to work from home arrangements for two female Workers of WASA, arising out of the COVID 19 Pandemic.

Facts-Workers, both of whom had minor children took "pandemic leave" of a total of 14 and 15 months, respectively; failure to return to work as directed.
Findings-Workers not without fault. WASA declared Workers to have abandoned their jobs, but without providing the opportunity to be heard as it indicated it would.
Held: Dismissal not in keeping with the principles and practices of good industrial relations.
Remedy: Damages awarded to both Workers.

production, and social protection policies are essential to address these global trends."

GLOBAL TRENDS IN LABOUR LAW

Some of the recent trends in labour law reform in other jurisdictions indicate a greater focus on inclusivity, non-discrimination and diversity in the workplace. Both legislative reforms as well as judicial interpretations have sought to fortify the rights of marginalized groups, encompassing gender, race, sexual orientation, and disability.[6]

Teleworking or remote work and the gig economy are changes in how work is performed that have prompted legislative change in other jurisdictions. They are areas that we may wish to consider and provide for in any legislative reform of our labour laws.

Modern labour laws and policies must address the challenges of ensuring a safe work environment for remote workers, encompassing ergonomic considerations, mental health, and the right to disconnect.

Remote work requires special attention to ensure that the obligations of parties are clear. For example, how do we define a workplace? When is a worker on active duty? What is a workplace accident?[7] Whose obligation is it to provide a safe place of work, when the work is being performed at the worker's home? These may sound as trite and simple questions but similar questions have engaged the minds of Judges in other jurisdictions. I would suggest that in the absence of legislation, these and similar questions should be

[6] Ibid

[7] Ms. Alexandria Gentile-Patti, a customer agent for Air Canada works remotely from home. She fell down the stairs in her home on her way to her dinner time. She asserts that her fall constitutes an unforeseen and sudden event that occurs during work, since the fact of going to dinner constitutes, in particular, a comfort activity from which the employer benefits. The Commission for Standards, Equity, Health and Safety at Work recognizes that she suffered an employment injury. Air Canada asserts- the fall did not occur during work, since she was no longer in her professional sphere, but rather in her personal sphere. There is no connection between this activity and work and adds that when a worker is in the comfort of his home, there is a presumption of privacy such that there is no effective control on the part of the employer.

Decision of the Tribunal-Ms. Gentile-Patti's fall, which occurred a few moments after she disconnected herself from her workstation to go to dinner, represented an unforeseen and sudden event that occurred during work. She therefore suffered an employment injury.

in the contemplation of employers, unions and employees when settling Management Policies or when negotiating collective agreements. This approach may well minimise disputes in these areas and would go some way in filling the gap until our labour laws are updated.

Gig workers, whom we would refer to generally as independent contractors, face hurdles in organizing and bargaining collectively. Some jurisdictions are exploring innovative solutions, such as sectoral bargaining or platform cooperatives, to address the collective bargaining rights of gig workers (Stewart and Stanford, 2022).

Our approach has been to exclude such workers from the definition of 'worker' under the IRA but this has been used in the past by some employers to surreptitiously avoid their obligations to persons who are really workers but whom may unwittingly agree to sign a contract for service.

Organizations are increasingly adopting artificial intelligence (AI) and automation technologies. These technologies have substantial implications for the workforce and may be even more severe in economies such as ours. While AI systems can analyze vast amounts of data to streamline decision-making processes, automate routine tasks, and enhance overall productivity, these advancements may prove costly in terms of job displacement. AI also raises a number of ethical and similar considerations, such as potential biases in algorithmic decision-making, and privacy concerns.

You may have read in the print media,[8] a case in which High Court Judge, the Honourable Westmin James, referred two attorneys at law to the Disciplinary Committee of the Law Association (LATT) after uncovering multiple fictitious legal authorities cited in court submissions in a lawsuit over the dismissal of a Lab Assistant in 2023. The fictitious legal authorities were purportedly decisions of our own Industrial Court. Justice James said in his ruling on the breach of contract lawsuit:-

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[8] See Article by Jada Loutoo, *Judge slams AI use in case, refers lawyers to disciplinary committee for fake citations* in the Trinidad and Tobago Newsday, May 1, 2025

> *"Irresponsible use of internet sources or generative AI tools undermines not only individual cases but also the credibility of the legal system as a whole. If such conduct is not condemned and appropriately addressed, it could lead to a dangerous erosion of the rule of law,"*

This is possibly the first case locally involving the use of AI, resulting in sanctions. In his ruling, Justice James described the incident as a serious breach of professional ethics.

AI seems certain to be a part of the future of the world of work and industrial relations in Trinidad and Tobago. Until our laws provide specifically for the use of AI, employers and Unions would be well advised to have policies and collective agreements which govern its use at work.

Early out of the blocks in tackling the use of AI in courts in our region is the Caribbean Court of Justice (CCJ), which issued 'PRACTICE DIRECTION NO. 1 OF 2025, THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE TOOLS IN COURT PROCEEDINGS'. This Practice Direction provides guidance on the permissible use of Generative Artificial Intelligence ('GenAI') tools by attorneys, parties, witnesses, self-represented persons, and other court users. It applies to all proceedings before the CCJ.

Striking a balance between ensuring productivity and respecting employees' right to privacy becomes a key challenge for modern labour law. The use of biometric data, such as fingerprints or facial recognition, and wearable technology in the workplace is becoming more prevalent. Use of biometrics for access control, attendance tracking, or monitoring employee health. The collection and storage of such biometric data raise privacy issues, as this data is often sensitive and requires robust protections to prevent misuse.[9] Our labour laws must confront all of these issues to ensure workers' rights are protected while at the same time not tying the hands of employers in their quest to increase productivity and become more competitive.

Globalization which has facilitated the movement of labour across borders brings with it cross-border employment arrangements, which pose their own peculiar challenge in the form of complex cross border employment dynamics. These arrangements may lead to

[9] Op Cit. p 543

diverse workforces, which involve remote work across borders, challenging traditional notions of employment, and raising jurisdictional issues and can result in a lack of protection for workers. The answer may lie in cross-border litigation.

Reported in ILO publication '*Justice across borders: Access to labour justice for migrant workers through cross-border litigation'*[10], are six case studies which involved cross-border litigation. They were in respect of migrant workers. These cases shed light on the legal complexities and challenges faced by workers and their representatives in bringing forward cross-border claims. The six successful legal court cases were from Belgium, China, Administrative (Hong Region Kong, (SAR)), Special Germany, Indonesia, Jordan and the United States of America. The cases involved both individual workers and collective actions brought on behalf of a group of workers from a variety of sectors and experiencing various labour and human rights violations. The workers involved included construction, agriculture and domestic workers, who suffered violations including wage theft, sexual assault, and the charging of illegal recruitment fees.

Without going into the details of those cases, what was seen as critical to their success, among other things, was the existence of a legal framework and labour complaints mechanism that permitted migrant workers to pursue cases in the first place, and in particular, the ability for the complaints to continue once the worker was no longer in the country of employment.[11] These cases underscore the importance of having our labour laws keep pace with contemporary times.

SOME SPECIFIC LABOUR REFORMS IN OTHER JURISDICTIONS

Some contemporary approaches to labour Law Reform can be seen from the Employment Rights Bill of the United Kingdom, 2024 and recent changes in laws in Kenya.

[10] © International Labour Organization 2024, First published October 2024
[11] Ibid p. 9

Some of the features of the Employment Rights Bill, UK 2024[12], include upgrading Employment Rights: addressing issues like job security, fair pay, and family-friendly policies. Prioritizing fairness, equality, and worker wellbeing by strengthening protections against sexual harassment, improving gender equality, and supporting whistle-blowers. Modernizing Trade Union Legislation and empowering trade unions by repealing restrictive laws, simplifying processes, and introducing new rights and protections for union representatives. The establishment of the Fair Work Agency will enhance enforcement of employment rights, including investigating labour abuses and regulating umbrella companies. The Bill is designed to balance the needs of businesses and workers, ensuring productivity and living standards are improved while maintaining fairness.

The publication, 120 *Years of Legal Excellence in Kenya Anniversary Edition* highlights certain changes in the landscape of labour law in Kenya. These changes have resulted from both legislative changes as well as from decisions of the Employment and Labour Relations Court.

Regarding background checks for employment purposes- the *Employment (Amendment) Act*, 2022, amended the Employment Act, 2007. Prior to the 2022 amendment, some employers required all job applicants to provide clearance and compliance certificates from various government bodies as a pre-requisite to being interviewed. That law presented hardship and expense to many potential employees. By an amendment to the Act which came into force on 22nd April 2022, employers can only now require such certificates from prospective employees once the employers have granted an offer of employment.

Another change to the Employment Act, 2007 which came into force on 15th April 2021 was the introduction of pre-adoptive leave. Now in Kenya an employee who adopts a child is now entitled to one month's pre-adoptive leave with full pay from the date of the placement of the child.

[12] Department for Business and Trade, UK, *Factsheet: Employment Rights Bill – Overview* PDF (assets.publishing.service.gov.uk)

In the area of the termination process for employees on probation, a three judge Bench of the Employment and Labour Relations Court delivered a judgment on July 30, 2021, where it held that a probationary contract was no different from any other contract of employment and that the procedure for terminating those other contracts applied to the termination of a probationary contract. The court held that an employer must observe the substantive and procedural fairness requirements set by law when terminating a probationary contract. The effect of this judgment is that there is no distinction between a probationary contract and a permanent or fixed term contract and employers must be vigilant to ensure that the procedures are updated to ensure compliance.

I would posit that in the future disputes in industrial relations would become more prevalent in the areas of bullying and in particular, cyberbullying.

The term 'cyberbullying' has been used to describe aggressive conducts carried out through information and communication technologies (ICT), and can involve picture/video clips, emails, or social network sites, among others.

ILO WORKING PAPER - *System needs update: Upgrading protection against cyberbullying and ICT-enabled violence and harassment in the world of work*[13], points out:-

> *"The negative implications of bullying on victims are well documented in literature (see, for instance, P. Smith et al., 2006), and many countries have*

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[13] Valerio De Stefano, Charalampos Stylogiannis, Mathias Wouters, Ilda Durri

SOURCE https://webapps.ilo.org/static/english/intserv/working-papers/wp001/index.html

attempted to address this issue through a wide range of regulatory instruments. Nonetheless, bullying persists in workplaces, schoolyards, and various other public and private spaces, and it is now also exacerbated by the use of information and communication technologies."

This sounds quite familiar from recent incidents highlighted in our local press.

Therefore, whether or not the issues arise from actual workplace incidents or involve threats etc. carried out outside of the workplace and working hours, a certain amount of vigilance is required. Employers would be required to treat with them in a similar manner to current treatment of other out of work activity which impacts conduct in the workplace.

In conclusion, I would say that the future of our country's industrial relations climate, requires a concerted and honest effort by all stakeholders to confront our present reality, tackle the areas of shortcoming in our laws, workplace policies and collective bargaining, that have not adequately kept pace with issues arising out of the use of technological changes and climate changes etc. Commitment to a tripartite approach should not depend on personalities but on principles because we all are really in this together. We can learn from the experiences of others and draw upon them in reforming our own laws and policies and tailoring them to suit our specific circumstances.

Finally, I find that a quotation from Peter Drucker sums up adequately the direction we should take and that is "*The best way to predict our future is to create it*." Let us create the future industrial relations climate that best suits us all.

Heather Seale
President, Industrial Court
June 18, 2025