



**SPECIAL SITTING OF THE INDUSTRIAL COURT OF
TRINIDAD AND TOBAGO FOR THE OPENING OF THE
2015 - 2016 LAW TERM**

ADDRESS BY

HER HONOUR MRS. DEBORAH THOMAS-FELIX

PRESIDENT OF THE INDUSTRIAL COURT

**10.00 a.m.
21ST SEPTEMBER 2015**

**First Court, Ground Floor
Industrial Court Building
7 St. Vincent Street
Port of Spain**

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We live in very difficult and uncertain times. This is an era where we witnessed the brutal slaughter and massacre of humankind and we recoil in horror at the savage and pernicious nature of attacks by entities and individuals such as ISIS, Boko Haram, and the Boston Bombers. On these shores, many of us have been deeply affected by the level of crime and violence perpetuated on this nation.

On the economic front, the effect of the 2008 financial crisis, which almost brought down the world's financial systems, is still being felt, with its repercussions gaining the most attention in what were hitherto “rich countries”. The fallout has strongly impacted on Europe, culminating in the Eurozone debt crisis that started in earnest in late 2009 and has evolved into a multi-year debt Crisis.

In Trinidad and Tobago, the country's economic performance and outlook have been adversely affected by a sequence of negative developments including the 2008 financial crisis, falling oil and gas prices and the recent downgrade in the country's investment credit rating. Trinidad and Tobago has joined the rest of the world and has begun regulatory reforms on banks and financial houses in an effort to stem the tide of the financial crisis. Recent estimates provided by the Central Bank of Trinidad and Tobago suggest that real Gross Domestic

Product (GDP) contracted by “0.5 percent in the first quarter of 2015, the first such decline since the second quarter of 2012 when real GDP fell by a deeper 2.5 percent.”

Growth in the region continues to stagnate as countries grapple with the fallout from the economic crisis, exacerbating high and rising debt to GDP ratios which have threatened to erode and destabilise their economies. The economies of Barbados, Jamaica and Guyana are experiencing various economic challenges, while the smaller economies of the English-speaking Caribbean are faced with high and increasing unemployment rates.

The statistics are most alarming with respect to the youth in the region. In some cases - as in St. Lucia - youth unemployment represents an excess of 27% according to the World Bank. At the broader national level overall unemployment in St Lucia is projected at 24.9% for 2015. Globally, estimates of joblessness among young persons, 15-24 years, rose by 15% between 2008-2014. The number of unemployed people worldwide rose from 170 million before the onset of the world financial crisis in 2008 to an estimated 206 million in 2014 and is projected to rise to 215 million by 2016.

On the environmental front, environmental degradation and resource depletion have become ever more visible as we experience natural

disasters such as floods, hurricanes and earthquakes. The most recent experience of Dominica following Tropical Storm Erika underscores the inherent vulnerability of Small Island Developing States (SIDS) where years of development gains and economic progress can be wiped away in less than a day, with often tragic consequences.

The world is also facing pressing challenges as large numbers of people cross borders seeking refuge from difficult political, social and economic developments. We only have to look at Europe to fully appreciate the depth, breadth and gravity of the refugee crisis with its obvious economic, social and legal implications. At the same time global demand for minerals and resources has increased, pushing against the limits of what the planet can sustainably provide.

The greatest environmental challenge however, and one which I dare say will inevitably engage the attention of every country in the world, is climate change, which threatens to undermine the very basis of human civilisation. This climate crisis is inextricably linked to other environmental concerns such as water availability, waste disposal and the depletion of biodiversity.

It is in this global and regional context that the Industrial Court of Trinidad and Tobago celebrates fifty (50) years as a key contributor to social justice delivery in this country. When the Industrial Stabilisation

Act¹ (ISA) became law in March 1965, a new regulatory framework was introduced to the practice of labour relations in this country. The legislative arm of the State at the time acknowledged that economic stability is a key factor to the development of a new nation. As a result, there was a critical need for employers, workers and trade unions to peacefully resolve disputes. One of the main purposes of the Act as stated in its preamble was to provide for:

“the establishment of an expeditious system for the settlement of trade disputes.”

The “expeditious system” for the settlement of Trade Disputes was then and remains today the Industrial Court of Trinidad and Tobago.

Theorists of Organizational Behaviour argue that out of chaos some of the most resilient and important systems are conceived. The Industrial Court was created from an environment of chaos, turbulence and discord and was appointed as the vehicle to quell the flames of mistrust and economic instability in society. This vehicle, created from chaos, has effectively quelled the flames of discord and economic instability in this country and has created order and structure in the practice of industrial relations.

¹Industrial Stabilisation Act 8 of 1965

I concur with Dr. Leighton Jackson when he opined at the Court's Symposium this year that: *“The establishment of the Industrial Court of Trinidad and Tobago must, therefore, be considered the most important institutional construct in modern democratic governance in the Commonwealth Caribbean from the point of view of the history of these states”....and that “the signal function of the Industrial Court is one of reconstituting relationships in a society where radical changes were necessary for the transformation of the society into one in which everyone finds an equal place.”*²

A wealth of jurisprudence has emanated from the Industrial Court in these past fifty (50) years which provides guidelines on the rights, duties and obligations of employers and employees in the workplace and represents the hallmarks of the principles and practices of good industrial relations in this country.

Labour relations and the practice of employment law in Trinidad and Tobago have also evolved over the past decades from an antagonistic, unstable and uncertain environment to a well-structured system of compulsory arbitration which has been very effective despite some bumps in the road and the requisite growing pains.

² “The Jurisprudence of the Industrial Court of Trinidad and Tobago – 50 years of Delivering Social Justice” address delivered by Dr. Leighton Jackson, Deputy Dean, Faculty of Law, University of the West Indies, Mona, at the Meet with the Court Symposium 3 on May 16th 2015 at Hyatt Regency, Trinidad.

This year as we celebrate fifty (50) years as an institution, I crave your kind indulgence, as I chronicle the key legislative changes which were made from 1965 to 2015, to provide some context about the role and jurisdiction of the Court.

The ISA was passed in Parliament on 19th March, 1965 and was assented to by the Governor General the next day, 20th March, 1965. At its inception in 1965, the complement of Judges was five (5). In 1967, the ISA was amended to allow for the increase in the membership of Judges of the Court from five (5) to seven (7) and the amendment also enabled the Court to sit in more than one Division as long as the President or Vice President presided as the Chairman.³

However, in the matter of *Trinidad Bakeries Ltd. & National Union Foods, Hotels, Beverages and Allied Workers & The Attorney General on behalf of the People of Trinidad and Tobago*,⁴ the Court of Appeal ruled that the “Industrial Court has no jurisdiction to make a non-consensual order or award for the reinstatement of dismissed workers and that, accordingly, it acted *ultra vires* in making such an order”.

³ Act 6 of 1967

⁴ *Trinidad Bakeries Ltd & National Union Foods, Hotels, Beverages and Allied Workers & The Attorney General on behalf of the People of Trinidad and Tobago* Civil Appeal 53/1966, TD 2 of 1966.

In short, the Industrial Court had no power to reinstate workers. As a result, there was a second amendment to the ISA on June 14th 1967,⁵ which conferred powers to the Industrial Court to reinstate workers. This Amendment also made the Industrial Court a Superior Court of Record with all the powers inherent in such a court.

The constitutionality of the ISA was challenged in the famous case of *Collymore v. Attorney-General, 1967*,⁶ and as a consequence of that challenge the Act was repealed and replaced by the Industrial Relations Act 23 of 1972.⁷

The new IRA facilitated the creation of the Office of Economic and Industrial Research whose main purpose is to provide research to support the Industrial Court and the social partners of the industry. The Registration, Recognition and Certification Board is also a creation of the IRA. Its main function is to peruse applications which are made by trade unions for bargaining status and to issue Certificates of Recognition where necessary.

⁵ Act 11 of 1967

⁶ *Collymore v. Attorney General* (1967) 12 WIR 5: (1969) 2 ALL ER 1207

⁷ Industrial Relations Act 23 of 1972, Chapter 88:01 of the Laws of Trinidad and Tobago

The first amendment of the IRA was in 1978,⁸ this amendment provided for two (2) Divisions of the Court, namely, the General Services Division and the Essential Services Division.

In 1979, the IRA was further amended to provide for the President of the Republic to indicate to which Division of the Court Judges were appointed.⁹ The last amendment of the IRA was in 1987, this amendment enabled the Minister of Labour to refer an unresolved dispute to the Industrial Court after a period of three months (3) or more of continuing industrial action.¹⁰

These changes have shaped the Industrial Court into the type of Court we have today; a Court for which the practice of good industrial relations, fairness, equity and good conscience are the cornerstones and the bedrock upon which its superstructure is sustained. The Industrial Court is the avant garde which continues to pre-empt socio-economic crisis in Trinidad and Tobago and across the globe. Not only has the Court been **purpose** built for problem solving, it is **well** built to handle the myriad problems of a modern democratic society.

Over the past fifty (50) years, the Court has expanded its operations significantly. On April 29th 1965, the new Industrial Court held its first

⁸ Act 44 of 1978

⁹ Act 2 of 1979

¹⁰ Act 3 of 1987

sitting at the Sixth Supreme Court, situated at the Red House, Port of Spain. In October, 1965, the Chronicle Building on St Vincent Street, Port of Spain, was renovated to house the Court. Thirty-two (32) years after on May 27th 1997, Prime Minister Basdeo Panday, handed over the building where we are currently located, to the then President of the Industrial Court, Mr. Leo P.E. Ramchand.

The Court expanded its operations to southern Trinidad when on February 15th 2005 under the leadership of the then President Addison M. Khan; it opened a Branch in San Fernando. In 2015, the Industrial Court acquired a building in Tobago for its use which we hope will be fully operational in 2016.

In Trinidad and Tobago, the practice of industrial relations remains very dynamic as the employment contract continues to evolve and to adjust to a highly technological and globalized workplace. Meaningful employment and opportunities to work are central to citizens' well-being and are important to a country's social and economic advancement.

It is through the financial reward which is received from work that families, communities and countries are strengthened and empowered. Moreover, economic growth is inextricably linked to the earning capacity of households. Consequently, a decrease in disposable

household income without doubt will negatively impact a country's economy.

The time has come therefore for employers, trade unions, workers, and practitioners of industrial relations to lend support and encourage each other to work symbiotically to develop innovative and creative business techniques and policies at the workplace in this time of economic challenge.

This is the time for us to pool our collective human, economic, and technical resources and to marshal all our formidable talents in service to our people. Our nation's patrimony and our children's future are at stake and more importantly they are in our hands.

As a people and as citizens of this country and the world, we need to work collectively towards making those difficult decisions which will positively impact the growth, development and security of our nation. This is imperative, particularly at a time when there are myriad socio-economic challenges facing employers and workers daily worldwide.

In this context, there exists a need for us to examine the informal economy in Trinidad and Tobago. This includes persons who hold multiple jobs in various fields to maintain their families.

They may sometimes hustle on the beaches and in the streets; in parks and in neighbourhoods; people making craft, fisher folk - if there is still fish - persons working as babysitters or cleaners in homes. Some are engaged in giving aid to the aged in our communities and others provide *ad hoc* and unstructured security at dwelling houses.

A closer examination into these “odd” jobs will allow us to determine whether the conditions of work are safe, whether persons face discrimination of any kind and whether they are adequately compensated for the work they do.

Should these people be categorized as workers in the Industrial Relations sense? What is the impact of their contribution on the national economy?

These questions are important for us in Trinidad and Tobago. We tend to pay lip service to the informal economy, it is like the ghost lurking around that nobody acknowledges or seldom sees.

The time has come for us to develop more coherent strategies for the informal economy to assist in measuring the contribution of those engaged in this sector to the nation’s GDP. We should examine how this informal economy impacts the socio-economic development and how we can assist in defending the dignity of those who are so employed.

DECENT WORK

I guess you will be thinking by now about Decent Work and how it affects the informal economy. Let me indicate that Decent Work is a globally accepted goal and instrument for improving the lives of people. The term was endorsed by the tripartite constituents of the International Labour Organisation (ILO) member states at its 87th Conference in 1999.

Decent Work is defined as: *“productive work in which rights are protected, which generates an adequate income with adequate social protection. It also means sufficient work in the sense that all should have access to income earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers’ rights and sound standards.”*

What, therefore, is Decent Work? It is the understanding that work is a source of personal dignity and stability in family units, that it brings about peace in communities and it is an important tool for economic growth, innovation and expansion of opportunities for productive jobs and enterprise development in this country.

The Court therefore has a vested interest in promoting and operationalizing the concept of Decent Work and in ensuring that respect for labour standards and fundamental principles and rights at work, social protection and the practice of good industrial relations, is paramount.

A REVIEW OF THE WORK OF THE COURT

The Court continues to encourage parties to adopt a conciliatory approach to solving disputes and, despite challenges, we continue to deliver judgments in a timely manner.

The statistics show that during the period 2010 to 2012, the number of disputes filed was 2,594, while the number of disputes disposed was 1,443. During the period 2013 to 2015, the total number of disputes filed was 2,384 and the total number of disputes disposed was 2,089. These figures show an 8% decrease of disputes filed at the Industrial Court and a 45% increase of disputes disposed. This increase is mainly due to the conciliatory approach and the effective conciliatory services which are provided by the Court.

ACCESS TO JUSTICE IN TOBAGO

The Industrial Court continued its access to justice initiative in Tobago. This year, the Court convened its sitting in Tobago from 17th – 25th

August, 2015. I was joined by Their Honours Mr. Lawrence Achong, Chairman, Essential Services Division (ESD), Mr. Albert Aberdeen, Mr. Melvin Daniel and Mr. Roger Jugmohan. We presided over thirty-two (32) disputes. Eleven (11) judgments were delivered and five (5) disputes were resolved and consent orders were entered. One (1) dispute was settled at conciliation and eleven (11) matters heard at Case Management.

The Judges must be commended for their dedication and for foregoing their vacation leave to resolve these disputes in Tobago. Many thanks to the staff for their hard work and continued support.

My heartfelt gratitude to the Learned Chief Justice of Trinidad and Tobago, Mr. Justice Ivor Archie, for his continued support and for allowing us the use of the facilities at the Supreme Court in Tobago.

Special thanks to Mr. Derek Ali, Attorney at Law, Mr. Mario Als, Mr. Kimba Anderson, Mr. Gareth Caesar, Mr. Clyde Elder, Mrs. Marcelline Lewis-Wilkinson, Mr. Courtney Mc Nish, Mr. Gary Andrews, Mr. Lyndon Cowan, Ms. Valerie Philip-Paul, Mrs. Vanessa Murray-Chapman, Mr. Brian Murphy, Mr. Codrington Winchester, Mr. Ken Davis, and Mr. Robert Giuseppi for their participation at these hearings.

When I became President of the Court, I expressed the desire to improve access to the Industrial Court for all citizens of Trinidad and Tobago. I am proud to announce that the Industrial Court has acquired

a 199 year lease for the premises which is known as Sandy Hall in Scarborough, Tobago.

I am very thankful that the Chief Secretary, Mr. Orville London, understood and accepted my vision and has graciously provided the building in Tobago for the Court's use. We are currently in the process of remodeling and redesigning the interior of the building and hopefully by next year, 2016, we will have a permanent Industrial Court in Tobago.

Thanks again to the Chief Secretary, Mr. Orville London.

MEET WITH THE COURT SYMPOSIUM

The Meet with the Court Symposium continues to be a big ticket item on the Court's annual calendar.

The Symposium was held at the Hyatt Regency on 16th May, 2015. The theme this year was "The Road to Social Justice". The request for invitations to the event was overwhelming and we apologise to those to whom we were not able to extend an invitation. This difficult decision was only due to budgetary constraints. As in the past years this symposium was a resounding success. Let me therefore extend our sincere thanks to Dr. Ralph Henry, Dr. Leighton M. Jackson,

Mr. Jefferson Cumberbatch, Mr. Gaekwad Ramoutar, Mr. Rainer Pritzer and to you, the stakeholders for your participation and support for the event.

INTERFAITH SERVICE

The Court held an Interfaith Service at the Cathedral Church of the Most Holy Trinity, Port of Spain on 24th March, 2015 to celebrate its golden anniversary and to give thanks for its accomplishment in social service delivery over the years.

Many thanks to The Right Reverend Claude Berkley, Reverend Dr. Knolly Clarke, Dean Emeritus, Reverend Father Carl Williams, the performers, stakeholders, the Members and staff of the Industrial Court, former and current, for their attendance and support of this event.

TRAINING

Their Honours, Mrs. Judy Rajkumar-Gualbance and Mrs. Heather Seale attended a course in Judicial Writing at the National Judicial College in Reno, Nevada, USA in April, 2015.

In July this year, two Court Reporters, Ms. Beulah Dalrymple and Ms. Portia Craigwell, attended the National Court Reporters' Association Annual Convention in New York. The hope is that these two (2)

members of staff can provide in house training as we continue to build the Court Reporting service at the Industrial Court.

The Court held a retreat for the staff at the Radisson Hotel on 2nd August, 2015. This retreat was very important in advancing the Court's development and the report and concerns which emerged from this experience put us in a much better place to facilitate team building and institutional strengthening going forward. Training in the area of Conciliation for all Judges at the Court was provided from the 9th to the 11th September, 2015 as we continue to build the capacity of Judges in various subject areas.

CHALLENGES

Court Reporting

Currently there is a chronic shortage of Court Reporters. I am sure many of our stakeholders have been experiencing some delay in receiving Notes of Evidence in their matters. Of the twenty-two (22) positions of Verbatim Reporter 1, fifteen (15) are vacant. During the last year one (1) Verbatim Reporter retired and another is due to retire next year, so there are currently seven (7) Verbatim Reporter 1 employed at the Court.

There are also three (3) positions of Verbatim Reporter II comprising of two (2) office holders and one (1) acting incumbent.

It is extremely difficult for the Court to properly function with ten (10) out of twenty-five (25) reporters. This shortage has directly affected the operations of the Court and has resulted in delays in preparation of notes which are needed by Judges to prepare and write their judgments. Also, the Court cannot in many cases furnish parties with Notes of Evidence when they are requested.

I have held several meetings with the Chairman of the Public Service Commission who is deeply concerned and has been very supportive in trying to find a solution to this grave problem. One can appreciate that the skill of a Court Reporter is very unique and difficult to obtain.

Therefore, despite advertising, we have not been able to find persons with this skill set. We are actively seeking solutions for this problem and ask for the patience and understanding of stakeholders while we resolve this problem.

Inadequate space

In 2012, I addressed you, the social partners, on the chronic problem of space at the Court. On that occasion I said *“Space at the Court’s Port of Spain building is a perennial problem. Judges and staff occupy spaces in this building which are less than ideal and which are certainly not adequate. This lack of space has stymied the operations of the*

Court and has prevented the Registry, the Library, the Accounts Department, the Verbatim Note Taking Section, the IT Unit, the Secretariat, the Research Unit and the Security Unit from properly functioning.

In fact, due to the lack of space, the staff of the Library has been removing older books from the shelves and storing these books at an external warehouse in an effort to find space for new volumes which have been purchased. This greatly affects the quality of service which the Library can provide. The staff of the Registry currently make use of one of the Witness Rooms to perform duties daily due to the cramped conditions at the Registry. Each department can share reports of some of the ways in which they have attempted to deal with the cramped space in their department.

While I do not in any way want to be an ungracious and rude neighbour, there is need for the Industrial Court to take control of and occupy all floors of the Port of Spain building, a building for which we

provide funds for all of the operations.”¹¹

The problem is more chronic now in 2015. There has been an increase in staff and Judges at the Court and we anticipate that there will be a greater reliance on the Court services as the economy continues to contract. It is very important that the physical facility at the Court is comfortable for staff and users and I look forward to a speedy resolution of this problem by the relevant authorities.

NEW MEMBER OF THE INDUSTRIAL COURT

In October, 2014, His Honour Mr. Morton Mitchell was appointed a Member in the General Services Division. The Industrial Court welcomes His Honour Mr. Mitchell and wishes him great success in his career at the Court.

¹¹ Annual Report for September 2012 – September 2013. Address by Her Honour Mrs. Deborah Thomas-Felix, President of the Industrial Court of Trinidad and Tobago.

TRIBUTE TO HIS HONOUR MR. ADDISON MASEFIELD KHAN **Former President of the Industrial Court**

It is with deep sadness that we mourn the passing of His Honour Mr. Addison Masefield Khan, former President of the Industrial Court. Mr. Khan died peacefully on 9th September, 2015.

Mr. Khan served as a Member of the Industrial Court of Trinidad and Tobago from 1st November, 1986 to 20th March, 1993. He was elevated to the position of Vice President on 21st March, 1993 and he served in that position until 12th December, 1999, when he had the distinction of serving as the fourth President of the Industrial Court from 13th December, 1999 to 12th December, 2005.

Mr. Khan made a tremendous contribution to the development of the Industrial Court and to the development of industrial relations jurisprudence in this country. Many of his judgments are regarded as authorities on various issues in industrial relations.

Kindly permit me to extend to the family of the late President, the deepest condolences from all Members and staff of the Court.

CONCLUSION

Fifty (50) years is a milestone in the life of any institution. As we move towards seventy-five (75) years, the Industrial Court remains

committed to the promotion of good labour relations standards and the protection of the fundamental principles and rights at work.

The Industrial Court, a pillar of social justice delivery, continues to promote and encourage a stable industrial relations environment in Trinidad and Tobago which is critical to our nation's development. A stable industrial relations climate is a very strong link in the chain of economic growth which can serve as the foundation for improving social justice delivery and the quality of life in this country.

Over the next few years we will be steadfast in our duty to ensure that there is social justice delivery as we continue to increase the competency of staff and Judges and strengthen the internal structure of the Court. We remain committed through our judgment to the ideals of inclusiveness, equity and fairness for all citizens of Trinidad and Tobago.

Many thanks to the members of staff, past and present, for their tireless work and commitment to duty. The staff has contributed to a large measure, over the past fifty (50) years, to the efficiency in the operations of the Court and has been the engine room of the Court.

To the former and sitting Judges for their dedication and their unstinting support to the Court for the past five (5) decades, I thank you.

Thanks to all of the social partners and the public in general for embracing the ideals of the Industrial Court which are founded on the principles of inclusiveness, social peace and social justice.

These ideals have made the Court the unique institution which it is today.

Thank you for listening.

May God bless you all.