



**SPECIAL SITTING OF THE INDUSTRIAL COURT OF
TRINIDAD AND TOBAGO FOR THE OPENING OF THE
2016 - 2017 LAW TERM**

ADDRESS BY

HER HONOUR MRS. DEBORAH THOMAS-FELIX

PRESIDENT

INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

10.00 a.m.

19TH SEPTEMBER 2016

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

SPECIAL SITTING OF THE INDUSTRIAL COURT OF TRINIDAD AND TOBAGO FOR THE OPENING OF THE 2016 - 2017 LAW TERM

The year in review September 2015-2016 has not been without economic and social uncertainty and turbulence. We continue to experience an upsurge in crime and criminal activity in this country and we continue to swim in a sea of economic instability and insecurity as declining oil and gas prices have caused governments worldwide to rethink the distribution of the shrinking global and national pie.

This new paradigm requires that the social partners work harmoniously together to navigate these treacherous waters in this fast changing turbulent environment. This may compel social partners to reexamine their demands so as to provide the strategic flexibility necessary to cope with this economic crisis. The citizens of this nation have been very resilient and victorious over economic and social challenges in the past and we, as a people, have the ability and the history of creating new pathways of success; notwithstanding the gloomy economic forecast.

There is a need for the melding of minds and hearts to re-examine and re-evaluate our common purpose and common goals and rededicate ourselves to the task of determining what we want our future and our society to be. Social partners should come together to assist in this social transformation as we continue to navigate these choppy waters and tackle one of the basic tenets of nation building: what type of Trinidad and Tobago do we collectively want?

A critical element of this and indeed, of the Court's remit, is ensuring that rights at work and labour standards are upheld and protected. This speaks to the critical issue of occupational, safety and health, a central element of the world of work that unfortunately does not always receive the attention it deserves in terms of time and resources.

It is imperative that we understand Occupational Safety and Health is obviously desirable but more significantly, redounds to the benefit of not only workers, but businesses, the economy and our wider society. It is a question of human rights, workers' rights and good business.

Moreover, the health and safety of citizens is integral to the development of this nation. It is immensely important that we enjoy good physical and psychosocial health; by psychosocial I refer to our mental, emotional, social and spiritual wellbeing.

It is my hope therefore that there can be a greater understanding and awareness among owners and managers of businesses that proper policies, standards and practice of occupational safety and health must be implemented at the workplace; policies and standards which are critical to the economic success of businesses. For to do otherwise will eventually adversely affect profit margins.

What do we mean by occupational safety and health? The World Health Organisation (WHO) states that "Occupational health deals with all aspects of health and safety in the workplace and has a strong focus on primary prevention of hazards."

The International Labour Organisation (ILO) and the WHO share a joint approach to the issue of occupational health and state that 'The main focus in occupational health is on three different objectives: (i) the maintenance and promotion of workers' health and working capacity; (ii) the improvement of working environment and work to become conducive to safety and health, and (iii) the development of work organisations and working cultures in a direction which supports health and safety at work and in doing so also promotes positive social climate and smooth operation and may enhance productivity of the undertakings.

The concept of working culture is intended in this context to mean a reflection of the essential value systems adopted by the undertaking concerned. Such a culture is reflected in practice in the managerial systems, personnel policy, principles for participation, training policies and quality management of the undertaking.'

Wherever your business is located, whatever type of business you operate in Trinidad and Tobago there is always the possibility that an accident or incident could occur or the possibility of exposure of members of your workforce to some type of hazard. It is therefore important to develop, implement and monitor a well-structured safety and health management system for each business, which includes policies, the assignment of roles and responsibilities as well as defined procedures all aimed at preventing and managing hazards and their associated risks.

In Trinidad and Tobago the Occupational Safety and Health Act, Chapter 88:08 (OSHA) as amended, is the main legislation which addresses health and safety issues at the workplace. This legislation provides rules and standards which are to be implemented in the workplace for workers to have a safe and healthy work environment.

In an acknowledgment that the safety, health and welfare of workers is of paramount importance, the Act requires that those who own and manage businesses have effective and proactive policies and safeguards in place for managing issues relating to the safety and health of everyone in the workplace.

At common law, employers have a duty to take reasonable care and provide a safe work environment. The OSHA legislation has expanded on this common law principle by imposing general duties to employers. The legislation has also entrenched the rights of workers to work in a safe environment and has created a body (the Occupational Safety and Health Authority) with powers to regulate workplace safety issues.

Additionally, it is critical to note that the WHO's Constitution enshrines "the highest attainable standard of health as a fundamental right of every human being". The organisation goes on to remind that "the right to highest attainable standard of health" requires a set of social criteria that is conducive to the health of all people including the availability of health service, safe working conditions, adequate housing and nutritious food. Indeed workers should be able to perform their duties in a safe and secure working environment that is free from safety and health concerns.

It follows then that in Trinidad and Tobago the prevention of work-related injury and illness should be the main priority on the list of workplace policies as we strive as a nation to increase and stimulate economic activity and secure an improved quality of living for our citizens.

I wish to emphasise the above point and expand on the foregoing for I am aware that some employers and companies may regard the improvement of health and safety at the workplace as an additional cost which affects their bottom line. I stress though, that when carefully examined, you will see that workers' health, safety and wellbeing are integral parts of the economic sustainability and the organisational development of any business. A number of successful businesses show that it is possible to develop the working environment by linking health and safety issues with managerial and development policies; that is, by combining the workers' wellbeing and company's profitability in a balanced way.

We know and acknowledge that the main purpose of a company is to produce goods and services in the most economic manner and in a way that procures profit. It is therefore natural that companies choose the most cost-effective way to manufacture products or provide services. However, profit and safety are not mutually exclusive and the latter has been shown to improve the former.

Several studies show that working conditions are key elements to determining the economic success of the company. Bad working conditions can affect the performance of the company by increasing the expenses and lowering the profitability whereas good working conditions can boost the productivity and decrease the company expenses. The value of occupational health and safety to a company's bottom line cannot be overstated.

If it were put in dollars and cents and in terms of costs, when there is an accident there might be a period of absence from work, medical care, cost of medication and other costs that relate to the immediate consequence of the accident itself. There might also be indirect costs such as loss in working hours for those who are injured and you may have to close down the business operations for a period of time after the accident has occurred. Additionally, there may have been damage to equipment and property and therefore the output, due to the accident, would be reduced. There can also be damage to the company's image and legal expenses and one may have to pay a fine and compensation at the Court; so there are direct and indirect costs. There is also the question of lower staff morale and loss of clients or contracts.

Additionally, the ILO has reported that work-related stress, alcohol and drug abuse, violence (both physical and psychological) all lead to health-related problems for workers and lower productivity for business enterprises. Taken together they represent a major cause of accidents, fatal injuries, disease and absenteeism at work in both developed and developing countries.

I urge employers in both public and private sectors to adopt and promote proper health and safety policies and programmes at work. I also strongly recommend that they create awareness among their workers of the various dimensions and short-term and long-term consequences of work related accidents, injuries and diseases, and place the health and safety of all workers as a priority. I am sure you will agree that a better health and safety environment benefits the organisation

in that it enhances productivity, quality and cost saving and also has the socio and economic impact of improving workers protection.

In an environment such as ours where there is a large energy sector, a manufacturing sector and an agricultural sector, though small, it is important that workers be provided with the necessary personal protective equipment to protect them from chemical and other hazards.

Indeed, a large number of our workforce spends a minimum of 8 hours a day at work and it is very important that the work environment be comfortable, safe and healthy. In some instances this may require some simple yet effective actions by the employer such as the regular servicing of the air condition systems and the routine cleaning of carpets and blinds. It is also as simple as ensuring that there are proper chairs for employees to sit and the requisite ergonomics are adhered to.

In small business enterprises the policy need not be elaborately drafted but it must be clear, precise and effective and it must be properly explained to those who work in the environment.

Statistics provided by the Ministry of Labour and Small Enterprise Development (MLSED)¹ reveal that for the period 2006 to 2015 a total of **102** fatal accidents occurred in the workplace. The industry with the largest number of fatalities was the construction industry which recorded **33** fatal accidents for the period 2006-2015. One death in the workplace is one too many and we therefore should be concerned and very alarmed that there have been **102** workplace fatalities in 9 years.

I have decided to present the non-fatal statistics by year so we can appreciate the enormity of the problem. In 2006 there were **377** non-fatal accidents reported in the workplace; in 2007 there were **758** non-fatal accidents reported; in 2008 there

¹ Industrial Accident Register, Research & Planning Unit, Ministry of Labour and Small Enterprise Development

were **1,059** reported non-fatal accidents; in 2009 **921** non-fatal accidents were reported. In 2010 there were **843** reports of non-fatal accidents; in 2011 there were **904** non-fatal accidents reported; in 2012, **754** non-fatal accidents were reported; the statistics for 2013 are not available; in 2014 there were **686** reports of non-fatal accidents and in 2015, **895** non-fatal accidents were reported.

The sector with the highest number of non-fatal accidents is the manufacturing sector with the lowest figure at **249** in 2014 and the highest at **555** in 2008.

These accidents and incidents in my view are to a large measure due to failures and deficiency in the policy and management of occupational health and safety in several businesses in this country.

As a nation we cannot promote the concept of increased productivity and increased economic activity without simultaneously insisting on effective policies for occupational safety and health in all business enterprises. Moreover, we cannot turn a blind eye to the growing number of diseases which have been debilitating and devastating to our citizens.

It is the duty of each employer whether in the public or private sector, to provide a safe and healthy environment for workers and to develop and promote a culture which supports health and safety at work. I challenge employers to take up the mantle and to promote and implement proper and sustained health and safety initiatives in the workplace. This is the only meaningful way to increase productivity and reduce the high number of work related incidents and accidents.

THE INDUSTRIAL COURT'S YEAR IN REVIEW

The Industrial Court continues to fulfill its mandate to facilitate the expeditious determination of disputes at the workplace. In the year in review ²(September 14, 2015 to September 9, 2016) **1,171** new disputes were filed at the Court which is **450** more than the number of disputes filed the previous year. The Court disposed of **963** disputes this year which is significantly higher than the **702** disputes which were disposed for the same period in the year 2014 to 2015; the disposal rate for 2015/2016 is **82.2%**. A breakdown of the total number of disputes disposed in 2015 to 2016 is as follows: **258** were disposed by judgments, **157** were settled bilaterally, **111** were disposed by conciliation, **30** were dismissed for want of prosecution and **407** were withdrawn by parties, mainly due to the conciliatory efforts of the Court.

Meet With the Court Symposium

The Meet with the Court Symposium continues to be the flagship event of the Industrial Court. This year the Court along with its stakeholders examined the topic of retrenchment and layoff in the current labour climate. The presenters, Economists Professor Andrew Downes and Dr. Ralph Henry, and legal experts Dr. Leighton Jackson and Mr. Jefferson Cumberbatch, provided us with very brilliant presentations and thought provoking perspectives on the topic. I thank the presenters for their support and their role in making the symposium a success. Thank you stakeholders for your participation and continued interest in this event.

Access to Justice - Tobago

The Industrial Court is committed to its outreach to afford all citizens of Trinidad and Tobago proper access to justice, to this end, we continued our vacation sittings in Tobago. The Court convened from 15th - 24th August, 2016 and I was joined by Their Honours Mr. Lawrence Achong, Chairman, Essential Services

² Since the Special Sitting on the Opening of the 2016/2017 Law Term, the data has been updated to 14th September, 2015 – 15th September, 2016. For that period 1194 disputes were filed and 996 disputes were disposed. The estimated disposal rate for the period is 83.4%.

Division (ESD), Mr. Albert Aberdeen and Mr. Melvin Daniel. During the period we presided over twenty-one disputes and delivered thirteen judgments. Additionally three matters were settled by conciliation, two disputes were settled bilaterally with the urging of the Court, one dispute was adjourned, one dispute was withdrawn and one remains part-heard.

I commend the Judges for their dedication and for foregoing their vacation leave to resolve these disputes in Tobago. Many thanks to the staff for their hard work, continued support and commitment.

Special thanks to Attorneys at Law Mr. Ken Wright, Ms. Vanessa Thomas-Williams, Mr. Christopher Yaw and Ms. Lana Chunilal and Industrial Relations Practitioners Mr. Stephen Mathison, Mr. Bryan Murphy, Mr. Codrington Winchester, Mr. Lyndon Cowan, Mr. Lyndon Mendoza, Mrs. Vanessa Murray-Chapman and Mr. Teddy Stapleton.

My heartfelt gratitude to the Learned Chief Justice of Trinidad and Tobago, Mr. Justice Ivor Archie, for his continued support of this initiative and for permitting the use of the facilities at the Supreme Court in Tobago. It is my hope that the Industrial Court building in Tobago will become operational for the next fiscal year.

Trends in Labour and Industrial Relations Bulletin

This year, the Industrial Court published its second Bulletin on "Trends in Labour and Industrial Relations" as we endeavor to strengthen the country's information base on labour market activity while at the same time provide stakeholders, as well as the wider working public, with information on trends in the labour market. The information in the Bulletin, for the most part, was collated from the database of the Industrial Court. Special thanks to Her Honour Mrs. Janice Christopher-Nicholls, Mrs. Deedra Clapham and the staff of the Office of Economic and Industrial Research for the hard work in making this Bulletin a reality.

Car Park

I am pleased to announce that the Southern area of the Court's car park which was taken away in 2006 has been restored after ten years. This will relieve a number of security and logistics problems which have plagued the Court over the years.

Challenges

The work of the Court has grown exponentially over the past 51 years. In 1965 there were **49** new disputes filed; in 1966 the total number of disputes filed was **172**; in the year 2009 there were **692** new disputes filed and for the period 2013 to 2015, **2,384** disputes were filed. With the increasing number of disputes and matters engaging the attention of the Court there is the need for increased accommodation for staff and for an adequate complement of staff to service the work of the Court.

The Court continues to experience challenges of space with Judges and staff functioning daily in less than ideal conditions. The shortage of staff (particularly in the Court Reporting Department) continues to be a problem and this year in review, we experienced budgetary cuts from the very beginning of the year, as a result stationery and basic equipment were scarce.

These challenges have stymied the smooth operation of the Court. Many practitioners can attest to the fact that their several requests for verbatim notes of evidence from the Court have not been met in a timely manner due to the lack of support staff to prepare these notes. I am aware that the issue of lack of resources is sadly not unique to the Industrial Court and I am clearly cognizant of the change in our economic circumstances resulting in continuing pressure on the availability and allocation of human and capital resources. However, I wish to emphasise that as a nation and as a people, we must always seek to afford priority and stability to our institutions particularly those that are charged with ensuring the preservation of

peace, law and order and justice as these should be fundamental standards we should aspire to collectively.

Tributes

It is with deep sadness we mourn the loss of two of our colleagues Her Honour Mrs. Judy Rajkumar-Gualbance and His Honour Mr. Krishendeo Narinesingh this year.

Her Honour Mrs. Judy Rajkumar-Gualbance

Her Honour Mrs. Judy Rajkumar-Gualbance was appointed a Member of the Industrial Court on October 23, 2000. She presided as a judge in the Essential Services Division for fifteen (15) years until her untimely passing, ironically, on October 22, 2015. Prior to her appointment at the Court, she served as an Economist in the Ministry of Finance, Planning and Development. She was a tutor at the University of the West Indies and she also served in the Ministry of Education as a Teacher for over ten (10) years.

Her Honour Mrs. Rajkumar-Gualbance was loved by everyone at the Court, she will be remembered for her commitment to duty, her bright personality and, most of all, as someone who demonstrated humility, faith and courage in the face of adversity. We extend our heartfelt sympathy to her loved ones.

His Honour Mr. Krishendeo Narinesingh

His Honour Mr. Krishendeo Narinesingh served as a Member of the Industrial Court in the Essential Services Division from December 10, 2013 until his untimely death on 3 June, 2016. Before joining the Court, His Honour Mr. Narinesingh was a Magistrate. He also served as an attorney at law in the Solicitor General's Department at the Ministry of the Attorney General.

His Honour Mr. Krishendeo Narinesingh will be remembered for his humble personality and his commitment to serving the people of Trinidad and Tobago. We mourn his passing and extend to his family our deepest sympathy.

Their Honours Mrs. Judy Rajkumar-Gualbance and Mr. Krishendeo Narinesingh were Members of the Essential Services Division (ESD) and so was Her Honour Ms. Victoria Harrigin who also passed in 2013. No new Members have been appointed to the ESD to fill these vacancies, as a result, all sittings of the Special Tribunal of the ESD have been adjourned indefinitely in the last term of this year which is creating a backlog in the Special Tribunal. I do hope that this issue will be urgently addressed by the relevant authorities.

Conclusion

As I conclude I wish to remind the social partners that there is a need in these times of global financial instability to look closer and re-examine the issue of economic inequality and the negative impact economic inequality can have on social, political and economic issues such as economic growth and development, corruption, crime, poverty and social mobility. I want to also humbly suggest that we re-examine our laws and policies on social protection and employment rights of workers including those in the informal economy and put systems in place to ensure that when a company closes its doors that the rights of workers and the pecuniary benefits due to workers are protected as a matter of priority. We at the Industrial Court promote inclusiveness, equality and an effective social justice system as pillars of economic growth and sustainable development; as we continue to fulfill our mandate of social justice delivery in Trinidad and Tobago.

I wish to thank the Members and staff of the Industrial Court for their hard work this past year and the stakeholders for their continued support.

May God bless you all.

Thank you for listening.