

The background of the slide features a stylized, repeating pattern of the Jamaican flag, consisting of green, yellow, and black diagonal stripes forming a central cross.

**Jamaica's Industrial Relations and
Labour Law at Fifty:
Looking in, Looking Out;
Looking Better or Worse?**

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Origins of Jamaica's Labour and Industrial Relations Law

- Must be examined from the prism of forced labour of system of Slavery
- Upon Emancipation, legislative framework for employment relations embodied in Master and Servant Law (1842) - remained on the books until 1974
- Only other law in industrial relations was Trade Union Law (1919)
- Both laws were inadequate to meet the needs of workers in post slavery society

Flashpoint '38

- Jamaica erupted in violent labour unrest in 1938, a direct result of inequities in employment relationship
- These unrests laid the foundation of the Trade Union movements to represent the rights of workers which ultimately was a powerful catalyst for increased anti colonial and nationalist sentiments leading to independence

Moyne Commission

- Reacting to the labour unrests, UK appointed a Royal Commission, chaired by Lord Moyne to examine the reasons for the unrest
- Its report found that the non-existence of a working industrial relations framework precipitated the state of affairs.
- It recommended that laws be enacted to ‘...protect trade unions from actions for damages consequent on strikes, the legalisation of peaceful picketing and compulsory registration of trade unions.’

Moyne Commission

- Also recommended that colonial government should support the establishment of institutions to regulate labour relations (e.g. Trade Unions and a Labour Department)
- Moyne also urged the colonial government to regulate wages and conditions of employment until ‘trade unions...developed to the point where they can play a decisive part in [collective bargaining]’.

Pre Independence Labour Legislation

(regulating conditions of employment)

- Amended Trade Union Law(1938)
- Workmen Compensation Law (1938)
- Minimum Wage Law(1938)
- Women(Employment of) Law (1942)
- Factories Law (1943)
- Labour Officers (Powers) Law (1943)
- Holidays With Pay Law (1947)

- All these laws are still in existence today, with only relatively minor changes made at various points over the years

Pre Independence Legislation (regulating industrial relations)

- Trade Disputes (Arbitration and Enquiry) Law (1939)
- Public Utilities and Public Service Arbitration Law (1952) popularly called the “Essential Services Law”
- Protection of Property Law (1905)
- Served mainly to create avenue for industrial disputes settlement

Effect of these laws

- Provided minimum protective provisions
 - Start of the “Floor of Rights” for workers
 - Implemented Regulatory framework
 - Established industrial dispute resolution mechanism
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- Still not extensive reach for all workers; unions still pivotal to protect workers rights

Constitutional Labour Rights

- At Independence Section 23 (1) of Constitution encouraged further unionism by providing right to Freedom of Association and particularly the right to form and join a Trade Union.
- Interestingly when the Charter of Rights was passed in April 2011, Section 13 retained the rights to freedom of association but there was no specific reference made to the trade union movement
- This begs the question, has the pivotal role of the unions diminished? Are they still relevant ?

Post Independence Legislation (1960's)

- Foreign Nationals and Commonwealth Citizens (Employment) Act (1964)
- National Insurance Act (1965)
- This lack of legislative activity signalled the view of the government that the unions could “look after the worker” as it spent time seeking to establish the fledging nations in industry....

Post Independence Legislation (1970's)

- Considered a period of enactment of progressive labour laws to protect workers rights
- Employment (Termination and Redundancy Payments)Act (ETRPA)(1974) – providing rights to redundancy payments and periods of notice
- Labour Relations and Industrial Disputes Act (LRIDA) (1975) – creating the Industrial Disputes Tribunal (IDT) and power to reinstate on unjustifiable dismissal
- LRIDA amended in 1978 to compel IDT to consider national interest in making awards

Post Independence Legislation (1970's)

- Employment (Equal Pay for Men and Women) Act (1975)
- Maternity Leave Act (1979)
- Neither Act has ever been amended since enactment. They provide rights in principle which at times hollow in practice. –
- No formal recorded complaint at MLSS under Equal Pay law
- Over the life of Maternity Leave Act average of 42 complaints annually

Post Independence Legislation (1980's&1990's)

- Lull in legislative activity
- Amendments to LRIDA and ETRPA in 1986 designed to restrict the activities of unions during austere economic period with IMF imperatives
- Again the role of the union in protecting the rights of workers was essential

Post Independence Legislation (1980's&1990's)

- Employee Share Ownership Plan Act (1995)
- Caribbean Community (Free Movement of Skilled Persons) Act 1997
- Encouragement of industrial democracy and resurgence of Caribbean integration movement.

Post Independence Legislation (2000 and beyond)

- Seven pieces of legislation amended
- Trade Union Act and LRIDA 2002
- LRIDA further amended in 2010
- Minimum Wage Act (2007 & 2011)
- ETRPA (2008)
- Factories Act (2009)
- Holidays with Pay Act (2009)
- Foreign Nationals Act (2011)

Post Independence Legislation (2000 and beyond)

- Most amendments merely increase fines and penalties – largely cosmetic
- Few major changes: changed definition of worker, individuals can now access IDT
- This is an issue that must be immediately addressed; laws must be kept constantly under review to remain relevant

Labour Institutions – Ministry of Labour and Social Security

- Created in 1939 based on Moyne's recommendations with a mandate to:
- Inspect records and conditions of work
- Initiate prosecution for breaches of legislation
- Obtain data and statistics on unemployment
- Disseminate information to workers and the public generally
- Provide conciliation and mediation to aid industrial disputes resolution

Labour Institutions – Ministry of Labour and Social Security

- Mandate still relevant as these issues still present as priority in employment relationship
- Over 8,000 complaints annually
- Challenge with criminal prosecution for breaches due to inadequate staff and resources
- Challenges with staff retention
- Ministry staff sometimes negatively perceived when matter unfavourably addressed

Labour Institutions – Industrial Disputes Tribunal

- Created to replace ad hoc tribunals under previous legislation
- Continues to face challenges in terms of staffing and negative perceptions by both employers and unions/workers
- However can be traced to adversarial nature of issues needing resolution
- Statistics show over its 37 year existence it delivered 802 awards – 47% were in favour of unions and 37% in favour of employers
- This ratio could be considered as acceptable not overly biased

Labour Institutions – Industrial Disputes Tribunal

- Awards of the IDT can be impeached on a point of law via judicial review proceedings
- Many of rulings were quashed in its infancy which was made worse by fact it is not obliged by law to give reasons for its decisions
- This issue is being addressed by panels now routinely providing written awards and more awards are being upheld by the reviewing courts

Labour Institutions – Industrial Disputes Tribunal

- Awards such as the *Jamaica Flour Mills Limited v The Industrial Disputes Tribunal and The National Workers Union* PC Appeal 69 of 2003

»AND

- *Village Resorts Limited v IDT and Uton Green* 1997- SCCA 66/97

played a pivotal role in changing the face of the industrial relations landscape when affirmed by the court

Role of the Judiciary

- In the early days of reviewing the IDT awards the courts appeared to take a strict legal analysis approach to the cases which were referred to it, ignoring settled industrial practices within the employment sphere
- E.g. *Banton and others v Alcoa Minerals of Jamaica Incorporated and Others* where court debunked the view that trade union membership equated to representational rights.

Role of the Judiciary

- The trilogy of cases in 1980's of
 - **Serv Wel Jamaica v Trade Union Congress (1982)**
 - **Dannah Brassiere v NWU (1982)**
 - **Four Seasons v NWU (1983)**Eventually made it clear that there was in law no right to strike even though workers considered it an inalienable part of their right to freedom of association
- These cases were blow to the trade union movement

Role of the Judiciary

- However with the passage of time it appears that the courts are becoming more sensitive to the norms and practices of the Industrial relations movement as the cases of **Village Resorts** and **Flour Mills** illustrates

Recommendations - Legislation

- Consolidate the labour legislation which continue to be relevant to the IR landscape into one Act which will be more user friendly
- The process should take the opportunity to not just amalgamate existing provisions but incorporate other provisions which would assist in enhancing the employment relationship e.g. Instituting a requirement for employers to deliver a statement of particulars of employment to workers evidencing the terms of engagement and delineate the right not to be unjustifiably dismissed
- This task can be made extremely less tedious by using as a base the CARICOM model laws that already exist in some areas of labour law with a view to eventual harmonisation among all states in CARICOM

Recommendations - Legislation

- Repeal outdated and discriminatory legislation, such as Protection of Property Act and Women Employment of Act
- Enact more progressive legislation to meet the current needs of the workplace – e.g. The Occupational Safety and Health Act which has been in gestation for close to 20 years
- Develop legislation in areas of the law which are becoming more topical – Discrimination in employment
- Keep labour law under constant review and make amendments in a timely manner

Recommendations- Institutions

- Provide adequate resources to the Ministry and the IDT to properly fulfil their mandate
- Because of the perceived (if not real) potential for bias in the operations of the IDT and especially the Conciliation Department of the MLSS by employers and unions, consideration must be given to the creation of an autonomous body devoid of government restrictions to undertake the functions and administration of these institutions-
- A model in this regard may very well be found in the new Court Management Services being rolled out at the Ministry of Justice

Recommendations- Institutions

- Re-examine the current composition of the IDT with a view to use legally trained personnel as Chairpersons - this would better prepare the panels in the preparation of their award because of the increasing juridification of employment issues
- In the alternative each panel should be accompanied by a legal officer to their sittings and be mandated to fully consider that persons advice in their deliberations
- Consideration should also be given to the establishment of a specialised appeal court of IR matters

Recommendations- Institutions

- The legislature must be prepared to act expeditiously in matters related to amendment of these laws
- The executive must exercise political will to make the hard policy decisions to bring labour law in line with global imperatives

Recommendations- Judiciary

- The judiciary should continue on a path of purposive interpretation of labour legislation to ensure that the intention of Parliament is achieved.
- Must be trained and exposed to the nature of industrial/labour relations to guide their rulings within the confines of the law
- Encourage the acceptance of the CCJ as final appellate court

Conclusion

- Having looked into the past and present
- And looked out at what would be required to improve the system
- In some areas we are better – a far cry from post emancipation and early independence
- In most others if we are not worse off we are certainly at a standstill
- The time is now to make the hard decisions necessary to further enhance the IR labour law systems