



# LAW ASSOCIATION OF TRINIDAD AND TOBAGO

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## **MEDIA RELEASE**

The Law Association congratulates Her Honour Mrs Heather Seale on her appointment as President of the Industrial Court. We also take the opportunity to record our profound gratitude to outgoing President Mrs Deborah Thomas-Felix for her yeoman service to Trinidad and Tobago. Her tenure as President of the Industrial Court will be remembered for her sterling contribution to the development of good industrial relations practice in the employment sector in Trinidad and Tobago.

We take the opportunity also to echo the concerns expressed by some members of the public concerning the system of appointment and re-appointment of judges of the Industrial Court, which, as the Caribbean Court of Justice observed in a related context, “lends fragility to judicial independence.”

For the benefit of the public, judges of the Industrial Court are appointed for periods of at least three but not more than five years at a time and are eligible for re-appointment. During their term of office, they enjoy financial security and security of tenure, and to that extent, their independence is assured. That independence becomes fragile when a judge who wishes to pursue a judicial career at the Court seeks re-appointment. Were it the case that the decision to re-appoint a judge of the Industrial Court was made by the Judicial and Legal Service Commission, that constitutional arrangement would have been designed to ensure judicial independence. But the power to re-appoint all judges of the Court, with the exception of the President, is vested effectively in the Cabinet, which advises the President of the Republic on who should be re-appointed. On the other hand, the President of the Court is appointed by the President of the Republic after she consults with the Honourable Chief Justice.

The fear that judicial independence may be compromised in the system of re-appointment arises from the fact that, whether through statutory corporations, such as WASA and T&TEC, or state enterprises, such as Caribbean Airlines, or directly as the employer of public servants, the Government is a party to many disputes and matters before the Industrial Court. The

uncomfortable situation created by law, therefore, is that judges of the Industrial Court are called upon to adjudicate on the merits of cases presented to it by the very person who has the power to decide whether the judge should be re-appointed at some later point in time.

It is, therefore, not difficult to appreciate that trade unions representing workers employed by government entities might be justifiably concerned that a judge whose term of office is near expiration and who wishes to be re-appointed might hesitate before giving judgment against the Government. As our highest Court put it in a similar context, there is a risk that a judge seeking re-appointment might seek to commend herself to the Government as the authority “with power to meet her wishes.”

The risk that a judge might seek to ingratiate herself to the Government in this way is no doubt of less concern in the case of the President of the Court who owes her appointment not directly to the Government but to the President of the Republic who need only consult with the Honourable Chief Justice. But given that the President of the Republic herself is effectively elected to her office by the Government, it is hard to eliminate altogether the perception, if not the risk, that an incumbent President of the Industrial Court might strive to avoid alienating the Government in order to pave her way to re-appointment. Moreso, since the re-appointment process is neither transparent nor guided by any objectively verifiable standards, Her Excellency is not required to give any reasons for her course of action.

The Association hastens to make clear that there is no basis for any suggestion that the President’s decision not to re-appoint Her Honour Mrs Thomas-Felix was carried out other than strictly in accordance with the law. We know of no basis for thinking that her decision was motivated by any desire other than to ensure the further development of the Industrial Court and the strengthening of the administration of justice.

However, it is incumbent upon us to note and to warn that for as long as judges of the Industrial Court are perceived to depend upon the Government for their re-appointment to the Court, concerns about the Industrial Court’s judicial independence will re-surface. We urge the Government to seriously consider appropriate amendments to the Industrial Relations Act to vest the power of re-appointment, at least in the Judicial and Legal Services Commission.

**LAW ASSOCIATION OF TRINIDAD AND TOBAGO**

**15<sup>th</sup> December 2023**