

HLSTUEI/FES Workshop

Sustainability for the Future:

Operating Trade Unions as a Business

Jamaica's Trade Union Act: Constraints & Possibilities for Trade Union Sustainability

Introduction

- Trade Union Movement in this country could be considered as the bedrock of our existence as an independent nation
- What began as disjointed unplanned agitation to redress deplorable working conditions culminating in the 1938 labour disturbances transmogrified into a well defined and vibrant trade union movement in the aftermath of those events

Introduction

- This development was underpinned by the upgrading of the hitherto hollow Trade Union Act promulgated in 1919,
- In their heyday, unions were integral entities in the fabric of the nation, acting as the virtual voice of the masses in the public domain
- It would however not be incorrect to say that the current weight of the union's powers has diminished due to a number of factors, not the least of which is the onslaught of globalisation, loss in membership, individualisation of work

Introduction

- Unsurprising the once powerful and sometimes militant unions of yesteryear need to analyse their current positions with a view to reinventing themselves in order to not only remain relevant but also to begin a process to renewed growth and development
- This task must however be approached always contemplating the heart and soul of the movement which is the protection and expansion of the lot of its member - the Jamaican worker

Presentation Outline

- Critically examine the statutory legal framework which directs the operations of unions
- Assess whether in its current state it acts as a hindrance or an encouragement of their further growth and development
- Compare Jamaican legislation with other CARICOM countries especially in light of moves afoot to promote harmonisation of such laws

Presentation Outline

- Examine if recommendations should be made for certain provisions of the **Trade Union Act** and **Regulations** to be amended to better accommodate the pursuance of a 'business model'
- Examine concept of social entrepreneurship vis-a-vis trade unions
- Provide practical guidance for trade unions in their quest to promote continued sustainability in the current economic climate

Historical Context

Historical Context

- **1834** - Slavery ended with the passing of the British Emancipation Act (1st August)
- **1838** - All slaves fully emancipated after a period of apprenticeship and considered free to choose their employment and their employer (1st August)

Historical Context

- Anticipated that the makings of a free market regime with employment contracts equally negotiated would have been implemented alongside a basic legal framework to establish labour standards.
- Political directorate was still dominated by the planters who endeavoured to maintain the status quo as far as possible to minimise the economic cost of wages and other benefits applicable to workers

Historical Context

1863 -1865 :

- Reports of strikes amongst sugar workers and peasantry for wages
- Wages were poor, employment irregular and crop failures prevalent
- Workers appealed to the Queen with no satisfactory result
- Appeals from the clergy to the Secretary of State for the Colonies also yielded no results for the improvement of wages and the severe hardships facing workers

1865 - Morant Bay Rebellion led by Paul Bogle
(11st October)

Royal Commission appointed to investigate the rebellion. Commission evidence indicated that the movement/rebellion was aggravated by the want of good labour laws and tribunals for the easy settlement of labour disputes

Historical Contexts

1865 - 1894

- First Trade Unions emerged
- They operated without legal protection
- The ***Jamaica Union of Teachers'***
(forerunner to today's ***Jamaica Teachers' Association***)

formed in 1894 – Jamaica's first trade union.

Historical Contexts

- **1898** - The ***Carpenters, Bricklayers and Painters Union (aka the “Artisans Union”)*** began operations and helped to chart the course for the development of other trade unions by offering wide and ambitious menu of benefits such
 - (a) minimum rates for the building and construction industry
 - (b) opened a workshop run by small committees
 - (c) established a library
 - (d) established a technical school

Historical Contexts

- **1907** - ***Printers' Union*** established by Marcus Garvey - Printer's Union strike led by Marcus Garvey (then employed to the P.A. Benjamin Company) over the purchase of printing machines and the hiring of other workers to operate them.

Historical Contexts

- **1918- *Longshoremens' Union No. 1*** of the Jamaica Federation of Labour – was formed. It represented workers in the tobacco trade – Pursued a more militant style of trade unionism. This union was at the forefront of dock workers labour strikes in 1918

Historical Context

- **1918 – 1919** : Series of strikes in sugar, bananas, govt. railways, fire brigade and docks. Leader of Longshormen's Union Bains Alves petitioned the government to legalize unions
- The then Governor (Sir Leslie Probyn) however made attempt at conciliation to address the widespread unrest amongst workers by appointing conciliation board.
- Following strikes by dock workers, tram workers and postmen, another conciliation board was appointed and recommended wage increases.

- **1919** - The ***Civil Service Association*** was formed and is one of the few unions established during this period which survives today – Approach to trade unionism was by gentle suasion, reasoned argument and mild agitation with the Colonial Secretary as its Honorary President.

Trade Union Act 1919

- **1919** – After further agitation from Alves and others and the *Trade Union Ordinance* was passed. It was modelled from the UK Trade Union Act (1871).
- Trade unions then became recognized by law and were able to operate with legal protection as the law removed the criminal sanction for conspiracy arising from union organization.

Trade Union Act 1919

- The law however had two glaring deficiencies:
 - It did not protect the unions against liabilities for civil damages resulting from strikes
 - It did not legalise peaceful picketing
- These omissions were deliberate because the Governor did not think the unions were ready for these protections.
- Only 2 unions were registered between 1919 and early 1930's : These were -
- ***Longshoremens' Union No. 1 & 2***

Historical Contexts

- The legislation served to establish the legal framework for the growth of modern trade unionism
- The growth was however quite slow; only 12 unions were registered under the Act up to 1938.
- The labour conditions of the workforce in contrast were deteriorating exponentially;
 - wage rates were low, jobs scarce and unemployment high while there were hardly any provisions for matters such as vacation, sick or maternity leave

Historical Contexts

- **1938** - Serge Islands strike
- Strikes by chauffeurs, power and pumping station workers, waterfront workers
- Frome – Bloody Sugar workers strike
- Worker rights supporters/leaders emerged – Alexander Bustamante, St. William Grant, Norman Manley
- These unrests led to the UK Government setting up a Commission to investigate reasons for the uprising

Moyne Commission

- *1938* - The Moyne Commission's Report - Labour unrest due to increase in colour prejudice, feelings of resentment engendered amongst workers as post emancipation workers expected to be submissive and willing (i.e. slave-like in demeanor) if they were to retain their jobs.
- Unemployment high (whether voluntary or involuntary) due to post slavery perception that land or manual work was slave work
- High levels of absenteeism, underdeveloped manpower, economic destitution, and social disorganization.

Moyne Commission

- Its report concluded that the non-existence of a working industrial relations framework precipitated the occurrences.
- *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.'*

Amendment to the Trade Union Act

- ***Trade Union Act*** was amended in **1938** to address union protection from civil/tortious litigation through instituting immunities and by the provision of administrative mechanisms to handle disputes resolution.
- Labour Department was also established to monitor developments in the field

TU Act

- Act was thereafter amended four times; in **1959, 1969, 1979 and finally in 2002.**
- The amendments address a number of issues:
 - prohibiting involvement of picketers who were not employees of the enterprise with the 12 months prior to relevant the industrial action,
 - mandating the provision of an auditor's certificate for reports being submitted to the Registrar,
 - instituting a minimum age for membership and limiting the involvement of some members in union activities,

TU Act

- The combined effect of the amendments have arguably however not considerably changed the major tenets of the Act which were present since its inception and as such the general legal principles and procedures underpinning the trade unions remains unscathed.
- This may or may not be a constructive position for a movement which now faces decidedly different circumstances of existence.

Major Provisions of Act

Definition of Trade Union

- Trade Unions are defined by **Section 2**

"trade union" means any combination whether temporary or permanent, the principal purposes of which are, under its constitution, the regulation of the relations between workers and employers, or between workers and workers, or between employers and employers whether such combination would or would not, if this Act had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade:

Definition of Trade Union

Provided that nothing in this Act—

(a) shall effect—

- i. any agreement between partners as to their own business;
- ii. any agreement between an employer and those employed by him as to such employment;
- iii. any agreement, in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft;

(b) shall preclude any trade union from providing benefits to its members

Definition of Trade Union

- This definition is slightly different from the original 1919 delineation which did not include the word **'principal'**.
- The importance of this insertion is critical to these discussion of whether the Act constrains unions in the course of their activities to merely regulating relations between workers and workers, workers and employers, and employers and employers.

Definition of Trade Union

- It is submitted that such a view would be illogical and misconceived.
- The fact that the Act is primarily concerned with managing union activity which encompasses the representation of workers within the employment sphere does not prevent them from being involved in activities which are not similar to those duties

Definition of Trade Unions

- It should be noted that the definition expressly states that nothing in the Act shall ***'...preclude any trade union from providing benefits to its members'***
- It is not farfetched to envision that a trade union may in its quest to provide benefits to its members be involved in pursuits which do not conform to the traditional conceptualization of trade unionism

Definition of Trade Union

- The question is whether the trade union in taking such a course of action would become involved in any 'unlawful action' as contemplated by the Act.
- It should be noted that the trade union definition declares that nothing in the Act will make effective *any partnership agreements, employment contracts or other business contracts which would otherwise than by reliance on its provisions be illegal*

Definition of Trade Unions

- In other words it is only if at common law the objectives of the trade union would be considered as illegal and in restraint of trade would that object be immune from legal action.

Trade Union definition

- In this regard the trade union is protected from criminal action for any action whose purpose would otherwise have been to restrict another in the operation of their business. **Section 3**
- Conversely unions may enforce any agreement independently of the statute once it is not in restraint of trade. **Section 4**

What is Restraint of Trade?

- *“Contracts or combinations that tend, or are designed, to eliminate or stifle competition, create a monopoly artificially maintain prices, or otherwise hamper or obstruct the course of trade as it would be carried on if it were left to the control of natural economic force”*

Definition of Worker

- **Section 2** defines “**workers**” as:
 - “ all persons employed in trade or industry, whether or not in the employment of the employer with whom an industrial dispute arises”

This definition is very wide as it seeks to promote/ encourage Trade Unionism to encompass any person who may wish to join a trade union – this differs from definition for the purposes of Bargaining/Representational rights in a workplace

Definition of Industrial Dispute

● **industrial dispute" Section 2**

- means any dispute between employers and workers, or between workers and workers, which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person;

- This definition is important as many of the rights and privileges which accrue to trade unions and their members are contingent upon the existence of an 'industrial dispute

Method of establishment

- Trade Unions are not companies, friendly societies or industrial and provident societies even though some of their purposes and activities encompass activities pursued by these entities.
- As such **Section 5** of the Trade Union Act stipulates that registration under the following legislation will be null and void:
 - Friendly Societies Act
 - Industrial and Provident Societies Act
 - Companies Act

Method of establishment

- The objective of this provision is arguably that such action would be deemed unnecessary since the trade union (as will be seen below) would be endowed with quasi legal personality by virtue of registration under the Trade Union Act.
- As such these legislation and the purposes for which they were enacted though not necessarily dissimilar with options available to trade unions in providing benefits for members should not be the methodology utilised to establish a trade union itself

Method of establishments

- Another potent argument in this regard is as noted previously, the trade union itself because of its history which limits its activities would be unable to legally access some of the benefits of these legislation such as entering and enforcing certain contracts (in restraint of trade)

Registration of Trade Unions

It is a compulsory requirement for TU to registered

Section 6 (1)

- “ Upon the establishment of a trade union, it shall be the duty of the committee of management or trustee appointed in that behalf, or in default of any such appointment, the directing authority, by whatever name it may be called, of such union, to make application for registration within **thirty (30) days** after the date of the establishment of such union. . . .”

Failure to comply is punishable by fine of \$10,000.00 or \$500.00 for each week the offence continues

Registration of Trade Unions

● **Section 6(4)**

- “If an application for registration of a trade union has not been made as required by this Act or if registration of a trade union has been refused or cancelled, every member of such trade union who continues as a member thereof, and every person who takes part in any meeting or proceedings of a trade union, knowing that such union is not registered under this Act, shall be guilty of an offence

”

.

- Liable to a maximum fine of \$500.00

Registration of Trade Unions

● **Section 13 (a)**

- An application to register a trade union must be accompanied by a copy of its Rules and a list of titles and names of its officers.

● **Section 13 (b)**

- Once satisfied that objects of the Trade Union are lawful and regulations have been complied with the Registrar is bound to register the Union

Registration of TU

- **Section 13(c)**

- No trade union shall be registered under an identical or similar name to one which already exists so that the public is likely to be deceived

- **Section 13(d)**

- Where a TU has been in operation for over a year before applying for registration, they must produce statement of receipts, funds, effects and expenditure in the prescribed form before it will be registered

Registration of TU

- **Section 13(e)**

- The Registrar shall issue a Certificate of Registration which will remain conclusive proof of registration unless withdrawn or cancelled by the Registrar.

- Fees for registering trade union - \$1,000
 - **(1st Schedule)**

Registration of TU

● **Section 15**

- Each Registered TU must have a registered office where all communication can be forwarded. If after **7 days** of operation there is no designated office, the trade union and every officer may be liable to a maximum fine of \$500.00 for each day the situation remains
- It is the duty of the TU to advise the Registrar of the location of the registered office for recording purposes; failure to do so means that the union is non compliant with the law

Registration of TU

- **Section -17** –
 - “The Deputy Keeper of the Records shall keep in the Record Office, a register of all trade unions registered under this Act and shall be the Registrar under this Act.”
- This means that the Registrar General is the appropriate authority to register Trade Unions in Jamaica

Withdrawal or cancellation of Certificate

- **Section 22**
- Only the Registrar of Trade Union can cancel or withdraw a Registration Certificate in the following cases -
 - at the request of the trade union
 - if it obtained by fraud or mistake
 - if the trade union operates in violation of the Act after being notified by the Registrar
 - if the trade union has ceased to exist

Withdrawal or cancellation of Certificate

- However there are two safeguards provided to the aggrieved union:
 - They must be provided with not less **than 2 months** notice in writing setting out the grounds for the cancellation or withdrawal (except at its request).
 - There is the right to appeal the decision.

Right to Appeal

- The amendment of 1959 give a right of appeal to an aggrieved person:
- **Section 24**
 - Any person aggrieved by the refusal the Registrar to register, or for withdrawal or cancellation of certificate (except at the request of the TU) may within **21 days** appeal to a Judge in Chambers who shall give directions as he thinks fit

Current Registered Trade Unions

- As at May 20, 2013 the Deputy Keeper of the Records advised that there were **76** registered trade unions
- Notable absentees – JUPOPE
- UCASE (subsumed with NWU)

Importance of Registration

- The importance of registration cannot be understated since it is this act which bestows upon the union its 'quasi corporate' status.
- At common law unions do not have a distinct legal personality as obtains for a registered company although it does however have some of the attributes of legal personality.

Importance of Registration

- It is merely an association of persons bound together by their membership contract which operates through the acts of its trustees or other authorised officers.
- So for example, registered trade unions can in the trustees' name purchase, lease, sell, exchange or mortgage any real estate.
- Prior to 2002 the union was limited in such exercise to one (1) acre of land, but this disability was removed when the act was amended. **Section 7**

Role of Trustees

- **Section 8 – *to control union property***
 - Trustees are empowered to hold all real and personal estate belonging to any trade union, for the use and benefit of the trade union and its members,
 - The real or personal estate of any branch of a trade union shall be vested in the trustees of that branch or alternatively the trustees of the trade union, if the rules of the trade union so provide and be under the control of such trustees, without any further description.

Role of Trustees

- **Section 9 - undertake legal proceedings on behalf of the union**
- The trustees or any other authorized officer of the union are empowered to bring or defend, any action, suit, prosecution or complaint in the courts concerning the property or rights of the trade union; and shall and may, in cases relating to real and personal property sue and be sued in any court in their proper names without other description than the title of their office....

Role of Trustees

- **Section 9 Cont'd**

- No such action, suit, prosecution, or complaint shall be discontinued or suspended by the death or removal from office of such persons, but shall and may be proceeded in by their successor or successors, as if such death, resignation, or removal had not taken place;

Protection of Trustees

- **Section 10** – *provides protection for individual trustees in the exercise of their function*
 - A trustee of any registered trade union registered shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

Importance of Trustees

- It is evident that trustees of the unions are very important persons who have a great degree of power to influence its operations and directions.
- It is therefore imperative that fit and proper persons are selected to hold these sensitive positions.

Importance of Trustees

- However the Act is silent on the requirements for the persons, who should hold these positions except obliquely where they subsequently become bankrupt, or mentally incapable to act
- **See Section 21**

Role of Treasurer

- **Section 11 – Render true accounts of trade union accounts**
 - Every treasurer or other officer shall render such account to the trustees of the trade union, or to its members, an account of all moneys received and paid the balance, and of all bonds or securities
 - If required after an audit, the treasurer shall hand over to the trustees the balances and all securities and effects, books, papers and property of the said trade union in his hands or custody.
 - **Failure to do so leaves him liable to legal action**

Role of Treasurer

- **Section 16 -Statement of accounts and audit certificate to be transmitted to Registrar.**
 - The Treasurer of every trade union shall, on or before the 1st day of August in every year, transmit to the Registrar
 - (a) a statement, in the prescribed form, of the revenue and expenditure of the trade union during the twelve months preceding the date of such statement;
 - (b) a statement, in the prescribed form, of the assets and liabilities of the trade union at the date of the statement required by paragraph (a)

Role of Treasurer

- **Section 16 cont'd.**
- (c) an audit certificate, in the prescribed form,
- (d) a list of the members of the trade union at the date of such statements;
- (e) a return relating to the period of 12 months immediately preceding the date of such statements, showing –
 - (i) all new rules of the trade union and all alterations to existing rules, made during the period; and
 - (ii) all changes in the officers and trustees of the trade union during the period

● **Section 16 Cont'd**

- (2) In addition to the statements, accounts, certificate, lists required, the Registrar may at any time by order in writing require the Treasurer to deliver to him, detailed accounts of the revenue, expenditure, assets, liabilities and funds of the trade union in respect of any period specified in such order, and any accounts so rendered shall furnish such details and information, and be supported by such documents, as the Registrar in any case may require.

Role of Treasurer

- **Section 16 Cont'd**
- Every member of, and depositor in, any trade union shall be entitled to receive, on application to the treasurer or secretary of the trade union, a copy of all or any of the statements and accounts, and of the certificate, lists and return without payment

Role of Treasurer

- **Section 16 Cont'd**
- Every trade union which, and every officer of a trade union who, contravenes or fails to comply with any of these provisions and every treasurer and secretary of a trade union who fails to comply with an application made by a member, shall be guilty of an offence against this Act, and on conviction there for, shall be liable to a fine not exceeding **twenty thousand dollars** for each such offence.

Importance of the Treasurer

- Again this role is pivotal to the continued operation of the TU and as such it is imperative that suitable persons are appointed.
- With this level of accountability it is perplexing that the Act is silent as to the minimum qualification required to hold this position.

- Taken together, the major provisions of the Act provide a framework for the existence and operations of trade unions in Jamaica.
- Arguably not as comprehensive as required to facilitate the fulsome operations of these associations, it provides the necessary support for their continued legality and hold the possibility of adaptation to meet the needs of the contemporary union movement

Caricom Comparisons

- For the most part trade union laws are uniform across the Caribbean which comes as no surprise when viewed in light of the fact that most were British colonies and inherited similar legislative frameworks.

What is a trade union?

- As it relates to what constitutes a trade union the Jamaican definition is similar to that of other countries except that in some countries for example Antigua and Barbuda, Belize, Dominica and Grenada it specifically states that providing benefits for members is a part of its 'statutory objects' and encompasses employer groupings.
- It is a general principle that though trade unions may have other objects it does not preclude them from being trade unions.

- Grenadian **Labour Relations Act**, Section 2 breaks with this position.
 - *trade union" means any combination of persons registered under this Act, the principal purposes of which are the representation and promotion of employees interests and the regulation of relations between employees and employers, and includes a federation of trade unions, but not an organisation or association **that is dominated or influenced by an employer or employers' organisation***
- This formulation shows recognition of the fact that worker unions can be susceptible to manipulation by employers

Legal Status

- Unions have acquired legal status by virtue of legislative interventions and may therefore make contracts, and enter business transactions, sue and be sued either in the name of trustees or officers or in the name of members where there are no trustees as in the case of the Bahamas.
- Each country's legislation also makes provision for the trade unions' ownership of property by virtue of its legal status.

Legal Status

- Belize has also moved to simplify and categorically define the legal position of trade union status in that by its **Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act of 2000** it designates the trade union or employer organisation as being a 'body corporate'

Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act of 2000

- **Section 16**

- *'Every trade union or employers' organisation registered under this Act shall be a body corporate having perpetual succession and a common seal and subject to the provisions of this Act, shall have the power to acquire, hold and dispose of movable and immovable property of whatever kind, to enter into contracts, to sue and be sued in its name and to do all lawful things necessary for the attainment of its objectives'*

Legal Status

- Like Jamaica, Guyana, Trinidad and Tobago, Barbados, St. Kitts and Antigua prohibits registration of trade unions under the Friendly Society and Companies Act but only Jamaica prohibits registration under the Industrial and Provident Societies Act. There is no such provision under the Belize legislation for obvious reasons.

Enforceability of contracts

- As it relates to the non enforceability of certain contracts, some countries for example Barbados specifically prohibit enforceability in agreements between trade union members for sale of goods, business transactions and conditions of employment, non payment of union dues and application of funds to provide benefits to non members.

Enforceability of contracts

- However it should be noted that other statutory provisions have been implemented to oust these clauses for example to make collective labour agreements legally enforceable. Such is the case in Trinidad and Tobago, The Bahamas and Antigua and Barbuda. The agreements must however first be registered with the appropriate authority.

Registration

- Only Jamaican law creates this wide category of 'worker' which conceivably captures even a person involved in a 'sympathy strike' this is considered commendable as it encourages participation in trade union activities regardless of employment in the particular enterprise.
- Jamaica also holds the distinction of being a state which does not place a restriction on the number of persons required to allow registration of a union

Registration

- In Guyana, St. Vincent, Grenada, Belize and Trinidad and Tobago a minimum of 7 persons are required to register a union, whereas in the Bahamas there must be at least 15 subscribers for an employer trade union and St. Lucia requires as much as 20 persons before registration will be effected.
- As for registration itself, save for Antigua where it is only required to be recognised, all other countries require mandatory registration in some shape or form.

Protection of trade union officers

- Antiguan law provides for specific protection of trade union members and officers from liability for unlawful acts of unions except where they personally participated, authorised or ratified such acts which is not replicated anywhere else in the Caribbean.
- As it relates to trustees almost all countries have similar provisions either administratively or legislatively with Guyanese law prohibiting trustees from holding managerial positions in the union

Protection of trade union officers

- In the Bahamas and Barbados legislative provisions exist that prohibit persons who have been convicted of fraud or dishonesty in relation to the management of trade unions from holding positions within the union, whereas in St. Lucia and St. Vincent the law prohibits any conviction in relation to fraud from taking trade union office.
- There are no provisions in this regard in Jamaican law.

Collection and use of trade union funds

- As it relates to collection of dues or subscription there is little legislation on this issue in the region, but it is presumed that some payments will be made by members and provisions for this are usually made via the trade union rules and how payments will be made.
- In Antigua provision is made in the Labour Code and the Industrial Relations Act for the deduction of union dues by employers.
- This is usually referred to as the 'check off' system.

Collection and use of trade union funds

- There is no independently enforceable statutory provision accommodating this in Jamaica, however the Labour Relations Code encourages workers to support their trade union financially.
- Trinidad and Tobago also operates a system where upon application by a registered majority union, the Registration Recognition and Certification Board may make an 'Agency Shop Order'
- This allows the employer to deduct from each member of the bargaining unit a specified contribution of which fifty percent is payable to the union and the remaining amount is payable to the Cipriani Labour College or the Industrial Relations Charitable Fund, however a worker may authorise that all his contributions are paid to the union

Collection and use of trade union funds

- In some countries, there is specific provision for establishments of a political fund and how these should be managed.
- This is however not the case in Jamaica, the Bahamas Guyana and Dominica. Approval of political objects must be approved by members via secret ballots an exclusion are also made in the legislation for individuals who do not wish to participate in that activity.

Trade Union Rules

- all jurisdictions including Jamaica, there are provisions for the adoption of trade union Rules or Constitutions as part of the registration process with templates being provided by the legislation.
- These Rules can also be changed by the union however Bahamian law mandates the taking of a secret ballot to effect amendment of the Rules

TU Membership

- All jurisdictions possess legal provision stipulating the age at which a person may become a member of a union and like Jamaica the majority stipulate 16 years but leadership roles can only be given to a person above 18 years old and in St Vincent the minimum age is set at 21 years.
- Only Antigua has legislation to address the issue of disciplinary procedures for union members

Observation

- As can be seen there are various areas of similarities among the Caribbean countries but in certain specific areas such as the enforceability of collective agreements, registration and status, collection and use of TU funds, Jamaica lags behind in obviously stronger provisions which would no doubt assist unions in cultivating sustainable operations

Jamaica Case Studies

- As it relates to Jamaican trade unions it is instructive to note that based on international criteria there are various types of union organisations in operation, the definition of some overlap dependent on the interpretation of the class of members.

The craft union

- Those formed on the basis of a particular skill e.g. auto mechanics, plumbing or electrical work. This type of union predates the unions we know today.

The industrial union

- Draw their membership exclusively from a single industry or economic activity and exist across a geographical region
- An alternate view is that some industrial unions can also be considered as craft unions based on the nature of the work performed despite the fact that the Public sector is not an industry per se

Enterprise/company unions-

- Sometimes established as “Staff Associations” and may be registered as trade unions and are bodies that represent workers interests within their respective companies.

Blanket/ General Unions

- Those who represent workers at all levels and across all industries and are not restricted to workers in a certain craft or industry or occupation and is open to all employed workers.

Observation

- In our jurisdiction the best organised and most powerful unions are blanket unions which from our historical background were also closely linked to political parties.
- Following the provisions of the Trade Union Act their principal and most obvious role is the promotion and protecting the right of employees within the workplace.

Observation

- However there are very active and effective industrial unions which for the most part operate within the public service and are interestingly **NOT** registered under the Trade Union Act.
- It should be noted that these bodies appear to function with more or at least equal emphasis on the 'business model'/provision of tangible benefits criteria as opposed to the traditional union 'representation' in workplace issues only model

BITU, NWU & UAWU

- These unions have over time developed a system for representation of workers issues in the form of negotiating terms and conditions of employment and addressing disciplinary and grievance matters. They have been relatively successful in these endeavours with workers receiving progressive increases in wages and innovative fringe benefits

- According to the *Profile on Trade Unions* the BITU introduced special benefits for its members during times of extended or serious illness and death but the programmes have not been able to keep up with the demands placed upon them by membership.
- Therefore although the programmes still exist they are rarely accessed by members since the benefits are eroded by inflation and cost of living.

- They are constrained by lack of consistent funding and this has recently been exacerbated by declining membership levels. The corollary is the reduction in revenue streams (dues, subscription and donations) which impact the benefits which may be provided. Such unions have had to utilize funds to ensure the continued running of their administrative operations such as payments of staff, travelling expenses and accommodation/office overheads.

JTA and JCSA

- These industrial type unions have over time been able to operate relatively successful operations on both arenas of trade unionism.
- It should however be noted that the Jamaica Teachers Association (JTA) not registered under the Trade Union Act but rather as incorporated bodies under the Companies Act. The JCSA is registered under the Industrial and Provident Societies Act.

JTA –

- ***Although not a registered TU it is a widely accepted body with seats on the Jamaica Confederation of Trade Unions***
- As an incorporated company under the Companies Act it is operated as a business with general meetings meeting the requirements for filing relevant instruments under the Act. It also operates a subsidiary company and a co-operative:

Jamaica Publishing House Limited

- This is a limited liability company since 1975. It is supervised by a Board of Directors which directs the policies and programmes of the company and was formed as a result of the need for textbooks in schools that were Caribbean in focus and content.

JTA Co-op Credit Union

- Registered as a Credit Union under the Co-operative Society Act. It serves teachers and other workers in the educational sector who are members of the Jamaica Teachers' Association (JTA).
- As at December 2012 it had an asset base of J\$ 8.5B while loans and savings portfolios stood at J\$ 6B and J\$ 6.7B respectively. It currently operates out of 12 locations with a staff complement of 109 persons.

JCSA

- The JCSA is a public Service Union representing civil servants within the central government. It is registered under the Industrial and Provident Societies Act and is therefore monitored by the Department of Co-operatives and Friendly Societies.
- Its business operations include the following:

The Jamaica Civil Service Mutual Thrift Society

- Formed in 1939 and registered in accordance with the Industrial and Provident Societies Act.
 - The objectives of the Society are to foster and encourage thrift and to assist members with loans that are secured by acceptable collateral at competitive interest rates. The provision of loans to members will enable them to overtake unforeseen and unavoidable expenditure, which their immediate income is insufficient to meet

The Jamaica Civil Service Housing Company Ltd

- This is a registered company operated by the JCSCA. The company has brought residential land and developed in partnership with other entities (e.g. National Housing Trust NHT) to provide housing solutions for members.
- One such development was the pioneering multi-family housing development in Blue Castle Close done in 1970.
- More recently the development of Union Estates St. Catherine was a collaboration with the NHT and JCTU

Observation

- These case studies tend to indicate that the trade union like entities that are not registered under the Act are better able to operate business model operations successfully.
- One is not however sure whether it the fact of non registration which makes this possible. In principle some of the objects of both sets of organisations are similar

- Although registration under these statutes is prohibited by the Trade Union Act itself the writer is of the view that the trustees and officers of the unions are not estopped from establishing other such entities under these other legislation for such purposes.

- There is however the opposite argument which intimates that since the trustees actually stand 'in the shoes' of the trade unions undertaking this modality will essentially be the union doing what it is prohibited from doing. The answer will rest upon whether the objects of the trade union is lawful based on the trade union act.

Hindrances and Advantages

HINDRANCES

- The uncertain nature of the legal status of the trade unions which conceivably inhibits their ability to establish commercial type operations;
- Lack of strong legislative provisions to mandate the collection of union dues, subscriptions or contributions;
- Lack of legislative provisions to mandate fit and proper tests for trustees and other unions officials (such as the treasurer) to fully delineate the scope of their fiduciary duty which could prove devastating to their transparent operations;
- The lack of democratic mechanisms such as secret ballots, allowing members to determine the direction and management of trade union affairs and activities.

Advantages

- Wide definitions of 'worker' and 'industrial disputes'
- Non restriction on number of persons required to establish unions

Social Entrepreneurship

- The concept of social entrepreneurship encompasses identifying or recognizing a social problem and using entrepreneurial principles to organize, create, and manage a social venture to achieve a desired social change typically measure performance in **profit and return**, but social entrepreneurs also take into account a **positive return to society**.

- Social entrepreneurship typically furthers broad social, cultural, and environmental goals and is commonly associated with the voluntary and not-for-profit sectors.
- Based on the ethos of the trade union movement, it is submitted that the SE concept is ripe for full incorporation in their roles and functions

Recommendations and Conclusions

Change the Legislation

- Consider adopting the CARICOM Model Harmonisation Act Regarding Registration, Status and Recognition of Trade Unions and Employer Organisations
- It provides a comprehensive framework for the operation of trade unions and employer organisation....a dichotomy is created while incorporating all aspects of trade activities in one coherent statute.

Change the Legislation

- The draft model law includes provisions for freedom of association, registration and status, safeguarding of members of organisation, recognition and bargaining rights and collective agreements.

Change the Legislation

- Recommendations for fundamental amendment of the legislation are not new as in 1995 the Eaton Report noted the need for ‘...registration requirements be updated and effectively enforced and...[the inclusion of] fiduciary responsibilities of trustees and democratic governance of organisations’

Change the Legislation

- Antoine in the 1992 *Labour Law Harmonisation Report* commissioned by Caricom advocated inter alia that :
 - *‘Government take the opportunity to consider whether the time is not now ripe for the granting of full corporate status to trade unions...surely such organisations may now be viewed as fully independent entities with full corporate status?’*

Change the Legislation

- In the UK,
 - *...unions have adopted a managerial service relationship where they research members needs and design and promote attractive service packages and in response placing greater benefits beyond collective bargaining such as legal services professional advise representation at employment tribunal advantageous deals on credit cards motor insurance and travel.'*
- With amendments to the law Jamaican, unions too may advance in this direction and can emulate their industrial association counterparts who currently operate successful enterprises to the benefit of their members and ultimately themselves.

Change for Trade Unions

- Review mindset on their role and functions
- Take advantage of recent legislative amendments (LRIDA March 2010) to provide services at MLSS and IDT to non-unionised workforce in arena where there already exists tried and proven expertise
- Offer paid advisory services in other matters relating to employment

Change for Trade Unions

- Emphasise their unique position to co-operate and be partners rather than adversaries in introducing greater flexibility and change in the workplace and society
- Shun behaviour that perpetuates the perception that they are *'strike prone, unreliable, opportunist, anti-production and given to confrontation without regard for the national interest'*
- Utilise social entrepreneurship and social dialogue approaches

Road ahead for unions

- The union movement cannot be passive or reactive to the obvious challenges that exist
- They must be **proactive** taking a pre-emptive approach which anticipates emergent trends, seeks to foster self change while at the same time act on external reality (Cowell and Gangaram)

The way forward....

It will take strong resolve, but for unions to survive and prosper, this is what must be done!