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**JAMAICA'S EMPLOYMENT LAW:
WHERE IT BEGAN;
WHERE IT IS NOW;
&
WHERE IT SHOULD BE...**

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What is Employment Law?

- The terminology ‘employment law’ and ‘labour law’ have been used interchangeably in some jurisdictions and by authors of legal literature within the field.
- In the purist English/British law tradition the lexis ‘labour law’ is said to ‘... extend from the individual to the collective, from the contract of employment to relations between the institutions of organised labour and capital and the conduct and resolution of conflicts between them

What is Employment Law?

- Increasingly it appears that the nomenclature **‘employment law’** has found more favour in the modern era and its usage in similar confines has become more extensive.
- This is possibly attributable to the fact that the former tends to conjure up the spectre of servitude and a labour market system thought best forgotten, especially from the Caribbean perspective.

Where it began....

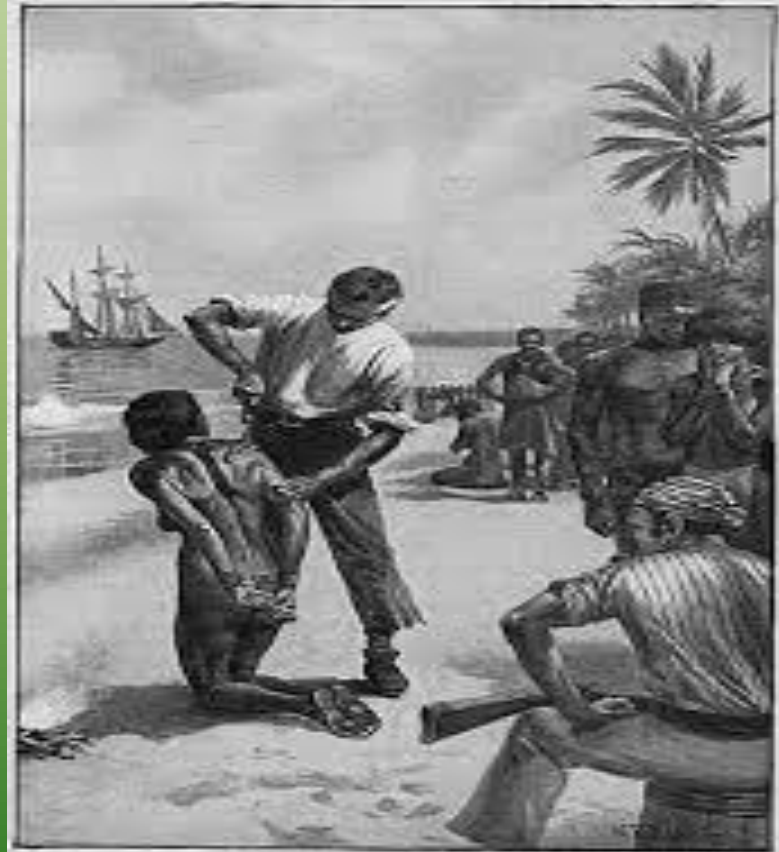


"A people without the knowledge of their past history, origin and culture is like a tree without roots."

Marcus Garvey

Origins of Jamaica's Employment Law

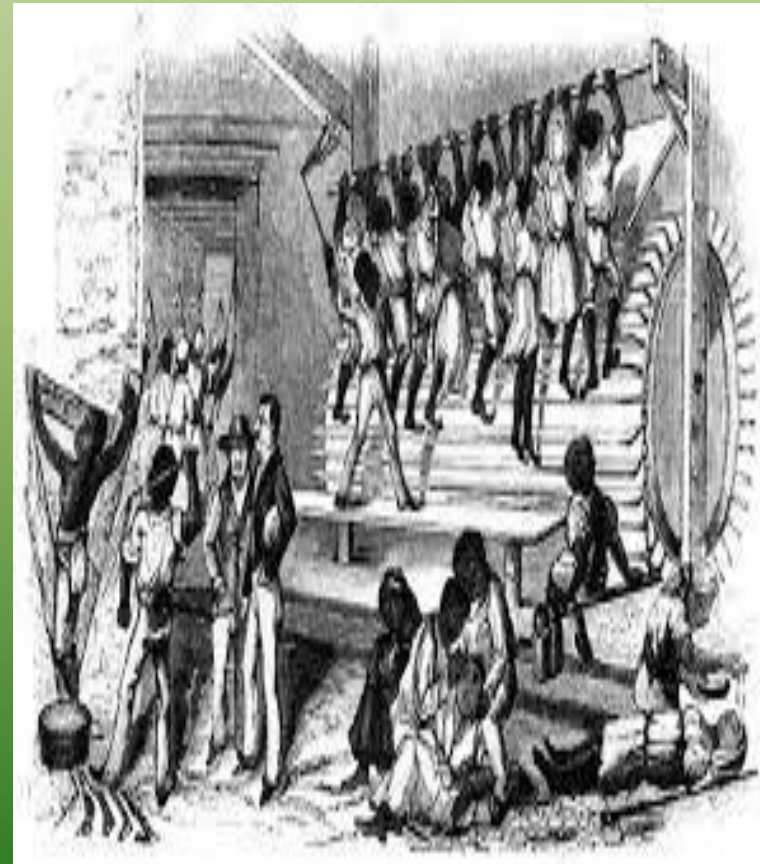
- Must be examined from the prism of forced labour of system of Slavery and to some degree thereafter Indentureship
- The common law contractual concept was virtually non-existent as the 'workers' had no legal rights since they were considered as property.



Slaves on the Coast. Branding a Female Slave.

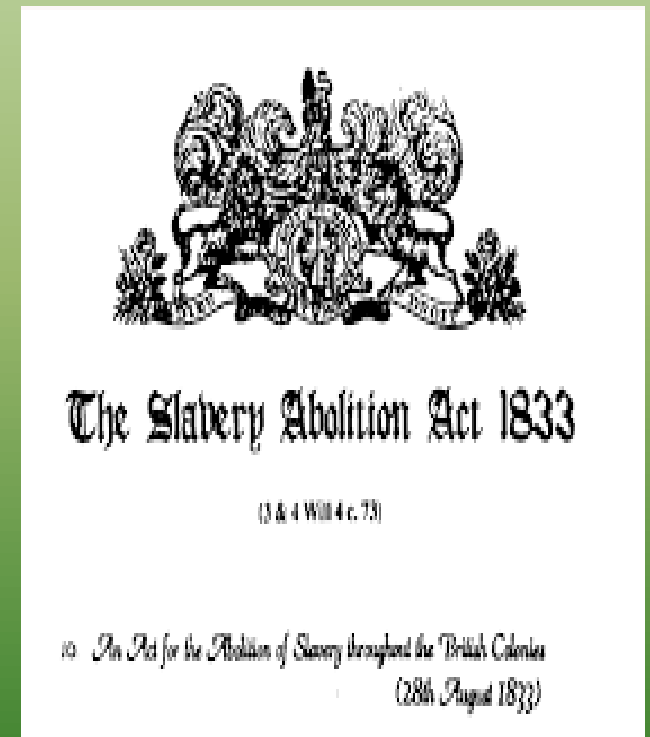
Origins of Jamaica's Labour and Industrial Relations Law

The legal provisions prescribing work obligations were contained in **Slave Codes** that stipulated steps slave owners could take to ensure their captive workforce remained submissive, including draconian disciplinary measures such as whippings and imprisonment.



Origins of Jamaica's Employment Law

- The British Government passed the Slavery Abolition Act (1833) and their intent was to provide a legislative framework to facilitate the slave's gradual transition from the status of 'chattel to being legally free workers' through an apprenticeship system



Origins of Jamaica's Employment Law

- Between 1834 and 1840, laws were enacted to formalize the employer/employee relationship where labour was exchanged for lodging and supplies with minimal wages,
- These laws proved inadequate in regulating the employment terms and conditions of workers.
- Apprenticeship was effectively abandoned as the free slaves simply did not adapt to it

Origins of Jamaica's Employment Law

- After Emancipation, the legislative framework for employment relations was embodied in the **Master and Servant Law (1842)**
- The Act, substantively dealt with form, duration and termination of employment contracts along with payment of wages,
- *'... sought to provide employers with a predictable, tractable, and relatively inexpensive supply of laborers'.*

Origins of Jamaica's Employment Law

- The Act was described by Micheal Manley in the Book *“A Voice at the Workplace”* as one which *‘really served to confirm the power of the employer to dismiss arbitrarily without legal let or hindrance’*
- Bolland in the book *The Politics of Labour in the British Caribbean* stated that it served to
- *‘... control and discipline the legally free but dependent workers by threatening them with imprisonment, often at hard labour for minor infringements of their labour contracts.’*

Origins of Jamaica's Employment Law

- The only other real law in which touched and concerned employment was the **Trade Union Law (1919)**
- However, this law was of hollow effect for, while legitimising the existence of trade unions, it lacked provisions allowing peaceful picketing and protection from the civil liability in tort consequent on losses incurred by industrial action.
- In essence, the traditional weapons usually available to enhance trade unions' operations were circumscribed

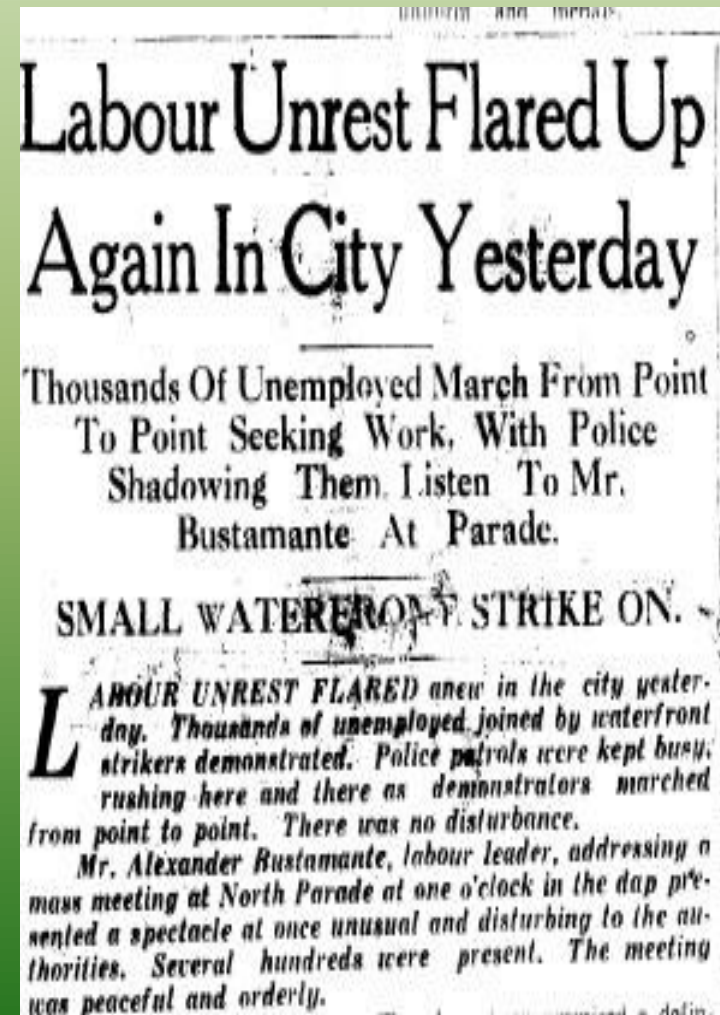


Origins of Jamaica's Employment Law

- It goes without saying that :
 - **These Laws were simply 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 and arguably the deficient and dysfunctional legal framework,
- These unrests laid the substantive foundation of the Trade Union movement to represent the rights of workers which ultimately was a powerful catalyst for increased anti colonial and nationalist sentiments leading to independence



Reacting to the labour unrests, the UK appointed a Royal Commission, chaired by Lord Moyne to examine the reasons for the unrest

1944-45 [Cmd. 6607] Report of the Royal Commission on West India (Royal Commission)

245



WEST INDIA
ROYAL COMMISSION
REPORT

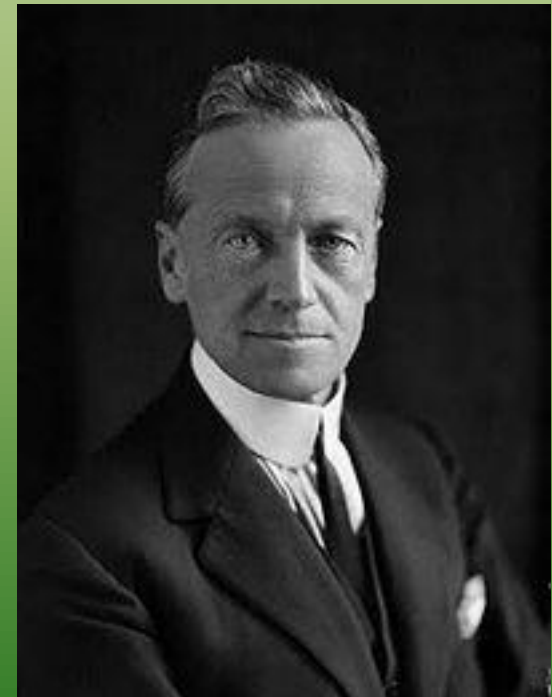
*Presented by the Secretary of State for the Colonies to Parliament
by Command of His Majesty*

June 1945

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Cmd. 6607



Moyne Commission

- **The Moyne 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

- Another central recommendation of the Moyne Report was that the government should:
- support **the establishment of institutions to regulate labour relations** and collective bargaining between trade unions and employers were expected to play pivotal roles.

Moyne Commission

- The Moyne Commission Report 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]'

INSTITUTIONS...



36. The duties of the Labour Department* should include all questions relating to the regulation of wages, conciliation, arbitration, the establishment and working of wages boards and trade boards, the inspection of wage lists, the obtaining and collation of such data as statistics of unemployment, hours and wages and cost-of-living, the inspection of conditions of work in factories, workshops and agriculture, and measures for the protection and safety of the workers. The functions of Registrar of Trade Unions should be undertaken by a member of the Department and, as we have already suggested, the responsibility for the auditing of their balance sheets.

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

LEGISLATION...



**Jamaica's
Labour
Laws:
Fit for
Purpose?**



Pre Independence Labour Legislation

(regulating conditions of employment)

- **Amended Trade Union Law (1938)**
- **Workmen Compensation Law (1938)**
- **Minimum Wage Law (1938)**
- **Recruitment of Workers Law (1940)**
- **Women (Employment of) Law (1942)**
- **Factories Law (1943)**
- **Labour Officers (Powers) Law (1943)**
- **Holidays With Pay Law (1947)**
- **Employment Agencies Regulation Law(1957)**
- **Shops and Offices Law (1957)**

- **All these laws (except the Women (Employment of) Law are ALL still in existence today, with only relatively minor changes made at various points over the years**

Effect of these laws

- Provided minimum protective provisions
- Start of the “Floor of Rights” for workers
- Implemented a BASIC Regulatory framework
- Established industrial dispute resolution mechanism
 - **HOWEVER...**
- It was still not extensively reach for all workers; unions were still pivotal to protect workers rights

Pre Independence Legislation

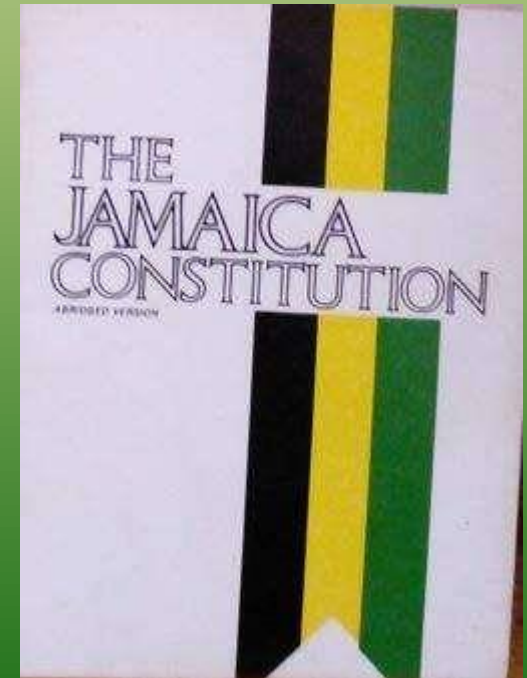
(regulating industrial relations)

- **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

- There were substantial problems with the procedures under the Essential Services Law. The Minister of Labour lacked the power to effectively intervene in disputes because of loopholes in the Act, resulting in protracted industrial action and negative impacts for the society and economy at large.
- The ad hoc arbitration tribunals under the Trade Disputes Act could only be established with consent of the parties.
- The remedy of reinstatement was not available under the operation of either law and there were no penalties for disregarding tribunal awards.

Constitutional Labour Rights

- At Independence (1962)
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.



Constitutional Labour Rights

- 23.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons **and in particular to form or belong to trade unions or other associations for the protection of his interests.**

- 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
- **National Minimum Wage Order (1975)**
- **(Several other Orders promulgated during the period to cover various trades)**
- **Holidays with Pay Orders (1970 and 1973)**

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; Regulation of representational rights and collective bargaining
- **Labour Relations Code (1976)** - containing such practical guidance as in the opinion of the Minister would be helpful for the purpose of promoting good labour relations

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 Act
- Over the life of Maternity Leave Act there are 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
- During that time, the role of the union in protecting the rights of workers was again heightened

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
- The “resurgence” of Caribbean integration movement.

Post Independence Legislation (2000's)

- **Trade Union Act LRIDA 2002**
- **Minimum Wage Act (2007 & 2011)**
- **Minimum Wage Orders (As announced by Govt)**
- **Employment Agencies Regulation Act (2007)**
- **ETRPA (2008)**
- **Factories Act (2009)**
- **Holidays with Pay Act (2009)**
- **Foreign Nationals (Commonwealth Citizens Employment Act (2011)**

Post Independence Legislation (2000's)

- Most amendments merely increase fines and penalties – largely cosmetic
- Or Revenue Generating increasing Fees for Permits and Licensing
- Or regulating wage levels
- Few major changes:
- ETRPA
 - Requirement to advise the MLSS of intention/actual redundancy

JAMAICA'S EMPLOYMENT LAW:



Post Independence Legislation (2000's)

- **LRIDA (2002)**
 - changed definition of worker
- **LRIDA further amended in 2010**
 - individuals can now access IDT
- **Consequential amendments to LRIDA**
 - **Protected Disclosures Act (2011)**
 - **Flexible Work Arrangements (2014)**
 - **Jury Act (2015)**
- **Disabilities Act**

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

Statistical Data regarding Disputes addressed by the Industrial Disputes Tribunal (IDT)

Year	Non-unionized	Unionized
2010	LRIDA individual disputes amendment implemented	24
2011	12	25
2012	24	14
2013	34	21
2014	36	8
2015	27	8
2016	51	15
2017	56	7
2018	37	7
2019	42	9
2020	24	5
2021	20	4
2022	41	6

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
- ***Village Resorts Limited v IDT and Uton Green 1997- SCCA 66/97***
- ***IDT v The University of Technology of Jamaica (UTECH) and University and Allied Workers Union (UAWU)***
- ***IDT 6 of 2008 (unreported) delivered December 9, 2008; Claim No. 2009 HCV 1173 (unreported) delivered 23 April 2010 (SC); [2012] JMCA Civ 46 (unreported) delivered October 12, 2012 (CA); PC Appeal #106 of 2013 [2017] UKPC22 (unreported) delivered July 17, 2017***

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

JAMAICA'S EMPLOYMENT LAW:



Recommendations - Legislation

- Consolidate all the Employment legislation which continue to be relevant to the Industrial Relations landscape into one Act which will be more user friendly
- Currently there are currently over 25 pieces of legislation which touch and concern labour matters with differing definitions related to the same issues
- The consolidation should also take into account other relevant legislation that are not currently housed in any “labour law” – e.g. – the Jury Act

Recommendations - Legislation

- 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
 - clearly delineate the right not to be unjustifiably/unfairly dismissed

Recommendations - Legislation

- 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

- Consider introducing unemployment insurance legislation
- The introduction of liveable wage to replace minimum wage
- Review the Labour Relations Code to make it more in step with current economic realities and the new world of work.

Recommendations - Legislation

- Repeal outdated and discriminatory legislation, such as Protection of Property 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 30 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
- This is an issue that must be immediately addressed; laws must be kept constantly under review to remain relevant

Recommendations- Institutions

- Provide adequate resources to the Ministry to properly fulfil its 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 UK's Advisory, Conciliation and Arbitration Service (ACAS)

Recommendations- Institutions

- Consider creating a **separate law for the establishment of the IDT (or alternatively an Industrial Court)** and create clear guidelines for its operations (akin to Supreme Court Rules).
- Re-examine the current composition of the IDT with a view to mandate the **use of legally trained personnel as Chairpersons/Deputy Chairpersons** - this would better prepare the panels in the preparation of their award because of the increasing juridification of employment issues

Recommendations- Institutions

- In the alternative **each panel should be accompanied by a legal officer to their sittings and be mandated to fully consider that person's advice in their deliberations**
- The new Law should also **create clear structure to guide IDT in calculating damages/compensation** if an award favours an employee

Recommendations- Institutions

- Consideration should be given in the new law to **creating a jurisdiction/court where all employment law related matters/cases** are heard instead of the current dual system where some common law claims are pursued in the conventional courts
- Consideration should also be given to the establishment of a **specialised appeal court for employment 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- Institutions

- **1982** Tripartite committee to examine and report on the effectiveness of existing labour legislation (PROBYN AIKEN P.S.)
- **1983** Task Force on Work Attitudes Report March – Government of Jamaica (CARL STONE)
- **1996** Interim Report of Committee on Labour Market Regulation, Government of Jamaica (GEORGE EATON REPORT)
- **2017** Labour Market Reform Commission, Reform Agenda Report LLOYD GOODLEIGH/MARSHALL HALL

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 specifically trained and exposed to the nature of industrial/labour relations matters to guide their rulings within the confines of the law

-

Conclusion

- Having looked into the past and present and looked out at what would be required to improve the system the following is noted:
 - 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 Employment and Labour law systems

What can we do (as Counsel)



Join the JAMBAR EMPLOYMENT LAW COMMITTEE!!