

FORTY-NINTH REPORT

OF THE

SALARIES REVIEW COMMISSION

OF THE

REPUBLIC OF TRINIDAD AND TOBAGO

November 27, 1997.

FORTY-NINTH REPORT OF THE
SALARIES REVIEW COMMISSION

Review of the Salaries and other Terms
and Conditions of Service of the offices of
Vice President, Chairman, Essential Services
Division and Member (Judge) of the Industrial Court

Under Section 141(1) of the Constitution of the Republic of Trinidad and Tobago, the terms and conditions of service of the offices of Members of the Industrial Court fall to be reviewed by the Salaries Review Commission. His Excellency the President, by letter dated April 18, 1997, granted approval for the Commission to review the salaries and other terms and conditions of service of the offices of Vice President, Chairman, Essential Services Division and Member (Judge) of the Industrial Court.

2. The remuneration arrangements of these office holders were last considered by the Commission in 1991 during our general review of the terms and conditions of employment of all office holders within our purview, the recommendations on which are contained in our Twenty-third Report of August, 1991. We have been advised that recently the matter of their terms and conditions of employment formed part of a review exercise entrusted to a Cabinet-appointed Committee whose terms of reference were "to review the Industrial Relations Act, Chap. 88:01 and the Institutions responsible for the resolution of trade and recognition disputes and to make recommendations for the improvement, development and reform of the said Act and institutions."

3. We understand that the abovementioned Committee submitted an Interim Report containing, *inter alia*, certain recommendations pointing to an improvement in the status as well as in the terms and conditions of employment of Members of the Industrial Court. However, since these are prescribed offices, it was decided that matters of concern raised by the Committee should be referred to the Commission. Accordingly, our mandate is to review the salaries and other terms and conditions of service of the offices of Vice President, Chairman, Essential Services Division and Member (Judge) of the Industrial Court, "specifically as to whether:-

- (i) the Chairman, Essential Services Division should receive the same salary and other terms and conditions of service as the Vice President of the Industrial Court, given the nature of the duties of the office of Chairman, Essential Services Division;

- (ii) the salary and allowances of the Vice President of the Court should be equated with those of a Puisne Judge;
- (iii) the terms and conditions of service of the Judges of the Industrial Court should be exactly the same as those of a Puisne Judge;
- (iv) Judges of the Industrial Court should receive the allowances and pension of a Puisne Judge;
- (v) the Vice President of the Industrial Court should be paid tax free salary; and
- (vi) the pensions and allowances of the Vice President and other Judges of the Court should be wholly exempt from income tax."

4. In the course of our deliberations on these issues we examined the written submissions made by these office holders and the opportunity was also afforded them on October 2, 1997 to make oral submissions to the Commission.

5. In their submissions, the office holders have maintained that the Industrial Court is a Superior Court of Record with a status equivalent to that of the High Court of Justice in Trinidad and Tobago. On the basis of this perceived equivalence, they suggested a pattern of remuneration whereby the President of the Industrial Court should be remunerated with terms of employment equal to those of a Justice of Appeal, while the terms for the Vice President of the Court and the Chairman, Essential Services Division should equate to those of a High Court Judge. It was also suggested that while the salary of a Member of the Industrial Court may be marginally lower than that of a High Court Judge, his/her allowances and other terms and conditions of service should be the same as those of Judges of the High Court. Altogether, the attention of the Commission was drawn by Members of the Industrial Court to the apparent distortion in relativities between their terms and conditions of service and those of Judges of the High Court of Justice. This distortion, they claimed, was initiated in 1980 with the grant to Judges of the Supreme Court only, of a tax free Personal Allowance and later becoming more pronounced when certain other improvements in terms and conditions of service including tax free salaries were granted to Supreme Court Judges.

6. The issue of parity of treatment of Members of the Industrial Court and Judges of the Supreme Court is one which we had thoroughly ventilated in our Twenty-third Report and in previous communication between the Commission and the President of the Court. We note that through practice, Members of the Industrial Court have been referred to as

Judges of the Industrial Court and that this may have led to the view held that these Members should be equated with Judges of the Supreme Court.

7. Our position has been that Judges of the Supreme Court comprise a unique group in our society and that their remuneration arrangements should reflect the grave responsibility entrusted to them for the administration of justice in an efficient, impartial and independent manner and for their role in contributing to the maintenance of the democratic processes, the stability of the society and the protection of the rights of the citizenry. We have maintained that the holders of these esteemed offices should be appropriately remunerated so as not to be placed in a financially precarious or supplicating position and further, to facilitate recruitment of attorneys-at-law of the highest calibre to fill these positions. Our recommendations contained in our Nineteenth Report of March, 1990, Twenty-third Report of August, 1991 and Forty-fifth Report of April, 1997, attest to our views in this regard and we continue to so hold.

8. Considering the requirements of legal training and experience, we do not agree that the offices of Member of the Industrial Court and Judge of the Supreme Court are of equivalent status to the extent that strict parity in remuneration and other terms and conditions of service has to be applied across-the-board. We submit that while it may be possible to identify some relativities between certain offices, there could be no identical matching of the offices of Member of the Industrial Court and Judge of the Supreme Court.

9. On the basis of the matters referred to above, we set out in the paragraphs below our findings and recommendations on the specific issues raised for our consideration as identified at paragraph 3 (i) to (vi) above.

(i) Question as to whether the salary and allowances of the Vice President of the Industrial Court should be equated with those of a Puisne Judge

10. In our Twenty-third Report of August, 1991, we acknowledged that the Industrial Court is a Superior Court of Record and is vested with the responsibility for dispensing social justice in Trinidad and Tobago. The Industrial Court's jurisdiction extends to hearing and determining trade disputes and to regulating industrial relations processes with a view to maintaining industrial peace and stability within the country. It was represented to the Commission that the Industrial Court is comparable with the High Court of Justice in that both Courts are Superior Courts of Record.

11. It was also submitted to us that Section 4(3)(b) of the Industrial Relations Act requires the Vice President to be an attorney-at-law of not less than ten years' standing and that this is the identical qualification which is required by Section 7 of the

Supreme Court of Judicature Act, Chap. 4:01 for appointment as a Judge of the High Court of Justice. It was the view of the Vice President that the stipulation of this qualification showed an intention to equate the status of the office of Vice President, Industrial Court with that of a High Court Judge.

12. In further support of his case, the Vice President has advanced that the qualifications and experience required for appointment to the offices of Puisne Judge, Chairman of the Tax Appeal Board and Vice President of the Industrial Court are identical and highlighted the fact that by law the Chairman, Tax Appeal Board receives the same salary, terms and conditions of service and pension of a Judge of the High Court of Justice, all free of income or any other tax. It was the Vice President's view that on the basis of equity, the terms and conditions of service to be applicable to all three offices should be identical. This view was supported by the President of the Industrial Court with whom we also held discussions.

13. In addition to the above submissions, we note that the Vice President is next in seniority to the President of the Court. In terms of duties and responsibilities attaching to that office, the office holder, *inter alia* assists the President in the administration of the Court, acts for the President in the latter's absence, presides over many of the more complex proceedings of the Court and presides in proceedings for contempt of Court as one of the only three Members of the Court (i.e. President, Vice President and Chairman, Essential Services Division) vested with that authority, in accordance with Section 7 (6) of the Industrial Relations Act.

14. In the light of the above, we believe that it will not be unreasonable to establish as a principle that the salary and allowances, with the exception of pension benefits, of the Vice President of the Industrial Court should be equated with those of a Puisne Judge. The specific details of the recommended remuneration package of the office of Vice President and which include the payment of salary and allowances free of tax and the relevant effective dates are set out in Appendix I. The Commission recommends that the provisions for pension benefits should remain as those applicable under the Industrial Court (Pensions and Gratuities of Members) Regulations. However, these benefits should not be liable to tax.

(ii) Question as to whether the Chairman, Essential Services Division should receive the same salary and other terms and conditions of service as the Vice President of the Industrial Court, given the nature of the duties of the office of Chairman, Essential Services Division

15. With respect to this office, it was represented to the Commission that by Act No. 44 of 1978 which amended the Industrial Relations Act, two Divisions of the

Industrial Court were created, namely, the General Services Division and the Essential Services Division with both exercising equal jurisdiction. The head of each Division is the Chairman of that Division, and so the President of the Court is the Chairman of the General Services Division and the Chairman of the Essential Services Division heads that Division.

16. We have taken cognisance of the heavy portfolio of duties and responsibilities required to be discharged by the holder of the office of Chairman, Essential Services Division. These include:-

- responsibility for the administration of the Essential Services Division which entails inter alia -
 - the administration of justice in respect of all matters referred to the Division from the services specified in the Second Schedule to Act No. 44 of 1978;
 - the supervision of Members and staff of the Division;
 - giving pre-trial directions pertinent to the various cases and matters referred to the Division; and
 - preparing appropriate responses to numerous enquiries and correspondence on matters within the purview of the Division.

17. In addition, the office holder presides as Chairman of the Court in all matters before the Division and as Chairman of the Special Tribunal as specified by law. The Tribunal had its genesis in the Civil Service Act, 1965 and was given the responsibility to hear and determine disputes involving the members of the Civil Service, the Police Service, the Fire Service, the Prison Service, the Teaching Service, the Supplemental Police and the Central Bank. In these matters, the Chairman is required to hear and determine many complex issues of both law and fact.

18. As previously mentioned, the Chairman, like the Vice President, is one of the three Members of the Court entrusted with the power to hear and determine contempt proceedings. Another important duty performed by the Chairman is to act as Vice President when that office holder is unable to serve in that capacity.

19. It has been indicated to us that for the functions identified above to be effectively performed, it is essential that the office holder, though not required under the Act, should have a legal background. Indeed, it was pointed out to us that very frequently legal submissions are made, often by Senior Counsel, both before and during the hearing of disputes before the Court. A Chairman without legal training would operate at a severe disadvantage if he or she had to rely on legal authority from a "wing" member so trained in order to address those submissions. We concur with this view and therefore recommend to the authorities concerned that steps be taken to amend the Industrial Relations Act to provide that the qualifications and experience required for the office of Chairman, Essential Services Division should be the same as those for the Vice President of the Industrial Court.

20. For the reasons enumerated above, we recommend that the salary and other terms and conditions of service attaching to the office of Chairman, Essential Services Division should be the same as those of the Vice President of the Industrial Court as detailed in Appendix II. We note that pending the suggested amendment of the Industrial Relations Act, the existing remuneration arrangements applicable to the office of Chairman, Essential Services Division should continue in effect. However, where a holder of the office of Chairman, Essential Services Division possesses the qualifications and experience required for the office of Vice President, the terms and conditions hereby recommended should apply to such office holder from dates no earlier than those recommended in the case of the office of Vice President.

(iii) **Question as to whether the terms and conditions of service of the Members of the Industrial Court should be the same as those of a Puisne Judge**

21. In their submissions to us, the representatives of the general body of Members of the Industrial Court claimed that the Industrial Court functioned as a unified jurisdiction which meant that all Members should be considered as carrying equal weight of duties and responsibilities and therefore should be remunerated equally.

22. In support of their case for parity in the remuneration package of Judges of the High Court and Members of the Industrial Court, the Members contended that Section 7(1) of the Industrial Relations Act which provides for the jurisdiction of the Court could be interpreted to mean that the Industrial Court possesses all the powers inherent in a Superior Court of Record such as the High Court and as such, was not a subordinate Court to the High Court. In this context, the provisions at Section 7(1) could be said to have established the parities between Judges of the High Court and Members of the Industrial Court.

23. We hold however, that the existing distribution of duties and responsibilities and the remuneration structure do not bear this out. Under the existing arrangements, at the very top, the President of the Court has terms of employment similar to that of a Justice of Appeal while the Vice President of the Court and the Chairman, Essential Services Division have a basic salary equivalent to that of a Puisne Judge. The Members of the Industrial Court whose tenure for three-year to five-year terms is determined by the President, receive a salary which is lower than that of a Puisne Judge.

24. We observe that a similar pattern of remuneration exists with respect to the Tax Appeal Board where the Chairman's remuneration bears equivalence to that of a Puisne Judge while that of the Members falls below.

25. Such a salary structure at the Industrial Court is understandable given the differences in the scope, duties and responsibilities between the Members of the Court and the higher offices of Vice President and Chairman, Essential Services Division.

26. In addition, we note that the legislation provides for the Members of the Court to be appointed from among persons experienced in industrial relations or qualified as economists or accountants or attorneys-at-law of not less than five years' standing. By and large, the Members would not be required to possess the qualifications and experience necessary for appointment to the office of Judge of the High Court.

27. Further, there is the prohibition of engaging in private practice on demitting office applicable to Judges of the High Court, which does not apply to Members of the Industrial Court.

28. Taking all the foregoing factors into consideration, we do not consider that the salary and other terms and conditions of service of the office of Member of the Industrial Court should be the same as those of a Puisne Judge. We have observed, however, that there appears to be need to re-examine some of the allowances now applicable to Members of the Industrial Court, but having regard to the limited nature of our mandate, as set out at paragraph 3 above, we propose to defer consideration of the matter until we undertake the general review of the salaries and terms and conditions of service of all offices under our purview for which approval has recently been conveyed by His Excellency the President.

iv) Question as to whether the Members (Judges) of the Industrial Court should receive the allowances and pensions of a Puisne Judge

29. Following on paragraph 28 above, we do not recommend that the Members of the Industrial Court should receive the allowances and pension of a Puisne Judge.

(v) Question as to whether the Vice President of the Industrial Court should be paid a tax free salary

30. As we recommended above, the salary of the Vice President of the Industrial Court should be free of tax. This should also apply to the salary of the Chairman, Essential Services Division in the light of our recommendations at paragraph 20.

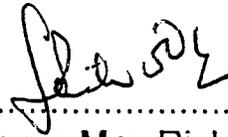
(vi) Question as to whether the pensions and allowances of the Vice President and other Members (Judges) of the Court should be wholly exempt from income tax

31. With respect to the Vice President, as discussed above, the allowances payable to this office holder should not be subject to tax. On the matter of pension, while this should not be liable to tax, the arrangements should fall to be dealt with under the provisions of the Industrial Court (Pensions and Gratuities of Members) Regulations. Similar arrangements with respect to allowances and pension should be extended to the Chairman, Essential Services Division.

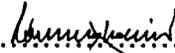
32. In the case of Members of the Court, we are of the view that the existing arrangements under the Industrial Court (Pensions and Gratuities of Members) Regulations whereby pension payments are liable to tax, should continue in effect.

33. With regard to the existing allowances payable to Members, we have been advised that these have not been subject to tax. There appears to be the need to consider whether specific legislative steps should be taken to exempt the allowances payable to Members of the Industrial Court from income tax as had been done in the case of the President of the Republic and Judges of the Supreme Court.

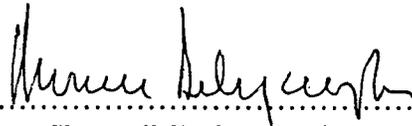
Dated this 27th day of November, 1997.



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Professor Max Richards
(Chairman)



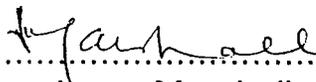
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Edward Collier



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Rowell Debysingh



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Keith Ortiz



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Joyce Marshall

Recommended remuneration arrangements
to be applicable to the office of Vice President
of the Industrial Court

Salary - \$11,000 per month

Personal Allowance

With effect from November 1, 1997 - \$ 3,000 per month

Housing

Rent free, furnished, super-grade residence or a Housing Allowance of \$5,000 per month in lieu.

Transport

- (i) A maximum loan of \$100,000 at a rate of interest of 6% per annum to facilitate the purchase of a motor vehicle with full exemption from Customs Duty, Motor Vehicle Tax and Value Added Tax and Special Registration Fee/Special Motor Vehicles Tax;
- (ii) A loan to cover the cost of Motor Vehicle Insurance Premium;
- (iii) A Commuted Travelling Allowance of \$1,200 per month;
- (iv) A Personal Chauffeur; and
- (v) A maximum loan of \$10,000 to cover the cost of motor vehicle repairs, at a rate of interest of 6% per annum, repayable over a three-year period.

Subsistence Allowance

\$50 per day in the following cases:-

- (i) Where the Vice President lives in North Trinidad and is on duty in San Fernando or Tobago;
- (ii) where the Vice President lives in South Trinidad and is on duty in Port of Spain or Tobago;
- (iii) where the Vice President lives in Tobago and is on duty in Trinidad.

Entertainment

- (i) \$250 per month;
- (ii) Actual expenses incurred in excess of the amount at (i) above to be met from an official Entertainment Vote under the control of the President of the Court.

Vacation Leave

- (i) Annual Vacation leave to coincide with "court vacation" and "long vacation".
- (ii) (a) With effect from January 1, 1998:-
 - six (6) weeks per annum and four (4) weeks per annum in every alternate year.
- (b) The existing short vacations at Christmas and Easter to be retained.

Overseas Travel Facilities

With effect from January 1, 1998:-

- (i) Passage Allowance

Either:-

- (a) Entitlement to go abroad in every alternate year and to be paid a passage allowance not exceeding the cost of three (3) adult first class return airfares from Trinidad to London for self, spouse, if any, and unmarried dependent children under the age of twenty, if any.

or

- (b) to receive a Travel Grant of \$20,000 per annum payable in cash.

Once the above option is exercised, it shall continue in effect for the duration of the Vice President's tenure.

(ii) **Industrial Court Contact**

An Industrial Court Contact Allowance of \$5,000 per month to assist in establishing contact with Industrial Court colleagues in other countries.

Medical Benefits

Entitlement without charge to operative treatment, X-ray, bacteriological and pathological examinations and physiotherapy treatment and to all incidental hospitalisation services at any hospital or other institution established and maintained by the State under the Hospitals Ordinance. When those services are not available at such hospital, the cost of such treatment and services at any other hospital, institution or nursing home in Trinidad and Tobago to be paid.

Pension/Gratuity

Entitlement to superannuation benefits in accordance with the Industrial Court (Pensions and Gratuities of Members) Regulations.

Exemption from taxation

With effect from November 1, 1997:-

The salary, pension and every allowance of whatsoever nature payable to the Vice President in respect of his/her service as the Vice President to be wholly exempt from the payment of income tax and any other tax.

Telephone

The cost of rental of a telephone and such metered charges and ticketed calls made for official purposes as are claimed to be met by the State.

APPENDIX II

Recommended remuneration arrangements to be applicable to the office of Chairman, Essential Services Division

Salary - \$11,000 per month

Personal Allowance - \$ 3,000 per month

Housing

Rent free, furnished, super-grade residence or a Housing Allowance of \$5,000 per month in lieu.

Transport

- (i) A maximum loan of \$100,000 at a rate of interest of 6% per annum to facilitate the purchase of a motor vehicle with full exemption from Customs Duty, Motor Vehicle Tax, Value Added Tax and Special Registration Fee/Special Motor Vehicles Tax;
- (ii) A loan to cover the cost of Motor Vehicle Insurance Premium;
- (iii) A Commuted Travelling Allowance of \$1,200 per month;
- (iv) A Personal Chauffeur; and
- (v) A maximum loan of \$10,000 to cover the cost of motor vehicle repairs, at a rate of interest of 6% per annum, repayable over a three-year period.

Subsistence Allowance

\$50 per day in the following cases:-

- (i) Where the Chairman lives in North Trinidad and is on duty in San Fernando or Tobago;
- (ii) Where the Chairman lives in South Trinidad and is on duty in Port of Spain or Tobago;
- (iii) Where the Chairman lives in Tobago and is on duty in Trinidad.

Entertainment

- (i) \$250 per month;
- (ii) Actual expenses incurred in excess of the amount at (i) above to be met from an official Entertainment Vote under the control of the President of the Court.

Vacation Leave

- (i) Annual Vacation leave to coincide with "court vacation" and "long vacation".
- (ii) (a) six (6) weeks per annum and four (4) weeks per annum in every alternate year.
(b) The existing short vacations at Christmas and Easter to be retained.

Overseas Travel Facilities

(i) Passage Allowance

Either:-

- (a) Entitlement to go abroad in every alternate year and to be paid a passage allowance not exceeding the cost of three (3) adult first class return airfares from Trinidad to London for self, spouse, if any, and unmarried dependent children under the age of twenty, if any.

or

- (b) To receive a Travel Grant of \$20,000 per annum payable in cash.

Once the above option is exercised, it shall continue in effect for the duration of the Chairman's tenure.

(ii) **Industrial Court Contact**

An Industrial Court Contact Allowance of \$5,000 per month to assist in establishing contact with Industrial Court colleagues in other countries.

Medical Benefits

Entitlement without charge to operative treatment, X-ray, bacteriological and pathological examinations and physiotherapy treatment and to all incidental hospitalisation services at any hospital or other institution established and maintained by the State under the Hospitals Ordinance. When those services are not available at such hospital, the cost of such treatment and services at any other hospital, institution or nursing home in Trinidad and Tobago to be paid.

Pension/Gratuity

Entitlement to superannuation benefits in accordance with the Industrial Court (Pensions and Gratuities of Members) Regulations.

Exemption from taxation

The salary, pension and every allowance of whatsoever nature payable to the Chairman in respect of his/her service as Chairman to be wholly exempt from the payment of income tax and any other tax.

Telephone

The cost of rental of a telephone and such metered charges and ticketed calls made for official purposes as are claimed to be met by the State.