



Secretariat Unit

Bill Essentials

The Constitutional (Amendment) Bill, 2015

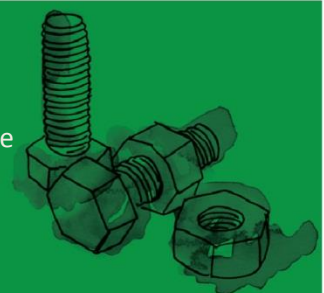
**An Act to amend the Constitution of the Republic of
Trinidad and Tobago**

Bill No: HOR Bill 6 of 2015

Introduced in: The House of Representatives

Introduced on: 1 May, 2015

Introduced by: Hon. Errol Mc Leod, Minister of Labour and Small and Micro Enterprise
Development



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Background

The Constitution (Amendment) Bill, 2015¹ was introduced and read for a first time in the House of Representatives by Hon. Errol Mc Leod, MP, Minister of Labour and Small and Micro Enterprise Development.

Purpose of the Bill

The Bill seeks to amend the Constitution by inserting a provision for the appointment of Justices of the Industrial Court. The provisions of this Bill are to be read in conjunction with amendments in clauses 6 – 8 of the Industrial Relations (Amendment) Bill, 2015.²

Legislation mentioned in the Bill

The Constitution of the Republic of Trinidad and Tobago³

Major Changes proposed by Legislation

Justices of the Industrial Court

Currently, Section 4(3) of the Industrial Relation Act Chap. 88:01⁴ provides for the composition of the Court. The Court shall consist of the following members:

- a President of the Court who shall be –
 - a Judge of the Supreme Court of Judicature designated, with his consent, by the President of Trinidad and Tobago after consultation with the Chief Justice; or
 - a person who has the qualification (age excepted) to be appointed a Judge of the Supreme Court of Judicature and is appointed by the President of Trinidad and Tobago after consultation with the Chief Justice [...]
- a Vice-president of the Court, who shall be an Attorney-at-law of not less than ten years standing, appointed by the President of Trinidad and Tobago;
- **such number of other members as may be determined by the President of Trinidad and Tobago from time to time who shall be appointed by the President of Trinidad and Tobago from among persons experienced in industrial relations or qualified as economists or accountants, or who are Attorneys-at-law of not less than five years standing.**

The Industrial Relations (Amendment) Bill proposes that such other “members” would now be referred to as “Justices”.⁵

¹ <http://www.ttparliament.org/legislations/b2015h06.pdf>

² <http://www.ttparliament.org/legislations/b2015h05.pdf> HOR Bill 5 of 2015

³ <http://rgd.legalaffairs.gov.tt/Laws2/Constitution.pdf>

⁴ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/88.01.pdf

⁵ Clause 6

Appointment of Justices and Qualifications

The Bill provides that the Justices will be appointed by the President of the Republic of Trinidad and Tobago, **acting in accordance with the advice of the Judicial and Legal Service Commission**. They will be selected from among:

- (a) Attorneys-at-law of **not less than ten years' standing**;
- (b) persons who possess professional qualifications in **industrial relations, occupational health and safety or management, including human resource management**, and have had specialist experience in any or all of those fields for a period of, or periods amounting in the aggregate to, **not less than ten years**;
- (c) persons who have been **members of a trade union or who have been representatives of employers or other persons who have been practitioners of employment relations** for a period of, or periods amounting in the aggregate to, not less than ten years;
- (d) persons who possess professional **qualifications in economics or accountancy** and have had specialist experience in any or both of those fields for a period of, or periods amounting in the aggregate to, not less than ten years; and
- (e) persons qualified in **any other combination of the disciplines referred to** in paragraphs (i) to (iv) but with specialist experience amounting in the aggregate to, not less than ten years.

Before the Judicial and Legal Services Commission can advise on the appointment of Justices who do not possess the qualifications to be appointed as a Judge of the Supreme Court of Judicature, advice must be sought from:

- (a) an industrial relations professional;
- (b) a practicing labour economist;
- (c) a practicing accountant;
- (d) the organization most representative of employers; or
- (e) the organization most representative of workers.

Tenure

Pursuant to section 5 of the Industrial Relations Act, members of the Industrial Court appointed other than under section 4(3)(a)(i)⁶ shall be paid such salaries as the President of Trinidad and Tobago may determine, and shall hold office for such period, being **not less than three or more than five years** as is specified in their respective instruments of appointment, but shall be eligible for reappointment.

The Bill provides that the appointment of a Justice under clause 107(A)(1) shall **continue to have effect until it is revoked by the President** acting on the advice of the Judicial and Legal Service Commission. Clause 107(A)(9) also provides for the President, in certain instances, to temporarily appoint Justices notwithstanding that they have attained the age of sixty-five.

⁶ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/88.01.pdf

Key Features of Proposed Legislation

1. Clause 1 provides for the title of the Bill.
2. Clause 2 provides that the Act will come into operation by Proclamation.
3. Clause 3 provides for the Act to be construed as altering the Constitution.
4. Clause 4 provides for the insertion of the word “107A” after “107” in section 54(2).
5. Clause 5 provides for the insertion of the words “107” after the word “104(3)” in section 106.
6. Clause 6 provides for a new section 107A which details the procedures for the appointment of Justices of the Industrial Court.

Table of Amendments

Section	Extent of Amendment
<p>54. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.</p> <p>(2) In so far as it alters—</p> <p>(a) sections 4 to 14, 20(b), 21, 43(1), 53, 58, 67(2), 70, 83, 101 to 108, 110, 113, 116 to 125 and 133 to 137; or</p> <p>(b) section 3 in its application to any of the provisions of this Constitution specified in paragraph (a),</p> <p>a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House</p>	<p>54. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.</p> <p>(2) In so far as it alters—</p> <p>(a) sections 4 to 14, 20(b), 21, 43(1), 53, 58, 67(2), 70, 83, 101 to 108, 107A, 110, 113, 116 to 125 and 133 to 137; or</p> <p>(b) section 3 in its application to any of the provisions of this Constitution specified in paragraph (a),</p> <p>a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House</p>
<p>106 (1) Subject to section 104(3), a Judge shall hold office in accordance with sections 136 and 137.</p> <p>(2) No office of Judge shall be abolished while there is a substantive holder of that office.</p>	<p>106 (1) Subject to section 104(3), 107 a Judge shall hold office in accordance with sections 136 and 137.</p> <p>(2) No office of Judge shall be abolished while there is a substantive holder of that office.</p>
	<p>107A (1) Justices of the Industrial Court shall be appointed by the President of the Republic of Trinidad and Tobago acting in accordance with the advice of the Judicial and Legal Service Commission.</p> <p>(2) The Justices of the Industrial Court shall be selected from among –</p>

	<p>(a) Attorneys-at-law of not less than ten years' standing;</p> <p>(b) persons who possess professional qualifications in industrial relations, occupational health and safety or management, including human resource management, and have had specialist experience in any or all of those fields for a period of, or periods amounting in the aggregate to, not less than ten years;</p> <p>(c) persons who have been members of a trade union or who have been representatives of employers or other persons who have been practitioners of employment relations for a period of, or periods amounting in the aggregate to, not less than ten years;</p> <p>(d) persons who possess professional qualifications in economics or accountancy and have had specialist experience in any or both of those fields for a period of, or periods amounting in the aggregate to, not less than ten years; and</p> <p>(e) persons qualified in any other combination of the disciplines referred to in paragraphs (i) to (iv) but with specialist experience amounting in the aggregate to, not less than ten years."</p> <p>(3) Before the Judicial and Legal Service Commission advises the President of the Republic of Trinidad and Tobago on appointments to the post of Justices of the Industrial Court of persons who do not have the qualifications to be appointed as a Judge of the Supreme Court of Judicature, it shall consult with the persons set out in subsection (5).</p> <p>(4) The President, Vice-President and Chairman of the Essential Services Division and Justices of the Court who have the qualifications to be appointed as Judges of the Supreme Court of Judicature may be appointed to the Industrial Court by the President of Trinidad and Tobago on the advice of the Judicial and Legal Service Commission without the need to seek the advice of the persons set out in subsection (5).</p> <p>(5) The Judicial and Legal Service Commission shall, for the purposes of appointment to the</p>
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	<p>offices under subsection (2) where necessary, coopt from among the following persons to advise the Judicial and Legal Service Commission on the appointment to those offices:</p> <ul style="list-style-type: none"> (a) an industrial relations professional; (b) a practicing labour economist; (c) a practicing accountant; (d) the organization most representative of employers; or (e) the organization most representative of workers. <p>(6) The Judicial and Legal Service Commission shall, in relation to the Vice-President and Chairman of the Essential Services Division and persons under subsection (4), consult with the President of the Court.</p> <p>(7) Notwithstanding that he has attained the age at which he is required by section 136 of the Act to vacate his office, a Justice of the Court referred to in that subsection, may, with the permission of the Judicial and Legal Service Commission, acting in accordance with the advice of the President of the Court, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.</p> <p>(8) The appointment of any person under subsection (1) to act in the office of Justice of the Industrial Court shall continue to have effect until it is revoked by the President acting on the advice of the Judicial and Legal Service Commission.</p> <p>(9) Where –</p> <ul style="list-style-type: none"> (a) the office of a Justice of the Court, other than the President or the Vice-President of the Court, is vacant; (b) a Justice of the Court, other than the President or the VicePresident of the Court, is – (i) for any reason unable to carry out his functions under this Act; or (ii) acting as VicePresident of the Court; or (c) the President of the Court advises the President of Trinidad and Tobago
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	<p>that the state of business of the Court so requires,</p> <p>the President of Trinidad and Tobago, acting in accordance with the advice of the Judicial and Legal Service Commission may, notwithstanding section 136 of the Act, appoint a person who has held office as a Justice of the Court and who has attained the age of sixty-five years to be temporarily a Justice of the Court for fixed periods of not more than two years.</p> <p>(10) Nothing done by a Justice of the Industrial Court appointed other than under subsection (6), shall be invalid by reason only that he has attained the age at which he is required under section 136 of the Act to vacate his office.</p> <p>(11) A Justice of the Industrial Court appointed other than under subsection (6), shall vacate his office if, with his consent, he is appointed a Senator or nominated for election to the House of Representatives.</p> <p>(12) Section 136 of the Constitution is amended in subsection (13) by inserting after the word “Judge” the words “or Justices of the Industrial Court”.</p> <p>(13) The provisions of sections 105, 106 and 107 of the Constitution shall apply to Justices of the Industrial Court as they do Puisne Judges under those sections.</p> <p>(14) A person who, immediately before the commencement of the Constitution (Amendment) Bill, 2015 was a member of the Industrial Court holding office for a period specified in his instrument of appointment shall, from the commencement of this section, be deemed to be a Justice of the Industrial Court until the expiration of that period and, upon the expiration of that period, he shall, on application to the Judicial and Legal Service Commission, be eligible for reappointment as a Justice of the Industrial Court.”.</p>
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136(13) Subsections (1) to (6) apply to the office of Judge	136(13) Subsections (1) to (6) apply to the office of Judge or Justices of the Industrial Court
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Considerations

- Presently, the salaries of members of the Court who are not appointed under section 4(3)(a)(i) of the Industrial Relations Act are determined by the President of Trinidad and Tobago. The Bill provides that these salaries will now be determined by the Salaries Review Commission.⁷
- The Bill provides that a person who is a member of the Industrial Court holding office before the commencement of the Act be deemed a Justice of the Industrial Court. Upon the expiration of the period specified in his appointment, he shall be eligible for reappointment on an application to the Judicial and Legal Service Commission.

Comparative Legislation in Other Jurisdictions

Country	Legislation	Remarks
United Kingdom	Employment Tribunals Act 1996 ⁸ The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ⁹ The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2014 ¹⁰	An Act to consolidate enactments relating to employment tribunals and the Employment Appeal Tribunal
Australia	Commonwealth of Australia Constitution Act ¹¹	Section 72 provides for the appointment, tenure and remuneration of Justices of the High Court and of other courts created by the Parliament.
Kenya	Constitution of Kenya 2010 ¹²	Section 166 provides for the appointment of Chief Justice, Deputy Chief Justice and other judges of superior courts of record.

⁷ <http://rgd.legalaffairs.gov.tt/Laws2/Constitution.pdf> Section 141(1)

⁸ <http://www.legislation.gov.uk/ukpga/1996/17/contents>

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¹⁰ <http://www.legislation.gov.uk/uksi/2014/271/contents/made>

¹¹ http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/s72.html

¹² <http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=Const2010>

Nigeria	Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 ¹³	Section 254 provides for the appointment of the President and Judges of the National Industrial Court
Uganda	Constitution of the Republic of Uganda ¹⁴	Sections 142 – 144 provides for the appointments, qualifications and tenure of Judicial Officers
Zambia	The Constitution of Zambia ¹⁵	Article 95 provides for the appointment of Puisne Judges and the Chairman and Deputy Chairman of the Industrial Relations Court.

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