

## BIU and Stevedoring Services Reach Agreement on Dismissed Employee



BIU President Brother Chris Furbert (centre) and Portworkers Divisional officers, Brother Otis Minors Assistant Secretary (left), Brother Tracey Bean (Vice President) and Brother Troy Smith (Secretary).

At a press conference held in the Conference Room at Stevedoring Services Ltd., on Tuesday, May 1, 2018, BIU President, Brother Chris Furbert announced that an agreement had been reached with the management of Stevedoring Services Ltd., whereby Brother Antoine Tacklyn, who was terminated in October 2017, would be rehired by the company, but in a different position.

Brother Chris explained that although Brother Tacklyn's position did not fall within the Collective Bargaining Agreement, the workers were supportive of him because prior to his promotion to a management position, he worked alongside the portworkers for over twenty-five years.

"Brother Tacklyn came up through the ranks and the workers felt that the termination was unfair," explained the BIU President. "The workers never asked for him to

be re-instated in his management position, but rather that he be given another position because of his long service to the company."

Brother Chris also explained that the workers had apologized to management for downing tools and that they had agreed that they should have had a conversation with management before taking industrial action in an effort to find a solution.

Additionally, the BIU President said that the matter had gone to arbitration and the arbitration panel suggested to the Union and the management of Stevedoring Services Ltd. that rather than continue with the arbitration process that they seek a solution without the assistance of the arbitration panel.

According to Brother Chris, a precedent had already been set at Stevedoring Services Ltd. whereby workers had been demoted rather

than dismissed and he believed the same thing should have happened in Brother Tacklyn's case.

"Brother Tacklyn worked on the Hamilton Docks for over twenty-seven years and during most of that time there were no complaints about him," added Brother Chris. "Prior to being employed by Stevedoring Services, he worked for Bermuda Forwarders Ltd. and they took him back after his termination which speaks to his work ethic."

The BIU President said that it is now between Brother Tacklyn and Stevedoring Services Ltd. management as to when Brother Tacklyn will return to work as a holdman, a position that he had held in the past.

"I'm happy that the BIU can make this announcement on International Workers Day", concluded the BIU President.

# Minister Releases 2016 Population and Housing Census Report

Minister of the Cabinet Office with Responsibility for Government Reform the Hon. Lovitta Foggo JP, MP, recently announced the release of the 2016 Population and Housing Census Report from the Department of Statistics.

Minister Foggo said, "This report presents the final results of the 2016 Census of Population and Housing which was launched on Census Day Friday, May 20, 2016. It supersedes the preliminary results completed in December 2017 and supersedes the corresponding data within the 2010 Census Population and Housing Report Revised. I encourage the public to read the report's Technical Note and Concepts and Definitions prior to reviewing the data. We have provided a web link so that members of the community can access and download a copy of the report."

Minister Foggo noted that some of the 2010 – 2016 highlights include:

- The population was 63,779 in 2016.
- The sex ratio increased from 92 to 93 males per 100 females.
- The median age of the population increased to 44 years, up from 41 years.

- The proportion of the population that was Bermudian increased from 78% to 79%.
- The unemployment rate remained unchanged at 7%.
- The average weekly hours worked in main job declined from 41 to 40 hours. The median annual gross income from main job for the full-time working population increased to \$65,418, up from \$63,789.
- The median annual personal gross income declined from \$58,466 to \$53,716.
- The median annual household gross income declined from \$103,657 to \$93,713.
- The average household size declined from 2.39 to 2.26 persons per household.
- The number of occupied dwelling units was 28,192 in 2016.

The 2016 Population and Housing Census Report is available online at [www.gov.bm/bermuda-census](http://www.gov.bm/bermuda-census).

## THE WORKERS VOICE

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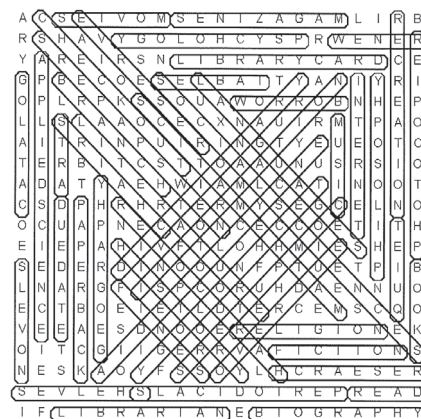
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# Hargun's Appointment Is An Affront to All Bermudians

In my opinion, Premier David Burt was correct when he stated "the appointment of Narinder Hargun as successor to Chief Justice Ian Kawaley is "an affront" to the Government". Not only was the appointment an affront to the Government, the appointment was an affront to all Bermudians and should be viewed as such. As I see it the appointment of Mr. Hargun was an affront because, as I see, there were other more qualified Bermudian applicants who should have been considered for the post before Mr. Hargun.

Just as I agree with Premier Burt regarding the appointment of Mr. Hargun, I disagree with the former OBA Senator, Michael Fahy's opinion column in which he intimated that the Premier disagreed with the appointment of Mr. Hargun because he is not Black nor a born Bermudian. In that same column, Mr. Fahy also intimated that former Premier Alex Scott opposed the appointment of Sir Richard Ground as Chief Justice because neither was he a born Bermudian. Mr. Fahy is wrong on both counts.

Premier Burt has not made public why he was opposed to the appointment of Mr. Hargun but I have it on good authority that he informed the Governor why he was opposed to the appointment. However, former Premier Alex Scott did inform the public why he was opposed to Sir Richard Ground's appointment as opposed to Justice Norma Wade. Mr. Scott said that he believed that Justice Wade, who was a Bermudian, had the seniority and longevity as a judge even though he was aware that the Governor at the time was

interested in a judge with experience in commercial law. However, it is my understanding that there are more criminal cases tried in the Supreme Court than commercial cases. According to the advertisement for the position of Chief Justice: Applicants should be qualified under section 5 of the Supreme Court Act 1905, as amended. A sound knowledge of all the main branches of the law is a minimum requirement. Specialist knowledge of at least one of the main branches of the law is highly desirable. Experience of the culture of Bermuda, its court and legal system would be an advantage. Applicants will be expected to demonstrate the qualities of a modern professional judge and to promote the confidence of litigants and the public in the judiciary.

In my opinion, the two Bermudian applicants, Puisne Judge, Charles-Etta Simmons and Director of Public Prosecutions, Larry Mussenden, whom I know applied for the position, both have the qualifications as outlined above and certainly both certainly have experienced the "culture of Bermuda", long before Mr. Hargun even took up residence in Bermuda. Both Ms. Simmons and Mr. Mussenden are people of "good character", so one wonders why the selection committee decided against them in support of Mr. Hargun.

Ms. Simmons was appointed as a Puisne Judge in 1998 and I would have expected her to be the successor to Chief Justice Kawaley. Surely after spending twenty-years on the bench qualified Ms. Simmons to sit in the Chief Justice's seat. I certainly



ly would not want to believe that she was not appointed because she is a woman, especially in light of the fact that there were two women on the selection panel, former Obudsman, Arlene Brock and the Executive Director of the Family Centre, Martha Dismont. By the way, I am finding it hard to comprehend why either of those two women were members of the selection panel as Ms. Brock is no longer a resident of Bermuda and no longer the Ombudsman; and as the other panellists all have legal backgrounds, I wonder why Ms. Dismont.

I was further concerned when I learned that other than Ms. Dismont, all others on the interviewing panel are resident somewhere else other than Bermuda, even the former Ombudsman, Arlene Brock now resides in South Africa. Although the sitting Chief Justice has the right to sit on the interviewing panel, I have been informed that he recused himself in this instance. Maybe somebody can help me understand the reason for panellists to hail from Lebanon, New Zealand and Prince Edward Islands. Are there no Bermudians capable and qualified enough to decide who should judge us in a court of law?

*(continue on page 7)*



# Brother Ira Pearman Philip

December 16, 1925 – April 8, 2018

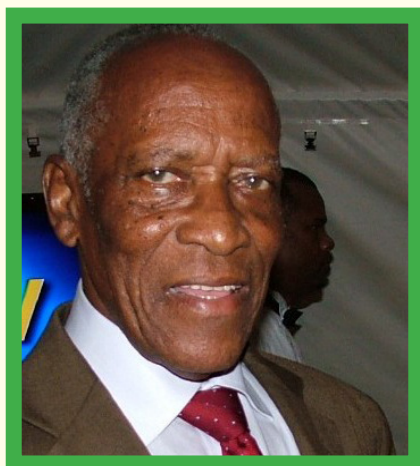
(BIU) Executive Board and the Union membership extend their condolences to the family and friends of Ira P. Philip.

Brother Ira was a true champion of the Labour and Trade Union movement. Brother Ira's relationship with the movement dates back to the foundation of the Bermuda Workers Association (BWA) which spawned the birth of the Bermuda Industrial Union. He was a member of the Executive Committee which held the BIU together as an organization after the death of Dr. E.F. Gordon in 1955.

Brother Ira's contribution to Bermuda in general and the BIU in particular can be found in "The History of the Bermuda Industrial Union" which he authored and which was published in 2003. According to President Emeritus of the BIU, Brother Ottiwell Simmons, Ira Philip was perhaps the most outstanding historian of Black History and current affairs.

"He wrote several books, all of which examined the Black movements, such as religion, with special emphasis on AME Church activities, the BIU and the Bermuda Progressive Labour Party," said Brother Ottie. "His books are reliable references for any research and they have been highly recommended for high school students".

"Ira's lifetime activities can be traced back to the early days of the Bermuda Recorder of the 1940s and he was one of the last people at the Recorder when it



was sold out to Sir John Swan," continued the President Emeritus. "When became manager of the Capital Broadcasting Company (ZFB), that company became a most prominent communicating system for Bermuda. Much of its success is credited to Ira's knowledge and expertise." Brother Ottie added that Ira Philip was the man, the journalist, the writer, chosen because of his skills and his background knowledge of the BIU, particularly during the Gordon years and later years of the Union's development. Ira was chosen not only because of his writing skills but because of his experience during the early years of Dr. Gordon, Joe Mills and other early stalwarts of the Union and the other fledgling divisions of the BIU.

Former BIU President, Brother Derrick Burgess said "Bermuda has sadly lost an Encyclopedia in the person of former Senator Ira Philip".

"It is my opinion that Mr. Philip was amongst the best

writers that I have ever read. His book, *Freedom Fighters: From Monk to Mazumbo*", is a classic in that he writes about the injustices that were incurring here in Bermuda when Rev. Monk, an AME Pastor, took on the establishment and later when Dr. Gordon played a similar role in helping to eradicate the injustices in Bermuda."

Brother Derrick agreed with Brother Ottie, that "The History of the Bermuda Industrial Union" should be included in the curriculum in our schools.

Current BIU President, Brother Chris Furbert, said anytime he sat down and talked to Brother Ira Phillip about the BIU it was very enlightening and he would encourage others to learn about the sacrifices that were made in order to create the greatest institution to protect the rights of organized Labour, the BIU. The Labour Movement has truly lost a man who was on the front line fighting for the injustices of the people that were taking place in our country at the time.

Brother Chris also agreed with Brother Ottie, that "The History of the Bermuda Industrial Union" should be included in the curriculum in our schools.

The Bermuda Industrial Union is grateful for the life of Brother Ira P. Philip. He kept the faith and stayed the course. May he rest in peace.

# The Black Panther Movie



Why did this movie attract so much attention from black people? To date it has earned over \$1 billion and to be sure, most of that money spent came from black people.

The movie centered around a fictional black nation called Wakanda. But this was a special circumstance as this Black nation was hidden from the world and it was able to do that due to its advanced technological development far in advance to the rest of the world.

Not only was it that the nation was built around African cultural norms, it showcased an elite all-female army which mirrored the fierce women warriors who existed in the African nation of Sierra Leone. Africa is known for having strong women leaders. Angola comes to mind. This country had a strong woman leader, Queen Nzinga, who


resisted Portuguese colonial rule for almost 50 years.

But even though the movie was a work of fiction it still does not explain why it created such a reaction among black people not only black people in America even in Bermuda and in Africa.

Could it be that it touches a long held deep desire within black people that black people around the world should have an impact on the world in their own right.

The last time such an event impacted black people worldwide was the rise of Marcus Garvey who called for Africa to be ruled by Africans. This call was at the height of European colonial rule of most of Africa which of course created great upset among European colonial rulers who did everything to pull his movement down. They knew if his ideas were to take root then that

**THE OTHER  
ALTERNATIVE**



By ALVIN WILLIAMS

would be the end of their influence and power over African people; and Garvey's movement had that potential since no movement than and even today has ever gathered such support among black people worldwide.

Even though the movie Black Panther and the nation Wakanda were a work of fiction; could it become a reality for the black world? Africa has the youngest population of the world's population. In 50 years Africa will represent 40% of the world's overall population. That alone will have a impact on the world. And the rest of us we black people living outside of Africa with our skills and training we are a Wakanda in the making. Our reaction to the movie may have awoken a long dream among the world's black peoples to have an impact on this world in our own right .

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# Premier Burt Signs Three International Agreements in Almost As Many Days

Between April 27, 2018 and May 2, 2018, Premier and Finance Minister, the Hon. David Burt signed three agreements with international firms that will boost Bermuda's image in the global community while at the same time boost prospect for more jobs for Bermudians and diversity Bermuda's economy.

On April 27th, Premier Burt announced that he had signed a Memorandum of Understanding (MOU) with the Binance Group, the world's largest cryptocurrency exchange and an international leader in digital exchange development and fintech, with a market capitalization of US\$1.3BN.

"Through the Binance Charity Foundation, the Group is committed to improving education, creating awareness in the development through the use of blockchain technology", said the Premier at the historic signing at the Cabinet Office. "Binance Labs are incubators to encourage greater innovation and scope for future investment in a variety of projects".

Premier Burt said that Binance has decided that their goals align with our aims and objectives to provide a leading, well regulated jurisdiction, ideally suited to the growth of the FinTech industry. As a result, the Memorandum of Understanding that sets out the beginnings of a partnership will benefit the people of Bermuda. Through this partnership Binance proposes to:

1. Develop its global compliance base in Bermuda, creating at least forty (40) jobs in Bermuda, with at least 30 jobs for



*Premier Burt and Mr. Gabriel Abed, Founder of BITT, Inc sign one of the recent international agreements.*

- Bermudians;
2. Through the Binance Foundation sponsor university-level training for Bermudians in blockchain technology development and compliance in an amount up to US\$10 million;
3. Through Binance Labs make up to US\$5 million available for investments in new Bermuda based blockchain companies;
4. As soon as practicable, develop a Digital Asset Exchange in Bermuda subject to all required legal and regulatory processes; and
5. Work collaboratively with the Government of Bermuda and all necessary oversight agencies in the development and improvement of a robust legal and regulatory framework.

On April 30th, the Premier signed another MOU with Medici Ventures, which will result in the creation of jobs in Bermuda and enhanced educational opportunities for Bermudians.

The Memorandum was signed by Dr. Patrick Byrne the Founder and CEO of Overstock.com. The MOU is with Medici Ventures which was formed to incubate, launch, and invest in blockchain investments in the most fundamental processes of that new aged, such as blockchain-meets-land-titling, blockchain-meets-central-banking, blockchain-meets-capital-markets, blockchain-meets-voting, and blockchain-meets-healthcare.

In signing the MOU, Medici will:

1. Make Bermuda its laboratory for the most leading edge blockchain innovations coming out of its stable of a dozen blockchain firms;
2. Create at least thirty (30) jobs in Bermuda over three years;
3. As soon as practicable, develop an Security Token Trading Platform in Bermuda subject to all required legal and regulatory processes;

*(continue on page 7)*

## Premier Burt Signs Three International Agreements in Almost As Many Days *(continued from page 6)*

4. Focus its social contribution in Bermuda on nurturing a proper pipeline for creating basic, intermediate, and advanced software development engineers; and
5. Work collaboratively with the Government of Bermuda and all necessary oversight agencies in the development and improvement of a robust legal and regulatory framework.

On May 2nd, the Premier signed another agreement with Mr.

Gabriel Abed, Founder of BITT, Inc and the Founder of Digital Asset Fund. Mr. Abed will be a consultant and advisor to the Government of Bermuda.

In making the announcement, Premier Burt stated, "Mr. Gabriel Abed, is a digital assets and blockchain technology expert, who I met earlier this year, however I have been following his work long before then. Mr. Abed is a recognized Caribbean authority on digital currencies, math based protocols and blockchain

technology. I am pleased to announce that Mr. Abed has agreed to provide his advice and expertise to the Government of Bermuda on digital assets and blockchain technology."

Premier Burt added, "The significance of the agreement is that Mr. Abed brings his extensive knowledge to Bermuda at no cost to the tax payer. I am extremely grateful to have his expertise as Bermuda moves forward with our Fintech strategy. I sincerely thank Mr. Abed for his generosity."

## Hargun's Appointment Is An Affront to All Bermudians *(continued from page 3)*

Those persons who are concerned about Mr. Hargun's appointment because of his conduct during the Commission of Inquiry have every right to be so concerned. I for one attended many of the sittings of the CoI, and I was extremely disturbed by Mr.

Hargun's line of questioning to many of those who appeared, but more so with the current Deputy Speaker, Derrick Burgess.

In my opinion, although Mr. Hargun does have experience in the courts as highlighted by His Excellency the Governor,

Ms. Simmons' experience far outweighs Mr. Hargun's experience and Mr. Mussenden's experience is almost equal to that of Mr. Hargun, but both Ms. Simmons and Mr. Mussenden are born Bermudians, and as I see it, that should hold some weight in Bermuda.

## Minister Foggo Updates Parliament on Union Negotiations *(continued from page 12)*

include management and Union representatives within each Department, to deal with conditions of employment and effective operations. Of equal importance are the quarterly scheduled Central Consultative Committee Meetings, which include the Civil Service Ex-


ecutive and Union representatives, to address management issues.

Mr. Speaker, communication is vitally important to good employment and industrial relations and is the hallmark of effective leadership.

Our aim Mr. Speaker is to build morale and enhance job

satisfaction which will ultimately result in increased productivity, and as a consequence, a future-forward Government for the people of Bermuda.

Thank you, Mr. Speaker.



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# BTUC President “Affordable Healthcare For All” is a Priority



*Premier Burt addresses the workers on May Day. Also shown is BTUC President, Brother Jason Hayward, Minister of Health, Kim Wilson and BTUC Treasurer, Sister Renee Jones.*

A small, but dedicated group of members of the Bermuda Trade Union Congress (BTUC) gathered at Victoria Park on Tuesday, May 1, 2018 to recognize International Workers Day or May Day as it is known in many countries. Also present to honour Bermudian workers was Premier David Burt and his Cabinet as well as other Government Members of Parliament, all wearing red, the symbolic colour for workers around the world. This year's theme was "Affordable Healthcare in Bermuda for All".

Prior to the traditional May Day March around the City of Hamilton, Brother Jason Hayward, President of the BTUC told those assembled that accessible and affordable healthcare should be

available to all Bermudians and that healthcare should be a human right, and not viewed as a commodity.

"Bermuda has the highest healthcare costs in the world," stated Brother Jason. "This equates to \$11,000 per person or \$700,000,000 per year in total."

Brother Jason said that a large percentage of workers do not have access to healthcare as many cannot afford the co-pay. He said that many are choosing between food, rent and healthcare and this affects the young as well as seniors in the community.

"People should not have to open 'go-fund me pages' in order to receive proper healthcare in Bermuda," continued Brother Jason. "This is not an issue that the BTUC

takes lightly and we all need to work together to find a solution".

The BTUC President said that Government needs to ensure that the proper regulations are in place, providers need to provide quality care and insurers need to ensure that premiums are affordable. He said that the BTUC will continue to advocate for a sustainable and affordable healthcare system that works for all.

Premier Burt said that the Government will continue to support the efforts of the Bermuda Trade Union Congress as healthcare is a serious matter for all adding "We can't have too much profit from people's pay".

Health Minister Kim Wilson said that affordable and accessible health for all is the number priority for her.





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## Who Started/Founded Churches: God or Men? Look at the Historical Facts

Church	Year Started	Place	Founder
Roman Catholic	606 A.D.	Rome	Boniface III
Muslim	622	Arabia	Mohammed
Lutheran	1520	Germany	Martin Luther
Church of England	1534	England	Henry VIII
Presbyterian	1536	Switzerland	John Calvin
Congregational	1550	England	Robert Brown
Baptist	1607	Holland	John Smythe
First Baptist	1639	U.S.A.	Roger William
Church of God (Missouri Group)	1671	U.S.A.	Stephen Munford
Church of Brethren	1708	Germany	5 men/3 women
Methodist	1729	England	John Wesley
A.M.E. (Methodist)	1816	U.S.A.	Richard Allen
Latter Day Saints (Mormons)	1830	U.S.A.	Joseph Smith
Apostolic Christian Church	1932	Switzerland	S.H. Froelich
Seventh Day Adventist	1860	U.S.A.	Mr./Mrs. White et. al.
Christian Science	1865	U.S.A.	Mary B. Eddy
Jehovah's Witness	1872	U.S.A.	Charles T. Russell
Salvation Army	1878	England	William Booth
Church of God (Indiana Group)	1880	U.S.A.	D.S. Warner
Church of God in Christ	1897	U.S.A.	C.H. Mason

### Do you know the TRUTH about the church? Take the following quiz to assess your knowledge?

True or False (✓) the correct answer (Tor F)

- T or F Abraham, a friend of God was a member of a church.
- T or F David, a man after God's own heart was a member of a church.
- T or F Elijah prayed that it not rain for 3 years and 6 months was a member of the church.
- T or F King Solomon, the wisest man who ever lived was a member of a church.
- T or F Daniel was cast in the lion's den was a member of a church.
- T or F Shadrach, Meshach and Abednego were cast into the furnace were members of a church.
- T or F Moses, the law giver, was a member of a church.
- T or F John the Baptist who baptized Jesus was a member of a church.
- T or F Churches are from God.
- T or F Sampson, the strongest man in the world was a member of a church.
- T or F Noah, who built the Ark, was a member of the church.
- T or F Jesus' mother, Mary, was a member of the church.
- T or F The apostles (Matthew, John, Paul, Peter, Andrew and Philip) were members of a church/denomination.
- T or F Jesus said, "I will be my church".
- T or F One must be in the Church to be saved.
- T or F Jesus commanded his disciples to build churches (for worship) in the New Testament.
- T or F The word church comes from the Greek word "ekklesia".
- T or F The Holy Spirit put the word "Church" in the scripture.
- T or F Jesus is the head of the Church.
- T or F One must go to church to get into heaven.
- T or F Isaiah the prophet was a member of a church.
- T or F Moses' brother Aaron, the high priest was a member of a church.

So how did you do? Brace yourself. The correct answers to all of the questions are "false". Don't be deceived.

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2016

# Population and Housing Census Report



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# Minister Foggo Updates Parliament on Union Negotiations

On Friday, April 27, 2018, Minister for Cabinet Office with Responsibility for Government Reform, the Hon. Lovitta Foggo updated Parliament on union negotiations. Below is the Minister's Ministerial Statement:

"Good morning, Mr. Speaker.

I rise to provide an update to the Members of this Honourable House on the status of the Government's Collective Bargaining Agreement negotiations.

Mr. Speaker, Honourable members will know that there are six Union and Association partners and seven Collective Bargaining Agreements. Upon taking office in July 2017, all of the Agreements had expired.

Since that time, the Government has successfully negotiated four new Agreements. These include: Bermuda Public Services Union (general membership); Bermuda Industrial Union; Fire Services Association; and The Bermuda Union of Teachers Collective Bargaining Agreements. Also, the Government has entered into a Memorandum of Understanding with the Bermuda Public Services Union (Principals), pending further review and consultation of an Agreement in principle.

Whilst the Prison Officers Association and the Bermuda Police Association Agreements remain outstanding, negotiations for both are currently in progress.

Mr. Speaker, Bermuda Public Services Union (general membership) Agreement will reach term



on 30th September 2020; Bermuda Industrial Union Agreement will reach term on 31st December, 2018; Fire Services Association Agreement will reach term on 31st March, 2020 and Bermuda Union of Teachers Agreement will reach term on 31st August, 2018.

Notwithstanding the milestone of having successfully completed negotiations with most partners, varying expiration dates, as well as provisions to re-open specific clauses in years two and three of the multi-year Agreements, will require new talks with the Unions. Accordingly, it is expected that talks will re-open with our Unions partners in the coming weeks and months.

Mr. Speaker, having taken the opportunity to assess the effectiveness of the new approach to negotiations, the Government has determined that the model which relies upon non-technical officers to lead negotiations is indeed reasonable. The Government has therefore taken the decision to appoint new members to the Public Sector Negotiations Team (PSNT).

The original members of the PSNT, appointed by the then Government in 2016, include Gary Phillips, Chairman, John Harvey, and Martin Law.

I take this opportunity, on behalf of the Government, to publicly extend thanks and appreciation to these gentlemen. It is well documented that they commenced their initial discussions in 2016 without a mandate. A matter that served to frustrate the process. This notwithstanding, once issued a bonafide mandate under the current Government the team worked diligently to ensure positive outcomes. It is expected that the original team will conclude their current work in the coming weeks or upon conclusion of negotiations with the Prison Officers Association.

Mr. Speaker, effective May 1st, a new team to include Jonathan Smith, Chairman, Orin Simmons and Vincent Hollinsid will assume the role of the Public Sector Negotiations Team.

As a priority, the PSNT will complete the Bermuda Public Services Union (Principals) negotiations and simultaneously enter into new negotiations with the Bermuda Union of Teachers as well as continue the Bermuda Police Association negotiations.

Mr. Speaker, the Government, through its actions, has reinforced its commitment to maintaining a healthy and harmonious workplace, as well as good industrial and employment relations."

Priority has therefore been placed on monthly scheduled Joint Consultative Meetings, which

*(continue on page 7)*



# How do I know if I have been Constructively Dismissed by my Employer?

In the Workers Voice edition of 30th June 2015, I explained the important role trust and confidence plays in the employment relationship. I also explained the kind of behaviour by both employers and employees which is considered a breach of the obligation of trust and confidence, justifying termination of the employment relationship.

In the United Kingdom legal authority *BCCI v Ali* (No.3) 1999 IRLR 508 the House of Lords which uses the same judges as the Privy Council and, is therefore, binding law in Bermuda said the following:

*"To amount to a breach of the implied term of trust and confidence, misconduct on the part of an employer must be so serious as to amount to constructive dismissal, entitling the employee to leave immediately without notice on discovering it. The test is whether that conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after discovering it and can walk out of his job without prior notice".*

Section 29 of The Employment Act 2000 defines Constructive Dismissal as follows:

(1) An employee is entitled to terminate his contract of employment without notice where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship, having regard to the employee's duties, length of service and circumstances.

(2) An employee who terminates his contract pursuant to subsection (1) shall be deemed to have been



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unfairly dismissed for the purposes of this act.

We will look at constructive dismissal by examining the following questions:

1. What is constructive dismissal?
2. Is constructive dismissal different from any other form of dismissal?
3. What does the law require in order for an employee to establish he has been constructively dismissed?
4. What happens if an employee continues working after an employer behaves in a manner which entitles the employee to claim he has been constructively dismissed?
5. What happens if the employee commits a breach of the employment contract before he is constructively dismissed?
6. What conduct by an employer is viewed as constructive dismissal of an employee?

## What is constructive dismissal?

In *Western Excavating (ECC) Ltd v Sharp* 1978 IRLR 27 the leading United Kingdom authority which is regularly quoted in the Courts

of Bermuda, the Court decided *"An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once."*

## Is constructive dismissal different from any other form of dismissal?

Constructive dismissal as defined by section 29 of The Employment Act 2000 and the case of *Western Excavating Ltd v Sharp* previously referred to, combined with unfair dismissal found in section 28 of the Employment Act 2000 are designed to protect an employee from unlawful conduct and excessive behavior on the part of an employer making the employment relationship unbearable for the employee.

In contrast, the following sections of The Employment Act regulate circumstances under which an employer is entitled to terminate or dismiss an employee from employment: Section 18 ensures there must be a valid reason to terminate a contract of employment - Section 25 permits summary dismissal for serious misconduct - Section 27 covers situations where termination is for unsatisfactory performance and Section 30 regulates termina-

*(continue on page 15)*

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## EAP CLIPS: MAY 2018

### LIVING AND THRIVING IN ANXIOUS TIMES

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The sky isn't falling, but it sure can seem like it! Mix the sluggish economy, stubbornly high unemployment, uncertain politics, and foreign upheaval together and you've got a big bowl of stress stew. Add to it a heaping dose of the "do-more-with-less" workplace, along with a fast-paced, ever-changing, technology driven world, and what you end up with is a perfect recipe for freak-out-out time! Can you thrive in this environment? The answer is yes.

So what now? Is this truly the end of the world we once knew? Are our best days behind us? And if so, how do we cope with what's to come?

There are no easy answers, but two things remain true:

1. It is not as bad as it seems, and
2. You have more control over your future than you think.

#### POWER OF PERSPECTIVE

If crime, dishonest, rudeness and all-around bad behavior seem at an all-time high to you, consider that what has changed is not society, but your ability to see it up close – the worst part of it – through modern media technology. You know only what you *hear, see and read*.

There's an old saying in the news business – "If it bleeds, it leads." Media outlets love doom and gloom because it's generally cheap to cover and it draws eyeballs. And they are pushing the edge of the envelope. But it is just not traditional media. Today anyone with access to the web can broadcast to the world through mediums like Facebook and YouTube where exhibitionism and outrageous behavior tend to crowd restraint.

The next time you find yourself wondering if the whole world has gone mad, remember that the stories and images on your TV, computer, and smartphone are distorted, "funhouse" representations of reality. If they are having a negative impact on your outlook, switch your consumption to something positive or simply unplug. You don't have to participate in the circus.

#### COPING WITH ANXIETY

The world's problems seem too big for you to handle for one simple reason – they are! Think about it – you have little to no control over weighty things like crime, poverty, oppression, terrorism, and world hunger.

What you can control, however, are your thoughts, actions, associations and lifestyle. This is key to a happier life.

With that in mind, here are some tips to help you manage stress and anxiety:

- **Learn your triggers.** Carefully note what sets off your anxiety and limit your exposure to it.
- **Spot quickly and interrupt negative feedback loops** with positive reinforcement. Anxiety often comes from playing out "what if" and doomsday scripts in your head. Keep motivational, spiritual; and affirming literature at hand, or even your own private "positivity hot link" on your computer – music, video, narrative, or images that instantly help you "reset" your mind.
- **Cut yourself a break when you're overwhelmed.** Agree to do what you can, when you can. Let that be enough for the day.
- **Let go of worst-case scenarios.** Most of what we fear never comes to pass. When or if a crisis ever hits, options will appear at that time to help you deal with it.
- **Realize that fretting is not productive.** The world doesn't change because you are concerned and unhappy. It's okay to be cheerful even in the face of misfortune.
- **Get moving.** Worry is undirected energy. Put that energy to use on something positive and productive.
- **Seek out positive, uplifting people.** Your happiness is directly related to your influences.
- **Learn relaxation techniques** like yoga and deep breathing exercises.
- **Exercise regularly.** Seriously, for dozens of reasons that you have already been beaten over the head with, this is one of your most powerful "feel better" strategies.
- **Accept that it takes time to change.** Focus on lowering the intensity and length of worrying, rather than eradicating it completely.

Finally, don't beat yourself up for feeling anxious. A certain amount of stress is unavoidable. The key to managing it is changing your habitual reactions to it.



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## How do I know if I have been Constructively Dismissed by my Employer? *(continued from page 12)*

tion for redundancy.

### **What does the law require in order for an employee to establish he has been constructively dismissed?**

Firstly, an employee must establish that the employer has breached either an express or an implied term of his contract of employment. Such a breach can occur through a single act of breach on the part of an employer; a series of small incidents over a period of time if the conduct of the employer is making it impossible for the employee to continue working; or an accumulation of a series of minor incidents plus a last straw incident which, in itself, is a breach of contract.

Secondly, an employee has to show that the employer's conduct is unacceptable and that it amounts to a fundamental breach of contract, entitling the employee to work under protest or resign. If the employee chooses to resign rather than work under protest, it is important that the employee makes it clear to the employer that he is resigning in response to the employer's breach of a term of the contract of employment. An employee should not walk off the job unless he has informed his employer that the reason he is leaving is as a direct result of the employer's behavior.

### **What happens if an employee continues working after an employer behaves in a manner which entitles the employee to claim he has been constructively dismissed?**

The critical question is whether an employee remains on the job without protesting about the employer's conduct after the employer has breached the contract of employment. In such circumstances the law may determine that the employee has waived (the technical legal term) or in every-day language has accepted the employer is in breach of contract and is prepared to continue working for the employer despite the breach of contract.

When an employer has breached the contract of employment by, for example, changing the terms of the contract, the employee has the right to elect whether to accept the breach of contract and continue working under the contract with its new terms, or reject the employer's breach of contract by either resigning or working under protest to see if the employer will abide by the original contract. This is an important point and places the employee in a position where he has a difficult decision to make in the current economic climate where new jobs are not easy to find. Employees will not be permitted to work under protest indefinitely. There will come a point at which an employee working under protest will be deemed to have accepted the employer's breach of contract.

### **What happens if the employee commits a breach of the employment contract before he is constructively dismissed?**

This point is best illustrated by an example. Let's say an employee

commits a breach of his contract of employment by stealing from his employer. However, at that time the employer is unaware of the theft by the employee and the employee continues working. At a later date the employer breaches the contract of employment by conduct which entitles the employee to make a claim for constructive dismissal. The law will not allow the employee to make such a claim when the employer proves the employee previously stole.

### **What conduct by an employer is viewed as constructive dismissal of an employee?**

The following are examples of conduct on the part of an employer which will entitle an employee to claim he or she has been constructively dismissed :

1. A unilateral reduction in the basic rate of pay of an employee;
2. Requiring an employee to cease doing his principal job and take up a new role;
3. Failing to afford an employee an opportunity to have their grievance addressed;
4. Failing to take reasonable care for the safety of employees.

The conduct identified as amounting to breach of the implied term of trust and confidence in Sections III. and V. of the Workers Voice article dated 30th June 2015 will also be considered sufficient to justify an employee making a claim that he or she was constructively dismissed.

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Find and circle all of the words that are hidden in the grid.

The remaining letters spell a secret message - a Henry Ward Beecher quotation.

A C S E I V O M S E N I Z A G A M L I R B  
 R S H A V Y G O L O H C Y S P R W E N E R  
 Y A R E I R S N L I B R A R Y C A R D C E  
 G P B E C O E S E L B A T T Y A N I Y R I  
 O P L R P K S S O U A W O R R O B N H E P  
 L L S L A A O C E C X N A U I R M T P A O  
 A I T R I N P U I R I N G T Y E U E O T C  
 T E R B I T C S T T O A A U N U S R S I O  
 A D A T Y A E H W I A M L C A T I N O O T  
 C S D P H R H R T E R M Y S E G C E L N O  
 O C U A P N E C A O N C E C C O E T I T H  
 E I E P A H I V F T L O H H M I E S H E P  
 S E D E R D I N O O U N F P T U E T P I B  
 L N A R G F I S P C O R U H D A E N N U O  
 E C T B O E I E T L D T E R C E M S C Q O  
 V E E A E S D N O O E R E L I G I O N E K  
 O I T C G I I G E R R V A F I C T I O N S  
 N E S K A O Y F S S O Y L H C R A E S E R  
 S E V L E H S L A C I D O I R E P R E A D  
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 TABLES  
 TECHNOLOGY

SOLUTIONS ON PAGE 2