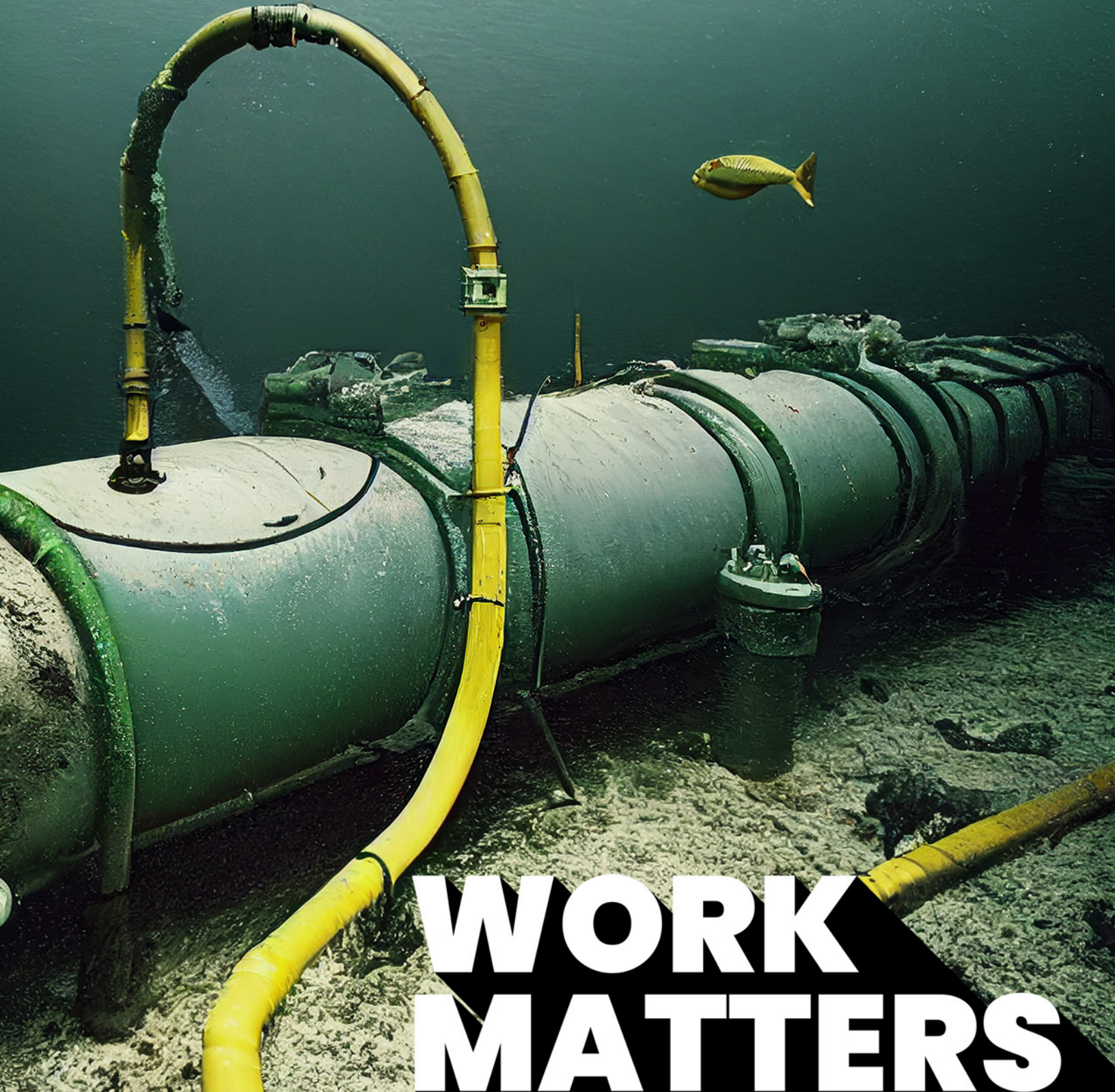




CIPRIANI COLLEGE
OF LABOUR AND CO-OPERATIVE STUDIES



WORK MATTERS

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COLUMN

Paria, Corporate Manslaughter, Privy Council....Oh What a Tangled Web

While this issue may be waning in the minds of some people, I along with much of the nation was relieved to not only have the allegedly unadulterated report of the Commission of Enquiry into the Paria tragedy released to the public, but also place the blame for this travesty where it was due. Personally, I deemed such determination inevitable since under the Trinidad and Tobago Occupational Safety and Health Act (the OSH Act) Paria Trading Company is recognized as the occupier. Thus, it has ultimate control over the pipeline involved and as such under section 8(2)(b) was responsible for implementing emergency response. However, under section 6(1) LMCS as the employer of the divers, the company had a duty to provide for their health, safety and welfare at work, which they clearly did not do. It must be noted that the aforementioned duties are absolute, and as such, they cannot be transferred to another party by wishful thinking or some homegrown, self-serving modus operandi or company policy.

However, as the clamours went out for charges of corporate manslaughter to be imposed, it was not politically expedient to inform 'John Public' that such a charge cannot be made under the existing laws of Trinidad and Tobago. That charge is based on a piece of UK legislation that was passed in 2007 in that country and although recommendations for the enacting of similar legislation in T&T were made since 2009, to date this has not been done. Maybe it was a case of too much too soon, since the OSH Act was fully enacted only two years prior on August 17, 2007. Whatever the reason, the then Minister of Labour, and his successor did not act on that recommendation. Notably, neither did any of the other subsequent Ministers of Labour. The point is that it is disingenuous to goad 'John Public' into demanding something that our laws simply do not permit at present.

The web becomes even more tangled when one considers that on April 5, 2023, Justices Allan Mendonça JA, Prakash Moosai JA and James C Aboud JA deliv-

ered a judgement in the Court of Appeal, that resulted in the Occupational Safety and Health Agency (the OSH Agency) referring the matter to the Privy Council. The University of the West Indies (UWI) won an appeal against a judgement that was given in the Industrial Court regarding the timeframe within which action can be taken under the OSH Act for safety and health offences. Section 93 states that all complaints must be filed in the Industrial Court within six months while section 97B gives a two-year period to file for a safety and health offence. UWI contended that the OSH Agency had erred by exceeding the six-month period when they took action against them because they should have done so within the six months stipulated timeframe. In a nutshell, the Industrial Court disagreed and sided with the OSH Agency, however, UWI appealed the matter and won, since the esteemed justices disagreed with the Industrial Court's interpretation of the timeframe to be used.

This judgement meant that not only could all the cases regarding safety and health offences presently before the Courts be thrown out, but those already resolved may be successfully appealed.

The almost two-year period that it took for the Commission of Enquiry to complete their investigation and submit their report is indicative of the impracticality of investigating and filing health and safety offences in the Courts within six months of their occurrence. In this instance, the lone survivor may not have even been capable of giving evidence six months later, due to issues such as Post Traumatic Stress Disorder. Given the critical importance of his testimony, the OSH Agency and other investigators would have had to wait until he was capable of reliving the horror in order to provide much needed first-hand information.

Moreover, in light of the Court of Appeal's 2023 ruling, since the six-month period expired in August 2022, where does that leave the OSH Agency's case against Paria and LMCS that was filed in the Industrial

Court in recent months, in keeping with the two year timeframe?

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