



Ministerial Statement
By
Senator, The Hon. Michael M. Fahy, JP
Minister of Home Affairs

Wednesday, May 13th 2015

Tribunal Reform

Madam President, I am very pleased today to announce proposed plans to streamline and rationalize administrative hearings and appeals in Bermuda, starting with the Ministry of Home Affairs.

Many Bermudians will be familiar with the need to deal with public authorities in every course of life. And when they disagree with decisions of those authorities, legislation often allows the decisions to be challenged.

Unfortunately, **Madam President**, there is currently an incoherent hodgepodge of appeal and review routes from decisions by public authorities in Bermuda. Decisions are variously heard by Ministers, Tribunals appointed by Ministers, Magistrates, the Supreme Court and the Governor. Hundreds appear throughout the statute books.

These bodies in turn have different powers and procedures. They are scattered across different Ministries and vary in their effectiveness and administrative support.

Madam President, the imperative for reform is clear. We believe that the appointment of a fulltime adjudicator or unified Tribunal system will streamline, consolidate and rationalize the plethora of statutory tribunals, rights of appeals and boards of inquiry which have arisen over many decades of legislative activity.

The need for action is even stronger given our present economic climate and the post-SAGE reality we live in. We simply have to find a way to do more with less.

The reality of Bermuda as a sophisticated jurisdiction governed by a constitution and the rule of law also means that it is inappropriate for members of the executive to have a say in these decisions.

Furthermore, the Supreme Court in the 2006 decision of *Fay & Payne v the Governor* held that an appeal from the Dental Board to the Governor to be unconstitutional on the basis that the Governor was not sufficiently independent to make determinations. An independent adjudicator or tribunal would ensure that appropriate procedures are in place and they are protected from any further legal attack.

Madame President, there are several possible benefits to a single adjudicator or unified Tribunal system, such as:

- A fair, independent and impartial tribunal takes decisions out of ministerial hands, which minimizes the potential for political interference and constitutional court challenges.
- Access to justice is improved as there will be a single, focal point of entry for all those aggrieved by a decision taken by public authorities, with easily-understood procedures and without the rigid formality of a court appearance. Furthermore, we envisage the use of lawyers to be a last resort.
- There is greater efficiency as one body would replace many, meaning one set of support staff instead of many. In addition, Ministers and their technical staff no longer have to have their time occupied by such appeals, which should allow them to concentrate on delivering better services for Bermuda.
- The number of Government Boards, Tribunals and public authorities could be significantly reduced which means that Ministers and their technical staff won't have to cast their net around for individuals to staff those bodies.
- Effectiveness is improved as legislation and rules of procedure should set out the tribunal's powers clearly. Full-time, legally trained adjudicators would be able to deal with cases expeditiously while allowing a body of expertise and coherent principles to build up over time.

Initially, I envisage this as a pilot project focusing on tribunals under the Ministry of Home Affairs. We look forward to finalizing a set of proposals and getting the views of key stakeholders in this process. As the benefits of reform are noted, we would then hope to expand this regime to other Ministries.

Madam President, this expansion could likely include the Human Rights Commission. We will be working closely with the Ministry of Community, Culture and Sports and Legal Affairs to see the project come to fruition.

This is an exciting prospect for Government, and we look forward to providing more details as this project continues to evolve.

Thank you, Madam President.