

## Bar Association criticises Moniz over fees



Richard Horseman

Simon Jones

The Bermuda Bar Association has accused Attorney-General Trevor Moniz of turning a blind eye to its repeated calls to allow conditional fee agreements in Bermuda.

Richard Horseman said the Bermuda Government's stance on the legal arrangements, which mean lawyers only get paid if their clients win, was depriving people of their right to justice. The Bar Association's president dismissed the idea that fee agreements were designed to line the pockets of lawyers or increase levels of litigation. He said that they

would improve access to justice by making legal services available to people who would not otherwise be able to afford a lawyer's fees.

A spokeswoman for the Ministry of Legal Affairs told *The Royal Gazette* that it had not received a "compelling case" for the change in Bermuda, but maintained the ministry was "open to discussions".

Mr Horseman said: "Despite the compelling social policy objectives behind the subcommittee's proposals, the considerable work that went into investigating the options and the support of the judiciary, the Bermuda Government has declined even to discuss the Bar Council proposals.

"Numerous attempts have been made to engage with the Attorney-General over the past two years but Mr Moniz has refused even to acknowledge Bar Council's several requests for a meeting much less to engage in a discussion with us.

"The result, sadly, is that many individuals in our community continue to be deprived of the right to justice, including redress from personal injuries, medical malpractice, mistreatment by employers or landlords or through holding the Government to account for its actions."

Under a conditional fee agreement legal practitioners charge an agreed uplift on the usual fees if they win, whereas under a contingency fee agreements lawyers' fees are calculated as a percentage of the amount awarded by the court.

In August 2012 the Bar Association put together a subcommittee, chaired by Mark Chudleigh, to determine whether conditional or contingency fee agreements should be permitted for civil cases in Bermuda.

After a period of consultation, the subcommittee issued its final report in October 2014 together with draft proposed legislation.

The proposed legislation was based on the UK conditional fees statute. The subcommittee was not in favour of moving to a US-style contingency fee regime and preferred the more moderate conditional fee approach for Bermuda.

The spokeswoman for the Ministry of Legal Affairs said: "Conditional fee arrangements have attracted

criticism in the UK where these reforms originated. Many voices at the time of enactment raised concerns about that jurisdiction moving closer to the litigious culture which prevails in the USA.

“This has happened to some extent, with some research pointing to across-the-board increases in health and motor insurance premiums.

“The Ministry of Legal Affairs has to date not received a compelling case for action but we remain open to discussions with any stakeholders on proposals that genuinely address access to justice issues.”

Mr Horseman maintained that the objective of fee arrangements was to spare a client from having to bear the “considerable price of entry for civil litigation by enabling the lawyer to share in the risk of the litigation”.

He added: “Numerous jurisdictions have permitted lawyers to enter into conditional or contingency fee arrangements. Notable examples include the United States, the United Kingdom and Australia.

“As matters stand in Bermuda, civil litigation is largely the preserve of wealthy corporations or individuals or middle-class individuals who are willing to use life savings or to mortgage their homes in order to fund legal expenses.

“Every lawyer in Bermuda has a tale of a deserving individual who has been deprived of their right to legal redress because they were unable to qualify for legal aid yet could not afford the cost of litigation.”