



MINISTERIAL STATEMENT

To the House of Assembly

by

**The Hon. Kathy Lynn Simmons, JP, MP
Attorney-General and Minister of Legal Affairs
and Constitutional Reform**

Entitled:

**Update on the Successful use of Special Measures, per Part 5 of
the Child Safeguarding (Miscellaneous Amendments)
Act 2019**

Monday, 27th February, 2023

Mr. Speaker, I rise today, gratified to inform this Honorable House that the Special Measures for child witnesses, as contained in Part 5 of the *Child Safeguarding (Miscellaneous Amendments) Act 2019* (“the Act”) have now been utilized—for the first time—successfully at trial in the Supreme Court.

Honourable Members will recall that the *Child Safeguarding (Miscellaneous Amendments) Act 2019* received Royal Assent on the 6th August 2019. Part 5 of the Act, which specifically makes provisions for Special Measures for child witnesses in criminal trials, came into operation on 15th July 2022. Consequently, Bermuda today fully meets the requirements of the Lanzarote Convention, or the *Convention on Protection of Children against Sexual Exploitation and Sexual Abuse*.

Mr. Speaker, as I avowed in previous Ministerial Statements in this Honourable House on the subject matter, Members will appreciate the practical challenges and sensitivities at play when securing evidence in open court from child witnesses in sexual assault cases. Judges must balance the procedural fairness to the accused against the need to safeguard child witnesses from being re-traumatised by the trial experience. The newly enacted statutory provisions for Special Measures for child witnesses in sexual offences provide a robust framework for judicial decision making on the range of procedural and evidential issues in such cases. One of the new Special Measures that is now available is the pre-recording of a child's evidence.

Mr. Speaker, with the astute assistance of the Director of Public Prosecutions, Ms. Cindy Clarke, I am able to share with this Honourable House, the following account of the practical application of Special Measures permitting the recording of child witness evidence by pre-recording in the Supreme Court.

Mr. Speaker, in November 2022, (I am intentionally not stating specific dates or gender, to protect the victim) pre-recorded child witness evidence was used, for the very first time in this jurisdiction, in a Supreme Court criminal trial. In that instance, a young victim under the age of 10 gave their evidence in the Justice Subair Williams' Chambers, where it was recorded for later use at trial.

Present in the judge's chambers as the evidence was recorded were: presiding judge Justice Subair Williams; The Director of Public Prosecutions, Ms. Cindy Clarke; Defence Counsel, Ms. Elizabeth Christopher; a Witness Care Officer from the Department of Public Prosecutions; a court-appointed intermediary; and the Court Clerk. Including the child witness, there were seven (7) persons in total.

All of the attorneys' questions put to the child witness were pre-vetted by the intermediary to ensure that the questions were suitably age-appropriate. The defendant was not allowed in the judge's chambers during the recording of the evidence. Rather, the defendant was located in the courtroom, with an audio-visual link provided for them to observe the child's evidence, as it was collected in real-time. Great care was taken to ensure that the defendant could communicate with their legal counsel privately; and that the child witness was not able to see, nor hear the defendant during the process.

Additional 'soft-touch' accommodations included the absence of official court room attire, such as wigs and gowns. In fact I am told that everyone physically present in the judge's chambers wore something pink—an ode to the child witness' favourite colour.

Whilst the evidence of the child was of the most personal nature, as it was in reference to circumstances of serious allegations of sexual exploitation, the tone, language and flow of the interview was kept light, moderate and even-paced by all concerned. Demonstrably, the focus was on the well-being of the child without compromising the quality and

reliability of the evidence. On final review by the professionals who participated, they would concur that the process ensured that the child was treated with dignity, respect and compassion.

Mr. Speaker, in that case, the recorded child witness' evidence was played for the jury during a Supreme Court trial at the close of 2022. The defendant was unanimously convicted by the jury of each of the sexual exploitation charges made against them. We can all breathe a sigh of collective relief in knowing that justice was truly served in this case without having the court environment contribute to re-traumatizing the witness. This child witness was never required to confront the defendant, nor was he/she obligated to testify in the intimidating court room setting in front of the adult jury. The defendant faces sentencing next month, and the Prosecution is confident that this was a secure conviction, made possible because of the use of the Special Measures provisions.

Mr. Speaker, I can also report that a second use of the Special Measures procedure took place during the week of January 30 – February 3, 2023.

I am advised by the Director of Public Prosecutions, that the pre-recording of the child's evidence in that case was equally successful. Confidence by professionals in their use of the procedure and the many recognised benefits to the overall administration of justice are lauded across the legal profession and the inter-agency Child Safeguarding Committee. I am further advised that interest among the legal profession is such that the Bermuda Bar Association is looking to run a training session for its members on the Special Measures procedure.

Mr. Speaker, The Government has been unfaltering in reforming our laws to ensure adequate safeguarding of our children, and guaranteeing that new child safeguarding laws are effectively implemented and operationally successful. To that end, budgetary resources via the Department of Public Prosecution's 2022/2023 vote were properly used to procure twenty (20) iPads for the very purpose of pre-recording and playing child evidence.

In concluding my remarks, **Mr. Speaker**, I wish to take this opportunity to thank Justice Subair Williams, and the staff at the Registry of the

Supreme Court, for urgently facilitating the pre-recording of the evidence of children in the sexual offence trials mentioned. The professional conduct of our public officers has been exemplary, as they facilitated all of the necessary logistics for the collection of the evidence with dignity and integrity, without compromising the overall fairness of the trial process.

I extend additional gratitude to the Director of Public Prosecutions and her stalwart team of Crown Prosecutors and Witness Care Officers for their persistent efforts to aid in upholding the law, especially in these extremely sensitive cases. Public officers from the Ministry of Legal Affairs and Constitutional Reform and from the Ministry of Social Development and Seniors, as well as partners from the criminal justice and child safeguarding teams, took time to attend parts of the trial to bear witness to the effectiveness of the Special Measures provisions in action. They are to be thanked for their collective engagement which adds to the ripple effect of public confidence in the measures and ultimately in reducing the hesitation of victims and families to report crimes against children.

When speaking on this topic, **Mr. Speaker**, I always close with a clarion call to the public to remind us that every child deserves a safe and healthy childhood; which means we must all remain vigilant and play our role as we continue to protect our children from those who seek to cause them harm.

Thank you, **Mr. Speaker**.