



Government of Bermuda

**Ministry of Social Development and Seniors**

**MINISTERIAL STATEMENT**

by

The Hon. Tinee Furbert, JP, MP  
Minister of Social Development and Seniors

**Update on the Litigation Guardian Services**

**Friday, February 3<sup>rd</sup>, 2023**

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**Mr. Speaker,**

This morning I rise to share with my Honourable colleagues the continued progress that is occurring for the provision of Litigation Guardian Services in Bermuda. As a reminder, in alignment with The Children Act 1998, Litigation Guardians are appointed by the Courts to be the voice of the child and to safeguard the interest of children.

**Mr. Speaker,**

Back in April 2022 and then again in July 2022, I informed the members of this Honourable House about how Litigation Guardian services were being established in Bermuda. Since then much important and critical work has been undertaken to service our children who are in of the highest level of support. The children to whom I refer have all experienced adverse childhood experiences such as damaging and undermining parental separation or direct abuse and neglect by those legally responsible for looking after and caring for them.

These children **Mr Speaker**, are Bermuda's responsibility, so I am delighted to report on the work implemented to further develop and embed the litigation guardian service into Bermuda and its judicial system.

**Mr. Speaker,**

Three new Litigation Guardians were recently appointed and are actively taking on individual cases that the Family Court has deemed a Guardian is needed. This raises the total to five practicing Litigation Guardians to service our children.

However, **Mr. Speaker**, a larger pool of Litigation Guardians is needed, which will not only enable more children to have the extra level of protection needed; but also offer our Courts additional qualified Guardians whom they can call upon to give a view about an issue for a child, at short notice. This spacious availability is needed in particular when the Department of Child and Family Services is not the right agency to call upon for an independent view of what is in the child's best interests.

**Mr. Speaker,**

It will take time to form a large enough pool of Litigation Guardians with the right qualifications and experience. Nonetheless, the Ministry of Social Development and Seniors will start the process and in the upcoming months, a further recruitment campaign will be launched. During this round of recruitment, our ultimate aim is to establish a Duty Litigation Guardian System for the Family Court.

**Mr. Speaker,**

I will now share the additional building blocks the Ministry has been putting in place to strengthen the foundational work and to ensure a sustainable high-quality Litigation Guardian service in the long term. These include:

1. A protocol for the administrative process;
2. Identifying office space for the Litigation Guardians;
3. Production of Litigation Guardian Practice Guidance and Training;  
and,
4. Strengthening the working relationship with the Judiciary.

**Mr. Speaker,**

Firstly, the Ministry has been advancing the service framework for Litigation Guardians, by putting in place a protocol to be followed when the Court decides that the appointment of a Litigation Guardian is in the child's best interests. This administrative process will ensure the appointment of a Guardian in a timely manner, that is without delay for the child, and for the Court.

Secondly, **Mr. Speaker,**

The Ministry is currently identifying space within its office which will give the Litigation Guardians access to secure storage for all Litigation Guardian files; and provide a work area to review files, hold meetings and/or training sessions. This is an important development as by Law, the Litigation Guardian Service should be independent. Also, advice given from the Consultant assigned to lend support to Bermuda by the UK Foreign Commonwealth Development Office, is that the Ministry is the preferred safe space for the work of Litigation Guardian Services.

Thirdly, **Mr. Speaker,**

The Ministry has developed comprehensive Litigation Guardian Practice Guidance which details how the Litigation Guardian Service will work, including what Court practices are needed for the successful provision of Guardian Services to children.

Lastly, **Mr. Speaker,**

One significant development during the past year is the closer and deeper involvement of the Judiciary in the work of the Litigation Guardian Steering Committee, which meets monthly and whose members are driving forward these developments. I believe we are now at the stage where the entire family justice system is working together with one voice and that voice is "the voice of the child", which is the overriding principle. Included in the Practice Guidance and in the Committee's monthly deliberations is how ensuring the court always hears

and understands the voice of the child before a decision is made about the child, a decision which can have lifetime consequences.

**Mr. Speaker,**

In working closely with Judges and Magistrates on policy issues, and making sure that the work does not compromise judicial independence on cases of individual children, the Ministry has been considering how to highlight the importance of the child's timescale, the child's chronology – which is different from incident-based chronology – and the impact on the child both of what has happened and what is being planned for the child's future. **Mr. Speaker,** this sounds fundamental but it really represents a cultural shift toward a System that truly puts the Child First.

**Mr. Speaker,**

The Litigation Guardian Steering Committee members are overcoming the challenges and the obstacles, and also thinking about radical reform. The Children Act 1998 is 25 years old and a lot has changed in our society in the last 25 years. So rapid change is needed just to catch up with the way we now live. Just last week, Consultant, Mr. Anthony Douglas, CBE, was in Bermuda and steered a series of information and training sessions for the Litigation Guardians, Social Workers and Managers in the Department of Child and Family Services, in addition to Magistrates, Acting Magistrates and Family Court Panel members. The sessions focused on analytical writing for case reporting, essential litigation guardian practice, the role of the Litigation Guardian, best practices in child protection, attachment theory, accelerated reunification, and how co-parenting can be supported in custody and access cases.

In closing **Mr. Speaker,**

During the upcoming year, the Steering Committee intends to look at how cases are reviewed in court, to consider a new threshold for triggering a review and to carry out further 'training weeks' to enhance and continuously improve practice standards. The Committee will also continue to work closely with the judiciary to look at issues such as: how child witnesses can best be supported in all types of

hearings: the role of intermediaries in court cases in that intermediaries help vulnerable persons to navigate the complexity of an average court process; and, a stronger co-parenting programme for Bermuda.

**Mr. Speaker,**

Allow me to thank everyone who has played a part in moving this vital service for our children forward. The checks and balances being implemented against the assessment of children's needs ensures that the Litigation Guardian service does not fall short of best practice globally and any plan proposed for our children is in their best interests.

Thank you, **Mr. Speaker.**