

**BERMUDA**

**CHILDREN ACT (LITIGATION GUARDIAN) RULES 2018**

**BR / 2018**

**TABLE OF CONTENTS**

1	Citation
2	Interpretation
3	Procedure for appointment of litigation guardian
4	Order of Court appointing litigation guardian
5	Litigation guardian to be treated as party to proceedings
6	Power of Court to change litigation guardian or revoke order of appointment
7	Duties of litigation guardian
8	Appointment of counsel for child
9	Duties of counsel representing child in Court
10	Counsel to make and receive service of documents
11	Termination of counsel's appointment

The Chief Justice, in exercise of the power conferred by section 34F of the Children Act 1998, makes the following Rules:

**Citation**

- 1 These Rules may be cited as the Children Act (Litigation Guardian) Rules 2018.

**Interpretation**

- 2 In these Rules—

“the Act” means the Children Act 1998;

“the Council” means the Litigation Guardian Council established under section 34A of the Children Act 1998.

**Procedure for appointment of litigation guardian**

- 3 (1) Where the Court determines under section 35 of the Act that a litigation guardian be appointed, it shall order that a litigation guardian be appointed and the order shall direct the Council to recommend to the Court the appropriate person to be appointed

## **CHILDREN ACT (LITIGATION GUARDIAN) RULES 2018**

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as litigation guardian from the panel of litigation guardians established under section 34C of the Act.

(2) The Council's recommendations as referred to in subparagraph (1) for the appointment of a litigation guardian shall be supported by an affidavit setting out—

- (a) a statement from the person selected for the appointment as litigation guardian consenting to the appointment;
- (b) the identity information of the person selected;
- (c) the qualification of the person selected; and
- (d) the experience of the person selected, demonstrating the person's competence to assist with the conduct of proceedings on behalf of the child;
- (e) a statement to confirm that the person selected has no interest adverse to that of the child; and
- (f) the Council's statement on the reasons the person selected is regarded by it as suitable to assist with the needs of the particular child in the case before the Court.

### **Order of Court appointing litigation guardian**

4 (1) The Court may, upon being satisfied with the recommendation of the Council on the appointment of a litigation guardian and the supporting affidavit, make an order appointing the litigation guardian for the child concerned.

(2) The order of the Court appointing the litigation guardian shall be served on—

- (a) the parent or guardian of the child;
- (b) the litigation guardian appointed; and
- (c) any other party to the proceedings.

### **Litigation guardian to be treated as party to proceedings**

5 Unless the Court directs otherwise, a person appointed as litigation guardian to the child concerned shall be treated as a party to the proceedings with respect to that child and with respect to service of documents to, or notices to be given to, parties to the proceedings.

### **Power of Court to change litigation guardian or revoke order of appointment**

6 (1) The Court may, on its own determination or on application by a party to the proceedings—

- (a) direct that a person may not act as litigation guardian;
- (b) revoke the appointment of a litigation guardian; or
- (c) appoint a new litigation guardian in substitution of an existing one.

**CHILDREN ACT (LITIGATION GUARDIAN) RULES 2018**

(2) An application by a party to the proceedings for an order or direction under subparagraph (1) shall be accompanied by a supporting affidavit setting out the reasons for the application.

(3) The appointment of a new litigation guardian in substitution of an existing one shall be made in accordance with the procedure in paragraphs 3 and 4.

**Duties of litigation guardian**

7 A litigation guardian appointed by order of the Court under paragraph 3 shall have the following duties—

- (a) to have effective control over a case brought on behalf of, or against, a child and to act on behalf of the child upon the hearing of any application in the applicable proceedings with the duty of safeguarding the interests of the child;
- (b) be responsible, on behalf of the child, for anything that a party to the proceeding is required or authorised to do;
- (c) conduct such investigations as are necessary to enable him to adequately represent the child by —
  - (i) contacting or seeking to interview such persons as he thinks appropriate or as the Court may direct;
  - (ii) obtaining such professional assistance as is available, which he thinks appropriate or as the Court may direct;
- (d) give such advice to the child as is appropriate having regard to the child's understanding; and
- (e) provide the Court with such other assistance as it may require.

**Appointment of counsel for child**

8 (1) ~~The Court may, in accordance with section 35(3) or (4A) of the Act, appoint Counsel to represent the child.~~

(2) Where counsel to represent the child is appointed under ~~section 35(4A)~~, a litigation guardian appointed with respect to the same child shall—

- (a) where appropriate, instruct counsel on all matters relevant to the interests of the child arising in the course of proceedings, including possibilities for appeal;
- (b) give such advice to the child as is appropriate having regard to that child's understanding.

**Duties of counsel representing child in Court**

9 (1) Subject to subparagraph (2), counsel for a child appointed under ~~paragraph 8(2)~~ must represent the child in accordance with instructions received from the litigation guardian.

## **CHILDREN ACT (LITIGATION GUARDIAN) RULES 2018**

(2) Where, after taking into account matters in subparagraph (3), counsel for the child considers that the child—

- (a) wishes to give instructions which conflict with those of the litigation guardian; and
- (b) is able, having regard to the child's understanding, to give such instructions on the child's own behalf,

counsel shall conduct the proceedings in accordance with the instructions received from the child.

(3) Where counsel has to determine whether to take instructions from the child as provided in subparagraph (2), he shall take into account—

- (a) the views of the litigation guardian; and
- (b) any direction given by the Court to the litigation guardian concerning the part to be taken by the litigation guardian in the proceedings.

(4) Where the Court has not determined that a litigation guardian be appointed under section 35 of the Act, counsel for a child must represent the child in accordance with instructions received from the child.

(5) Where counsel for a child receives no instructions under subparagraphs (2), (3) or (4), he must represent the child in furtherance of the best interests of the child.

### **Counsel to make and receive service of documents**

10 Counsel for a child appointed under paragraph 8 must serve documents, and accept service of documents, on behalf of the child in accordance with rule ..... of the Rules of the Supreme Court 1985.

### **Termination of counsel's appointment**

11 (1) Where a litigation guardian wishes an appointment of counsel made under paragraph 8 to be terminated—

- (a) the litigation guardian may apply to the Court for an order terminating the appointment; and
- (b) the litigation guardian and the child, if he is of sufficient understanding, shall be given an opportunity to make representations to the Court.

(2) Where the child concerned wishes an appointment of counsel made under paragraph 8 to be terminated—

- (a) the child may apply to the Court for an order terminating the appointment; and
- (b) the counsel and the litigation guardian shall be given an opportunity to make representations to the Court.

**CHILDREN ACT (LITIGATION GUARDIAN) RULES 2018**

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(3) Where the Court determines to terminate the appointment of counsel under subparagraph (1) or (2), the court will give reasons for so determining and cause a record of such reasons to be taken.