



[2016] ITNJTrans 1

IN THE INTERNATIONAL TRIBUNAL FOR NATURAL JUSTICE ('ITNJ')

Chief Justice's Chambers  
Melbourne  
Australia

**No 2 of 2016**

**B e t w e e n -**

**NATIONAL CHILD PROTECTION ALLIANCE ('NCPA')**  
*Applicant*

and

**COMMONWEALTH OF AUSTRALIA**  
*Respondent*

**WALSH OF BRANNAGH CJ**

**TRANSCRIPT OF PROCEEDINGS**

AT MELBOURNE, AUSTRALIA  
MONDAY 12<sup>th</sup> SEPTEMBER 2016, AT 10.00am.

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## **APPEARANCES:**

### **For the Applicant:**

No Appearance

### **For the Respondent:**

No Appearance

### **For the Tribunal:**

Chief Justice Sir John Walsh of Brannagh

Julie-Anne Pho, Associate to Chief Justice / Court Officer,

Shae Woodward, Associate to Chief Justice / Court Manager

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## **SUMMARY**

The first day of the trial for the case of *National Child Protection Alliance v Commonwealth of Australia* was listed for 12 September 2016. However, given the Applicant's concerns about proceeding with the trial, mainly due to real security threats (as expressed by its Executive Chairman, who shall remain anonymous for privacy reasons) the trial was put on hold. An interlocutory hearing took its place on the same date of 12 September. Although a Notice of Hearing was sent to both the Applicant and the Respondent, and the Executive Chairman of the NCPA had in fact spoken to the ITNJ's legal team about the interlocutory hearing upon receipt of the Notice of Hearing, there was no attendance on behalf of the Applicant or the Respondent. Notwithstanding, the hearing went ahead so that Chief Justice Walsh of Brannagh could get certain facts and issues on the record.

Chief Justice Walsh of Brannagh detailed the history of the matter as it progressed through the ITNJ. He described the receipt and approval of the NCPA's application in December 2015, and the directions hearing held on 12 February 2016. He also described the planning process for the trial and its eventual listing over July and August 2016, and the NCPA's correspondence with the ITNJ over the last few weeks regarding its intention to put a stay on the proceedings due to security concerns for its members and witnesses.

Being respectful of the Applicant's concerns, as well as its underlying commitment to its cause of action, Chief Justice Walsh of Brannagh did not exercise his discretion to strike out the proceedings despite the Applicant's lack of attendance at the interlocutory hearing. Chief Justice Walsh of Brannagh also acknowledged the Respondent's rights not to be dragged through court proceedings vexatiously or unnecessarily. He then ordered that the Applicant inform the ITNJ of its intention with regards to the proceedings on foot, otherwise the ITNJ will strike out the proceedings. He clarified that the NCPA had a month from the date of the interlocutory hearing, being 12 October 2016, to let the ITNJ know in writing if it would like to proceed with a trial by a particular date, or to adjourn it to a later time but in the foreseeable future. A costs order was also made against the Applicant for wasting the ITNJ's time by way of failing to attend the hearing.

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**MISS PHO:** Good morning, this is the proceeding for the National Child Protection Alliance vs the Commonwealth of Australia. The date is the 12<sup>th</sup> of September 2016 and the time is 10.00am Australian Eastern standard time. Presiding over the matter is Sir John Walsh of Brannagh Chief Justice of the ITNJ. We also have Julie-Anne Pho, myself and Shae Woodward as court officers, of the ITNJ. The Applicant in this matter is the National Child Protection Alliance which will now on be referred to as the NCPA.

Is there a representative present for the applicant today?

It seems we have no one present for the Applicant today we will continue with the proceedings regardless so that some issues can be clarified and put on record. The Respondent in the matter is the Commonwealth of Australia. Is there a representative for the Commonwealth present today? ....

It seems we have no one present for the respondent. We will continue on with the proceedings so that we can have some issues clarified and put on record.

**MISS WOODWARD:** The purpose of this hearing is to determine where each parties currently stands, provide the public and the tribunal with an update of the current status of the

action and future proceedings, and if any will be taken by the NCPA. Today, we will provide a brief summary of the case, the events in lead up to the trial and seek further clarification, on some issues that have been raised in the ITNJ proceedings, which suggest that we put it on hold. We will then give both parties the opportunity to comment. In light of the recent circumstances we will then seek clarification from the applicant as to whether they seek the application to be permanently withdrawn or be temporarily put on hold.

If this clarification cannot be achieved today the proceedings could then be adjourned to another date or sine die, or could be struck out. We also note that pursuant to the Constitutional of the International Tribunal for Natural Justice, 2015 these proceedings are being recorded as no formal objection has been raised by either parties. It is being recorded by ITNJ technicians and will be published, along with the transcript on the ITNJ website. However, they are not being broadcasted live for security reasons. If anyone has any objections to this procedure, please make that known now before we proceed.

**HIS HONOUR:** It appears there is no objection. The ITNJ received an application from the NCPA, the National Child Protection Alliance in December last year, December 2015 which was later accepted. The application was for a declaration to be made that the Australian Family Law Act in it's implementation by way of the family courts, the judiciary and the legal system and law enforcement are in direct breach on the United Nations Convention on the Rights of the Child, articles 9 and 24 specifically, and the declaration was to recommend changes towards justice and fairness in recognition of the rights of the children of Australia whilst addressing the issue of domestic violence including child protection. After that was received a directions hearing was held on the 12<sup>th</sup> of February this year. Two representative from the NCPA were in attendance and I refer to what happened at that directions hearing.

The two people who attended the directions hearing including \*NCPA 1\* who was the Head of the NCPA and \*NCPA 2\*. We went through the procedure of the ITNJ rules and we discussed a number of procedural matters in relation to the evidence. It was discussed that witnesses could be present and give vive voce evidence in person or depositions could be taken or they could give evidence by way of video link. The NCPA was of the view that maximum impact would be gained by having people present who are willing to give evidence. One of the witnesses was one of the children who had been abused who was now over the age of 18, the relevance of that is that under the Family Law Act people who take

part in proceedings are prohibited from discussing the proceedings afterwards and that prohibition extends to going to the police to complain about violence or sexual attacks on the children or anything else that binds any child who is under the custody battle, who is under the age of 18 from even complaining about the matters.

We discussed very thoroughly during the directions hearing that the way the hearing would take place. At that stage the Commonwealth of Australia as the respondent had indicated to the tribunal they would not be attending, but as a courtesy we, as a tribunal sent them copies of the directions hearing and we also made it a requirement that copies of any documents be served, also be served on the Commonwealth. I could add there that the Commonwealth didn't necessarily accept the jurisdiction of the International Tribunal for Natural Justice in the same way that they don't accept the jurisdiction of the Permanent Court of Arbitration and other international bodies.

I think the difficulty seen in the Commonwealth stance is that the Commonwealth as the Commonwealth of Australia ratified the Convention on the Rights of Child and then the applicant was of the view that. It had been largely ignored. After the directions hearing there was discussion with the NCPA and arrangements were made for the hearing. They wanted some time to get clarify witnesses who would actually be giving personal evidence and they wanted matters if security and anonymity to be covered. That was be done and ultimately in July and August dates were discussed are the ITNJ indicated it would cooperate by having hearings during a week that was suitable to the applicant and to the witnesses and eventually the date of the 12<sup>th</sup> September today was set down.

Then in the past couple of weeks the applicant expressed to the tribunal a number of concerns which really hadn't been raised before, but these included real threats to the security of witnesses and its own members and there is in the minutes of the meeting, of the NCPA National Executive Council and on the 24<sup>th</sup> of August 2016. The tribunal received a phone call from \*NCPA 1\* and he's the executive Chairmen of the NCPA and he had indicated that they had had an emergency meeting and they were requesting that the hearing not go ahead on the 12<sup>th</sup>. This was on the Wednesday the 24<sup>th</sup> of August and at the same time he indicated that they wanted to have a meeting on the 5<sup>th</sup> of September. Subsequently we wrote to the NCPA and indicated that if any party wanted to have a meeting with the tribunal before the

trial and specifically with the judge hearing the case, we could undertake that if the respondent was advised and the respondent was given an opportunity to attend.

The minutes of the emergency meeting of the NCPA National Executive Council, well on the 24<sup>th</sup> of August this year, a statement was issued by them and I'll read it out.

It says, "we have received information that some militant fathers rights supporters and some other civil rights groups may be planning to disrupt the ITNJ proceedings and use such proceedings to make their own cause. We are already severely constrained of bringing a case before the ITNJ by the legal requirements of section 121 of the Family Law Act to take every possible step to exercise due diligence to ensure that the identities of those participating and who are still engaged in family law proceedings will be secured and protected. Several of the witnesses are suffering complex post traumatic stress after suffering years of abuse and violence in domestic matters and from subsequent mental abuse and are extremely emotionally fragile and would require support and reassurance throughout the proceedings. Some potential witnesses have already withdrawn as they could not face the stress of doing the proceedings and such disruptions and misuse if the proceedings were to occur undoubtedly be exposed to further stress and anxieties plus and possible exposure of their identities. It is our duty and first priority that those vulnerable parents and children are safe and protected.

It then goes on to say.

Over several years and in recent weeks officers of the NCPA have received a great deal of harassment, abuse, and threats of harm and death from militant father's rights but have always been prepared to continue their work despite such occurrences there is therefore a risk they will then also be exposed to harm during the course of the hearing.

In such circumstances it has been decided by the NCPA Executive Council to postpone the proceedings with ITNJ sine die until such matters can be fully considered and an alternative strategy be devised in order to bring to public attention the harms which have been caused to young people by the Family Courts of Australia. We shall be considering these matters very carefully over the next few weeks and determining how and when we will proceed in these matters with minimal risk to participants.

That was on the 24<sup>th</sup> of August and we responded to them and pointed out that in the directions hearing that took place in February this year we made it clear that arrangements were being made to firstly to take evidence by way of deposition or affidavit and secondly anyone that did not wish to have his or her identity known steps would be taken to mask the identity either by a screen, or by some other method of evidence being able to be, without the physical identity of the person being named or information been given leading to the identity of the person.

Now, the booking for the hearing was to take place at Monash University Law Chambers. In fact, it is just round the corner from this officer. The booking was made direct by the NCPA and the booking was signed by \*NCPA 1\* who sent that minute and so it does read out, and the date of the booking was the 17<sup>th</sup> of July so five weeks elapsed before the NCPA had decided that they didn't want to proceed. So the applicant's position is a little unclear at the present time because we weren't quite sure exactly what is. We asked whether they wanted a postponement to a specific date and some of the answers we have been getting have been quite confusing.

Now if the application is to be indefinitely withdrawn the tribunal has an obligation to make a decision as to whether the matter is to be adjourned to a fixed date or to certain date and also apart from the people in this room there were a number of other people involved in the getting ready for any sort of court hearing and costs have been incurred and I'm quite sure that the Commonwealth isn't going to object to the NCPA pulling out. At this stage a decision has to be made as to exactly what the NCPA wishes to do. If it's to be temporarily put on hold we need to set a down a date for the trial and then address security and privacy issues ensuring the safety of all involved in further hearings.

I can repeat that we covered this matter during the directions hearing and in the correspondence since the NCPA indicated that they wanted to as they put matters on hold. We have certainly clarified that there is no need for people to put themselves at risk in giving evidence. It was the NCPA that wanted to have people giving live evidence and one of the main witnesses that would occur was one of the victims who is now over the age of 18 and wanted to let the court know and the world know what happened, what happened to her. That

the statements that were given to us indicated that a lot of the harm done could have been stopped at the family court level or at the police level and had not been.

We will try to clarify what the NCPA position is. If they were present I would ask them and I haven't heard anything for the last few days. We have been trying to find out from them exactly what they wanted to do and it's our obligation to make, make a decision and I'm coming to a view...What I propose doing is to indicate that unless we get a firm decision from the NCPA and a firm date set for the trial by a certain date that the matter be struck out. What struck out means is that the matter will be removed from list and the NCPA will no longer be an applicant and if they want to re-instate the matter they'd have to basically start afresh.

It is different from a dismissal. A dismissal is when the evidence is heard. Both sides are heard and then the decision is made saying that the application is granted or dismissed. What I am saying is that I will set a date by which time we want the NCPA to confirm its resolve to go ahead. I propose that the date be a month from today that if the NCPA wishes to proceed within one month of today they are let us know that they are going to proceed they agree on the on the date for the trial and that the court costs are paid.

I should indicate in relation to costs, we had the directions hearing back in February and although there is always a court fee cost charge we didn't charge costs at that time. I think in relation to what some might see as a waste of time today and a waste of time this week, because quite a number of people arranged their affairs to be Melbourne for the week to be present during it and think it may fair to say that NCPA should be ordered to pay some costs and what I propose is that the NCPA be ordered by pay the cost of one days hearing that is today and the court scale is because we operate as a London based tribunal operating internationally the fees are set in British Pounds and the fee for a days hearing is 2,000 pounds. So I order that the NCPA pay the sum of 2,000 pounds for forcing us into a position where we are unable to proceed today.

**MISS PHO:** Given that Chief Justice Sir John Walsh of Brannagh has decided that NCPA has one month from today to formally declare that they will be proceeding with the matter, so that being the 12<sup>th</sup> of October 2016. If the NCPA is unable to do so Sir John Walsh of Brannagh will be striking out the proceedings and costs will be ordered against the applicant. The order



will then be forwarded and sent out by email to both parties within seven working days of that date.

**HIS HONOUR:** Perhaps I should clarify costs. The NCPA have been ordered now to pay costs for today's proceedings of 2,000 pounds. If we hear from them in a month another date will be set the hearing will be set down for, it was estimated it would take five days. It would be set down at a suitable date where we could have the continuity of five straight days. It's always particularly in sensitive matters it is always helpful if a case lasts more than one day to have the hearing in continuous days rather than having them split up and hearing one day one week then hearing one day another week and so on.

If the NCPA do not let us know that they are prepared to seriously go ahead within one month then the matter will be struck out and the NCPA matter will not be before the ITNJ. That's not to say that the issues that they raised- the protection of children and abuse in custodial matters could be addressed by somebody else.

It is significant that while these proceedings were being listed there is a royal commission being listed in Australia in relation to institutional abuse of children and the ITNJ application is not against a specific church or orphanage or school or whatever, it is actually against the system that over the years has evolved where for some reason in a custodial battle the real interests of the children are not being heard and children generally not being allowed to give evidence and their views are largely disregarded and it appears from the material put before the tribunal that there has been a policy decision in relation to the administration of family law matter that both parents should be given equal rights and equal custody of children, irrespective of any problems with either parent, with father or mother. I notice that the NCPA talks about father's rights groups and threats of death and harm to them. I know from the telephone the NCPA actually also mentioned apart from death threats having his house burnt down.

**HIS HONOUR:** I'll just say, I was just going to say that although there has been talk of death threats and talk of harm to the witnesses and harm to the people running the NCPA no one seemed to be concerned about the court staff and Sacha Stone sent an email this morning that, thanking both Shae and Julie-Anne for lasting the distance and we're not going to be frightened away and we will be here to hear the case. If the NCPA do come back to, the ITNJ

will be willing to hear any cases that will come before it. So, I think that might be a closing signal.

**MISS WOODWARD:** Is there, so is there anything else you want to cover?

So appears to conclude today's hearing. A transcript of proceedings will be sent to both parties and published on the website. The video recordings will also be made available as soon as possible and accessible ITNJ official court website. A copy of the orders made today will include notification of the quantum of costs as said 2,000 pounds will be sent out to the parties in due course and that concludes today's hearing.

**MISS PHO:** The matter is now stood down.