

P. 1 P. 13,

P. 24 Chotalia
will not
meet with
input from
counsel

Transcript of the Case Management Conference
dated November 6, 2009

[Unknown] Person for the Tribunal is Shirish Chotalia.

Chairperson Chotalia. Good afternoon counsel and how is everyone today?

[Unknown] Good thank you. Fine thank you.

Chairperson Chotalia. Thank you, first of all I wanted to begin by thanking all of the counsel for appearing on short notice to discuss this case. What I would like to do is, we've also got Greg Miller Tribunal counsel here, he's just stepped out of the room for a minute, now I have a cursory review of the file in terms of the particulars and the witnesses and the issues that have been outlined, in this statement of particulars. Now what I'm proposing is that we, I'm going to ask all of counsel I mean, first of all I thank counsel for co-operating with the Tribunal in terms of focusing this inquiry. The mandate, of course, of the Tribunal is to provide an expeditious and fair process for these hearing of discrimination cases and what I would like to do is take a principled approach to the presentation of the evidence, now I understand that the existing schedule contemplating the one that started in November and then a resumption in January, meanwhile there is the outstanding ruling on the jurisdiction from the federal court so I'd rather stand it's a primary respondent's counsel there is no stay, no requests for, for a stay, is that correct?

[Unknown] That is correct.

Chairperson Chotalia. Okay, so we'll proceed with the hearing, but again I think we really need to narrow the issues and the purpose of the case management content today is to see how we can, at this time the counterclaim 75 witnesses I have here AFN 26 witnesses including the expert witnesses and those requiring a subpoena some of those include public office holders so we're going to have to deal with those issues. The Commission as I can see has some 15 witnesses including the 3 expert witnesses and I see that the Chiefs has some 18 witnesses.

Mr. Sherry Oh um Ms. Chair could I just, I don't mean to interrupt, but just so -

Chairperson Chotalia Oh yes, yes go ahead. Who am I speaking to please? If you could just identify yourself.

Mr. Sherry Yeah it's Mike Sherry for Chiefs of Ontario. Just to a, I just want to a particular point, we put in our original list with 18 witnesses, but in the particulars which we filed I think October 14, it's been reduced to 8.

Chairperson Chotalia Oh okay.

Mr. Sherry Sorry to interrupt.

Chairperson Chotalia Oh know thank you that's very helpful because that was going to be one of the issues that as I understand that the terms of the interviews status were of course not to duplicate or overlap the, is it the existing evidence, so what I'm proposing is that we, you know we have to work, now first of all the first issue I wanted to deal with is the reply from the, the Attorney General had filed a request of particulars in its materials, saying that it inquired in it's statement of particulars, it had indicated that paragraph 22 "a request for further particulars" with respect to the items that a through e. Now those dealt with comparative to cultural based terminology, like the terminology itself the clarification of the particular funding agreements, the temporal scope of the complaint, the number of issues that I don't need to reiterate as you are certainly in a better position than I to be aware of, I'm just wondering from the Attorney General's perspective I know that there is amended statement of particulars of the Commission so have, so is the Attorney General not satisfied with that response or do you require further particulars?

Mr. Taylor In terms of -

Chairperson Chotalia Would you kindly give us your name sir.

Mr. Taylor Yes I'm sorry - Mitchell Taylor, for the respondent, in terms of the request for particulars that we put in our response to the complainants there has been an exchange of letters and now that you raise this thing, I'm wondering out loud if we have or should be filing those exchanges of letters with the Tribunal itself and I seek your direction on that, but there are an exchange of letters where we have gradually narrowed ourselves down so that we, well we're not completely happy with what we've got we think we've got about as much on that as we're going to get, so that one is dealt with, but at the same time the amended particulars that we have put in are in response to firstly, the Commission and secondly the Chiefs and it is our thought, so I'm raising it now that because of those amended responses we in turn need to further amend our response to the complainants. And so as well as seeking direction on whether we should file our letters to do with particulars we would be seeking some direction and maybe a timeline as to whether we can and when file an amended

particular response to the complainants.

Chairperson Chotalia Okay well I think that's the first issue that we need to deal with is the particular response, I'm sorry my, the director is indicating to me that Valerie Richer is on the line.

Ms. Richer I am.

Chairperson Chotalia Okay thank you. Now sorry I'm now trying to deal with Mr. Mitchell Taylor's query and I think that what we should do is we should definitely, I'm not sure if we need that exchange of letters or if counsel can come to some agreement as to what that exchange of letters is, you know, it would be better but if you feel appropriate I feel that we should file the reply in some form with the Tribunal so that the member will have it. Now then, I think that the Attorney General should file its amended particulars and certainly you can advise me what you feel would be an appropriate time period to file that. When would you be in a position to do that?

Mr. Taylor Well if we are sitting on the week of the 16th we should file it by November the 13th, I would think and there won't be anything surprising I don't think, it's really to bring in line the response to the complainants, bring in line our response to the complainants with what we have now filed as responses to the Commission and the Chiefs, so there won't be a surprise but we as I say and this is Mitchell Taylor speaking, should bring it in line and we could do that by the 13th next Friday.

Chairperson Chotalia Okay now I've given, I've given the whole process some thought, and had some discussions with our counsel and Greg Myers is here, I really feel that we from the Will-Say statements, it's not clear to me that there have been fair, adequate disclosure of a - the evidence that will be called and I think it's fair to say that the Will-Says are fairly generalized statements and again what I want to do is to ensure that we have a - not a hearing by ambush but really a fair and balanced hearing where we deal with the (inaudible) evidence which deal with the issues here. So what I'm proposing that we do is that the, if we reduce the witnesses we still have some 65 witnesses at any rate and we have expert and non expert witnesses and what I would like to do is to have the parties file affidavit evidence of their, of the witnesses, that is that the affidavits of what the evidence in chief will be and it should be of course the relevant evidence that goes through the issues of the discrimination and the remedy would comparator group and obviously the issues that are before the Tribunal and that will allow, of course, a meaningful understanding of the evidence. My hope is that through filing of the affidavits, they will be filed with the Tribunal and then exchanged among the parties. Once you have that exchange of affidavits each of you as counsel will be able to have a much better understanding of the exact nature of the evidence that

is going to be brought forward by a particular witness. Once you have that evidence it will be up to you to determine whether or not you choose to examine an affidavit, I'm not saying you need to examine an affidavit that's completely at your discretion, but it allow you to at least to flush out at your own mind, where the evidence is consistent with your position and where it is not consistent. In other words what I'm trying to do is to sort out the contentious evidence and non-contentious evidence and to focus the hearing a very- at this point what I see is that there is going to be an expansive amount of evidence that is going to be coming through various witnesses but I'm not sure how focused it is going to be, I'm not sure how relevant it will be and the extent of what is necessary that to be brought forward if there is an agreement between all counsel that in fact that this is not a non-contentious evidence.

So, what I'm proposing to do is to give you a period of time to file this affidavit of evidence, this affidavit evidence, with the Tribunal and circulate it to the other counsel and we could look at it at a tentative date that is amenable to all parties and we're thinking about mid-December so we say the week of December 18th, then what could happen with that affidavit evidence is that the witnesses will have to file that affidavit evidence, if you choose not to have your - not to disclose this evidence if the affidavit is not filed this will of course be prejudicial to the other parties, so with the affidavit evidence will also give the member the ability to assess the evidence and the member will retain the right to restrict irrelevant or prejudicial affidavits or witnesses, a portion of a witness testimony that may be irrelevant. Now if we're dealing again with the expert witnesses I think it's important that the affidavit of the expert witness set out clearly the area of expertise that is proposed that the Tribunal qualify the expert view and the issues, the evidence in chief that that expert will provide.

Now again a party, just to be clear the idea of the affidavit is not to prevent the (inaudible) evidence, rather is to have fair disclosure and focus once we get into the hearing to focus the evidence. So for example you may have a witness that will have a maybe three or four pages of evidence that's not contentious with respect to certain areas or aspect of funding.

So, you know, once we have the affidavit of evidence we can also work together and I will be having a conference call with you just before the hearing to try and see how we can, if we can get a much better or get some form agreement on stating the facts an agreed statement of the facts. So this way when we get into the hearing I think everyone will be much more focused on the nature of the evidence that's going to come forward from a witness and the areas that are contentious and areas where you may want to cross-examine. Now if you have cross examined on the affidavit, now that's up to you but I told you I would give you enough

time to have an opportunity to cross-examine on the affidavit and you know we have the varying weeks of November 16th and January 18th and 22nd of February and February 19th I'm leaving in your hands in respect to a time frame. I do want to ensure though that everyone has an opportunity, each counsel, if you feel that you need to do that. You know if you choose to examine on the affidavit as just as in any civil case it's up to you, you can of course at the hearing use that evidence as you would use in a civil case, you may of course ask the questions or you may examine on such and such date and did you do this (inaudible) so you can use it as you feel appropriate and leave that for such purposes as you feel is appropriate. But there's no obligation, if you would like if you choose not to examine an affidavit you need not but at least it will provide each of you a better understanding of the anticipated evidence then once the witnesses of course testify in chief. The hearing can also be much more focused on those areas which are of course in dispute, and you'll have a chance to cross examine in there as well.

So what I'm proposing is that we proceed in that way and we'll give you a timeline to, to conduct that cross examination, if you wish on the affidavit and then what we can do is also have a few regular conference calls to ensure that the process is unfolding as envisioned. Now as far as the issue will arise if you have any examination on affidavit and there will be questions that the witnesses refuse to answer. In a normal civil proceeding we would of course go to Superior Court and ask for a direction to - to compel, I'm not really certain that we'll need to go to that extent because again you can phrase, if the, if our issues with respect to this that you feel cannot be dealt with in a hearing when you have the witness there in the box then you can address it in one of the regular conference calls that I'm proposing that we have. But otherwise I think that what you can do, you will have the witness in the box at the hearing. The witness of course will give the viva voce evidence and again you can make your arguments at that time with respect or cross-examine the witness I'm sorry.

Now if we proceed on this, well we will proceed in this manner so I'm just wondering what type of timeline would you feel is fair? I realize that we have some again, I might have now with 65 witnesses more or less. So if you're given, counsel, if you were each given until December 18th, to file your affidavit evidence and circulate amongst it amongst yourselves and file it with the Tribunal. Is that a fair timeline?

Mr. Poulin Madam Chair, this is the Commission. Since most of the- this Daniel Poulin from the Commission.

Chairperson Chotalia Oh yes good afternoon.

Mr. Poulin Good afternoon ma'am. Considering that most of the work will fall onto you, I think I should speak first. First thing that I wish to look at and strongly protest choosing the date to the (inaudible) beginning of the hearing, at this point in time I have a number of witnesses you quoted, you had quoted the number earlier, than I have 5 experts, I've exchanged a lot of documents, I've exchanged books, one of my experts is away, if expert reports because there's no reason to re-write it's a book, it's his book on the residential schools to make an affidavit for all of my witnesses will require an incredible amount of time and incredible amount of effort so if you impose that we proceed this way I will of course comply but I wish to register my very strong protest. At this point in time in doing this.

Chairperson Chotalia. Yes Mr. Poulin I understand you did file a book and that's the very purpose of this process we really need to focus on how that book is relevant to the hearing of the issues before the Tribunal. It's expected that the materials that are filed before the Tribunal are referenced with respect to what portions are relevant and yes I understand that this is going to require significant amount of time by counsel to focus their evidence but that is what is going to happen because we cannot, you cannot, you cannot have some 65 witnesses with the general Will-Says that I see here, I don't anticipate that this matter can be concluded in any reasonable fashion without narrowing the evidence and determining exactly what the various witnesses are going to say and I think that once you get that affidavit evidence exchanged amongst yourselves you're going to be able to better determine whether you even need to call all of these witnesses.

Mr. Poulin I will take that into account and remember I wish to stress that when we did our disclosure and for example we started circulating a draft agreed statement of fact so that the parties will have a chance to comment on it, but it's only being circulated I believe I sent it either this morning or this afternoon, I can't remember clearly when, but the purpose was to attempt to identify and narrow these issues. You will understand that the scope of this complaint would present a large of amount of time, it covers a long period and it covers a large population, it covers the entire country and there are differences that, notwithstanding in all respects I believe that I have registered my position to this process and I take note that you wish to proceed this way so we will comply.

Chairperson Chotalia: Yes thank you Mr. Poulin. I understand your arguments, because this is such an important and complex case. We really need to have full and fair disclosure.

And there has to be a very clear understanding of the exact position of the various parties and the exact nature of the evidence otherwise, it is very difficult to respond to it. It is very difficult for a Tribunal to focus on what is relevant out of this 300 page book that you filed and what is not.

Mr. Champ: Madam Chair this is Paul Champ for the complainant, First Nations Child and Family Caring Society.

Chairperson Chotalia: Yes Mr. Champ.

Mr. Champ: I have a couple of questions if I may.

Chairperson Chotalia: Yes, please.

Mr. Champ: I am still just trying to fully understand the process that you are proposing. I fully appreciate I think what you are trying to achieve here and I think that it has, the idea, has some merit but first of all, I am not sure if I am entirely clear on what exactly it is. It sounds to me like, and correct me if I am wrong, you are basically setting up a discovery process where the parties will put forward full affidavits of all of their witnesses that will not necessarily be evidenced before the Tribunal but that will set out what the evidence will be. The opposing parties will then have an opportunity to cross-examine outside the Tribunal process those affidavits presumably before a court reporter and then at that time, if I understand you correctly, the parties then could decide if they want to say just agree to the affidavit evidence and the cross does become evidence to the Tribunal or if there is no agreement then a witness would then later testify in the box and then an opposing party could perhaps put transcripts from cross-examinations to them.

Chairperson Chotalia: Precisely, yes precisely.

Mr. Champ: Madam Chair if I may, if that is what you are proposing, em, on behalf of my client, obviously what you are proposing is a pretty major thing that I would have to get full instructions on but I think that I would also have to lodge an objection on it. This kind of a process frankly it seems to me is an even more onerous discovery process than what one would face in a civil action. In a civil action when it comes to discovery, the parties don't

have to file full discovery affidavits. There is, of course, discovery of some people from each party but not necessarily, not all of the witnesses. So effectively what you are doing is Chairperson Chotalia, if I may say is, you are creating a discovery process that is far more cumbersome and expensive than is found in the *Rules of Civil Procedure* and that is what I'm seeing and...

Chairperson Chotalia: Yes well Mr. Champ what my position there is that we are an Administrative Tribunal, we can don't even have to accept affidavits. We can accept letters, we can accept all sorts of evidence and you would agree with me that there when you read those Will-Says it would be impossible to hear from those 65 witnesses in any meaningful manner in any reasonable period of time. The purpose of an Administrative Tribunal is to have an expeditiously fair process, wherethere is full discovery and yes I agree that yes this is going to take some effort on the part of counsel but I think it is the only fair way to proceed.

Mr. Champ: Madam Chair if I may, just to kind of conclude the point I was going make is that I think I understand you are coming from that the Will-Says are general but it seems to me if that is what the concern is then perhaps you know somewhat more detailed Will-Says will be required or requested and I have seen that before and I think it would make some sense to assist the parties and focus on the issues because if I may also say, I am not so sure that the parties are necessarily, that if I understand what is happening correctly is that far part and I understand what the evidence is going be or what the periods of the case are and how the evidence relates to those theories of the case. I appreciate that you are on the matter rather late and have only have had an opportunity to have a cursory review all of the materials and believe me it is a lot of materials. I have been ploughing through it a lot over the last two months. But I am not so sure that the parties as are as entirely unfocussed as you are suggesting. I think the parties do have a fairly good idea of what they want to put in. That said, if I may, I like your proposal, the objective of your proposal which is narrowing the issues, narrowing the evidence, reducing the time of hearing. I think those are all very much laudatory objectives that can help the parties. My concern is that I think that the proposal that you are putting to it may not actually achieve that and so what I would suggest is that perhaps with your proposal that you put out there rather than put it to us in a fait accompli that we perhaps have some opportunity to obviously discuss with our clients but also hopefully to discuss further with the Tribunal modalities to sort of achieve what I think you are trying to do.

Chairperson Chotalia: Well, I very much appreciate your comments Mr. Champ. Thank you for your opinion and if you say you are not as far apart if counsel as I may have believed than that's good news so if you are not far apart in these, in perhaps knowledge of the case in evidence and then I think you should

be able to come much closer to an agreed statement of facts and perhaps and I see what, you know and if you can as counsel and I am very willing to have you and counsel work together and I am prepared to have another conference call before directing this to be very fair to all counsel as well, if you can work as counsel amongst yourselves and I am grateful that you are there because I understand that at some point some parties didn't have counsel. If you are prepared to work with each other in the narrowing the number of affidavits that you would like from the other side, and if you can narrow the scope of the evidence that your proposed witnesses is going to put on the, that you are proposing it in a box and of course I am willing to give you that opportunity. I am just trying to ensure that we have a fair process.

Now for example, this issue of Jordan's Principle has come out and my understanding, limited as it may be, is that this is a House of Commons resolution that dealt with the health services area and not with the family services, child services area. So again, to me it is unclear as to, for example, why could you not just file the resolution address it in an argument and this of course is a rhetorical question that I can pose to all of you but to make somebody can take that up, I see that the AG's position is that it is not relevant and I just really need counsel to focus on the complaint itself which is dealing with the area of family, child and family services and what I can see from much of the materials filed that there, I wouldn't expect that there would be a lot of disagreement on the intricacy of the, a number of the funding arrangements or am I wrong there and may be I can ask counsel for the Commission and for the complainant.

Mr. Poulin I am having difficulties hearing you Ma'am. Some other distortion on the line. Can you repeat the question?

Chairperson I am sorry. Is that better?
Chotalia:

Mr. Poulin It is weaker but it is clearer.

Chairperson Okay. I will try and clear my throat.
Chotalia:

Mr. Poulin Thank you.

Chairperson I'm just trying to understand the, I am sorry. I just lost my train of
Chotalia: thought.

Mr. Poulin I apologize.

Well maybe I can inform you . . .

Chairperson Yes, go ahead.

Chotalia:

Mr. Poulin I wanted to inform you that the motion instead, we have prepared a Notice to Admit that we will send to the Respondents and that is the other party, basically regarding documents which would remove the need for actually proving them and thus reducing the amount of evidence required. On the issue of Jordan's Principle, it is part of the draft Agreed Statement of Facts that is now being circulated and this issue of course would affect how many witnesses we have. On the issue of the documents, the voluminous documents that you have, including the book that you have, I wish to stress that I have taken the time to read them all so, you know, for example, Volume 1 and Volume 3 of the Royal Commission on Aboriginal People will be referred to and will be introduced into evidence and we will seek to reveal of course refer to them submissions (inaudible) 'til the end. Well, I've read them in full, it's missing (inaudible) and all the other report. At this point in time, the issue, we are working very, very much at narrowing the issues and making the amount of evidence, reducing the amount of evidence. At this point, you know, I must admit that I'm somewhat at a loss to see what the problem is at this point in time.

Chairperson There is a problem because the Tribunal has to receive relevant evidence of progress that deals with the specific complaint of discrimination in child and family services. There are a number of issues dealing with of course jurisdiction, comparator groups there's the issue of the span and time of the complaint, then there's the list of witnesses, for example, another issue is Sheila Fraser, for example, on the list of proposed witnesses that we don't, I mean, there's immunity there, I mean, there's those types witnesses, I would say that there's a particular report that you're interested in. Well, that can be, you know, you can have that entered, that particular report.

Mr. Poulin But she's not one of the, she has to be (inaudible) at the Auditor General. She's not in my list of witnesses.

Chairperson No, but she is on the list of the AFN.

Chotalia:

Mr. Poulin: True, but it's no longer, you have to remember that the (inaudible) the ultimate list of witnesses that it's relevant if the (inaudible) Commission with the (inaudible) if the complainants are no longer calling any other

witnesses than the ones the Commission is calling. So the only witnesses that are at issue are the ones found in the Commission, (inaudible) in particular, our amended statement of particulars of September 28.

Mr. Taylor: Mitchell Taylor here, this is something I've been wondering about. Is that true, Mr. Champ and Ms. Richer, that you are not calling any evidence?

Mr. Champ: Paul Champ on behalf of the Caring Society, that's true, so I was actually surprised by the number of witnesses that Chairperson Chotalia was suggesting. I thought it was much narrower. We have worked with the Commission. The Commission is leading the case as it were and the complainant the Caring Society and I'll allow Ms. Richer to speak on behalf of the AFN, but we do not intend to call any witnesses. We intend to rely on the case that is being introduced by the Commission so the number of witnesses may be far narrower than what we're talking about right now.

Mr. Taylor: Mitchell Taylor again, I don't mean to divert but this is important and something I've been wondering about and I'd like to hear from, if I may, Madam Chair, Ms. Richer, and then I have a further question, point about cross-examination.

Chairperson Chotalia: Okay.

Mr. Taylor: But is that correct that the AFN is not calling any evidence?

Ms. Richer: That's correct. We don't anticipate to tender any witnesses or cross-examine but we're just relying on Commission counsel, Mr. Poulin.

Mr. Taylor: My next point, Madam Chair, would be simply, that's just a marker at this point, I suppose, that it seems to me that the complainants should not be allowed to cross-examine and have friendly cross-examination, if I could put it that way, of the Commission witnesses. I'm not exactly sure what the complainants are proposing to do at the hearing but if they're not calling evidence, I don't think they should be also there to have a second kick at the can and helping resurrect whatever through friendly cross the Commission witnesses might or might not have said.

Mr. Champ: Paul Champ on behalf of the complainant Caring Society and I appreciate, Mr. Taylor, is not before the Tribunal as much and I recognize it is a little bit of an unusual process compared to other forums, but that is the way cases are entered before the Human Rights Tribunal that you sometimes have a response and occasionally have a couple of parties against you, both the Commission and the parties and I don't think there's any rule barring that. I think you heard from the AFN that they do not intend to

do any trial.

Mr. Taylor: I'll just register my objection, both generally and specifically, on this that this is an adjudicative process where, amongst other things, in excess of \$100 million dollars is put against us which is far more than in the vast majority of civil suits in the trial courts of Canada and we will be wanting to ensure that there is, if you like, good rigour in the adjudicative process, because of the potential consequences that are being asked for.

Mr. Poulin: This is Daniel Poulin, just to state that the Treasury Board case, I believe involved a billion dollars and it was -

Chairperson Chotalia: Okay, I'm gonna cut off this discussion right here. I think what we need to do is to focus on the other so now what you're saying is that you have only, you have 12 witnesses here?

Mr. Poulin: Madam, I have not sat down and I don't have one or two (inaudible) but I was quite surprised, Chairperson Chotalia, and I didn't want to pursue that in too much detail but (inaudible) I was quite surprised when you quoted them as witnesses. The complainant and the Commission only have the witnesses that we have written about.

Chairperson Chotalia: In Annex A.

Mr. Poulin: Is that uh ... if you have a look, I don't have my glasses.

Chairperson Chotalia: Cindy Blackstock, Elise Flette, Judy Levy, Joni Bod.

Mr. Poulin: Brenda Co, Richard Gray, Del Debois, Adam Warner, I believe there's an error in the names here, Jean Crowder, Chief Cowley, Zack Trout and Shell Baker, but all that was explained earlier to the Chairperson during when did we actually sat on those, that (inaudible) last sitting on the third day. We already provided an explanation that these were all or our our witnesses and we had these five experts that we will be calling, that the Chiefs of Ontario will have a number of witnesses and we'll try to work with the Chiefs of Ontario to reduce that list to a much more manageable, I hope, and I believe that there's been actually already a reduction.

Chairperson Chotalia: Okay, has this reduction, has this helped by the way, Counsel? Has this helped, for example, the respondent in narrowing its witnesses?

Mr. Poulin: I don't know. Mr. Taylor, I'll allow you to answer if you want.

Mr. Taylor: I think, it's Mitchell Taylor, the short answer, Madam Chair, is yes and no. On the yes side, witness, Dr. Blackstock, for example will, I expect, whatever process we use that leads to her being on the witness stand, she will speak to the Wen:de reports and the desire and desirability of what I'll call a national platform at the highest standard level and that's a relatively broad piece of evidence but at the same time it's focused and it's something that we can and I won't say in a straightforward or short way but come to grips with so, yes, the work that Mr. Poulin and the others have done helps with respect to her, for example. If we go to perhaps the other extreme and Madam Chair you've touched on this and we speak of Mr. Molloy's book that is a so-called expert report that's just pausing there for the moment. I should alert people that there will be an application to say that that is not an expert report that can properly be tendered as evidence but with that, having been given Mr. Molloy's book which I'm familiar with, it's about the Indian residential schools, largely, it's a general treatise on various difficulties and issues and so forth, but in my view doesn't come to grips with or help this case so Mr. Poulin will have to do an awful lot more to explain to me at least how that possibly can be relevant evidence, lay or expert, and how it possibly focuses anything. It seems to just balloon and explode the case into irrelevancies. So yes, the witness list helps and helps in a constructive way with, for example, Dr. Blackstock, yes the witness list helps because it allows us to see where the good and the problems are but, as I say, with Mr. Molloy, it focuses in a way to say that this is completely unfocused on his evidence part.

Mr. Poulin: Well, Madam Chair, I strongly disagree (inaudible) forward (inaudible) colleague ...

Chairperson Okay, Mr. Poulin thank you very much, I will proceed in this manner.
Chotalia: We are now going to, now it is clear that you don't have as many witnesses, I am directing that you do file, that counsel file, an affidavit in respect to the evidence that is going to be brought in chief, from their witnesses and those will be exchanged. So I'm asking you now from what time period would be reasonable to commit that by, I'm suggesting mid-December.

Mr. Champ Madame Chair this is Paul Champ on behalf of the Caring Society. I understand that you have made that order I gather, frankly, without notice to the parties that we are going to be dealing with this kind of an issue prior to this call, I would just ask what authority under either the Act or the Rules are we referring to, to make this Order that you make issuing now.

Chairperson Yes, this is an Administrative Tribunal. We control our process, and we
Chotalia: are going to manage this process in a reasonable manner to ensure that we get the relevant evidence that probative before the hearing member.

We do not have unlimited resources and we are not going to be, we are going to keep the member, I can even tell you it's going to be directive and focus the evidence on the complaint. Sir, if you don't like the decision, then I will make the Order and you can take it further.

Mr. Champ [talking same time]...try to understand the, what provision I do understand that Administrative Tribunals do generally have the power to control the process before them, however, this kind of an Order I'm not sure if it even falls within that, and I would also add that it seems now that, there may have been an misapprehension on the Tribunal and how many witnesses were actually being presented at...what's been clarified now is that the complaint proper is going to be introduced on the basis of seventeen witnesses only, not including the Chiefs of Ontario witnesses, whoever they may be, but the main complaint, the main joint complaint is being introduced through seventeen witnesses and given the significant importance, the number of children that are affected by the complaint, I'm just wondering if, whether it might be wise for all of us to just to reconsider proceeding on this basis, if you will, just to see where we are really at, it doesn't in my mind seem that seventeen witnesses is too onerous at this time.

Chairperson No, Mr. Champ, I'm directing it, we are going to proceed in this manner
Chotalia: because, also the Chiefs of Ontario, are not to duplicate or overlap in the evidence that they put forward. So, we do need to have again, I am not precluding viva voce evidence, we are trying to narrow the issues and its going to assist the Tribunal on it is going to be fair to the parties to have full-disclosure well in advance because all I have to do is to read one of the witness statements that will say here, for example, Adam Warner, (inaudible) for twenty-five years and has significant experience in national policy levels but there is no indication in what this witness will be saying and many of the other statements are general, so I think, it's going to of course require counsel to be disciplined in terms of the affidavit evidence that they will be putting forward and then we will proceed from that point forward.

Mr. Poulin This is Mr. Poulin Madam Chair I will request before I go back to my client for any further instruction, as well as (Inaudible) issue (Inaudible) direction if we decide to Federal Court on this.

Chairperson Ok, we will do that.
Chotalia:

Mr. Sherry Madame Chair: I just had one point for the witness number issues. Mike Sherry, for Chiefs of Ontario. I indicated earlier that there has been a narrowing already from 18 to 8, and I can assure the Tribunal that we finally get down to it, that, the number we will be presenting will be

something like 3 possibly 4 witnesses, just to provide the overall context.

Chairperson Chotalia: Alright, I'm not sure why there would be a difficulty providing us an affidavit form so that we have it with the Tribunal.

Mr. Champ Madam Chair. It's Paul Champ for the complainant, I just want to reiterate that the point that I was trying to make in any event is that I fully appreciate the objective of an Administrative Tribunal being to expeditiously deal with matters and in my experience, I appear in courts and before a number of Tribunals and one of the main features of expeditiousness, that I find when I appear before Tribunals is the fact that you do not have the same, you know, extensive cumbersome discovery rules and now it seems, what you seem to be suggesting in the direction is, basically imposing discovery rules that are far more onerous than what are found in the *Rules of Civil Procedure*.

Chairperson Chotalia: Well, no they are not. I don't understand why you say they are more onerous. I am simply asking you and asking all counsel, to file an affidavit with respect to the evidence in chief of their witnesses. Why is that so difficult? If you know your case and you are ready to proceed in two weeks, why would it be so difficult to provide that?

Mr. Poulin Because, just as an example, this is Daniel Poulin, Dr. Blackstock's testimony was supposed to extend to a period of, I was expecting 3 days for Dr. Blackstock's testimony (inaudible) main thrust of the evidence. To summarize that 2 or 3 days testimony with cross, to summarize it in an affidavit will require much more time than would be required for her to be on the stand. You are imposing an obligation on me, which will be longer, which would require more effort than if I were to present my case.

Chairperson Chotalia: Well, not necessarily Mr. Champ. Because, first of all, when Dr. Blackstock takes the stand, she may go on for a week, then she may be subject to cross-examination by a member of party, it may end up being 2 or 3 weeks, whereas if we have an affidavit from Dr. Blackstock, perhaps the Attorney General will say, well, I agree, we don't have any difficulty with paragraph 8-19 of our evidence, we are only going to focus only on paragraph 20-25 of the evidence, or they may even argue that it's irrelevant entirely, and make that motion at the time. I don't know what is going to happen at the hearing, but in my view, it is significantly going to shorten the hearing.

Mr. Poulin Will I be allowed, I just wish to know in advance, that will of course impact on whether a position I take after that, on whether or not we go to Federal Court. We will be allowed, if it happens at the hearing, to go out of the scope of the affidavit. Or will we be limited to the words that are being used in the affidavit.

Chairperson Chotalia: You are going to be...the idea of the affidavit is to provide the evidence in chief that you are going to provide at the hearing so that there is a full appreciation of her evidence, for example, of the witness evidence by all of the other parties. With that appreciation, obviously if you're made a statement in the affidavit, certainly it can be clarified or expand somewhat, but you know, if you require or if you think you have missed something, I mean you can certainly indicate to the member, listen, this is relevant evidence and we to (inaudible) the member is dealing with it, as you are aware, Administrative Tribunals accept letter and documents and all sort and kinds of evidence. We are not restricted to the viva voce evidence per se under oath.

Mr. Poulin I'm sorry Madam, but my reading of your direction at this point in time, considering the answer you have given, this is Daniel Poulin here. You are instructing me to put my chief in writing before the Tribunal.

Madame Chair Yes. You can do that please.

Mr. Poulin I will submit to you Madam, that this is contrary to the (inaudible) provision of the Supreme Court of Canada. Consequently, I strongly object to your direction. I will comply, and I will of course, I will need until mid-December in order to be able to do that.

Chairperson Chotalia: Ok, thank you.

Mr. Poulin But I strongly, strongly object and I will go and speak with my client and raise theses issues with them.

Chairperson Chotalia: Ok. I appreciate that. You are certainly free to speak with your client and take such direction as you feel appropriate but this is how we will proceed. So...

Mr. Taylor Mitchell Taylor, Madam Chair may I speak.

Chairperson Chotalia: Yes, please.

Mr. Taylor I have not made submissions on this as yet. There is a direction that I haven't made submissions about. I hear your direction, and there it is, we too will consider our position and take some direction. I generally speaking, subscribe to the thought that Mr. Champ and Mr. Poulin were putting forward, I find this process to be more onerous than civil proceedings before a Superior Court and quite a last minute change of course, I'm not being critical of the timing in the sense that I know that you are the chair now, and you are coming to grips with how we handle this thing, there are some particular aspects that are for the respondent

different than the other parties and its starts with this direction, as I am hearing it, asks us to put our defence before the other parties before or at the same time that we are seeing their case, which is novel, because normally the defence gets to see how the plaintiffs case, for present purposes and just refer, while I'll say complainants case and include the Commission in that category, normally a respondent gets to see how the complainants case is shaping and developing before the defendant has to, in an evidentiary way that's going before the Tribunal to disclose to the parties and the Tribunal what is going to be put forward, it seems to me at the very least that the defence should be able to follow the complainants distinct from a contemporaneous filing, at a very practical level, I am committed to another case, the first two weeks of December, I am available for this case up to then, but for the first two weeks of December, I am committed, yes, there are other counsel working with me but ultimately, I would want to see what we're putting in before it goes in and, anytime in December is a big problem timing wise, apart from any other points.

Chairperson Chotalia: I must indicate, that I had considered that issue, that it would be appropriate for the respondent to be able to file affidavit and after seeing evidence of the complainant, because hopefully, at that point then your evidence will be of course dealing with the reply evidence to the particulars you receive from affidavits from the complainants. So, I had addressed my mind to that and was of the mind that you would have a period of time after December to file your affidavit, now, in our normal process of course, the Will-Says are filed, but you already filed them, but I feel that it is appropriate for the respondent to have some time after to see and to reply and file affidavits after. In terms of the practical, of course we can deal with that.

Mr. Taylor: Thank you for that. One more, well two more points and then I will be quiet. One is that it's occurring to me, that the real difficulty and question and this is something that we and others have struggled with over the course of this complaint, when it was before the Commission and now before the Tribunal, is the need to focus the issues and then evidence will follow and where we are at now we seemed to be not focusing on the issues, but being asked to focus the evidence with unfocused issues and see what happens there and it seems to me that it would be far better to have a process that grills down and focuses issues, the evidence then follows from that as distinct from trying to put out and focus the evidence and somehow that will get to the real issues.

Chairperson Chotalia: Well, my hope was that the, by going through this exercise, counsel will only put forward the evidence in their affidavit that relates to the issues.

Mr. Taylor: The difficulty is that the issues aren't clear.

Chairperson Chotalia: Yes, that is, that is first, the first issue. You have raised, the respondent raised the issue of the jurisdiction here and we are awaiting the Federal Court decision on both jurisdiction and comparator groups.

Mr. Taylor: No, we are only awaiting there decision on whether there is a case to go forward.

Chairperson Chotalia: Right, whether the referral by the Commission was appropriate.

Mr. Taylor: No. No. There is two things under reserve by the Federal Court but one is largely dealt with. One had to do with striking paragraphs in Dr. Blackstock's affidavit and the substance of that has been dealt with, but there is cost issue that is still under reserve. The other thing that is under reserve is the other side has brought an application to summarily strike the judicial review as inappropriate and or without any possible hope so it's not dealing with the substance but rather just whether it's so hopeless that it should be knocked out. But substance is still to be set for hearing.

Chairperson Chotalia: Oh, I see. So the substantive issue and judicial review has not yet been heard.

Mr. Taylor: No.

Chairperson Chotalia: Ok. I'm sorry, I was under the misapprehension that it's been...

Mr. Taylor: We would have liked it to have been heard but nope, it hasn't.

Chairperson Chotalia: So, those issues, may I ask you outright why you have not brought a stay.

Mr. Taylor: Yes, you may. I suppose, but I'm not meaning to be, sound silly, Madam Chair, but we haven't brought a stay because we have been asked not to bring a stay or directed not too but related to that, we are considering the desirability of bringing a motion before you to deal in a summary fashion and before the merits are dealt into bringing an application before you to address jurisdictional points to do with service and comparators.

Chairperson Chotalia: And the difficulty with that is of course, how will we have, would we have sufficient facts in the material to make that to reconsider that type of an application, I'm not sure. I haven't had my mind to it.

Mr. Taylor: But that is an issue that no doubt bothers all of us or infringes on all of our minds, yes.

Mr. Poulin This is Daniel Poulin Madam, this is just to inform Madam that we filed, from the Commission, we filed an application to intervene before the Federal Court and one of the arguments we wish bring forward, is that the matter of service, in comparator groups should be addressed by the Tribunal based on the evidence to be (inaudible). That is if not, it wouldn't be proper to address that by way of judicial review. We haven't had a decision yet, I wanted to ask my friend, Mr. Mitchell if he had heard something but I guess, I just got my answer that he hasn't received an answer yet from the Federal Court about our motion to intervene.

Mr. Taylor Anyhow, that's my piece for now.

Chairperson Chotalia: Alright. So,

Mr. Champ Madam Chair I...

Chairperson Chotalia: I just want to make sure...sorry, who's speaking

Mr. Champof counsel trying to get their heads around on what you are proposing and how it works with everything else. May I make one suggestion,

Chairperson Chotalia: Okay, sorry, I didn't get your name, is this Mr. Champ?

Mr. Champ Paul Champ, on behalf of the First Nations Child and Family Caring Society. May I make one suggestion, and an important one I would think, um, as I said at the beginning, I agree completely with what I think you are objectives is, which is, reducing hearing days, focusing the issues and so forth, I'm just wondering how the best way to do it is and one thing that I might suggest is this, is that you should suspend your direction you issue it and you suspend it until after the first witness is completed and the reason I would say that is because my client, the Caring Society, the Executive Director, Ms. Blackstock, is going to be the first witness and if I may, I think she is going to be sort of like the table of contents of the rest of the case and I think that the sitting member and the respondents will have a much, much clearer idea of the case after her evidence and what I would just maybe perhaps implore the Tribunal is that there has been a lot of work to get that witness ready, it's scheduled now for 9 days or 8 days away and I honestly believe Madam Chair that I think once Ms. Blackstock testifies, the documents in which she's introducing, it is going to provide an umbrella or a overarch of the case, that I think it is going to make the issue very clear for both the sitting Tribunal member and the parties and then at that point, we could then perhaps revisit your direction after that for affidavits for other witnesses cause I think it would also. I am just putting it out there as a proposal, that I think that actually

might be more expeditious and effective and also it will give the sitting Tribunal member an opportunity to hear that evidence and then consider, and have a better idea of what future witnesses would be relevant in Tribunal member's mind and then also the affidavits that come afterwards, towards, how they should be evaluated I don't know how to put it any other way Madam Chair. It's just that I honestly believe that if Ms. Blackstock is allowed to testify before your order comes into force, your direction comes into force, it may well address a lot of the issues that you're raising and at least help us all in coming to a solution that we're all comfortable with.

Chairperson Well, I'm not sure if there's any – I'm looking at what you're proposing to be talk about it because Dr. Blackstock was directly involved in the creation of Jordan's Principle and then, you know, she's going to talk, obviously she has some very relevant direct knowledge. But then, the Jordan's Principle issue as I understand from the pleadings of the respondents are objecting to. So I'm just wondering why is it so difficult to encapsulate her evidence in the systematic affidavit?

Mr. Champ Chairperson Chotalia, if you'd...

Chairperson She would not be precluded from testifying. She will be providing viva voce evidence but it will certainly focus the evidence for the Tribunal and certainly the areas that are relevant and those that may not be relevant, to which there may be an objection.

Mr. Champ: Paul Champ again, Madam Chair. I understand completely what you're saying. The only thing I would say is Ms. Blackstock will be a very focused witness, I can guarantee you. The evidence that she will present, I am very confident it will be of great assistance to the Tribunal in understanding the issues and it will be pointed. I think that the time it will require to prepare an affidavit of all of that evidence, but her testimony in particular, would take a considerable length of time. We are already keyed up with her evidence and all I can say is that I think it really will shed light on those issues. You know of course, about the Jordan's Principle, I think there might be a misapprehension on the part of the Tribunal to, or at the very least, the evidence submitted, Blackstock would provide on the development of the Jordan Principle and what it actually in fact was meant to address, how it was adopted in Parliament and so forth. That evidence, I can tell you, I think her testimony on that issue would probably be half an hour to an hour at most. I'd put half an hour, I would think and then after that, perhaps that would be after her testimony is done, that might be the time for the parties to go back and maybe address some of these suggestions that you're making for narrowing the case. I just, I honestly, I really think that with the overarching testimony of Blackstock, it will provide a framework for these discussions that we're having, when we'll all be fully informed on

what the issues will be.

Mr. Taylor : Well, Mitchell Taylor, for the respondent, as I mentioned before, I subscribe to a number of things that Mr. Champ and Mr. Poulin said about the idea of affidavit and changing course at this juncture, and I'm not in agreement with the direction, but I hear the direction. But I now part company with Mr. Champ because if we're going to proceed as you've directed Madam Chair, it's certainly not in the offing in my respectful submission, that we should let Dr. Blackstock go wild, if I can put it that way, and then after she's given whatever evidence that she's giving, and I hear Mr. Champ say "focus", but I might have a different view after – it's not on her to give evidence and we'll have everyone else constrained thereafter. That's just not right in my submission. I mean, either we have a direction that takes effect before we all get up and start the case or we don't.

Chairperson Chotalia: Now, are there other counsel that I have not heard from here?

Mr. Rees You haven't heard from, it's Owen Rees for Amnesty. I haven't made any submissions because I'm not presenting any evidence.

Chairperson Chotalia: Okay, yes, that's right. Okay.

Mr. Sherry: Mike Sherry for Chiefs of Ontario. I've made couple interventions on the issue of the number of witnesses. But in terms of the arguments that have been made, I generally support Mr. Champ and Mr. Poulin.

Chairperson Chotalia: Okay. And Ms. Richer? Ms. Richer? Alright...

Ms. Richer: Hello?

Chairperson Chotalia: Did you have any position on with respect to the discussion?

Ms. Richer: So sorry, I, of course, support Mr. Poulin's submission.

Chairperson Chotalia: Okay, can we have a brief – can you please give me 15 minutes and we will account, who's available in 15 minutes?

Mr. Taylor : Yes, for the respondent.

Mr. Poulin: Yes, this is Daniel Poulin, yes, I am available. We will be suggesting 4:30,

is that the case?

Chairperson Yes, would that be appropriate?
Chotalia:

Mr. Poulin: Yes, that will be fine.

Mr. Sherry: Mike Sherry for Chiefs Ontario. So we just call the same coordinates at 12:30?

Chairperson Yes, we'll call again in 15 min.
Chotalia:

[Unknown] The parties will call in, as we did earlier?

Chairperson Oh yes, the same procedure. Okay, thank you very much counsels. Thank
Chotalia: you.

*****Break*****

Chairperson You're on.
Chotalia:

[Unknown] Owen Rees?

Mr. Rees: Present.

[Unknown] Thank you. Mr. Poulin? Yes? And Ms. Richer?

Ms. Richer Yes. Thank you.

[Unknown] And I think we have everyone.

Mr. Mitchell Not Mr. Champ.

[Unknown] Oh Mr. Champ is still not there?

[Unknown] I've sent him an email.

[Unknown] Thank you, we'll just wait a moment.

Mr. Poulin: This is Daniel Poulin, I will try to phone him right now on my Blackberry.

[Unknown] Okay, thank you very much.

Mr. Poulin: You can (inaudible). I let a message for him on his answering machine.

[Unknown] Okay, well thank you very much. We'll still wait a moment.

[pause] Hello Mr. Champ?

Mr. Champ: Yes.

[Unknown] Okay, thank you very much. We were waiting for you to join the call.

Mr. Champ: Sorry about that.

[Unknown] No problem. We are ready to resume.

Chairperson Chotalia Okay, thank you counsels for that break. What I've done is I've decided to taken very seriously your positions and what I'm asking you to do in light of the mutual objective of all of the parties and of the Tribunal, I'm asking you to make your best efforts to file an agreed statement of facts with the Tribunal by December 18. Once we've, the Tribunal, has that agreed statement of facts, we will have a conference call. Now, first of all, I don't want to impose, okay? I wanted to ask you, that's my proposed date for an agreed statement of facts. Is that going to work for all of the counsel here?

Mr. Taylor: Mitchell Taylor speaking. I think so. And why I say, I think so, is from December 1st to December 12th, I am on a file working. But I am doing that in (inaudible), British Columbia, on (inaudible) in the north-west corner so to speak where I know that my ability to connect with the mainland, if I can put it that way, through internet and stuff, is somewhat limited. But I'll be back a week before the 18th and so I'm going to say yes and I and others will work through firing drafts back and forth somehow.

Chairperson Chotalia Alright, I have no - if you would like to have a longer period of time, its just that its coming into Christmas.

Mr. Taylor: I think that if we go beyond the 18th, we'll probably start losing a lot of people that next week. So I'll say yes to the 18th.

Chairperson Chotalia Mr. Champ?

Mr. Champ: Ah, yes.

Chairperson Okay. Which counsels object to or has difficulty to that date of December

Chotalia 18?

Mr. Poulin: For the agreed statement of facts?

**Chairperson
Chotalia** Yes.

Mr. Poulin: I don't think anybody has, in fact, I'll be very very happy to certainly be... I've already sent one draft earlier today. I hope Mr. Taylor's got it.

Mr. Taylor: Yes I have it. Thank you Mr. Poulin.

Mr. Poulin: Good. Thank you. I'll resend it, considering, I'll take into account your views Madam and I will expand on it. Mr. Taylor, could you just wait before you reply on that. You can look at it, if you want to, but wait until maybe next Wednesday? And I will greatly expand on it and I will send you another version. And this time I will, I sent you a PDF because we had had comments on clients from different parties which I did not include. So what I'm going to do is I'll send you a copy that you can actually modify and work on and so that way we can keep exchanging.

**Chairperson
Chotalia** Okay, that's excellent. Thank you Mr. Poulin. Thank you counsel for those efforts. Again, whatever you feel is not contentious evidence and more of what you can include in that agreed statement of facts would be much appreciated. Then, what we'll do is we'll have a conference call after that December 18 date in the week of January 18th to see what issues are outstanding. So what I'm saying is, at that point, if it appears we have not narrowed the issues and the relevant evidence, then we will come back to the proposal that I made today. But I will not, I will certainly give all counsel an opportunity to make some submissions at that time with respect to the procedure. So I will not direct without obtaining the input of all counsel. So does that seem fair?

Mr. Taylor: Mitchell Taylor speaking. Yes that seems agreeable. I just lost, or sorry, better put, I didn't understand what you were saying as to when the conference call following the 18th of December would be and what did you say about the week of January 18th.

**Chairperson
Chotalia** Oh, okay. I am proposing that I then have a conference call with all counsel in the week of January 18th to 22nd, which is booked so we know that all counsel are available, where we can revisit, (inaudible) on the procedure that I - the agreed statement of facts, what issues are outstanding, because we have raised many issues today and then if we require some sort of affidavit or other procedure to address it, and at that point, if we can come to an agreement, we'll do so. If we can't come to an agreement, then I'll certainly give all counsel an opportunity to supply

submissions on any proposed procedure as I had proposed today.

Mr. Taylor: Mitchell Taylor. That sounds fine by me and my only further question would be what are we doing with the hearing weeks that are then scheduled January 25 and so forth? And I can tell you that from our end of it, based on what we heard on September 14th, we've essentially booked ourselves for this file from January to June.

Chairperson Chotalia Okay. Well I think that what we can do, if you like, I can have a conference call sooner than that week of January 18th so that if we did it sooner, we could hold these dates of January 18th, 25th and 28th if you would like. But I'm just thinking that there's still going to be outstanding issues. For example, the broadcasting issue, and we're going to have to deal with that. I'm proposing to deal with that by giving all counsel an opportunity to provide full legal submissions with respect to that issue.

Mr. Taylor: I'm not insisting on proceeding on the 18th or other weeks in January. I'm quite happy to have a process that shakes things through it. I'm really just inquiring what we are doing with them and I don't mind having the conference call you referred to during that week when we know, by definition, that we are all available.

Chairperson Chotalia Okay, very good then. Do other counsel object to having a conference call in that week and setting aside the dates for hearing of January 18th, 22nd and January 25th? At least we should put off the January hearing dates because I think there are a number of issues that we really need to resolve in an intelligent manner prior to the start of evidence.

Mr. Poulin: Can I, This is Mr. Poulin, Madam. Can I suggest then that instead of telephone conference that we actually meet in person? That we actually hold a hearing which we can all raise these issues at the same time and we can talk about them.

Chairperson Chotalia Okay, certainly. I don't have any - I'm very pleased to do that in terms of the case management issues. I'm very pleased to do that and we can do that in that week of January 18 then. But do you want me to set a date now or should we just circulate it to counsel?

Mr. Poulin: I'd leave it at January the 18th considering it's been set aside by all parties already, it's perfect to hold, to address the issues and to actually make submissions, for example, on the issue of the televised hearing. You can ask us to provide you with written submissions in advance, if you want to.

- Chairperson Chotalia** Okay, I'm just thinking that on the televised hearing of the broadcasting issue. I need to get APTN involved, that's why I didn't specifically address that. What we thought we'd do is just send out a letter to all counsel and to APTN and ask them to provide submissions by a certain date and I'm asking counsel now when, you know you're very busy, when would be an appropriate time period by which you are able to provide the submissions on that request and then we can ask APTN if they can be available and comply by the same timeline.
- Mr. Poulin:** May I suggest November 27? This is Daniel Poulin.
- Chairperson Chotalia** Okay, so you would be able to provide your submissions on that point by then? Do any counsel on the telephone right now object to that date?
- Mr. Champ:** This is Paul Champ for the Caring Society. I don't object to that date, but I was wondering would we want to give the APTN the opportunity to present their full submissions first?
- Chairperson Chotalia** Uh, yes. That's why I needed to actually take some time to consider how to involve APTN. So...
- Mr. Champ:** Maybe, Madam Chair, we could perhaps give them like 2-3 weeks from your letter to file written submissions and then all the other parties would have 2 weeks thereafter. I'm not sure if that works for everyone else.
- Mr. Poulin:** That would be fine with me. Daniel Poulin.
- Mr. Taylor:** Mitchell Taylor. That's fine with me.
- Chairperson Chotalia:** Okay then, that's what we'll do. We'll send out a letter on Monday asking for submissions from APTN within a 3 week period and then we'll ask for counsel submissions on point within another 2 weeks. Okay? So, that resolves that issue and then we will meet. Let's just set a date then. Can we meet on the - let's have a meeting at the Tribunal offices on January 19th starting at 10 in the morning. Would that be an appropriate time for everyone here?
- Mr. Taylor:** Mitchell Taylor. That's fine.
- Mr. Poulin** Perfect, and Mitchell Taylor, if you have any issues in which to have me address, I'll be very happy if you let me know in advance and I will try to resolve them before the actual show up at the hearing.
- Mr. Taylor:** Oh, most certainly.

Mr. Poulin Just to inform the Tribunal that we had a very productive meeting all the parties together at the offices of the respondent to discuss the issues, especially discuss all the issues with disclosure, which is probably why you haven't heard that much about that at this point.

Chairperson Chotalia: Okay, well thank you very much. I must say, again I repeat I am grateful to have such competent counsel on this case. This is a very important case and that's why - we just want to insure that we have a fair and appropriate process to have all of the issues fully considered and dealt with. So I think that that expresses my sentiments and I think that we can now close this meeting today.

Mr. Taylor May I ask one further detail question on a separate matter, Chairperson Chotalia?

Chairperson Chotalia: Yes.

Mr. Taylor It's a question of Mr. Champ and Ms. Richer, if you are able to answer, again I ask neutrally, so please don't take it otherwise. I ask because there have been a number of counsel on the co-plaintiffs' side and periods of no counsel. As best as one can predict the future, are Mr. Champ and Ms. Richer in a position to say that we are now clear that we're going forward with Mr. Champ as counsel for the Caring Society and that the AFN will not have counsel, but will have Ms. Richer?

Ms. Richer: The AFN - this is Valerie Richer. - the AFN is proceeding with Daniel Poulin as the lead on our behalf and we are not - we are planning to monitor the proceedings and the only submission that, at this point, we are thinking of making at this point are at the conclusion of the hearing.

Mr. Taylor Okay, I appreciate that. That's clarity. Thank you.

Ms. Richer: You're welcome.

Chairperson Chotalia: Okay, thank you counsel and have a good weekend.
[pause] I think everyone's off now.

**END OF
TRANSMISSION**