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Submissions for the respondents by Mr. Sorochan

June 17, 2016
Vancouver, BC

(CHAMBERS COMMENCED AT 9:32 A.M.)

THE CLERK: In the Court of Appeal for British
Columbia in chambers this 17th day of June 2016.
In the matter of Daniel Christopher Scott versus
the Attorney General of Canada, My Lord.

MR. SOROCHAN: If it please the court, Don Sorochan.
With me is Amy Schalles and Kelsey Sheriff.

THE COURT: Thank you.

MR. VICKERY: My Lord, Paul Vickery for the Attorney
General of Canada. With me is Travis Henderson
and Laurie Rasmussen.

MR. SOROCHAN: My Lord, Mr. Vickery has indicated that
I should proceed first.

THE COURT: All right. Much as it always a pleasure
to see you, I'm sorry that you're back.

MR. SOROCHAN: Well, we'll see what happens.

THE COURT: All right.

SUBMISSIONS FOR THE RESPONDENTS BY MR. SOROCHAN:

Because I know we have a very limited period
of time, I've distilled what I have to say in a
thing called "Respondents' Submissions in Brief,"
which I will hand up to you.

THE COURT: All right.

MR. SOROCHAN: And I hope to --

THE COURT: The time is not as limited as you might
think. We put it in this courtroom because
there's not a panel sitting here at 10:00, and I
am not sitting at 10:00.

MR. SOROCHAN: I'm going to discipline myself to try
to get this done in 15 minutes, but --

THE COURT: All right. But if you need more --

MR. SOROCHAN: Because you have the written material,
so I wasn't proposing to go through all that.
You haven't got it yet. I'm handing it to you.

THE COURT: If you need more time, all I'm saying is
don't worry about it.

MR. SOROCHAN: Never give Sorochan more time.

THE COURT: Now, the other thing that I should say
before we start is that, of course, as a judge in
chambers, my duties are purely procedural in
nature. The panel will have to make a decision
if it comes down to a question of whether

1 proceeding with the appeal is an abuse of process
2 or not.

3 MR. SOROCHAN: Yes, I expected that this would be, in
4 essence, a hearing to decide what we should do
5 going forward.

6 THE COURT: All right.

7 MR. SOROCHAN: Rather than to decide anything of
8 substance.

9 THE COURT: Thank you.

10 MR. SOROCHAN: And that's the way I'm proceeding.

11 But I'm wanting to deal with some of the
12 matters that my friend has dealt with, so I'm
13 going to deal with them in the bullet points.

14 One, it was suggested that the affidavit
15 materials aren't admissible on an appeal, but
16 they're admissible to -- as is set out in more
17 full -- in a fulsome way.

18 THE COURT: Well, I'll hear from your friend on that,
19 but it seems to me that if you're arguing that
20 proceeding with the appeal is an abuse of
21 process, which I think is more or less what the
22 argument is --

23 MR. SOROCHAN: Well, it's arguing that the -- you're
24 entitled to bring this material forward in two
25 circumstances that are relevant here: One is to
26 show the circumstances surrounding the
27 settlement, and I should just say right here at
28 this instance, I did not agree with my friend's
29 description of what occurred when we last
30 appeared before you. It wasn't a matter of
31 seeking leave before this court to abandon the
32 appeal, because the court has no jurisdiction to
33 interfere with an abandonment of an appeal. The
34 only jurisdiction -- and I researched it, and my
35 friend Ms. Rasmussen was also involved in this --
36 that the court has about abandoning appeals as to
37 whether to award costs.

38 Costs were not an issue here, but none of
39 that mattered because Your Lordship's
40 intervention made sense. It made sense that if
41 we -- if we didn't have this thing resolved, that
42 if we were going to go back to the trial court,
43 that it would benefit from the views of this
44 court.

45 But it wasn't a matter of having to come for
46 permission to abandon the appeal, and the reason
47 that I agreed to it it made sense is also

1 implicit in the abeyance agreement and it's set
2 out in the affidavit materials, because at that
3 time all political parties in Canada were not
4 taking issue with the fundamental premise of the
5 abeyance agreement that there is a social
6 covenant and that it was going to be given effect
7 to by the policies of whatever government was in
8 place.

9 We had the present government there through
10 my friend Ms. Rasmussen, and through Joel Watson,
11 who was the then director of legal services for
12 Veterans Affairs. And we had Mr. Scott's
13 affidavit discloses the commitments of all
14 political parties, as reflected in the resolution
15 that is referred to in the abeyance agreement and
16 the change to the law that is reflected in the
17 abeyance agreement.

18 So it made sense at that time to go forward
19 opt basis that we did, and that's what happened.
20 That doesn't mean --

21 THE COURT: Well, my recollection was, though -- my
22 concern at the time was we had an outstanding
23 issue with respect to the covenant, and my
24 questions at the time were, is the Government of
25 Canada abandoning that position for all time?
26 And I was told that it fully -- the government
27 fully expected to reach an accommodation with the
28 respondents, but that in the event -- in the -- I
29 think it was said highly unlikely event that that
30 did not occur, that there was -- the court could
31 not be promised that this would not come back to
32 the court of appeal by way of an appeal from the
33 trial judgment, if it ultimately want against the
34 government.

35 That was where my unease lay.

36 MR. SOROCHAN: I don't think we need to belabour that
37 point.

38 THE COURT: Okay.

39 MR. SOROCHAN: But I certainly take issue that there
40 was leave required of this court. What happened
41 was a common-sense discussion and a decision made
42 to proceed the way we did.

43 THE COURT: I agree that there certainly was no
44 finding that leave was necessary or that an
45 abandonment could not occur.

46 MR. SOROCHAN: So the other circumstance in which
47 materials such as we put before the court is

1 permissible is to -- under the use of Hansard in
2 other --

3 THE COURT: Well, again, unless your friend convinces
4 me otherwise, it seems to me that it's
5 admissible. So if you'd like to leave that to
6 reply, I'm happy --

7 MR. SOROCHAN: All right.

8 THE COURT: -- for you to do that.

9 MR. SOROCHAN: I'll just -- it's very brief.

10 THE COURT: Okay.

11 MR. SOROCHAN: I say that there was a mischief that
12 was supposed to be addressed, and that -- and the
13 debates in Hansard show what that mischief was,
14 and they are all set out. In fact, I could have
15 put in a lot more. The Hansard discussions even
16 predated the appeal hearing, but for the purposes
17 of putting it in the context in the surrounding
18 circumstances of the abeyance agreement, I
19 restricted the material to what occurred in
20 December and up to the point of the abeyance
21 agreement.

22 So then the -- I point out that in
23 paragraph 3 that it isn't only the unanimous
24 resolution of Parliament. Parliament's will is
25 also expressed in the unanimous report of the
26 Veterans Affairs --

27 THE COURT: When you say unanimous resolution of
28 Parliament, was this ever brought forward in the
29 Senate or is it the Commons?

30 MR. SOROCHAN: Is what?

31 THE COURT: Is it the Commons where the resolution
32 was?

33 MR. SOROCHAN: Oh, absolutely.

34 THE COURT: But not the Senate.

35 MR. SOROCHAN: Oh, it didn't -- okay, unanimous --

36 THE COURT: So it's not Parliament.

37 MR. SOROCHAN: It wasn't a bill; it was a resolution.

38 THE COURT: Yes, but it's a resolution of the House of
39 Commons.

40 MR. SOROCHAN: House of Commons.

41 THE COURT: I think we have to be careful with that.

42 MR. SOROCHAN: All right.

43 THE COURT: All right.

44 MR. SOROCHAN: It didn't -- we could have got one in
45 the Senate, too, if you'd wanted.

46 THE COURT: Well, maybe. But I just want to be
47 careful because --

1 MR. SOROCHAN: It was to send a message by all of the
2 political parties that this was their position
3 with respect to veterans because the disquiet
4 that had occurred within the populous with
5 respect to the contrary position was unsettling
6 to all politicians, and -- but in addition to
7 that resolution, there are other examples of
8 Parliament's unanimity on that, and that is
9 the --

10 THE COURT: The House of Commons unanimity.

11 MR. SOROCHAN: House of Commons Veterans --

12 THE COURT: I don't doubt that the Senate may also
13 have been of the same view, but --

14 MR. SOROCHAN: I didn't get into the Senate.

15 THE COURT: -- we don't have any views of the Senate.

16 MR. SOROCHAN: At that time it was thought to be going
17 out the door, but it's still there.

18 THE COURT: Right.

19 MR. SOROCHAN: I like the Senate, by the way.

20 THE COURT: Well --

21 MR. SOROCHAN: Some of my best friends are senators.

22 THE COURT: -- whether we like it or not, it's part of
23 the constitution --

24 MR. SOROCHAN: It is, and --

25 THE COURT: -- and composition of Parliament.

26 MR. SOROCHAN: But going back to the House of Commons,
27 the House of Commons had a report from the --
28 again unanimous -- from the Veterans Affairs
29 Committee that also touched upon the social
30 covenant issues, and in addition, Bill C-58,
31 which is referenced in the material and in the
32 abeyance agreement, reinstituted the purpose
33 clause that is set out in paragraph 3 of this --
34 of this summary brief.

35 I should -- you will -- if you wish, you can
36 go back into the pleadings and see that similar
37 purpose clauses have been removed at the time
38 they brought in the new veterans charter, and I
39 can tell you why they were removed, but it's not
40 relevant to this proceeding. But they were
41 removed as part of the privatization process that
42 occurred when the new veterans charter came in.

43 So then I've -- then the point is raised
44 somewhere in my friend's material that we can't
45 put evidence in on matters of fact, but the
46 social covenant and its existence was argued by
47 my friends as being capable of being decided on,

1 on the motion dismissed on the basis that it
2 wasn't a matter of fact, because if it was a
3 matter of fact, all of our pleadings on the
4 matter would have been deemed to have been
5 accepted and they wouldn't have been able to
6 challenge them.

7 The social covenant is -- and by the way,
8 the resolution at the time, House of Commons
9 didn't create the social covenant. It is, in
10 fact, a recognition that it has been part of the
11 common law or customary law of Canada since the
12 First World War, and that is what it says and you
13 can go back and I can go to Hansard's for 45
14 years, if you want, on that point, but it's
15 recognition, we submit, of a long-standing social
16 covenant.

17 My friend says that there is no unanimity as
18 to the precise language of the social covenant,
19 and, for what we're -- there is, however, a
20 consensus that is reflected in Parliament's
21 resolution as to the essence of the social
22 covenant.

23 I'm going to quote you another wording of
24 the social covenant that was made by -- and it
25 was made by Prime Minister Trudeau playing the
26 role of Papineau in the movie *The Great War*, and
27 it's not the Papineau that his riding is named
28 after, but a descendant of that Papineau. And
29 the Prime Minister himself has changed it from
30 the social covenant or the social contact to the
31 sacred covenant. So there are different words
32 that are used, but the essence is the same.

33 Prime Minister Trudeau, playing the role of
34 Papineau, says -- describes it this way --

35 MR. VICKERY: Excuse me, My Lord. I do apologize for
36 interrupting my friend, but I wonder what
37 possible relevance something said in a play could
38 have to this --

39 MR. SOROCHAN: Well, you'll find out when you hear it.
40 But my friend said that there has to be some sort
41 of a certainty that one would find in an
42 insurance policy to have --

43 THE COURT: I don't want to be impolite to your
44 friend. He has made an objection. I'm conscious
45 of your concerns, but I think we better hear this
46 out and see where it goes.

47 MR. SOROCHAN: All right.

1 THE COURT: Thank you.

2 MR. SOROCHAN: Papineau said -- and it was in the role
3 played by Prime Minister Trudeau, and he was
4 speaking to his troops in the riding of Papineau
5 at the time:
6

7 For those who have been disabled who cannot
8 carry on the good fight, it is certainly for
9 us to see that they want for nothing. So
10 also for those who were dependent upon our
11 heroic dead, we shall accept with readiness
12 and joy the honour of their support.
13

14 And I note the use of the word "honour" there and
15 note the use of the word "honour" in cemeteries
16 all across Canada with respect to our war dead
17 and in the Hall of Honour in the Houses of
18 Parliament, and it is that that brings about the
19 link that is really behind what is happening
20 here.

21 It is inconceivable that there is an issue
22 taken with the social covenant by any of our
23 political parties. All of our political leaders
24 have said words to that effect. Sometimes it's
25 described as a sacred covenant. Sometimes it's
26 described as a social contract. Sometimes it's
27 a -- whatever. But the essence is the same. If
28 you come and fight for our country, you will be
29 looked after if you're wounded and your
30 dependents will be looked after if you're killed.

31 Now, the question is, it doesn't have the
32 specificity that my friend seeks, perhaps, that
33 it isn't like an insurance policy and it leaves
34 to that generality what "looked after" means.

35 Now, if we proceed into our litigation, we
36 would -- we have comparisons to what "looked
37 after" means. We can compare how people would be
38 treated for like injuries in the civil courts.
39 We can compare how like people would be treated
40 for like injuries in Workers' Compensation
41 schemes. We can compare how soldiers in like
42 circumstances are treated by our allies.

43 So we can show to the court that the sacred
44 covenant of looking after them and looking after
45 dependents is not met, and the court could, by
46 the use of the honour of the Crown principle,
47 make a comment that the government had not --

1 just as they do -- just as the courts have done
2 with aboriginal issues.

3 THE COURT: Well, it seems to me you're really getting
4 into reargument of the case that we've already
5 heard argued. The question right now is how we
6 proceed in light of the -- and I may have
7 mischaracterized it, but as I understand it, your
8 position is that it is an abuse of process for
9 the Crown to proceed with the appeal at this
10 point in time and that the division that heard
11 the appeal should dismiss it as an abuse of
12 process.

13 MR. SOROCHAN: Yes, but if you just bear with me.
14 I'll just get this out of the way.

15 THE COURT: All right.

16 MR. SOROCHAN: People keep coming up to me and asking
17 me, why is this happening? The why, in my
18 respectful submission, and to my observation,
19 very little to do with the social covenant and a
20 lot to do with the honour of the Crown argument.

21 There's a panic amongst certain people in
22 Ottawa that if the honour of the Crown is allowed
23 to be used in any context other than aboriginals,
24 it can be used with respect to any promise of
25 government. And I have to address this as to
26 why, because it's fundamental to the agreement.

27 THE COURT: Well, that was the essence of the appeal.

28 MR. SOROCHAN: Well, that -- except that --

29 THE COURT: I don't see that it goes to the procedural
30 thing that we're dealing with right now.

31 MR. SOROCHAN: Yes, I know, but it's why we're dealing
32 with the procedural thing now, and I just want to
33 quite simply state that limited circumstances in
34 which I'm asking the court to intervene, which
35 I've set out in this argument, where there was a
36 constitutional move forward and a constitutional
37 requirement to the -- the need for the social
38 covenant, you wouldn't need the social covenant
39 if all of the commonwealth countries had standing
40 armies at the start of the First World War. They
41 didn't. The reason they didn't was
42 constitutional. They couldn't. They were
43 prohibited from doing so without the consent of
44 Parliament by the Bill of Rights of William and
45 Mary.

46 It was also constitutional in the sense
47 that, like the agreements that created Canada by

1 treaties with the First Nations, the social
2 covenant gave rise to Canada as an independent
3 country. Canada was not an independent country
4 until after the First World War. It became an
5 independent country on the blood and injuries of
6 our soldiers that suffered during the First World
7 War, and it was after that that Canada became
8 independent and was in the Treaty of Versailles,
9 and which led eventually to the Statute of
10 Westminster in 1931, which gave us full
11 independence.

12 THE COURT: With all due respect, none of that -- and
13 this is obvious -- happened after our hearing in
14 2014.

15 MR. SOROCHAN: No, but --

16 THE COURT: That's what I'm concerned with today.

17 MR. SOROCHAN: I don't disagree with you, but I know
18 what's behind this flip-flop that has happened
19 with politicians. It's got nothing to do with
20 the social covenant. You wouldn't find any of
21 them would ever disagree with the social
22 covenant. It's got everything to do with a bunch
23 of people saying, oh, oh, you got to watch it; if
24 you let this social covenant come in and be
25 enforced by the honour of the Crown, every
26 statement that's made by the government can be
27 enforceable. And I just want to reiterate --
28 yes, I argued it before, but I'm reiterating it
29 now that that's not the position of the
30 respondents here. We say there is a very narrow,
31 constitutionally based framework that gave rise
32 to the social covenant, and the way to deal with
33 that is we can meet that head on.

34 You can -- the court should decide whether
35 I'm right or he's right, but rather than doing
36 that, there's a collateral attack on the
37 existence of the social covenant.

38 THE COURT: Well, neither Mr. Justice Harris nor
39 Mr. Justice Willcock are here. They, together
40 with me, will decide what to do.

41 MR. SOROCHAN: All right.

42 THE COURT: And you're really going back to the
43 original arguments at this stage.

44 MR. SOROCHAN: I've just said my piece, but I --

45 THE COURT: All right.

46 MR. SOROCHAN: We have to -- it's part of the
47 surrounding circumstances of what's going on

1 here, is that this isn't about the social
2 covenant and people backing off that. I expect
3 there will be another announcement by the
4 minister today saying, in essence, he agrees with
5 the social covenant.

6 But it's about their fear -- irrational
7 fear, in my respectful submission -- that the
8 social covenant will open the floodgates to the
9 shocking proposition that ministers of the Crown
10 should be bound by -- or should be answerable
11 when they depart from what they say. And that
12 will never happen. We'll never have it so that
13 honour of the Crown is used to make sure that
14 they keep their commitments.

15 But they have to -- it should be applied,
16 just as it was applied in the aboriginal context,
17 where, as here, it had a constitutional framework
18 called upon it and it had a constitutional
19 result.

20 Now, what should we do here? One, you
21 should -- I haven't changed my view that the --
22 that was expressed before you the last time, that
23 we ought not to -- you ought not to order them to
24 abandon the appeal, which would be one
25 possibility. I believe that the route that we
26 adopted was the correct route, but at the same
27 time, I submit it does not lie in the mouths of
28 the government to flip-flop on this. It puts
29 the -- we talk about putting the administration
30 of justice into disrepute. This puts the whole
31 electoral process into disrepute.

32 My friend stood up, and in support of his
33 argument on parliamentary sovereignty, said that
34 if the -- people didn't agree with what the
35 parties in power were doing, they could throw
36 them out. Well, they did, and we saw that the
37 materials show that the issue that is before this
38 court was a substantial factor in the election.

39 So it's very ironic that my friend relies on
40 parliamentary sovereignty, but doesn't give
41 effect to it when it's had a practical result by
42 voters and doesn't give effect to the unanimous
43 resolution of the House of Commons saying what
44 the historic fact has been with respect to the
45 social covenant.

46 So what I submit that you should -- if we're
47 to proceed, is that you have to take cognizance

1 of those facts that have taken place since we
2 argued the appeal in December of 2014. It is
3 clear that by early January of 2015 the position
4 had been repudiated, both by the -- both by the
5 conservative government. Minister O'Toole stood
6 up in the house and quoted Borden. He made it
7 clear, as is reflected in the abeyance agreement,
8 that those positions were repudiated, and they
9 were also repudiated during the election
10 campaign, which resulted in the new Parliament.

11 For my friend to stand up and -- this is
12 almost a trick to get -- well, it is a trick --
13 to get this court to render judgment on the basis
14 of an argument that had been repudiated without
15 telling the court that that's what he's doing,
16 and then he would -- if it happened, these
17 ministers now could stand up and say, well,
18 they're just rendering judgment on an argument
19 made by the previous government.

20 Well, that's reflected in the memorandum of
21 argument my friends put in.

22 THE COURT: Well, with respect, and I'm having a lot
23 of trouble with these arguments generally.

24 Canada has one government; it doesn't have a
25 previous government and a current government.

26 There were different parliaments, but there is
27 one Government of Canada.

28 MR. SOROCHAN: Well, you would think that --

29 THE COURT: And I don't care what political stripe
30 they are. Your position is that they have to
31 come here in a case and take a consistent
32 position and that they can be estopped from
33 taking other positions. That's fair enough, but
34 I -- you know, the court can't be dragged into
35 politics and pretend that we have a different
36 governmental system or different government. We
37 elect our government.

38 MR. SOROCHAN: Well, you have one government, but if
39 that -- but that government made a deal with us.
40 Government of Canada made a deal with us. Now
41 they're trying to unmake the deal.

42 THE COURT: That's the question, yes. All right.

43 MR. SOROCHAN: So that -- but, no, the court should
44 pay attention to the effect of what is happening
45 here on the legitimacy of the electoral process.
46 It's not a political question. It's a --

47 THE COURT: Well, if the Government of Canada has made

1 a deal with you, as you say, that is something
2 the court will have to consider and determine
3 and, again, I'm not quite sure what the argument
4 you're putting forward is in terms of what the
5 court should do.

6 It seems to me that the argument -- and this
7 is how I've characterized it, and I may be
8 wrong -- is that proceeding with the appeal at
9 this stage is an abuse of process because the
10 government, through its various emanations, has
11 made certain commitments.

12 MR. SOROCHAN: It would be an abuse of process. It
13 would be a breach of estoppel, promise --
14 whatever way you want to put it -- to render
15 judgment on the basis of the arguments that they
16 made in December of 2014 without taking -- but it
17 would not -- what you should do is take into
18 account what happened since.

19 THE COURT: Well, it seems to me that we have to take
20 into account what happened since, but the
21 question is how we take it into account. If we
22 take it into account on the question of whether
23 this case is still arguable, that is whether the
24 government has abandoned their position and
25 cannot ask the court to rule on it, that's one
26 thing.

27 If this is additional evidence, I suppose
28 normally we would have to determine whether the
29 evidence is admissible. Given that it's striking
30 out of pleadings, evidence should not generally
31 be admissible anyway.

32 MR. SOROCHAN: No, it's not evidence in the sense that
33 it's evidence in that context, but it's -- we
34 have to find a way to, in an orderly fashion, put
35 before the court that what has occurred, and
36 that's what I've tried to do with the affidavits.

37 THE COURT: Well, it seems to me you've put before me
38 what's occurred. I would think that the
39 materials we have, if not adequate, are almost
40 adequate for the panel to resolve the question,
41 and subject to anything your friend says, it
42 seems to me that the material that I have before
43 me should be duplicated and given to the other
44 members of the panel, and they should take it
45 into account in deciding --

46 MR. SOROCHAN: Well, that's precisely what I want.

47 THE COURT: All right. Are you seeking to submit

1 additional material?

2 MR. SOROCHAN: Well, not that I had -- not unless my
3 friend raises something I haven't thought of.

4 THE COURT: All right. Let's hear from Mr. Vickery,
5 then. Mr. Vickery.
6

7 **SUBMISSIONS FOR THE APPELLANT BY MR. VICKERY:**

8 Thank you, My Lord. My Lord, I begin with
9 the proposition, of course, that the appeal that
10 is under reserve was an appeal with regard to a
11 motion to strike a pleading. It is clear, in my
12 submission, that evidence is not generally
13 available in support of a motion to strike a
14 pleading.

15 The abeyance agreement to which my friend
16 refers does not speak of the government
17 abandoning its defences in the event that during
18 the period of abeyance it was not possible to
19 resolve the outstanding litigation.

20 To the contrary, and we note this in our
21 brief written submission, it provides that in the
22 event the matter is not resolved within the
23 abeyance period, then the parties are free to
24 raise any litigation options as they see fit, I
25 believe, is the language.

26 Now, as I understand it, and I was not here
27 before you -- Ms. Rasmussen was -- there was a
28 discussion with regard to whether or not the
29 government had abandoned its ability to raise
30 defences with regard to the issues raised on the
31 appeal, should the matter proceed to trial.

32 THE COURT: Well, not quite, because the issue has
33 been decided at trial -- that is it's arguable --
34 and it was not open to Canada to make the
35 argument that this is an unarguable proposition
36 at trial, because that's already been decided at
37 the trial level.

38 MR. VICKERY: No.

39 THE COURT: My concern, given the judge has made
40 certain pronouncements, was that the matter would
41 come back to this court after a trial, possibly,
42 and we would hear arguments at that point that
43 the abandonment of the appeal had finally decided
44 the matter, or we have wasted a whole bunch of
45 time.

46 As I understood it, at the date of the
47 abeyance agreement, at the date of your last

1 appearance -- your client's last appearance in
2 this court --

3 MR. VICKERY: Yes.

4 THE COURT: -- the position of Canada was that it
5 expected to reach an agreement that it did not
6 abandon any defences.

7 MR. VICKERY: Yes.

8 THE COURT: And reserved the right to bring them back
9 before this court. It was on that basis that I
10 was very reluctant to -- and I want to be careful
11 because what your friend has said is accurate.
12 No one decided that leave was needed to abandon,
13 but I was very reluctant to accept the
14 abandonment at face value. Counsel ultimately
15 agreed to change it into an abeyance agreement in
16 this court.

17 MR. VICKERY: Yes.

18 THE COURT: That's where we stood at that period.

19 Now, since that time there have been other
20 events and, again, I'm putting a characterization
21 on it that your friend may not have, but it seems
22 to me that the argument is that it is an abuse
23 for Canada to proceed with the appeal at this
24 point. It seems to me that in order to determine
25 whether this court should proceed to give
26 judgment that the panel will have to look at the
27 arguments that are being made in these memoranda.

28 MR. VICKERY: Yes.

29 THE COURT: And the evidence, and if there's a need
30 for further material, we can deal with that, but
31 it seems to me that the material that I have is
32 probably sufficient to deal with the arguments.
33 That can be put before the panel, and the panel
34 can then finish its work on this case, either
35 deciding, perhaps, that it is an abuse of
36 process, deciding that the appellant's case is
37 correct, deciding the respondents' case is
38 correct. But that would allow us, it seems to
39 me, to get on with matters, and it does appear to
40 me that the arguments, although admirably brief,
41 are comprehensive enough that the court would be
42 able to deal with them.

43 MR. VICKERY: Well, certainly I would not object to
44 that method of proceeding. I would submit that
45 the issue which is before the court, that is the
46 substantive issues argued on the appeal, of
47 course, cannot be affected by subsequent events.

1 I think it's important to note that for the
2 purposes of the appeal we were required to accept
3 that the factual allegations in the claim were
4 true and we did not attack the factual
5 allegations in the claim. We argued as to the
6 legal effect of what was alleged in the claim,
7 and my friend is correct that parliamentary
8 sovereignty was a major point discussed on the
9 appeal.

10 Now, I would say that those issues remain as
11 they were. The Government of Canada stands by
12 the submissions that were made on the appeal and
13 is content to have the court determine the matter
14 and, in fact, the government seeks the guidance
15 of the court with regard to the matter, and I
16 think it's fair to say that having the court
17 determine the matter does not in any way prevent
18 furtherer discussions with the veterans community
19 at large. Those discussions, in fact, are
20 ongoing, and it's common ground, as I understand
21 it, that the government is, in fact, in the
22 process of moving to expand benefits to veterans.

23 That is the subject of the mandate letter to
24 which my friend refers, but it has, in my --

25 THE COURT: No, what's going to happen is outside of
26 this court's concerns.

27 MR. VICKERY: That was precisely my point in going
28 there, My Lord, is that what this court has
29 before it are the allegations contained in a
30 specific amended statement of claim, and it's
31 that that we would ask the court to consider and
32 nothing more.

33 THE COURT: Well, that much is true. It does seem to
34 me that on the question of whether Canada can
35 continue with the appeal, we have to look at this
36 new material.

37 MR. VICKERY: Yes.

38 THE COURT: And I think it's sufficient for that
39 purpose. I agree with you that the court cannot
40 pronounce on anything that is not before it, but
41 at the same time -- and I speak only for myself
42 and not for the panel at this stage -- it seems
43 to me that it would be a shame if there were new
44 facts that were going to be alleged below through
45 amendment and, again, we wasted judicial time.

46 I can't promise that if this court
47 pronounces on the issue that what we say would

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Ruling

1 not -- while not based on the new evidence, it
2 would be ridiculous to suggest that whatever this
3 court says one way or another would not apply to
4 the new allegations which are, in large part,
5 simply magnifications of the original argument.

6 MR. VICKERY: Yes, My Lord, and as I say, I'm
7 certainly prepared to agree to the process that
8 you suggest, that it is necessary to put the
9 material before the full panel. I would request
10 that if that be done and if there is a need -- a
11 perceived need for further material or further
12 submissions, then of course we be given that
13 opportunity.

14 THE COURT: Well, that's the -- I think we're more or
15 less *ad idem* at this point. The question is
16 where we go from here, and I will tell you that I
17 met with the other members of the division
18 yesterday to determine what they thought was an
19 appropriate way of proceeding, and we were all
20 agreed that, assuming nothing to the contrary
21 happened this morning, that we would accept the
22 submissions that had been made on this
23 application or on this case management conference
24 and have been distributed to all members of the
25 panel, and we also acknowledged that there was a
26 possibility that the parties would not or want to
27 put in further material.

28 While I think I can speak for the entire
29 division in saying we thought that the material
30 that was present this morning was probably
31 enough, we accepted that the parties might wish
32 to put further material in, and if they do, I
33 should deal with that this morning.

34 So that's where we stand. It sounds like
35 everyone is agreed that the panel can receive
36 this new material, at least for limited purposes.
37 I don't know whether anyone wishes to put more
38 material before the panel, but if not, we can --
39 I will direct that this material be duplicated
40 and provided to the panel, and we can go from
41 there.

42 MR. VICKERY: My Lord, I'm content to proceed in that
43 fashion. The government does not wish at this
44 point to file any further material.

45 THE COURT: Thank you. Mr. Sorochan?

46 MR. SOROCHAN: I don't -- I can't envisage any further
47 material. I made the decision as to what should

1 be there now. I had a ton of other stuff, but I
2 didn't think it would be helpful.

3 THE COURT: All right. Well, I think the issues are
4 very well defined at this point in time, and,
5 counsel, I'm almost speaking beyond you to the
6 gallery at this point, but one of the
7 difficulties is that, having this matter come
8 back to the panel in late June means that it's
9 time where there are lots of reserved judgments
10 in this court, and I cannot promise an
11 instantaneous judgment from the division. We're
12 going to have to review the arguments, probably
13 listen to the recording of the initial hearing
14 again in case there's anything that was missed.

15 So the judgment will not be very, very
16 rapid. We will do our best to get it out as soon
17 as we can.

18 MR. SOROCHAN: We just hope there's no more enactments
19 between now and then that we have to bring to
20 your attention.

21 THE COURT: Well, you're always welcome.

22 All right. Thank you. And I'd like to
23 express my thanks again to the veterans for
24 attending this morning.

25 THE CLERK: Order in chambers. Chambers is adjourned.

26
27 **(CHAMBERS ADJOURNED AT 10:08 A.M.)**

28 **Reporter's Certification:**

29
30 I, Tiffany Vincent, RCR, Official Reporter
31 in the Province of British Columbia, Canada,
32 BCSRA No. 576, do hereby certify:

33
34 That the proceedings were transcribed by me
35 from an audio recording provided of recorded
36 proceedings, and the same is a true and accurate
37 and complete transcript of said recording to the
38 best of my skill and ability.

39
40 IN WITNESS WHEREOF, I have hereunto
41 subscribed my name this 17th day of January,
42 2017.

43
44
45
46 Tiffany Vincent, RCR
47 Official Reporter