

Court File No. CV-19-00616512-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -- COMMERCIAL LIST

B E T W E E N:

BABAK PAYAMI, KAMNOOSH SHAHABI, MEHRDOKHT HADI
and SHAYAN MOIN

Applicants

- and -

IRANIAN CANADIAN CONGRESS

Respondent

--- This is the Examination in aid of a motion under Rule 39.03 of SOUDEH GHASEMI, a representative of the Respondent herein, taken at the offices of Network Reporting & Mediation, One First Canadian Place, 100 King Street West, Suite 3600, Toronto, Ontario, M5X 1E3, on the 12th day of June, 2019.

APPEARANCES:

ATOOSA MAHDAVIAN For the Applicants

JONATHAN NEHMETALLAH For the Respondent

ALSO IN ATTENDANCE:

MEHRDOKHT HADI Observer

BABAK PAYAMI Observer

KAMNOOSH SHAHABI Observer

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(NONE)

The list of undertakings and refusals is provided as a service to counsel and does not purport to be complete or binding upon the parties.

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EXH. NO. 1: Requirements of Not-For-Profit 16
Corporations taken from Government
of Canada Website, Six Pages.

EXH. NO. 2: Email from Jonathan Nehmetallah to 75
Moosan Mahdavian dated June 10,
2019.

1 --- UPON COMMENCING AT 10:02 A.M.

2 SOUDEH GHASEMI: Affirmed.

3 EXAMINATION BY MS. MAHDAVIAN:

4 1 Q. So we're on the record now. And I heard the
5 court reporter was giving you some directions on how to
6 answer the questions, so I just want to put that on the
7 record, that we need verbal answers from you. So if you
8 nod your head, it won't get reflected. And, please, if
9 you don't understand a question, ask me to rephrase it or
10 repeat it. I'd be happy to do that. And if you need a
11 break at any time, let us know. Okay?

12 A. Okay.

13 2 Q. Can you state your full legal name for the
14 record, please?

15 A. Soudeh Ghasemi.

16 3 Q. Thank you. And I confirm that you've been
17 affirmed just before we came on the record.

18 Can you also confirm that your answers will bind
19 the Respondent, Iranian Canadian Congress?

20 A. Yes.

21 4 Q. Thank you. And there is nothing affecting
22 your ability to give testimony today?

23 A. No.

24 5 Q. Okay, thank you. Now, can you just very
25 briefly tell me what you do for a living?

1 A. I'm a Chartered Accountant.

2 6 Q. And where do you work?

3 A. KPMG.

4 7 Q. And what is -- well, obviously your highest
5 educational degree is a CA degree, a degree in Chartered
6 Accounting?

7 A. It is a CA, CGA.

8 8 Q. And where did you get that from?

9 A. Ontario government.

10 9 Q. Okay, no, but where did you do your
11 schooling?

12 A. Laurentian University.

13 10 Q. Thank you. And how long have you been in
14 Canada?

15 A. Since December 2004.

16 11 Q. 2004. Okay. Thank you. And I take it
17 you're a Canadian citizen?

18 A. Yes.

19 12 Q. Okay, thank you. When did you first join ICC
20 as a member?

21 A. I believe 2012.

22 13 Q. And when did you first join the board of ICC?

23 A. 2014.

24 14 Q. And what was your title or your role in 2014
25 when you joined the board?

1 A. As vice-president.

2 15 Q. Vice-president. And today you are the
3 president of the organization?

4 A. Yes.

5 16 Q. Okay, thank you. And you've been in that
6 role since what date?

7 A. Effective --

8 --- Reporter's Note: 10:05 a.m. Babak Payami
9 enters the room.

10 THE DEPONENT: Effective last AGM.

11 BY MS. MAHDAVIAN:

12 17 Q. So since 2018?

13 A. Since 2018.

14 MS. MAHDAVIAN: Thank you. Sorry. Just off the
15 record, please.

16 --- Off the record at 10:05 a.m.

17 --- Upon resuming at 10:05 a.m.

18 BY MS. MAHDAVIAN:

19 18 Q. Now, can you just briefly tell me what the
20 roles and responsibilities of the president are -- of ICC
21 of course?

22 A. My role is to oversee the operation of the
23 organization.

24 19 Q. Do people report to you?

25 A. Yes.

1 20 Q. Who are the people that report to you; who
2 are your direct reports?

3 A. All board members.

4 21 Q. All board members. And I understand there
5 are, aside from you, eight other board members; is that
6 right?

7 A. Yes.

8 22 Q. So it's a nine-person board. And can you
9 tell me who was the secretary after the 2018 election?

10 A. Younes Zangiabadi.

11 23 Q. Can you spell the name?

12 A. Y-o-u-n-e-s, last name is
13 Z-a-n-g-i-a-b-a-d-i.

14 24 Q. When did he cease to be secretary?

15 A. I have to confirm the date.

16 25 Q. Okay, can you let us know by undertaking?

17 MR. NEHMETALLAH: Absolutely.

18 --- UNDERTAKING

19 MS. MAHDAVIAN: Thank you.

20 MR. NEHMETALLAH: To be sure for the record, the
21 date --

22 MS. MAHDAVIAN: That Mr. Zangiabadi ceased to be
23 the secretary of the organization.

24 BY MS. MAHDAVIAN:

25 26 Q. Can you tell us why he did not continue in

1 his role?

2 A. Well, he took another role, which is the
3 research department.

4 27 Q. But why did he stop being the secretary?

5 A. He moved out of the country.

6 28 Q. Yes. So he's in this research role even
7 though he's not in Canada?

8 A. Yes. That doesn't stop him.

9 29 Q. Really? Okay. And tell me, is he a Canadian
10 citizen?

11 A. No.

12 30 Q. And are you able to be on the board if you're
13 not a Canadian citizen?

14 A. If a motion is passed by the members for an
15 exception, yes, and he got that exception from the
16 members on the last AGM.

17 31 Q. So you're referring to the amendment --
18 by-laws amended at the AGM or you're referring to a
19 specific motion?

20 A. Specific motion, as I said, for the exception
21 for this individual.

22 MS. MAHDAVIAN: All right. And have you produced
23 in your record, Jonathan, anything to do with the AGM and
24 motions passed at the AGM? I know that you produced the
25 election report. Just off the record.

1 --- Off-the-record discussion at 10:09 a.m.

2 --- Upon resuming at 10:10 a.m.

3 BY MS. MAHDAVIAN:

4 32 Q. Can I please have by way of undertaking a
5 copy of the minutes from the AGM that Ms. Ghasemi has
6 referred to which she has confirmed off the record
7 reflect the motion confirming that Mr. Zangiabadi, who is
8 not a Canadian citizen, could still be on the board?

9 MR. NEHMETALLAH: For clarity of the record, are
10 we talking about the 2018 AGM?

11 MS. MAHDAVIAN: I believe that's the last AGM.

12 MR. NEHMETALLAH: Was that the last AGM?

13 THE DEPONENT: Yes.

14 MR. NEHMETALLAH: I'll give that undertaking.

15 --- UNDERTAKING

16 BY MS. MAHDAVIAN:

17 33 Q. Thank you. And correct me if I'm wrong but I
18 thought that in order to be involved with the Iranian
19 Canadian Congress, you had to either be a permanent
20 resident or a Canadian citizen. So does that mean that
21 even if you're not in Canada, you can join the
22 organization and be active in the organization?

23 A. When he ran for the election --

24 34 Q. Yes.

25 A. -- he was in Canada.

1 35 Q. Okay. But subsequently he left?

2 A. For a certain period of time for his
3 education, yes.

4 36 Q. Is he back?

5 A. He will be back.

6 37 Q. So, again, during the last months he hasn't
7 been in Canada; correct?

8 A. Physically, no.

9 38 Q. Well, that's what we're talking about,
10 physically. So during that time, was he not disqualified
11 from being on the board because he's not physically
12 present?

13 A. No. He attends the meeting.

14 39 Q. All right. Is it also -- is that the reason
15 why the office of secretary was then taken by Pouyan?

16 A. Yes.

17 40 Q. So he now serves in both functions as
18 vice-president and secretary?

19 A. Yes.

20 41 Q. P-o-u-y-a-n. I want to take you to Exhibit
21 "A" of Pouyan's Affidavit sworn May 22nd, which is
22 referred to as the updated version of the amendments.
23 Can you just doublecheck that? This is what your lawyer
24 has attached as an exhibit and it's referred to as the
25 updated version of the by-law.

1 So I take it that it contains certain amendments;
2 is that right?

3 A. Yes.

4 42 Q. And who prepared these by-laws? Was it a
5 lawyer?

6 A. You mean initially?

7 43 Q. The updated ones.

8 A. By-laws were originated by the founders of
9 the organization.

10 44 Q. Yes, I know that.

11 A. Any changes in the by-law has been passed by
12 the majority of the members.

13 45 Q. I wasn't asking who passed them. I asked who
14 prepared them. Who drafted them?

15 A. The original format was drafted by the
16 founders.

17 46 Q. I got that. I'm asking about the updated --
18 the amendments. Who drafted those?

19 A. These are coming in terms of motions to the
20 board before the AGM, and the motions will be passed at
21 the AGM and they will be added to the by-law.

22 47 Q. And who drafted them? Do you understand the
23 question?

24 A. I don't, actually.

25 MS. MAHDAVIAN: Okay. Maybe you can assist.

1 MR. NEHMETALLAH: She's asking who drafted the
2 motion that led to the amendment. And if you don't
3 know --

4 MS. MAHDAVIAN: The language.

5 MR. NEHMETALLAH: The language of the motion.
6 And if you don't know, say you don't know, but who
7 drafted the actual motions that then led to the
8 amendments?

9 THE DEPONENT: At different stages there were
10 different people. So I don't know. The answer to that
11 would be I'm not sure.

12 BY MS. MAHDAVIAN:

13 48 Q. Did you get -- when I say "you" -- sorry. I
14 will be doing that a lot -- I'm talking about the
15 organization. So did ICC get any assistance from a
16 lawyer with respect to the amendments in the by-laws?

17 A. I don't know the answer to that question.

18 49 Q. You don't know? You're the president. You
19 don't know the answer?

20 A. Yeah, I don't know the answer to that
21 question. I have to clarify that.

22 50 Q. Right. Can we by way of undertaking get an
23 answer to the question of who assisted in drafting the
24 by-laws? And not just the motion that introduced the
25 amendments but the actual language in the amended version

1 of the by-laws?

2 MR. NEHMETALLAH: Sorry. That was a good amount.
3 So who assisted in drafting -- the undertaking is both
4 the by-laws and each subsequent amendment to the by-law?

5 MS. MAHDAVIAN: Well, I'm not interested in the
6 original by-laws. It was a number of years ago, and as
7 Soudeh has mentioned -- sorry. I'll refer to you as
8 Soudeh. It's easier. The founders did that.

9 MR. NEHMETALLAH: Sure.

10 MS. MAHDAVIAN: But then there were some
11 amendments apparently introduced at the 2018 AGM,
12 according to the note up on top of Exhibit "A."

13 MR. NEHMETALLAH: Okay.

14 MS. MAHDAVIAN: I'd like to know who drafted the
15 amended sections.

16 MR. NEHMETALLAH: In 2018.

17 MS. MAHDAVIAN: Yes.

18 MR. NEHMETALLAH: Okay, that's fine, I'll give
19 that undertaking.

20 MS. MAHDAVIAN: Thank you.

21 MR. NEHMETALLAH: Or best efforts, rather.

22 --- UNDERTAKING

23 BY MS. MAHDAVIAN:

24 51 Q. Sure. Were these amendments circulated to
25 the membership before the AGM?

1 A. Yes.

2 52 Q. And how was that done?

3 A. Via email.

4 53 Q. And can you produce a copy of the email which
5 sent the proposed draft amendments to the by-law to the
6 membership?

7 MR. NEHMETALLAH: I'll undertake to do that.

8 MS. MAHDAVIAN: Thank you.

9 MR. NEHMETALLAH: The email -- sorry, Counsel, if
10 I keep repeating, I just don't want to give the wrong
11 undertaking. The email enclosing the 2018 amendment to
12 the by-laws?

13 MS. MAHDAVIAN: Yes. To the membership.

14 MR. NEHMETALLAH: The email to the membership.

15 --- UNDERTAKING

16 BY MS. MAHDAVIAN:

17 54 Q. Do you know if that email was sent to the 957
18 eligible voters that have been identified in Pouyan's
19 Affidavit; is that who received it?

20 A. Every eligible voter received that
21 communication.

22 55 Q. Okay, thank you. Have these amended by-laws,
23 now that they apparently were passed at the AGM, have
24 they been filed with Corporations Canada?

25 A. That I have to confirm.

1 MR. NEHMETALLAH: Counsel, just to be clear, this
2 is governed by the province, not --

3 MS. MAHDAVIAN: Well, I have here from the
4 websites of Government of Canada requirements with
5 respect to not-for-profits, and one of them is the filing
6 of by-laws. I can have you take a look if you wish.
7 Just off the record.

8 --- Off-the-record discussion at 10:18 a.m.

9 --- Upon resuming at 10:19 a.m.

10 BY MS. MAHDAVIAN:

11 56 Q. So by way of undertaking, first of all,
12 you'll confirm with me if they have been filed. And I
13 guess as a precursor to that, Jonathan, you'll let me
14 know if they don't have to be filed and the answer is
15 they don't have to be filed?

16 MR. NEHMETALLAH: Yes, the undertaking -- I'll
17 undertake to advise if there is reporting obligations
18 to Corporations Canada.

19 MS. MAHDAVIAN: Yes.

20 MR. NEHMETALLAH: Or the Iranian Canadian
21 Congress, and if there are obligations, whether they have
22 fulfilled those obligations with respect to the by-law.

23 --- UNDERTAKING

24 MS. MAHDAVIAN: Right. Yes. Thank you very
25 much.

1 MR. NEHMETALLAH: No problem. May I have a
2 minute just to --

3 MS. MAHDAVIAN: Yes.

4 MR. NEHMETALLAH: Counsel, if I may, do you have
5 an extra copy of that?

6 MS. MAHDAVIAN: You can have it.

7 MR. NEHMETALLAH: Thank you.

8 MS. MAHDAVIAN: Do you want to mark it?

9 MR. NEHMETALLAH: As an exhibit?

10 MS. MAHDAVIAN: Well, as something that we've
11 been referring to.

12 MR. NEHMETALLAH: Let's mark it as Exhibit 1.

13 MS. MAHDAVIAN: Sure.

14 MR. NEHMETALLAH: Sure.

15 MS. MAHDAVIAN: So Exhibit 1 is just a printout
16 from the government website with respect to requirements
17 by not-for-profit corporations that I've referred to.

18 EXHIBIT NO. 1: Requirements of Not-For-Profit
19 Corporations taken from Government of Canada Website, Six
20 Pages.

21 BY MS. MAHDAVIAN:

22 57 Q. All right. And do you remember offhand,
23 Soudeh, what the amendments related to just generally?

24 A. Okay. So there are two sets of amendments
25 when I look at this. Which one are you referring to?

1 58 Q. Okay, well, maybe you can explain what that
2 means, why are there two sets?

3 A. There are one sets of amendments from 2017
4 AGM.

5 59 Q. Okay.

6 A. And there was another amendment that I see
7 here.

8 60 Q. How do you know which one is which? I guess
9 that's the start. Is that just by virtue of your
10 knowledge of being involved with the company?

11 A. This is the best of my memory.

12 61 Q. All right. So you're looking at the code of
13 conduct that was introduced in 2018?

14 A. Right. And I'm looking at the last page.

15 62 Q. Yes?

16 A. Are you looking at page 39?

17 63 Q. Yes.

18 A. That donation in excess of \$10,000 --

19 64 Q. Yes.

20 A. -- that was another amendment that was done.

21 65 Q. In --

22 A. 2017.

23 66 Q. 2017. Okay.

24 A. So in terms of who introduced all these
25 amendments, I can get it.

1 67 Q. Yes, sure.

2 MR. NEHMETALLAH: The --

3 THE DEPONENT: I --

4 BY MS. MAHDAVIAN:

5 68 Q. And who would you be asking, by the way?

6 A. I will be asking the current board, and if
7 the current board doesn't have enough knowledge, I will
8 reach out to the prior board.

9 69 Q. Okay. Great.

10 MR. NEHMETALLAH: So my apologies just because
11 the undertaking came from my client. The 2017
12 amendments?

13 MS. MAHDAVIAN: She said there are two sets of
14 amendments.

15 MR. NEHMETALLAH: Two sets of amendments from two
16 separate years or two sets of amendments --

17 MS. MAHDAVIAN: Two separate AGMs.

18 MR. NEHMETALLAH: -- from -- two sets of
19 amendments in 2018 and two sets of amendments in 2017?

20 THE DEPONENT: One set of amendments in 2017.

21 MR. NEHMETALLAH: Okay.

22 THE DEPONENT: That's what I -- when I look at
23 this, there's another amendment that I see here is from
24 2018.

25 MR. NEHMETALLAH: And the undertaking was who

1 assisted those?

2 MS. MAHDAVIAN: No. The undertaking --

3 MR. NEHMETALLAH: Just what those are?

4 MS. MAHDAVIAN: Yes. What they consisted of. Or
5 I think she said she'll find out who introduced them?

6 MR. NEHMETALLAH: What did you say?

7 THE DEPONENT: I will find out how -- you had
8 mentioned that you wanted to know -- could you clarify
9 what you want to know?

10 BY MS. MAHDAVIAN:

11 70 Q. I wanted to know what the amendments
12 consisted of. And then you asked me which set of
13 amendments, which I didn't know there were more than one.
14 So, I'm really still interested in knowing what were the
15 amendments that were introduced?

16 MR. NEHMETALLAH: Okay.

17 MS. MAHDAVIAN: And what was the reasoning behind
18 them.

19 MR. NEHMETALLAH: I'll -- I'll undertake to
20 clarify the sets of amendments in 2017 as well as the
21 sets of amendments in 2018 as well as who drafted the set
22 of amendments in 2018.

23 --- UNDERTAKING

24 MS. MAHDAVIAN: Yes, and also the rationale
25 behind introducing the amendments in 2018, please?

1 MR. NEHMETALLAH: That's a bit ambiguous when you
2 say "rationale."

3 MS. MAHDAVIAN: The reasoning behind it, why were
4 these amendments made? For example, the code of conduct,
5 what brought that about?

6 And you've referred to that in your material so
7 it's highly relevant.

8 MR. NEHMETALLAH: I appreciate that it's
9 relevant. I'm trying to understand how to answer the
10 rationale. I'll make best efforts on that one --

11 MS. MAHDAVIAN: Sure. I mean did the board --

12 MR. NEHMETALLAH: Put it --

13 BY MS. MAHDAVIAN:

14 71 Q. Did the board have something happen that made
15 it realize it required a very stringent code of conduct
16 that has been introduced, you know?

17 MR. NEHMETALLAH: I'll undertake to give a best
18 efforts to provide the rationale behind the code of
19 conduct.

20 --- UNDERTAKING

21 BY MS. MAHDAVIAN:

22 72 Q. Okay, great. So now let's move on. Now,
23 you're aware that the four individuals who are the named
24 Applicants delivered affidavits in December of 2018 that
25 were sworn affidavits pursuant to Section 307 of the

1 Corporations Act?

2 A. Sorry. I lost you at some point. Could you
3 just repeat it again?

4 73 Q. Yes. You're aware that the four named
5 Applicants delivered sworn affidavits in December of
6 2018?

7 A. Mm-hmm.

8 74 Q. Yes?

9 A. Sorry. Could you repeat again?

10 75 Q. You are aware that the four named Applicants
11 delivered sworn affidavits in December of 2018?

12 A. Yes.

13 76 Q. And you are aware these sworn affidavits were
14 delivered pursuant to the Corporations Act?

15 A. Yes.

16 77 Q. And you received all four Affidavits?

17 A. Yes.

18 78 Q. And did you read all four Affidavits?

19 A. Yes.

20 79 Q. And sitting here today, do you agree that the
21 four Affidavits comply with the requirements?

22 MR. NEHMETALLAH: That's a legal determination.

23 She -- whether something complies --

24 BY MS. MAHDAVIAN:

25 80 Q. What's ICC's position on it; do they comply?

1 MR. NEHMETALLAH: There is no position right now.
2 I think that what you're asking is a legal determination,
3 so I'm not going to have her answer a legal question.

4 MS. MAHDAVIAN: Have you anywhere in your
5 materials, Jonathan, set out anything in opposition to
6 the application and relief sought that the four original
7 Affidavits are not compliant?

8 MR. NEHMETALLAH: The question isn't compliance
9 and we don't need to set out the position in the
10 Affidavit with respect to compliance. I think compliance
11 is a determination the Court needs to make.

12 MS. MAHDAVIAN: Well, no. If you are opposing
13 the relief being sought on the basis that the four
14 original Affidavits did not meet the requirements under
15 the Act, I need to know that. It's not in your materials
16 currently.

17 MR. NEHMETALLAH: Yes, but that being said, she
18 doesn't have the ability to determine whether there's
19 compliance or not.

20 BY MS. MAHDAVIAN:

21 81 Q. Okay, well, Soudeh, did you take a look at
22 the form of the Affidavit that's referred to in the
23 Corporations Act?

24 A. Yes.

25 82 Q. Did you compare the Affidavits that my

1 clients delivered against the one that's in the Act?

2 A. Yes.

3 83 Q. Do they more or less look like they followed
4 the format in the Act? It's a simple question.

5 A. Yes.

6 84 Q. And you agree that the Affidavits, all four
7 of them contain the statement that says the information,
8 the members list, the contact information, would only be
9 used for valid purposes connected with ICC?

10 A. Yes, but the members are under the impression
11 that their information won't be shared with anybody else.

12 85 Q. Well, thank you, but that wasn't the question
13 I asked you. I asked if the Affidavits have that
14 statement that says that the members' information would
15 be used for valid purposes connected with ICC?

16 A. Could you repeat again?

17 86 Q. Sure. Why don't we, in fact, bring an
18 Affidavit up so you can take a look at it. I think the
19 first one you'll find is tab 3. Exhibit "B" is the
20 Affidavit of Mr. Pouyan, who's sitting here today.

21 MR. NEHMETALLAH: For clarity of the record, it's
22 page 89 of the Application Record.

23 BY MS. MAHDAVIAN:

24 87 Q. Yes, thank you. This Affidavit was sworn
25 December 11th, 2018; you see that?

1 A. Yes.

2 88 Q. And in it he says, "I require the list of
3 members only for purposes connected with the above-named
4 corporation." And the above-named corporation is ICC;
5 yes?

6 A. Yes.

7 89 Q. And he also affirms that the list of members
8 and the information contained therein will be used only
9 for purposes connected with the above-named corporation;
10 correct?

11 A. Yes.

12 90 Q. And if you go through the other Affidavit,
13 they all say the same statement. We don't have to do
14 that. They all do say that. Do you agree with me?

15 A. Yes.

16 91 Q. Okay, thank you. And you said you looked at
17 the Corporations Act, and when you looked at the
18 Corporations Act, did you look at Section 307
19 specifically?

20 A. Yes.

21 92 Q. All right. And when you looked at Section
22 307, did you note that there was a ten-day limitation for
23 ICC to respond to the request?

24 A. Yes.

25 93 Q. Thank you. And that would have been by

1 December 27th if we use the date of the last Affidavit
2 that was delivered?

3 A. I have to check the dates but I'm certain
4 that they've been responded in time.

5 94 Q. You're certain who has been responding in
6 time?

7 A. I responded to them.

8 95 Q. Well, you didn't send the list. You didn't
9 send the list, did you?

10 A. I responded to their inquiry.

11 96 Q. Okay. Do you understand what ICC was
12 supposed to do in response to the request?

13 A. Yes, but we are bound to PIPEDA. And that's
14 --

15 97 Q. PIPEDA, P-I-P-E-D-A. All right.

16 A. And the rest is online response, so.

17 98 Q. Okay. Well, so Section 307 doesn't say send
18 a letter back in ten days. It actually says send the
19 list within ten days of receiving the request. You agree
20 that you didn't do that?

21 A. I responded, clarifying that since we are
22 bound to PIPEDA, or PIPEDA, we need consent of the
23 members so that we can share the information with the
24 Applicants.

25 99 Q. Okay. I know that's what your letter says

1 but my question is different. I'll repeat it again. You
2 agree that under Section 307, once an organization such
3 as ICC receives a request and an affidavit supporting
4 that request, they are required within ten days to
5 provide the members list. Yes, you agree that's what the
6 Act says?

7 A. That's what the Act says but our by-law says
8 that the information of the membership should be kept as
9 PIPEDA.

10 100 Q. I'm not interested in by-laws right now. I'm
11 trying to focus on the Act. So the Act says that. You
12 agree with me; yes or no?

13 A. You'd better repeat it. The Act says that
14 but our by-law indicates that the information of the
15 members should be kept confidential and it can't be
16 released without their consent.

17 101 Q. Okay. Well, again, I'm focussing now on
18 Section 307 and the language in Section 307. I'm happy
19 to pull it up for you to look at it. It doesn't make any
20 reference to it looking at your by-laws. It only has the
21 language it has; correct?

22 A. Yes, and I'm going to repeat it again. Our
23 by-law indicates --

24 102 Q. Okay, Soudeh, right now I'm only asking about
25 Section 307 and what it says. It's a really simple

1 question, not a trick question. The language in Section
2 307 says what it says; do you agree?

3 A. Section 307, yes.

4 103 Q. Yes. And do you agree that ICC did not
5 provide the requested list within ten days as set out in
6 Section 307?

7 A. ICC followed its by-law and responded to the
8 Applicant as per the by-law.

9 104 Q. Sitting here today, ICC has not provided the
10 four Applicants with the members list which was due on
11 December 27th; correct? We have not received the members
12 list as at December 27th; yes or no?

13 A. You have received a communication replying
14 back to that inquiry as why you didn't receive the list.

15 105 Q. This is a -- this is a really simple
16 question. As of today, sitting here on June whatever it
17 is, 12th, ICC has failed to deliver the members list due
18 as of December 27th in response to the Affidavits and
19 requests that were delivered; yes or no?

20 A. Sorry. Repeat it again?

21 MR. NEHMETALLAH: Counsel, can we go off the
22 record for a second?

23 MS. MAHDAVIAN: No. No, we're not going off the
24 record.

25 THE DEPONENT: Your question went too long. I'm

1 just --

2 BY MS. MAHDAVIAN:

3 106 Q. Sure. I'll repeat it. Sitting here today,
4 ICC has failed to deliver the members list that was due
5 by statute on December 27th; correct?

6 A. ICC acted as their best of their knowledge
7 back in December.

8 107 Q. ICC now has a lawyer, and sitting here today,
9 ICC has continued to fail to deliver the members list;
10 yes or no?

11 A. As of today, no.

12 108 Q. You have not delivered it?

13 A. As of today, ICC did not fail.

14 109 Q. As of today, ICC has not delivered the
15 members list that was due on December 27th; correct?

16 A. ICC was following its by-law on December --

17 110 Q. '17?

18 A. -- '18, and as of today, I believe the
19 Applicants has the list.

20 111 Q. As of today, the Applicants do not have the
21 list, the members list, as of December 27th. We don't
22 have that. This is why we're here today. Do you agree
23 that ICC has failed to deliver the members list as of
24 December 27th and it's had six months to do so?

25 A. We did not provide the list, and the

1 reasoning is because we follow our by-law and PIPEDA, and
2 the members are under the impression that their
3 information is private.

4 112 Q. Your reasons are what they are and your
5 lawyer struggled to convince the judge that the reasons
6 were right, but all I'm asking are the facts and the
7 facts is that as of December 27th, when this list was
8 due, based on statute, ICC didn't deliver it?

9 A. As of December, ICC sent out two notices to
10 its member --

11 113 Q. Okay.

12 A. -- explaining the situation.

13 114 Q. I don't want the explanation. I want the
14 answer to the very straight-forward factual question.
15 The fact that you're evading the answer is very telling.

16 A. As of December, one of the members -- only
17 one member of the ICC released their consent --

18 115 Q. Actually, you're wrong about the date, and
19 I'm going to stop you because that's not the question
20 that's on the record waiting for your response. The
21 question was -- I'll break it down because it seems that
22 the questions are too long for you.

23 Based on the Affidavits that were delivered and
24 your reading of Section 307, the deadline for delivery
25 was December 27th, do you agree?

1 A. I agree.

2 116 Q. Thank you. And do you agree that as of
3 December 27th, ICC did not furnish the four Applicants
4 with the members list?

5 A. Sorry. Say that again.

6 117 Q. As of December 27th, which was the deadline
7 that you've agreed with me on, ICC did not deliver the
8 members list on that date, the December 27th members
9 list?

10 A. On December 27th?

11 118 Q. Mm-hmm.

12 A. No.

13 119 Q. And sitting here today, this December 27th
14 list has still not been provided; correct? Whatever your
15 reasoning, it is what it is, but as of today, that list
16 has still not been provided; correct?

17 A. Yes.

18 120 Q. Thank you. When you reviewed Section 307 of
19 the Act, did you also make note of the section under the
20 subheading "Offence", which reads:

21 "Every corporation or transfer agent that fails
22 to furnish a list in accordance with subsection 1
23 when so required is guilty of an offence and on
24 conviction is liable to a fine of not more than a
25 thousand dollars." (as read)

1 A. Yes.

2 121 Q. Did you, when you received these Affidavits,
3 go speak to a lawyer?

4 A. Yes.

5 122 Q. Who did you speak to?

6 A. I can't really say.

7 MR. NEHMETALLAH: I think that's subject to
8 privilege.

9 MS. MAHDAVIAN: No, it's not. The identity of
10 the lawyer is not. I'm not asking her to tell me what
11 advice she got.

12 BY MS. MAHDAVIAN:

13 123 Q. Who did you speak to?

14 MR. NEHMETALLAH: Was it the corporate lawyer?
15 Was --

16 MS. MAHDAVIAN: Okay, don't help her, please.

17 BY MS. MAHDAVIAN:

18 124 Q. Who did you speak to?

19 She said she spoke to a lawyer.

20 A. I spoke to a lawyer.

21 125 Q. Yes. Whose name is...?

22 A. That was done... The conversation was done
23 informally. The consultation was informal.

24 126 Q. I'd like the identity of the lawyer. I don't
25 care about the informality of it. I'd like to know who

1 you spoke to.

2 A. I would like not to answer that. I think
3 that's privileged.

4 127 Q. It's not privileged, Soudeh, and if it is,
5 your lawyer will take that position.

6 MR. NEHMETALLAH: We'll undertake to provide the
7 answer if --

8 MS. MAHDAVIAN: I'd like to know today because
9 I'll have a lot of questions.

10 BY MS. MAHDAVIAN:

11 128 Q. Who is it?

12 She knows.

13 Don't look at your lawyer. It's a really simple
14 question. Who did you speak to?

15 MR. NEHMETALLAH: Counsel, she doesn't -- she's
16 clearly not answering. We'll undertake --

17 BY MS. MAHDAVIAN:

18 129 Q. Was it Bandrew Zomizgar (ph.)?

19 A. No.

20 130 Q. Okay. So who did you speak to?

21 A. I believe I need consultation from you to
22 figure it out --

23 MR. NEHMETALLAH: We will undertake --

24 THE DEPONENT: -- if it's privileged.

25 MS. MAHDAVIAN: No, no, no.

1 MR. NEHMETALLAH: Counsel, she's not going to
2 answer. We're just going to go in circles here. I think
3 it can be --

4 BY MS. MAHDAVIAN:

5 131 Q. Why are you not answering?

6 A. Because I need consultation. I believe
7 that's privileged and --

8 132 Q. It's not privileged. If it was privileged,
9 your lawyer would say privileged, we're not answering.
10 The identity of the lawyer you spoke to is highly
11 relevant.

12 MR. NEHMETALLAH: Well, I'm going to assert
13 privilege right now, and if we reconsider, we'll
14 undertake to provide the answer.

15 --- REFUSAL

16 BY MS. MAHDAVIAN:

17 133 Q. When did you speak to this unidentified
18 lawyer?

19 A. I have to confirm the date. It would be two
20 days or the same days that I received the Affidavit.

21 134 Q. The first Affidavit?

22 A. The first Affidavit.

23 135 Q. And did you go back to the same lawyer when
24 you received the other four supplementary Affidavits, the
25 other three Affidavits?

1 A. No.

2 136 Q. Okay. As a result, did you receive any
3 advice? You said it was an informal communication. Did
4 you receive any advice?

5 A. It wasn't an official advice so I'd prefer to
6 keep that.

7 137 Q. I'm not asking what the advice was but did
8 you receive any advice, any direction?

9 A. Yes.

10 138 Q. Yes?

11 A. Yes.

12 139 Q. All right. Why is it that you did not
13 officially retain a lawyer on behalf of ICC? These were
14 legal requests being made; correct?

15 A. Yes. The organization is a volunteer-based
16 organization with limited resources.

17 140 Q. And it had just been served with Affidavits.
18 So you didn't think it was appropriate to get formal
19 legal advice so that ICC would be acting based on its
20 legal obligations?

21 A. I believe we did everything in our best
22 ability to respond to those. I have reached out to the
23 Privacy Act Commissioner.

24 141 Q. And we'll get to that because I would like to
25 know your conversation.

1 But so beyond that informal communication with
2 the lawyer you're refusing to identify, was there any
3 other lawyers you spoke to?

4 A. No.

5 142 Q. No?

6 A. No.

7 143 Q. Just the one single communication?

8 A. Yes.

9 144 Q. Did anyone else at the board speak to any
10 other lawyers, to your knowledge?

11 A. Not as far as I'm aware.

12 145 Q. All right. So by way of undertaking, and I
13 guess you've now refused, I would like the identity of
14 the lawyer that Soudeh has referred to that she sought
15 informal advice from. And if you're refusing to tell me
16 why, I'd like to know why, because that lawyer wasn't
17 retained and apparently didn't give formal advice, so
18 there's no privilege attached.

19 MR. NEHMETALLAH: It's right now refused and
20 we'll provide the rationale through written response.

21 --- REFUSAL

22 MS. MAHDAVIAN: And if you can please also make
23 inquiries of the board members if they also spoke to any
24 lawyers that maybe Soudeh is not aware of.

25 MR. NEHMETALLAH: We can undertake to do that.

1 --- UNDERTAKING

2 BY MS. MAHDAVIAN:

3 146 Q. Thank you. Who can become an ICC member? Is
4 it an open membership?

5 A. Yes.

6 147 Q. And to your knowledge as president, what are
7 the requirements that need to be met just to become an
8 ICC member?

9 A. Anyone who can pay \$10 and they live in
10 Canada.

11 148 Q. Live in Canada. They don't have to be
12 citizens?

13 A. No.

14 149 Q. And prior to 2019, what were the ways someone
15 could become a member?

16 A. Sorry. Could you repeat?

17 150 Q. Prior to 2019 how could you arrange to become
18 a member? There was online and there was in-person?

19 A. Yes.

20 151 Q. And today online membership is not available;
21 correct?

22 A. Yes.

23 152 Q. And why is that?

24 A. One reason is that due to the fact that in
25 the past, from 2017 to 2018, all members were under the

1 impression that their information would be kept private.
2 So moving forward, we meet with whoever wants to become a
3 member in person and explain that, that there is under
4 certain circumstances, the information could be shared
5 with other members as per Section 307.

6 In addition to that, due to the fact that anyone
7 can go online and register on someone else's behalf, and
8 we need to confirm the identity of the members at the
9 spot that they become a member, we closed the online
10 membership.

11 So anyone can go online, become a member, and
12 then in the past, what we would do, we would require
13 additional document, and whoever would provide additional
14 document, a copy of their ID, we would accept their
15 membership.

16 However, now in the current situation and the
17 current changes, we will check the identity of the
18 members at the spot.

19 153 Q. Okay.

20 A. So we changed that to in-person.

21 154 Q. And what is it that you tell people? Is
22 there a prepared script that you provide to people about
23 the fact that their information might be shared?

24 A. There is Section 307 that I will explain and
25 the offence of the Section 307 that I will explain to

1 whoever becomes a member.

2 155 Q. So anyone who comes in there, you pull out
3 Section 307 and you say to them, "Pursuant to this
4 section you are --"

5 A. Moving forward, yes.

6 156 Q. What do you mean "moving forward"? Well,
7 since when did you deactivate online membership?

8 A. I have to confirm the date but it would be --
9 I have to confirm the date.

10 157 Q. Okay, please do that.

11 Counsel, I'd like to know the date.

12 MR. NEHMETALLAH: We'll undertake to provide the
13 date that online registration was deactivated.

14 --- UNDERTAKING

15 BY MS. MAHDAVIAN:

16 158 Q. So does that mean if someone is not in
17 Toronto, they have to travel all the way to your office
18 to join? How does that make sense?

19 A. At this point, yes.

20 159 Q. And how is that helpful to this organization
21 if it's supposed to be a provincial/national
22 organization? Are you going to make someone come in from
23 BC or Quebec?

24 Is that in the best interests of the
25 reorganization?

1 A. You need to repeat all these questions back.

2 160 Q. All right. Well, how do you propose to deal
3 with people who are not living in Toronto who can't come
4 in person? They don't get to join?

5 A. They do get to join. However, at this point
6 we're just dealing with this lawsuit case, and whoever is
7 not in Toronto at this point is kind of on hold.

8 161 Q. I see.

9 A. Yes.

10 162 Q. And why is it that the organization doesn't
11 simply put something on a form that informs people about
12 Section 307 and gets them to consent to that and join?
13 Why does it have to be in person? What is it you
14 actually really tell people? Why can't you --

15 A. Section 307.

16 163 Q. Yes. So why couldn't you put it on the form
17 and allow people to join online?

18 A. As I said, because anyone could go online and
19 register on behalf of someone else. So at this point
20 with the current situation --

21 164 Q. What current situation?

22 A. The current lawsuit and the current situation
23 and the ongoing smear campaigns are going around --

24 165 Q. Smear campaigns?

25 A. Yes.

1 166 Q. What are you referring to?

2 A. The smear campaigns.

3 167 Q. Tell me what it is you're referring to. Do
4 you have a copy of something that you can refer to? Do
5 you mean ICC smearing my clients?

6 A. No.

7 168 Q. Okay. So then what is it you're referring
8 to?

9 A. I can provide more information later.

10 169 Q. Yes. Which is what? What is it you're
11 providing? What information are you going to be
12 providing?

13 A. That some members are going after other
14 members.

15 170 Q. You know, it would be helpful if you stopped
16 talking so mysteriously. I don't know what that even
17 means.

18 A. Mm-hmm.

19 171 Q. Some members are going after other members?

20 A. Yes.

21 MS. MAHDAVIAN: Okay, just off the record,
22 please.

23 --- Off-the-record discussion at 10:49 a.m.

24 --- Recess taken at 10:54 a.m.

25 --- Upon resuming at 10:57 a.m.

1 BY MS. MAHDAVIAN:

2 172 Q. Okay, so just back on the record. Are you
3 okay to continue?

4 A. Yes.

5 173 Q. Okay, great. These decisions that have been
6 made in respect of my clients' request for the members
7 list, were they discussed among the board?

8 A. Yes.

9 174 Q. All right. And were the decisions made by
10 the board documented?

11 A. Yes.

12 175 Q. Where are they? Have you produced them?

13 A. They are in the minutes.

14 176 Q. Well, there's only one minute that deals with
15 this and it's a January minute. So where are the -- you
16 only had one meeting about this?

17 A. In January, yes.

18 177 Q. Well, these were received in December. Did
19 you have a discussion in December?

20 A. If it's in the minute -- I have to check the
21 minutes. Do you have a copy?

22 178 Q. Do you not remember, sitting here today?
23 Don't ask your lawyer questions.

24 A. Whatever discussion was about this one --

25 179 Q. Yes.

1 A. -- so it's in the minutes.

2 180 Q. All right. Well, I'm going to look for the
3 minutes and tell you so you can pull them up. But based
4 on your recollection, was a meeting held when the first
5 of these Affidavits made their way to your office in
6 December?

7 A. I have to check the dates.

8 181 Q. I'm asking your recollection right now.

9 A. Yes.

10 182 Q. And what do you recall was the discussion?

11 A. Could you clarify what exactly you mean?

12 183 Q. What was the discussion -- was it a meeting,
13 first of all, or a conference call?

14 A. It was a meeting.

15 184 Q. All right. So what was the discussion about
16 this particular issue? Who said what?

17 A. I believe it's in the minutes.

18 185 Q. Well, I'm asking your recollection. We can
19 do this a lot faster if you actually listen to the
20 question and answer it, Soudeh. Otherwise, we'll be here
21 all day.

22 What do you remember was the discussion? So
23 there is -- there is minutes from December '18 and all it
24 says is:

25 "Request from Kamnoosh, Babak, Mehrdokht to get

1 access to all members' information, motion as we
2 have a reference in our by-laws to PIPEDA, we
3 cannot disclose any information without our
4 members' consent. Nonetheless, we shall further
5 consult with lawyers and the Privacy Commissioner
6 to see how to address this request and maintain
7 our obligation to our members. Soudeh will
8 circulate her response in consultation with
9 lawyers." (as read)

10 So where is that -- where is that response?

11 A. Response to?

12 186 Q. "Soudeh will circulate her response in
13 consultation with lawyers," where is that?

14 A. I sent a copy of my response to the board
15 members.

16 187 Q. Before it was sent out?

17 A. Before it was sent out, yes.

18 188 Q. Okay. Can I get a copy of that, please?

19 And -- sorry.

20 MR. NEHMETALLAH: Sorry. We'll provide the
21 undertaking of the material circulated after -- material
22 circulated by Soudeh after the December 18th meeting.

23 --- UNDERTAKING

24 BY MS. MAHDAVIAN:

25 189 Q. Yes, thank you. I would also like any emails

1 relating to this matter exchanged between the board
2 members from the date that these Affidavits were
3 received -- any and all emails?

4 MR. NEHMETALLAH: With respect to?

5 MS. MAHDAVIAN: My clients' request for the
6 members list. All emails.

7 MR. NEHMETALLAH: With respect to the request?

8 MS. MAHDAVIAN: All text messages, everything as
9 between the board members.

10 MR. NEHMETALLAH: One moment.

11 BY MS. MAHDAVIAN:

12 190 Q. Soudeh, the minutes are prepared by whom?

13 A. I --

14 MR. NEHMETALLAH: One moment. Sorry. I didn't
15 get the last undertaking.

16 We'll undertake to provide all emails and
17 correspondence --

18 MS. MAHDAVIAN: And/or text messages --

19 MR. NEHMETALLAH: -- and/or text messages --

20 MS. MAHDAVIAN: -- relating --

21 MR. NEHMETALLAH: -- regarding -- or relating to
22 the request of the Applicants --

23 MS. MAHDAVIAN: Yes.

24 MR. NEHMETALLAH: -- for the membership list.

25 --- UNDERTAKING

1 MS. MAHDAVIAN: Yes, please.

2 BY MS. MAHDAVIAN:

3 191 Q. Was Pouyan the secretary as of that date?

4 A. Yes.

5 192 Q. And the minutes refer to your consultation
6 with lawyers. Did you have more than one consultation?

7 A. No.

8 193 Q. And was this lawyer a friend of yours?

9 A. I can't call her a friend.

10 194 Q. You can call her friend? So it's a female?

11 A. No. Oh, sorry. Repeat your question.

12 195 Q. The lawyer that you consulted with and
13 informally sought advice, male or female?

14 A. Female.

15 196 Q. And is this a friend of yours?

16 A. No.

17 197 Q. And are they a corporate lawyer?

18 A. No.

19 198 Q. What's their practice area?

20 A. I can't provide that. I don't know.

21 199 Q. Are you serious? You don't know or you don't
22 want to say? Did you not think it's important to speak
23 to someone who does corporate law? Did you just speak to
24 a family law lawyer or something?

25 A. I have to clarify that.

1 200 Q. What part of it?

2 MR. NEHMETALLAH: Counsel, I don't think she's
3 aware of what the lawyer practiced --

4 MS. MAHDAVIAN: I don't think that's what she
5 says.

6 THE DEPONENT: I'm not aware of her practice.

7 BY MS. MAHDAVIAN:

8 201 Q. I'm sorry?

9 A. I'm not aware of her practice, specific
10 practice.

11 202 Q. So how did you decide who to speak to? How
12 did you determine who to speak to even on an informal
13 basis?

14 A. Someone who had legal background.

15 203 Q. Did you think it's relevant that the person
16 knows about corporate law?

17 A. Could you clarify that?

18 204 Q. What part of it don't you understand, Soudeh?
19 It's a really, really simple question.

20 Do you understand that this was a request
21 pursuant to the Corporations Act?

22 A. Yes.

23 205 Q. Did you think it's relevant to speak to
24 someone who actually practices in the area of corporate
25 law?

1 A. Yes.

2 206 Q. And does the individual you spoke to, does
3 she practice corporate law?

4 A. No.

5 207 Q. Was it Sadie Etemad? I think it was, wasn't
6 it?

7 A. Yes.

8 208 Q. All right. She's a family law lawyer. Okay?
9 Now, where -- when did you speak to the Privacy
10 Commissioner?

11 A. December 20th.

12 209 Q. December 20th. You personally called?

13 A. Yes.

14 210 Q. And who did you speak to? What's the name of
15 the individual?

16 A. I don't have the name of the individual. It
17 was the representative from commissioner.

18 211 Q. Do you have notes from that conversation?

19 A. I have the record of it.

20 212 Q. From?

21 A. The -- sorry, what do you mean by "notes"?
22 Like my personal notes?

23 213 Q. Well, you called, presumably, to get some
24 guidance; yes?

25 A. Yes.

1 214 Q. Did you take notes of what they told you?

2 A. I remember what they told me.

3 215 Q. You didn't think to document it?

4 A. I did document it in our minutes.

5 216 Q. Where are they? Is that the minutes of
6 January 7th, item C?

7 A. Yes.

8 217 Q. So item C refers to the Privacy Commissioner
9 and legal advice. The legal advice is, are we still
10 talking about Sadie?

11 A. No, I think this is referring to the Privacy
12 Commissioner Act only.

13 218 Q. All right. So the Privacy Commissioner Act
14 provides you with legal advice?

15 A. No.

16 219 Q. All right. So then what's the legal advice?

17 A. I don't know what that's referring to.

18 220 Q. All right. Were these minutes prepared by
19 Pouyan?

20 A. Yes.

21 221 Q. All right. Do you review them before the
22 minutes are -- become formal, final?

23 A. Yes.

24 222 Q. All right. So though you reviewed them, you
25 don't know what the legal advice refers to?

1 A. No.

2 223 Q. I see. Okay. Now, on December 20th when you
3 spoke to the Privacy Commissioner, what did you tell the
4 Privacy Commissioner?

5 A. The current situation.

6 224 Q. Okay, tell me exactly what you said on the
7 phone. I'd like to know word by word.

8 A. I've been told that we received a request,
9 affidavit, as per Section 307.

10 225 Q. Okay.

11 A. I also informed that our by-law indicates
12 that we collect information from the members as per
13 PIPEDA.

14 226 Q. You have to speak up because she's trying to
15 take your --

16 A. Okay. I had mentioned that we received --
17 from the beginning. I'm just going to repeat. I had
18 mentioned that we received their request as per Section
19 307 of the corporate act, and we also have in our by-law
20 indicated that we collect the members' information and we
21 keep them as per PIPEDA.

22 227 Q. And this individual that you spoke to, male
23 or female?

24 A. Male.

25 228 Q. And did they ask any other questions of you

1 to get more information?

2 A. I had mentioned that the corporation is not
3 for profit.

4 229 Q. Anything else that you told this guy?

5 A. I had -- I asked them if I have to provide
6 members' information to other members as per current
7 situation that we do have PIPEDA, and we have received
8 this Section 307 request.

9 230 Q. Did you discuss with this guy the fact that
10 ICC does not engage in commercial activity and is not
11 subject to PIPEDA; did you discuss that?

12 A. I mentioned that ICC is not for profit.

13 231 Q. Yes. And did he ask or did it come up
14 whether ICC engages in commercial activity?

15 A. Yes. He asked.

16 232 Q. And what was your answer?

17 A. No.

18 233 Q. Okay. And did the individual you spoke to
19 have a legal background?

20 A. No.

21 234 Q. Okay. And was he still comfortable giving
22 you advice over the phone?

23 A. He had mentioned that he -- he's not giving
24 me legal advice.

25 235 Q. Okay.

1 A. But because we have PIPEDA in the by-law --

2 236 Q. Yes.

3 A. -- the best practice -- and we had mentioned
4 to members that their information will be collected as
5 per PIPEDA.

6 237 Q. Yes?

7 A. The best practice for the organization is to
8 get consent from the members before releasing their
9 information. Otherwise, the other members who are not
10 giving us consent have the right to file a claim with the
11 Privacy Commissioner Act.

12 238 Q. Okay, but this wasn't legal advice.

13 A. No.

14 239 Q. All right. So did you appreciate that you
15 needed to actually get proper legal advice on whether
16 this information was accurate?

17 A. Sorry. Repeat again.

18 240 Q. Yes. So the information from the Privacy
19 Commissioner guy, just the operator on the phone, was not
20 legal advice; you understood that?

21 A. Yes.

22 241 Q. So did you think at that point at December
23 20th that you should seek formal legal corporate
24 advice?

25 A. Could you just repeat it again? Sorry.

1 242 Q. Soudeh, as at December 20th you've spoken to
2 a friend who is a family law lawyer, and you've spoken to
3 an operator at the Privacy Commissioner office; correct?

4 A. Yes.

5 243 Q. You have not spoken to a corporate lawyer --

6 A. No.

7 244 Q. -- correct? And you have not taken steps to
8 find out whether the informal advice you've received is
9 actually accurate; correct?

10 A. I relied on the Commissioner Act advice.

11 245 Q. But it wasn't advice.

12 A. I relied on his advice.

13 246 Q. But it wasn't legal advice.

14 A. No.

15 247 Q. So as the president of this organization, you
16 chose to rely on information given to you by some phone
17 person at the Privacy Commissioner who does not know the
18 in and outs of the organization and all the details?

19 A. I believe they are not phone person.

20 248 Q. No? So what was the title of the individual
21 you spoke to?

22 A. I can't recall.

23 249 Q. Is there a way for you to find out who you
24 spoke to?

25 A. I don't know.

1 250 Q. Well, I'd like you to make best efforts to
2 find out who it is you spoke to on December 20th.

3 And you did not take any notes? You didn't send
4 an email on December 20th to your board members right
5 away telling them what you were told?

6 A. Not on December 20th, no.

7 251 Q. All right. Let me just ask you, just while
8 we're on the topic of minutes and board meetings, how
9 many board meetings take place? Like, how regularly does
10 the board meet?

11 A. Once a month.

12 252 Q. Once a month?

13 A. Yes.

14 253 Q. And these are in-person meetings?

15 A. Mostly.

16 254 Q. And other than the monthly meetings, are
17 there special meetings sometimes called?

18 A. Over the phone, yes.

19 255 Q. And are those minuted as well?

20 A. Yes.

21 256 Q. And where are those? Are there any that took
22 place in this time frame?

23 A. Yes.

24 257 Q. Have you produced minutes from those?

25 A. To public, no.

1 258 Q. Why not?

2 A. They haven't been approved by the board yet.

3 259 Q. Why is that? We're in June now. Do you
4 understand it's a legal obligation on the part of the
5 organization to have updated complete minutes?

6 A. Yes.

7 260 Q. All right. So by way of undertaking I'd like
8 copies of all minutes, whether in-person meetings or
9 phone meetings, to be provided for the period from the
10 AGM of last year to current.

11 What I have -- what you've provided ends at
12 January 7th, 2019.

13 MR. NEHMETALLAH: So we'll undertake to provide
14 from January 7 any minutes that have been held after that
15 date.

16 --- UNDERTAKING

17 MS. MAHDAVIAN: And any phone meetings that were
18 held during this time frame which she has alluded to.

19 MR. NEHMETALLAH: My understanding is those are
20 included as well in the board minutes.

21 MS. MAHDAVIAN: Well, can you just take a --

22 MR. NEHMETALLAH: I'll make best efforts.

23 MS. MAHDAVIAN: Why don't you take a minute and
24 look at them and show me -- off the record, please.

25 --- Off-the-record discussion at 11:15 a.m.

1 --- Upon resuming at 11:15 a.m.

2 BY MS. MAHDAVIAN:

3 261 Q. You'll undertake to give us phone meetings as
4 well?

5 MR. NEHMETALLAH: All board -- all board
6 meetings, whether they're held --

7 MS. MAHDAVIAN: Whatever format.

8 MR. NEHMETALLAH: Whatever format or forum.

9 MS. MAHDAVIAN: Okay.

10 MR. NEHMETALLAH: From the AGM onwards.

11 --- UNDERTAKING

12 BY MS. MAHDAVIAN:

13 262 Q. Yes, please.

14 And, Soudeh, how many do you have to be to
15 actually call a formal meeting?

16 A. Five.

17 263 Q. Thank you. I wanted to ask you, just on the
18 topic of minutes, as I understand it, there were a number
19 of events and activities that the board was engaged in
20 that I don't believe are included in these minutes.
21 Between May 1st and September 10... Sorry. Minutes of a
22 meeting June 19th -- June 19th.

23 Just off the record.

24 --- Off-the-record discussion at 11:17 a.m.

25 --- Upon resuming at 11:17 a.m.

1 BY MS. MAHDAVIAN:

2 264 Q. So just on the record, please. Starting with
3 page 157, July 9, who was at that meeting? It doesn't
4 indicate in the minutes. Do you know?

5 A. I can't recall.

6 265 Q. All right. So you'll let us know?

7 Does Pouyan keep his notes?

8 A. Yes.

9 266 Q. All right. I'd like copies of all of his
10 notes, please in --

11 MR. NEHMETALLAH: With respect to board meetings?

12 BY MS. MAHDAVIAN:

13 267 Q. -- support of the meetings. Yes, I'd like to
14 see the notes that he kept from which he then made
15 minutes. All right.

16 MR. NEHMETALLAH: Yes, I'll provide that
17 undertaking.

18 --- UNDERTAKING

19 BY MS. MAHDAVIAN:

20 268 Q. And where are the minutes relating to the
21 June 19th Parliament briefing session?

22 A. I believe it's in 157.

23 269 Q. The one that doesn't identify who went?

24 A. Yes.

25 270 Q. That minute is from July. Was there a

1 meeting held in June?

2 A. Not as far as I recall.

3 271 Q. Okay. All right. Well, I guess we've asked
4 for the complete minutes so we'll find out.

5 What about minutes from the meeting in which the
6 board would have dealt with the event, "Canada's Role in
7 the Middle East and its Iran Policy in Collaboration with
8 the Institute for Peace and Diplomacy," where's that?

9 A. Which event are you referring to?

10 272 Q. The event is called, "Canada's Role in the
11 Middle East and its Iran Policy in Collaboration with the
12 Institute for Peace and Diplomacy."

13 A. And your question is...?

14 273 Q. Are they referred to anywhere in the minutes,
15 this event?

16 A. No.

17 274 Q. Why not?

18 MR. NEHMETALLAH: Counsel, I'm struggling to see
19 the relevance of this.

20 MS. MAHDAVIAN: What I'm trying to get at is the
21 minutes are deficient.

22 MR. NEHMETALLAH: We don't even know the date of
23 this event or whether it was a board meeting or anything.

24 MS. MAHDAVIAN: No, I'm talking about a board
25 meeting about an event that ICC organized.

1 MR. NEHMETALLAH: Do we have the date of that?

2 MS. MAHDAVIAN: I can get you the dates on the
3 break and I can come back to the question, no problem.
4 And I'll move on for now so that we don't waste time.

5 BY MS. MAHDAVIAN:

6 275 Q. Do you know the event I'm talking about?

7 A. Yes.

8 276 Q. Do you know when it was?

9 A. I can't recall the exact date.

10 277 Q. What about the event or the meeting in
11 respect of which you discussed and decided to sign the
12 Toronto progress letter with John Tory, does that ring a
13 bell for you?

14 A. Yes.

15 278 Q. All right. Are there minutes available about
16 that decision made by the board?

17 A. That decision was made by the policy, team
18 policy. (sic)

19 --- The Reporter Appeals.

20 THE DEPONENT: Policy team. Policy committee.

21 BY MS. MAHDAVIAN:

22 279 Q. All right. And so, what, they decide on
23 their own? The board doesn't need to approve that
24 decision?

25 A. As long as it's aligned with the ICC by-laws,

1 no.

2 280 Q. Do they need to report to the board?

3 A. Yes.

4 281 Q. I'd like a copy of their report on that
5 event, please?

6 Is that a team that Bijan Ahmadi sits on?

7 A. No, Bijan Ahmadi doesn't sit on any team.

8 282 Q. He doesn't sit on anything?

9 A. No.

10 283 Q. What's his role?

11 A. Board member.

12 284 Q. Just simple board member?

13 A. Yes.

14 285 Q. Does he sit on any committees?

15 A. No. He acts as an advisory to policy.

16 286 Q. So the very -- the very team you just
17 mentioned?

18 A. He's not in the team. He just acts as an
19 advisory for the team.

20 287 Q. I don't know what that means, but anyway --

21 MR. NEHMETALLAH: Counsel, the undertaking is for
22 the reports -- the report of the policy team --

23 Policy team?

24 THE DEPONENT: Yes.

25 MR. NEHMETALLAH: -- the policy team to the

1 board?

2 MS. MAHDAVIAN: Yes. Apparently, this was a
3 decision made by the policy team. She has explained that
4 as long as it's aligned with the organization's policies,
5 then the board is fine with it. So I'd like to know what
6 they said --

7 MR. NEHMETALLAH: So we'll undertake to provide
8 if there is a report from the policy team.

9 --- UNDERTAKING

10 MS. MAHDAVIAN: Any communication between the
11 board and the policy team relating to this event and the
12 decision to sign this letter, please.

13 MR. NEHMETALLAH: Okay.

14 --- UNDERTAKING

15 MS. MAHDAVIAN: Yes.

16 MR. NEHMETALLAH: Provided it's during the
17 relevant time period, from --

18 MS. MAHDAVIAN: It would be.

19 THE DEPONENT: -- the AGM upwards.

20 --- UNDERTAKING

21 MS. MAHDAVIAN: Yes, it would be. Sure. Thank
22 you.

23 BY MS. MAHDAVIAN:

24 288 Q. Does your -- did you update your membership
25 form?

1 A. We did recently, yes.

2 289 Q. Yes? Do you have a copy of it handy?

3 A. No.

4 290 Q. All right. I'd like an undertaking for a
5 copy of the updated membership form? It's not available
6 online.

7 Is there a reference in the membership form to
8 the Corporations Act?

9 A. There's a section that it explains that
10 someone from the board will explain the corporate act to
11 you.

12 291 Q. So there's a reference to the Corporations
13 Act?

14 A. There is a reference.

15 MR. NEHMETALLAH: I'll provide that undertaking.

16 --- UNDERTAKING

17 BY MS. MAHDAVIAN:

18 292 Q. Yes, please.

19 And are you aware that a member named Mehdi Shams
20 has been trying to renew his membership for quite some
21 time now?

22 A. Yes.

23 293 Q. Do you have any information on why it's taken
24 him seven or eight emails before a response was received
25 by him -- before a response was sent by ICC to him?

1 A. Sorry, repeat the question.

2 294 Q. Yes. Do you have any information on why it
3 has taken ICC so long to respond to him? He has sent
4 seven or eight emails trying to renew his membership.

5 A. No, but he's been given two dates and he has
6 been given a period of time that he can provide us his
7 availability so that we can --

8 295 Q. I understand but what I'm asking is why did
9 this poor guy have to send seven emails -- and I've
10 produced a copy of his email, Exhibit "F" -- why did he
11 have to write the board so many times before he received
12 a response to get an appointment? As the president, what
13 do you have to say to that?

14 A. We got back to him, we provided him with a
15 date --

16 296 Q. You're not answering my question. His first
17 inquiry was March 24th.

18 A. Mm-hmm.

19 297 Q. You've only recently sent him a response in
20 June. Why does it take over two months for someone who
21 clearly wants to be a member again?

22 A. I don't know.

23 298 Q. You have no explanation?

24 A. No.

25 299 Q. Is he critical of the board? Is he a vocal

1 critique of the board?

2 A. He's critical of everyone.

3 300 Q. He's critical of everyone. Okay, fair
4 enough. I don't know him.

5 What is the requirement that makes someone
6 eligible to vote? Difference between a member who pays
7 \$10 and someone who can vote, is there a difference or
8 no? Anyone who pays the \$10 can vote?

9 A. Sorry?

10 301 Q. So I'm trying to understand if there's a
11 difference between being simply an ICC member and an
12 eligible voter?

13 A. They have to be 18 and over.

14 302 Q. Okay. So that's the only difference?

15 A. Yes.

16 303 Q. So you can be an ICC member if you're under
17 18 but you can't vote?

18 A. Yes.

19 304 Q. Got it. Anything else?

20 A. Not as far as I'm aware.

21 305 Q. Do they have to be Canadian citizens?

22 A. For?

23 306 Q. Voting.

24 A. No.

25 307 Q. Is it sufficient that they're a permanent

1 resident?

2 A. Yes.

3 308 Q. And how do you ensure that the online voters
4 meet the requirements?

5 A. Their identity has been checked either in the
6 last AGM --

7 309 Q. Yes?

8 A. -- or we have requested a copy of their ID.

9 310 Q. And who checks their identity when you say
10 their identity has been checked?

11 A. Providing their identity to the secretary.

12 311 Q. Secretary.

13 A. Yes.

14 312 Q. So who was the secretary during the last AGM?

15 A. Mehran Farazmand.

16 313 Q. Mehran Farazmand. Is he still involved with
17 the board?

18 A. No.

19 314 Q. And to your knowledge, were there members on
20 the list who didn't meet the requirements for the last
21 election? So you had names but who weren't eligible to
22 vote?

23 A. You need to clarify that eligibility. In
24 terms of what?

25 315 Q. Well, Pouyan has referred to 957 eligible

1 voters. I'm asking if that's everyone on your list or if
2 there were people who were members but who weren't
3 eligible to vote?

4 A. That -- that's eligible voters.

5 316 Q. Slash members? Like --

6 A. No. Like, eligible voters meaning that
7 anyone who is under 18 is not listed there.

8 317 Q. When you received the Affidavits from my
9 clients in December, did you take steps as the president
10 to ensure that the list was preserved as of December
11 27th, the integrity of the list?

12 A. Yes.

13 318 Q. Can you tell me what steps you took?

14 A. The information is kept by NationBuilder.

15 319 Q. All right. So did you download this
16 information on a USB as soon as you got these requests?

17 A. No.

18 320 Q. Did you send an email to everyone on the
19 board to say no one is to touch the list or make changes
20 to the list?

21 A. No.

22 321 Q. Why not?

23 A. Because only secretary has access to the
24 list.

25 322 Q. So only the secretary has access to

1 NationBuilder?

2 A. To the list, yes.

3 323 Q. Is that the same thing as NationBuilder?

4 A. The membership list, yes.

5 324 Q. So I'm trying to understand -- because you
6 said it's on NationBuilder; correct?

7 A. Yes.

8 325 Q. So does that mean that's the list?

9 A. Well, NationBuilder has other stuff, too.

10 326 Q. Okay.

11 A. Other features.

12 327 Q. Fair enough. But the person who only has
13 access to member information is the secretary?

14 A. Yes.

15 328 Q. So you, for example, can't access that?

16 A. I can access that but I did not.

17 329 Q. All right. Did you send an email to the
18 secretary telling him that he should make sure that the
19 list and the contact information as of December should be
20 preserved?

21 A. No.

22 330 Q. Why not?

23 A. Because I believe in his integrity.

24 331 Q. Well, it's not a question of integrity. It's
25 just now there's a legal request for this list. Did you

1 take those precautionary steps?

2 A. No.

3 332 Q. Okay. And did you have any conversation with
4 him about the list?

5 A. Whatever conversation.

6 333 Q. Like, for example, did you tell him not to
7 amend, delete, change, add?

8 A. No. He wouldn't do that.

9 334 Q. Okay. So you said that NationBuilder has
10 other stuff on it. What other stuff?

11 A. The list of supporters.

12 335 Q. Well, can you please -- that's actually a
13 very interesting question for me. What's the difference
14 between the list of supporters and the list of members?

15 A. The supporters are -- supporters are people
16 who sign up to -- to get information.

17 336 Q. Okay.

18 A. They subscribe to get information and get
19 updated.

20 337 Q. Do they consent to receiving emails?

21 A. Yes.

22 338 Q. So can you produce a copy of whatever it is,
23 someone who subscribes signs into?

24 MR. NEHMETALLAH: I'm unsure of what you're
25 asking.

1 MS. MAHDAVIAN: Well, she says that they
2 subscribe, so I'd like to see what it is, the form that
3 they fill out consenting to give their receiving emails.

4 MR. NEHMETALLAH: It may be a screenshot but we
5 can under -- like, it may be a web form. We can
6 undertake to show what the format is to sign up for the
7 supporter list, if that's what you're asking.

8 MS. MAHDAVIAN: Well, yes. Apparently there's a
9 list of people who sign up to get information and receive
10 emails, so I'd like to know if their consent is secured
11 by the organization.

12 MR. NEHMETALLAH: Okay. Okay. I'll undertake to
13 do that. I'm -- I may follow up but I'll undertake to
14 make best efforts.

15 --- UNDERTAKING

16 BY MS. MAHDAVIAN:

17 339 Q. All right. Great. And do these supporters,
18 the names exist on a separate list than the members list,
19 or are they combined?

20 A. They're kept separate as far as I know.

21 340 Q. They're kept separate?

22 A. As far as I know.

23 341 Q. And who handles the supporters list? Who
24 adds names to it, manages it, sends emails out to them?

25 A. At this point, it's Pouyan, the secretary.

1 342 Q. What about before? When you say "at this
2 point," I don't know what that means. Does that mean
3 recently or does that mean since he became secretary?

4 A. Since he became secretary.

5 343 Q. Okay. So prior to him taking over as
6 secretary, who was managing the supporters list?

7 A. I have to confirm that.

8 344 Q. Why don't you know this information? Aren't
9 you overseeing everything?

10 A. Yes.

11 345 Q. All right. So let me know then who before
12 Pouyan?

13 MR. NEHMETALLAH: Undertaking for who was
14 responsible for the supporters list.

15 --- UNDERTAKING

16 BY MS. MAHDAVIAN:

17 346 Q. Thank you. These emails that go out to
18 people addressed to Dear ICC Members and Friends, is that
19 the same thing as a supporter?

20 A. Which email are you referring to?

21 347 Q. I mean there have been some emails that I've
22 put in my materials that are addressed to -- sorry, just
23 off the record.

24 --- Off the record at 11:35 a.m.

25 --- Upon resuming at 11:35 a.m.

1 BY MS. MAHDAVIAN:

2 348 Q. So, for example, tab K, there's an email that
3 was sent to "Dear Friends." Who is that? Like, what is
4 that?

5 A. You mean who's "Dear Friends"?

6 349 Q. Yes. Which list is that?

7 A. This I have to check but I believe it's
8 members and supporters. I'd like to confirm.

9 --- UNDERTAKING

10 BY MS. MAHDAVIAN:

11 350 Q. First of all, please undertake to confirm.
12 Secondly, when Pouyan decides to send such an
13 email, does he run it by you?

14 A. Yes.

15 351 Q. So you have to approve any emails that go out
16 on behalf of ICC?

17 A. Yes.

18 352 Q. So you're aware of every single communication
19 that goes out on behalf of the organization?

20 A. Yes.

21 353 Q. And you've approved all of them?

22 A. Yes.

23 354 Q. And do you take the time to read through and
24 make changes sometimes?

25 A. Sometimes.

1 355 Q. As a result of the emails sent to Dear
2 Friends, did ICC receive financial contributions?

3 A. Yes.

4 356 Q. How much?

5 A. The exact amount?

6 357 Q. Approximately.

7 A. Couple thousand.

8 358 Q. Couple thousand?

9 A. Yes.

10 359 Q. And was that used towards this lawsuit?

11 A. No.

12 360 Q. No?

13 A. No.

14 361 Q. And in NationBuilder is there a list for
15 current members versus those who used to be members but
16 haven't renewed their list (sic)?

17 A. Yes.

18 362 Q. And I have never used NationBuilder so I
19 don't know how it works. So how do you determine who's
20 who and what's what?

21 A. Based on the expiry date of the membership.

22 363 Q. So when you log in -- is there a log-in for
23 NationBuilder?

24 A. Yes.

25 364 Q. Do you have a user name/log-in --

1 A. Yes.

2 365 Q. So when -- and you have a user name/log-in
3 information?

4 A. Yes.

5 366 Q. Does every member of the board have one?

6 A. No.

7 367 Q. So who has a user log-in?

8 A. At this point, it's me and secretary.

9 368 Q. Only you and the secretary?

10 A. Yes.

11 369 Q. And when you say "at this point," did you
12 recently acquire a user log-in?

13 A. No.

14 370 Q. You've always had one?

15 A. Since, yeah, I became the president I have
16 one.

17 371 Q. Since you became the president. And when you
18 say only the secretary has access to the members list,
19 how does he ensure that you don't go in the list?

20 A. We just communicate.

21 372 Q. So when he makes a statement that he keeps
22 the list confidential and only he has access to it,
23 that's not accurate; technically, you have access too?

24 A. Yes.

25 373 Q. But you just don't go --

1 A. Yes.

2 374 Q. All right. And in terms of the current paid
3 members versus members who used to be members but haven't
4 renewed, you said you can tell them apart by the date of
5 expiry?

6 A. Sorry?

7 375 Q. Yeah. So we were talking about how you can
8 tell whether a member is current or has to renew?

9 A. Mm-hmm.

10 376 Q. And how do you tell that?

11 A. By the expiry date.

12 377 Q. And do the expired members end up on a
13 separate list?

14 A. I don't know the answer to that.

15 378 Q. As of today, how many expired members are
16 there?

17 A. I don't have the answer to that one.

18 379 Q. Since -- I believe Pouyan said that as of the
19 AGM of 2018, there were 957 eligible voters. So that
20 means they were paid members; correct?

21 A. Yes.

22 380 Q. So I would like --

23 MR. NEHMETALLAH: Counsel, paid members over 18.

24 MS. MAHDAVIAN: Yes, yes, yes. All right.

25 BY MS. MAHDAVIAN:

1 381 Q. So I would like to know -- I'd like some kind
2 of a graph of the members that expired and didn't renew
3 from the AGM onwards. So, for example, that point in
4 time, then I would like to know that as of December?

5 MR. NEHMETALLAH: So we've provided the number to
6 you with respect to the AGM.

7 MS. MAHDAVIAN: Yes.

8 MR. NEHMETALLAH: And we've provided the number
9 to you for communications between counsel of the number
10 as of the date the request was received in December, and
11 we've since provided you the membership list with the
12 total number as of May --

13 MS. MAHDAVIAN: 19.

14 MR. NEHMETALLAH: -- 19.

15 MS. MAHDAVIAN: Yes.

16 MR. NEHMETALLAH: So --

17 MS. MAHDAVIAN: Okay.

18 MR. NEHMETALLAH: I'm not sure there's nothing
19 else -- I don't think there's anything else we could do
20 because --

21 BY MS. MAHDAVIAN:

22 382 Q. Let me just verify then with you. So you're
23 referring to your email of June 10th to me? I'll have
24 you take a look at it and I'd like to mark that, please.

25 MR. NEHMETALLAH: Correct. I should also advise

1 for the record there was a follow-up email in terms of
2 the format of the list --

3 MS. MAHDAVIAN: Yes.

4 MR. NEHMETALLAH: -- with respect to the metadata
5 that's maintained and everything.

6 BY MS. MAHDAVIAN:

7 383 Q. Okay. And I'll be asking those questions,
8 but just in terms of the number?

9 MR. NEHMETALLAH: This is correct.

10 MS. MAHDAVIAN: Yes. So this will be Exhibit "B"
11 and it's an email from Jonathan -- from counsel to me
12 dated June 10, '19, 8:40 p.m., where he refers to the
13 fact that the number of members is 737, though this is
14 not taking into account duplicates which the ICC has
15 identified as well as an issue with inaccurate expired
16 dates which may reduce the actual number.

17 EXHIBIT NO. 2: Email from Jonathan Nehmetallah
18 to Moosan Mahdavian dated June 10, 2019.

19 BY MS. MAHDAVIAN:

20 384 Q. So has there been any updates on that?

21 MR. NEHMETALLAH: Off the record.

22 MS. MAHDAVIAN: Sure.

23 --- Off-the-record discussion at 11:42 a.m.

24 --- Upon resuming at 11:44 a.m.

25 MS. MAHDAVIAN: Back on the record. I called

1 this Exhibit "B" but I meant to say Exhibit 2.

2 BY MS. MAHDAVIAN:

3 385 Q. And you have confirmed that the list that was
4 supplied to you, which you told me about on June 10th,
5 it's as of what date?

6 MR. NEHMETALLAH: My understanding is -- I'm
7 going to need to confirm this with you -- it was either
8 the date that the final -- ten days after the request,
9 the initial request, or the date of the initial request.
10 Either way, the list remained static between those two
11 dates.

12 BY MS. MAHDAVIAN:

13 386 Q. Okay. So December 2018?

14 MR. NEHMETALLAH: So it was December 2018. The
15 list, to the best of my knowledge, remained static --

16 MS. MAHDAVIAN: Yes.

17 MR. NEHMETALLAH: -- between the range of the due
18 date pursuant to the Act and the date of the initial
19 request of the first Applicant.

20 MS. MAHDAVIAN: Got it. Okay. So why don't we
21 take a short break of, like, five, ten minutes maybe. I
22 hope to just finish this off and then we can break for
23 lunch before you start your --

24 MR. NEHMETALLAH: Yes.

25 MS. MAHDAVIAN: -- cross.

1 MR. NEHMETALLAH: I'm a little nervous I may go
2 over time. We can discuss off the record.

3 --- Recess taken at 11:46 a.m.

4 --- Upon resuming at 12:08 p.m.

5 MS. MAHDAVIAN: Counsel, just before I leave the
6 number on the December list, I want to understand that
7 the 737 minus the duplicates that you've referred to, is
8 that as at that date, those were the current paid
9 members? In other words, eligible voters?

10 MR. NEHMETALLAH: Current paid members but more
11 than the eligible voters because some of those current
12 paid members may have been under 18 years of age.

13 BY MS. MAHDAVIAN:

14 387 Q. All right. So by way of undertaking, I'd
15 like to understand --

16 MR. NEHMETALLAH: No, the --

17 BY MS. MAHDAVIAN:

18 388 Q. -- how many eligible voters as at the
19 December date?

20 MR. NEHMETALLAH: Yes, I -- I am -- yes, I'll
21 make best efforts. I think that can be provided.

22 --- UNDERTAKING

23 BY MS. MAHDAVIAN:

24 389 Q. Good. And, Soudeh, are you -- are you able
25 to use NationBuilder yourself, for example, by logging in

1 today to get a number on a certain type of list that
2 you're looking for? Like, is that something you know how
3 to do?

4 A. Not exactly, no.

5 390 Q. So who -- is it Pouyan who is the person?

6 A. Pouyan.

7 391 Q. And did Pouyan receive training from
8 NationBuilder?

9 A. I believe so. I'm not too sure, to be quite
10 honest with you.

11 392 Q. All right.

12 MS. MAHDAVIAN: And, Jonathan, in your materials
13 or in my materials in one of the emails that you had sent
14 me, you had told me that you had a list as of May 5. And
15 I can bring you to the email.

16 MR. NEHMETALLAH: Mm-hmm.

17 MS. MAHDAVIAN: What was the number as of May 5?

18 MR. NEHMETALLAH: Oh, I have to undertake to
19 provide that.

20 BY MS. MAHDAVIAN:

21 393 Q. Okay, yes, please. So the number of -- and
22 please let me know if that's members including under 18
23 or if that's eligible voters or whatever it is?

24 MR. NEHMETALLAH: I will -- I will. Yes, I
25 will.

1 --- UNDERTAKING

2 BY MS. MAHDAVIAN:

3 394 Q. Thank you. And in terms of supporters, how
4 many people are on that list?

5 A. Best of my knowledge, approximately 18,000.

6 395 Q. 18,000?

7 A. Yes.

8 396 Q. And in that 18,000 supporters are -- included
9 in that are paid members, people who are actually members
10 of the organization?

11 A. That I'm not too sure.

12 397 Q. Is that something you can verify?

13 MR. NEHMETALLAH: Yes. What I can advise is that
14 my understanding of NationBuilder is it has a singular
15 database.

16 MS. MAHDAVIAN: Yes?

17 MR. NEHMETALLAH: Each member within that -- and
18 I may be mistaken but this is my understanding.

19 MS. MAHDAVIAN: All right.

20 MR. NEHMETALLAH: Each member -- or in that
21 singular database of names, there are -- you identify
22 individual -- you identify each entry by virtue of a tag.
23 For example, the tag supporter, and you can then, through
24 the database, pull a list of supporters.

25 And then there's two additional tags, to the best

1 of my ability, active members and inactive members. So
2 you can pull active members and you can pull all people
3 who have been in the past a member but they are no longer
4 members.

5 This is one of the reasons why it took so long to
6 get because you can't pull a list from say an arbitrary
7 date as of today's date. You can only pull active and
8 inactive supporters.

9 So when the list of supporters would most
10 likely -- would be those who aren't members, the list of
11 members are those in the database who are tagged active
12 members, and then there is everybody else who would be
13 just inactive entries.

14 MS. MAHDAVIAN: All right.

15 MR. NEHMETALLAH: To the best of my knowledge,
16 but I -- I believe I attempted to explain that in an
17 email but I appreciate that it's a complicated --

18 MS. MAHDAVIAN: Well, it's not complicated. It's
19 convoluted.

20 MR. NEHMETALLAH: It is convoluted.

21 MS. MAHDAVIAN: It is easy to understand, it's
22 just I'm not sure why they are doing it this way.

23 So let me understand. So, if it's 18,000
24 supporters as of today, active members would be the May
25 19 list that you gave me?

1 MR. NEHMETALLAH: Correct.

2 MS. MAHDAVIAN: 91.

3 MR. NEHMETALLAH: Yes.

4 MS. MAHDAVIAN: And inactive members?

5 MR. NEHMETALLAH: I don't have the number. The
6 inactive members would include anybody at any point in
7 time since the -- since the beginning or commencement of
8 the use of NationBuilder who were at one point or another
9 a member.

10 BY MS. MAHDAVIAN:

11 398 Q. And when did they start using NationBuilder?

12 A. Best of my knowledge, sometimes in 2014 or
13 '15.

14 399 Q. Okay.

15 A. It's either 2014 or '15.

16 400 Q. And do you adopt the information your lawyer
17 just gave on the record about NationalBuilder and the
18 database and all of that?

19 A. You mean I agree?

20 401 Q. Yes.

21 A. Yes.

22 402 Q. And when an email is sent to your supporters
23 on that list, would we have the inactive members since
24 the beginning of time?

25 MR. NEHMETALLAH: Are you asking if --

1 MS. MAHDAVIAN: I'd like to understand this
2 distribution list.

3 MR. NEHMETALLAH: Sure. So what I can undertake
4 to provide you -- and I think this will answer the
5 question -- is, are all -- are all members supporters?

6 MS. MAHDAVIAN: Yes.

7 MR. NEHMETALLAH: And are all inactive members
8 supporters as well?

9 MS. MAHDAVIAN: Yes.

10 MR. NEHMETALLAH: Whereas all supporters are not
11 members, are all members supporters?

12 MS. MAHDAVIAN: Yes. I feel like it's an LSAT
13 question or something like that, yes.

14 MR. NEHMETALLAH: My apologies, Counsel. I
15 didn't mean to cause flashbacks.

16 MS. MAHDAVIAN: I just want to know if the email
17 that goes out, for example --

18 MR. NEHMETALLAH: To supporters includes inactive
19 members?

20 BY MS. MAHDAVIAN:

21 403 Q. Not even just supporters. The email that ICC
22 has be sending informing members about this lawsuit, how
23 many members are on that distribution list?

24 A. It's any active members as of the date.

25 404 Q. So there have been several communications by

1 ICC to members. I'd like to know as of each day that
2 that particular circular went out or newsletter went out,
3 how many members were on the distribution list?

4 A. That --

5 405 Q. That you can do?

6 MR. NEHMETALLAH: We can do it but, as I
7 mentioned, it takes -- it takes time.

8 MS. MAHDAVIAN: Yes.

9 MR. NEHMETALLAH: And I'm -- I will make
10 absolutely best efforts, and we may provide, through
11 consultation with you, provide maybe a set of dates
12 through those communications just because doing say --
13 I'm not --

14 How many communications were there?

15 MS. MAHDAVIAN: I think there were five that I've
16 identified. But just off the record.

17 --- Off-the-record discussion at 12:16 p.m.

18 --- Upon resuming at 12:17 p.m.

19 BY MS. MAHDAVIAN:

20 406 Q. So do I have your best-efforts undertaking?

21 MR. NEHMETALLAH: Best efforts.

22 --- UNDERTAKING

23 BY MS. MAHDAVIAN:

24 407 Q. All right. So just so it's on the record,
25 there was an email that went out on January 15th by ICC

1 addressed to Dear Members of the Iranian Canadian
2 Congress; there was an email that was sent on Saturday,
3 March 23rd also addressed to Dear Members of the Iranian
4 Canadian Congress; an email that was sent out March 29
5 also Dear Members of the Iranian Canadian Congress, April
6 30th. It simply says, "Help us protect the
7 organization" --

8 MR. NEHMETALLAH: Counsel, what exhibit are you
9 referencing?

10 MS. MAHDAVIAN: Oh, yes, sorry. Exhibit "C."

11 MR. NEHMETALLAH: In the -- Exhibit "C" in the
12 Reply Application Record?

13 MS. MAHDAVIAN: Yes.

14 BY MS. MAHDAVIAN:

15 408 Q. So behind the letter that I sent, I
16 attached -- yes, there you go. You'll see these, Soudeh,
17 these are addressed "Dear ICC" or "Dear Members of the
18 ICC," and I'd like to know on these distribution lists at
19 these different points in time what -- who was on that
20 list, which tag were you using to get your distribution
21 list?

22 A. This particular one, it's active members.

23 409 Q. Okay.

24 A. As of that day, January --

25 MS. MAHDAVIAN: All right. So then as of

1 January, Jonathan, if you can please let me know as of
2 that date what were the numbers of the active members?

3 MR. NEHMETALLAH: I can make best efforts but
4 what I can advise to you is I don't think it's
5 substantially different than the number I advised --

6 MS. MAHDAVIAN: All right, but I'd like to know
7 because it's --

8 MR. NEHMETALLAH: I agree it's --

9 MS. MAHDAVIAN: -- a sliding scale --

10 MR. NEHMETALLAH: It's - yes, yes, yes, I agree.
11 --- The Reporter appeals.

12 MS. MAHDAVIAN: It's a sliding scale, apparently.
13 So January would have probably been almost the same as
14 December?

15 MR. NEHMETALLAH: Mm-hmm.

16 MS. MAHDAVIAN: Then we have March 23rd?

17 MR. NEHMETALLAH: So are you -- okay. Would it
18 be helpful -- okay, I understand the question now. I can
19 attempt to provide in these general time periods.

20 MS. MAHDAVIAN: Yes.

21 MR. NEHMETALLAH: Best efforts.

22 --- UNDERTAKING

23 MS. MAHDAVIAN: You're giving me May 5, which was
24 a list that you had.

25 MR. NEHMETALLAH: Correct. So the list was

1 preserved. I received the active-member list as of May
2 5. So relatively soon after I was retained. And then
3 anything before that, the ICC needs to go through that
4 exercise of determining who was and who wasn't at certain
5 particular points in time.

6 BY MS. MAHDAVIAN:

7 410 Q. All right, great. And if this distribution
8 list of people who receive emails is more than the 737
9 numbers that you identified in December, I'm requesting,
10 which I know you'll refuse, I'm requesting that list as
11 well. Because they've clearly been communicating with
12 more than just active members. You understand?

13 MR. NEHMETALLAH: No. Sorry.

14 BY MS. MAHDAVIAN:

15 411 Q. So my list that I'm asking for in my
16 application is as of the Section 307 Affidavits. ICC is
17 sending out email after email to Dear ICC Members. If
18 that number of people who received this email was more
19 than the 737, then I'd like to know that and I'd like a
20 list to be created with those names on it, too, because,
21 technically, ICC shouldn't be communicating with other
22 than non-active members.

23 MR. NEHMETALLAH: Well, I mean I disagree with
24 your conclusion that they shouldn't be communicating with
25 non-members and I won't provide a list that's not

1 members. The Act only requires a production of
2 membership list.

3 --- REFUSAL

4 MS. MAHDAVIAN: But then they're sending emails
5 to people about this lawsuit relating to the membership
6 information being provided to people who are not even
7 members.

8 MR. NEHMETALLAH: I'm -- I'm still refusing the
9 list of --

10 MS. MAHDAVIAN: Okay, well, my request is on the
11 record.

12 MR. NEHMETALLAH: Yes.

13 BY MS. MAHDAVIAN:

14 412 Q. All right. And just coming back to
15 NationBuilder and the metadata, you said you have the
16 list in Excel format?

17 MR. NEHMETALLAH: CSV format, which is Excel
18 format.

19 BY MS. MAHDAVIAN:

20 413 Q. And does that have metadata information on
21 it?

22 MR. NEHMETALLAH: To the best of my knowledge, it
23 does. What it is, is it's not the database per se. It's
24 an exported format from the database. The database is on
25 the cloud or whatever the term is.

1 My understanding is when you log into
2 NationBuilder, you're allowed to export a particular
3 list. I.e., without knowing the specifics, my suspicion
4 is you can get it in different formats whether it's PDF
5 or Excel.

6 My understanding is Excel is the format that
7 allows you to -- you can trace the metadata, what it has,
8 has it been deleted and things of that nature.

9 That's the best of my knowledge. I'd be
10 comfortable doing best efforts to inquire about metadata.

11 MS. MAHDAVIAN: Yes. So my request is not just
12 the list, ultimately, but the metadata to know --

13 MR. NEHMETALLAH: If the list has been altered?

14 MS. MAHDAVIAN: Yes. Because based on the emails
15 that you've circulated in your -- or, rather, attached in
16 your responding records, people were asking to be
17 removed. Obviously, I'm guessing those names were
18 removed when you delivered the May 19 list. I want to
19 know if other names were removed earlier.

20 MR. NEHMETALLAH: I'm going to refuse that. The
21 Act doesn't stipulate how one will provide the list. It
22 merely requires the list.

23 --- REFUSAL

24 MS. MAHDAVIAN: All right. Well, my request is
25 that you preserve the metadata anyway and we can deal

1 with it --

2 MR. NEHMETALLAH: I will certainly preserve --
3 I'll certainly preserve the record.

4 --- UNDERTAKING

5 BY MS. MAHDAVIAN:

6 414 Q. All right. Thank you. Since December 2018,
7 Soudeh, has ICC manually deleted any members from
8 NationBuilder to your knowledge?

9 A. No, not as far as I know.

10 415 Q. And the people whose emails you've included
11 in your responding records who said they want to
12 withdraw, were these active current members?

13 A. Yes.

14 416 Q. All right. And other than the names that --
15 well, we don't have their names. Other than these people
16 whose emails you've produced, were there -- were there
17 other people who contacted you? In other words, is it
18 just the 20 or so emails that we have here?

19 A. Sorry, could you just repeat that again?

20 417 Q. Sure. So in Pouyan's Affidavit, a bunch of
21 emails that have been redacted have been produced. These
22 are people who presumably received information from ICC
23 and then decided they don't want to be part of ICC
24 because they don't want their contact information
25 released; yes?

1 A. Yes. Members.

2 418 Q. Members. And they were active members?

3 A. Yes.

4 419 Q. All right. And what I want to know is, other
5 than the emails that you have attached, which is at tab K
6 of your -- of the Affidavit, which is about 20 or so I've
7 counted, have you -- have you received other notices to
8 terminate or withdraw?

9 A. Can I see the exhibit?

10 420 Q. It's in front of you.

11 --- Reporter's Note: Mr. Kamnoosh Shahabi enters
12 the room at 12:25 p.m.

13 MS. MAHDAVIAN: We now have Kamnoosh Shahabi
14 joining us.

15 MR. NEHMETALLAH: Counsel, what exhibit number?

16 MS. MAHDAVIAN: Sorry. I think it's Exhibit "K"
17 of your record.

18 MR. NEHMETALLAH: You may need to repeat the
19 question.

20 BY MS. MAHDAVIAN:

21 421 Q. So have you seen these emails now?

22 A. Yes.

23 422 Q. All right. So these emails that your lawyer
24 had included in your responding record are people
25 contacting ICC to say I want my name withdrawn or

1 removed -- remove me as a member, whatever wording
2 they've used; correct?

3 A. Yes.

4 423 Q. All right. And there's about 20 or so emails
5 here. Other than these emails that your lawyer has
6 appended, have there been other people who have written
7 to say "remove my name"?

8 A. By looking at the dates, it might be couple
9 more.

10 424 Q. Couple more?

11 A. Yes.

12 MS. MAHDAVIAN: All right. So, Jonathan, can I
13 get an undertaking to know what the number of people are
14 who have written in to say remove my name.

15 MR. NEHMETALLAH: After the May 19th date?

16 MS. MAHDAVIAN: Well, no. Before the May 19th.
17 The May 19th list has been produced so I don't care any
18 more after that. I want to know before. Were there any
19 more before other than these, for example?

20 MR. NEHMETALLAH: I don't think that's what she
21 answered, so.

22 THE DEPONENT: Just repeat it again. Sorry.

23 MR. NEHMETALLAH: Sorry. I don't want to give an
24 undertaking without knowing --

25 BY MS. MAHDAVIAN:

1 425 Q. All right. So what I'm interested to know is
2 other than the emails here -- and I appreciate that there
3 might have been some people after who have written in to
4 say don't send my name in, but before these emails, were
5 there any communications asking to be removed or are we
6 just looking at these 20 or so people before May 19th?

7 A. What I'm looking at, section L --

8 MR. NEHMETALLAH: Section K.

9 THE DEPONENT: Okay. Section K.

10 BY MS. MAHDAVIAN:

11 426 Q. Yes?

12 A. Yes.

13 427 Q. Yes what?

14 A. There are more people that they asked.
15 Before the May 10th you're asking; right?

16 428 Q. Okay, let me put it this way, and you can
17 supply the information however way you wish. You have
18 appended 20 or so emails in this responding record as an
19 example of people who actively chose to withdraw their
20 names. Is it just the 20 people before May 19th who
21 asked to be removed or were there more? Is this just a
22 sampling? Like, that's what I'm trying --

23 MR. NEHMETALLAH: I appreciate that. I'll
24 undertake to get -- provide the number of individuals who
25 have actively opted out aside from those not included in

1 the application.

2 MS. MAHDAVIAN: Yes.

3 MR. NEHMETALLAH: Or responding Application
4 Record.

5 MS. MAHDAVIAN: Because at the end of the day,
6 I'd like to -- the Court will need to know from the 91
7 names that you did release between AGM, which was 957,
8 down to 91, how many of them chose to be removed, how
9 many of them expired and didn't renew. So those stats
10 need to be made available.

11 MR. NEHMETALLAH: I can -- I can provide the
12 undertaking that did anyone else ask to opt out that was
13 not included in the Responding Motion Record.

14 --- UNDERTAKING

15 MS. MAHDAVIAN: Yes. And how do we know,
16 Jonathan, given that you've redacted these names, how do
17 we know that these were actually real people sending
18 emails from real email addresses? How do we verify that
19 in other words

20 MR. NEHMETALLAH: You have my assurance as
21 officer of the court. Aside from that, there's nothing
22 we can --

23 MS. MAHDAVIAN: Well, how do you know?

24 MR. NEHMETALLAH: I have the list.

25 MS. MAHDAVIAN: As of what?

1 MR. NEHMETALLAH: I had reviewed the May 5th
2 list, because all of these emails had come in after May
3 5th. And so these were run up against the May 5th list.

4 BY MS. MAHDAVIAN:

5 429 Q. Okay. So are you saying that as of May
6 5th then -- you'll give me the number -- these names
7 appeared on the May 5th list as active members?

8 MR. NEHMETALLAH: All of these members that have
9 opted out were members.

10 MS. MAHDAVIAN: Active members?

11 MR. NEHMETALLAH: I believe so. I need to
12 doublecheck if some were inactive members and didn't
13 realize and still opted out. My recollection, and I can
14 give an undertaking to confirm this, is that all of
15 these were active members that were removed.

16 --- UNDERTAKING

17 MS. MAHDAVIAN: All right.

18 MR. NEHMETALLAH: Not removed but made inactive.

19 BY MS. MAHDAVIAN:

20 430 Q. Okay, so which brings me to my next question.
21 So when people wrote in to say please remove my name,
22 what was done actually?

23 A. I believe their membership tag was removed
24 but I'm not sure.

25 431 Q. You're not sure? Like, this is the issue

1 that goes to the heart of this case. You don't know what
2 was done?

3 A. Their membership tag on NationBuilder has
4 been removed.

5 432 Q. Okay.

6 A. And so they're no longer a member when they
7 asked to be removed.

8 433 Q. Okay, but their name was not removed from the
9 database generally?

10 A. That I have to confirm.

11 MR. NEHMETALLAH: I think that's better asked of
12 Pouyan. He was the one who was --

13 MS. MAHDAVIAN: Well, no, she's the president who
14 oversees it all and presumably knew the strategy and the
15 approach that was going to be taken.

16 BY MS. MAHDAVIAN:

17 434 Q. Yes? Was that discussed among the board?

18 A. They asked their membership status to be
19 removed.

20 435 Q. That's not my question. Did the board
21 discuss what you would do when these emails started
22 coming in?

23 A. In a board meeting?

24 436 Q. Yes.

25 A. No.

1 437 Q. You didn't?

2 A. In a board meeting?

3 438 Q. Yes. So how did you decide? How did the
4 board decide how to handle this?

5 A. Their membership status was removed.

6 439 Q. How did the board decide to remove the
7 membership status? What discussion took place? What
8 decision was made?

9 A. The decision was to remove their membership
10 status.

11 440 Q. When was that decision made?

12 A. As the inquiry would come in.

13 441 Q. And so as of May 10th, was there a
14 conversation between board members about this, which is
15 the first of the emails you've attached?

16 A. About what?

17 442 Q. Well, we've spent the last five minutes
18 talking about emails, people who were asking to be
19 removed. That's what we're still talking about. Did the
20 board have a discussion about what to do with these
21 people who are writing in?

22 A. The conversation was between me and Pouyan.

23 443 Q. Only?

24 A. Yes.

25 444 Q. Did you report to the rest of the board on

1 what decision was made?

2 A. Yes.

3 445 Q. Okay. And where is that report?

4 MR. NEHMETALLAH: I think that report would fall
5 under litigation privilege. I think it was in the
6 context of discussing the litigation. So any
7 conversations surrounding -- surrounding the removal of
8 individuals was taken in the context of the litigation so
9 is subject to privilege. So she won't answer that.

10 --- REFUSAL

11 BY MS. MAHDAVIAN:

12 446 Q. I want to know what the decision was. I
13 don't need to see the report. So was the decision to
14 simply change the tag?

15 MR. NEHMETALLAH: So you're asking like the
16 technical --

17 MS. MAHDAVIAN: The mechanics.

18 MR. NEHMETALLAH: The mechanics.

19 MS. MAHDAVIAN: Yes. Because she doesn't know if
20 the names were removed. She says she doesn't know. But
21 clearly it was a conversation between her and Pouyan, so
22 she has to know. So I'm a little confused.

23 THE DEPONENT: Not removed from the database but
24 their membership status was removed.

25 BY MS. MAHDAVIAN:

1 447 Q. So now you're confirming that the names are
2 still in the database?

3 A. Yes.

4 448 Q. Okay.

5 A. Yes. I guess.

6 449 Q. You're not sure?

7 A. I'm not too sure.

8 450 Q. All right. Okay, well, we'll ask Pouyan
9 then.

10 Why did the board decide to send an email on May
11 13th to the membership?

12 MR. NEHMETALLAH: That's subject to litigation
13 privilege.

14 BY MS. MAHDAVIAN:

15 451 Q. Why? The why is subject to --

16 MR. NEHMETALLAH: It came through -- it was with
17 discussions with counsel. It's subject to privilege.

18 --- REFUSAL

19 BY MS. MAHDAVIAN:

20 452 Q. All right. And since the May 13th email was
21 sent, did you receive additional requests to be removed?
22 Are these part of Exhibit "L"; is that it?

23 MR. NEHMETALLAH: Sorry. You need to repeat for
24 my benefit.

25 MS. MAHDAVIAN: Exhibit "L"?

1 MR. NEHMETALLAH: Are you asking if Exhibit "K"
2 is the exhaustive op-outs?

3 MS. MAHDAVIAN: Yes.

4 THE DEPONENT: You need to clarify that phrase.

5 BY MS. MAHDAVIAN:

6 453 Q. Some of these emails -- one is dated May
7 10th, which is before the May 13th email; one is dated
8 May 16; everything else is May 17. May 16 and everything
9 else is May 17 and 18. So they are all after the email.

10 So was there anything else beyond what you've
11 produced here? Now I'm asking after May 19.

12 A. It might be.

13 454 Q. Yes? So I just need to know that.

14 MR. NEHMETALLAH: I'll provide an undertaking to
15 make best efforts to determine who's opted out since --
16 since the production of the May 19th list.

17 That being said, Counsel, your clients can simply
18 just make another request and we would be able to pump
19 out the current list again.

20 --- UNDERTAKING

21 BY MS. MAHDAVIAN:

22 455 Q. And did you receive any emails where people
23 said no, I want to stay on the list?

24 A. Yes.

25 456 Q. Can I have copies of all those emails of

1 people who contacted ICC saying don't remove me from the
2 list?

3 MR. NEHMETALLAH: I'll provide that undertaking.

4 --- UNDERTAKING

5 BY MS. MAHDAVIAN:

6 457 Q. Thank you. Not redacted, I imagine, since
7 their name --

8 MR. NEHMETALLAH: Yes, those won't be redacted.

9 BY MS. MAHDAVIAN:

10 458 Q. Did you call people yourself?

11 A. No.

12 459 Q. Are you aware that Pouyan was calling people?

13 A. Yes.

14 460 Q. All right. And did you authorize him to make
15 those calls?

16 A. Yes.

17 461 Q. And what list was he using when he contacted
18 people?

19 A. Active members as of that day.

20 462 Q. And do you know roughly how many people were
21 on that list?

22 A. Approximately, I believe it was 145, 14 --
23 somewhere between 140 to 150.

24 463 Q. And so did he reach all 140-150 people?

25 A. That I don't know.

1 464 Q. And since we ended up with only 91, and we
2 only have -- here's a math question. We ended up with
3 91. There are only about 20 emails in here that said
4 please remove me. So what happened to the rest?

5 A. You want me to answer?

6 465 Q. Yes.

7 A. There are more people in -- and I'm just
8 telling you as best of my knowledge based on the dates
9 that I'm looking at.

10 466 Q. Yes.

11 A. There are more people that they opted out
12 before May 10.

13 467 Q. Before May 10?

14 A. Yes. These are all just samples.

15 468 Q. I know but I'm asking you -- you said you
16 used the members current list to call people and you said
17 there were about 140 to 150 on that list?

18 A. As of the May -- let me see when the email
19 went out.

20 469 Q. May 13.

21 A. Yes, as of that date.

22 470 Q. So as of May 13 you had about 140 active
23 members who used that list to call people between May 13
24 and May 19. We ended up with 91. So by my count, that's
25 about 60 people. So we only have 20 emails here. What

1 happened?

2 A. That I have to get information. I don't
3 know.

4 471 Q. Okay. All right.

5 MR. NEHMETALLAH: I also believe Pouyan may be
6 the best to answer this.

7 MS. MAHDAVIAN: Okay. Well, I'll still ask for
8 the undertaking. If he ends up answering it, then we can
9 ignore the undertaking.

10 And if --

11 --- The Reporter requests clarification.

12 MS. MAHDAVIAN: Is that an undertaking; you're
13 going to give it to me? And then if Pouyan answers,
14 we'll ignore it?

15 MR. NEHMETALLAH: Correct. I'm trying to
16 determine the language of the undertaking. So to
17 advise -- I'll undertake to advise why individuals were
18 removed from active membership that were not included in
19 the emails provided in the Responding Motion Record.

20 MS. MAHDAVIAN: Yes.

21 MR. NEHMETALLAH: I'll provide that undertaking
22 subject to the answer of -- of --

23 MS. MAHDAVIAN: Pouyan.

24 MR. NEHMETALLAH: Pouyan.

25 --- UNDERTAKING

1 BY MS. MAHDAVIAN:

2 472 Q. Yes. Okay. Thank you.

3 Is it accurate that ICC has deactivated or
4 disabled the function of reminders being sent to people
5 to renew?

6 A. We haven't sent out a reminder this year.

7 473 Q. Why is that?

8 A. The reminders were usually out closer to AGM.

9 474 Q. Okay.

10 A. And we haven't sent a reminder as of yet.

11 475 Q. That's the reason?

12 A. Yes.

13 476 Q. And was that a decision the board made, not
14 to send reminders?

15 A. I'm not sure but I think so. I'm not sure.

16 477 Q. So if it was a decision of the board, it
17 would be in the minutes?

18 A. It should be.

19 478 Q. And if it's not in the minutes, can you
20 please provide documentation in support of that decision?

21 MR. NEHMETALLAH: Best efforts.

22 --- UNDERTAKING

23 BY MS. MAHDAVIAN:

24 479 Q. Thank you. And can you also tell me around
25 what date the decision or discussion was held about not

1 sending renewal reminders? Do I have that?

2 MR. NEHMETALLAH: You have to re-ask that. My
3 apologies.

4 MS. MAHDAVIAN: Pardon?

5 MR. NEHMETALLAH: I missed it.

6 BY MS. MAHDAVIAN:

7 480 Q. I'd like to know the date that the decision
8 was made not to send the renewal reminders?

9 MR. NEHMETALLAH: I'll include that in the
10 documentation.

11 --- UNDERTAKING

12 BY MS. MAHDAVIAN:

13 481 Q. Okay, thank you. Did you at any point after
14 you received the December Affidavits take steps to
15 contact the four individuals?

16 A. Me?

17 482 Q. Yes.

18 A. I emailed them.

19 483 Q. No, other than the formal ICC response, did
20 you personally reach out to the four of them?

21 A. No.

22 484 Q. Did you ask anyone on the board to reach out
23 to them?

24 A. No.

25 485 Q. Is it your position that the information

1 contained in your December response is correct at law,
2 the position taken at -- is that...

3 MR. NEHMETALLAH: I don't think she's
4 qualified -- that's a refusal because I don't think she's
5 qualified to make that determination of what is and isn't
6 correct at law.

7 --- REFUSAL

8 BY MS. MAHDAVIAN:

9 486 Q. And I'd like to know for the purposes of my
10 application, is ICC continuing to maintain that PIPEDA
11 applies?

12 MR. NEHMETALLAH: No.

13 BY MS. MAHDAVIAN:

14 487 Q. Thank you. Do you understand that PIPEDA
15 does not apply, Soudeh?

16 A. At this point, yes.

17 488 Q. Do you understand that the governing statute
18 is the Corporations Act?

19 A. Which is?

20 489 Q. The Corporations Act?

21 A. Yes.

22 490 Q. Why is it that Bijan also called the Privacy
23 Commissioner if you had already called?

24 A. He wanted to confirm.

25 491 Q. Okay. Confirm what?

1 A. That the information from Privacy Act is
2 correct.

3 492 Q. He didn't trust what you told him?

4 A. He wanted to confirm it.

5 MR. NEHMETALLAH: She can't answer that, Counsel.

6 BY MS. MAHDAVIAN:

7 493 Q. And there's an email in here where he
8 sends -- so he called on March 23rd I take it? Or no.
9 March 21st; correct? That's tab I. Tab I?

10 A. Okay.

11 494 Q. Do you have Bijan's email?

12 A. Which page are you looking at?

13 495 Q. The first one.

14 A. 93?

15 496 Q. Yes.

16 A. Yes.

17 497 Q. All right. And he says, "As I have mentioned
18 in my previous email to you." Where is that email?

19 A. Could you clarify which line you're referring
20 to?

21 498 Q. Second line, "As I have mentioned in my
22 previous email to you..."

23 A. I have to check that.

24 499 Q. All right. I'd like a copy of it?

25 MR. NEHMETALLAH: We'll provide that undertaking

1 to provide the --

2 --- UNDERTAKING

3 THE DEPONENT: Oh, sorry.

4 BY MS. MAHDAVIAN:

5 500 Q. Yes?

6 A. I have to check that.

7 501 Q. Yes. Thank you for the undertaking.

8 He also says, "I am confident that almost all
9 members of the ICC..." Is he referring to the 957
10 people?

11 A. Yes.

12 502 Q. All right. I'm confident that almost all
13 members of the ICC believe that based on the by-law,
14 their information is kept confidential. How is he
15 confident? Did he speak to 957 people?

16 MR. NEHMETALLAH: Counsel, she can't answer that
17 on his behalf.

18 BY MS. MAHDAVIAN:

19 503 Q. Well, did you ask?

20 A. I can't answer.

21 504 Q. Did you ask Bijan whether he spoke to all the
22 members of ICC?

23 A. No, I did not ask him.

24 505 Q. Did you ask anyone on the board to contact
25 all 957 members?

1 A. No.

2 506 Q. And do you have any idea where he might be
3 able to say that he's confident that almost all members
4 don't want their information kept confidential; do you
5 know where he's getting that from?

6 A. I believe he's referring to the by-law, and
7 when people were signing up, the by-law was saying that
8 their information --

9 507 Q. All right.

10 A. -- is kept confidential.

11 508 Q. Did you respond to this email?

12 A. No.

13 509 Q. Why not?

14 A. I did not respond.

15 510 Q. He says here that he would consider resigning
16 from the board and withdrawing his membership. His name
17 appears on the list that was released to us, so I take it
18 he has no concerns?

19 A. That's something he has to answer.

20 MR. NEHMETALLAH: She can't answer for --

21 BY MS. MAHDAVIAN:

22 511 Q. Ask him, please. By way of undertaking, ask
23 him.

24 MR. NEHMETALLAH: For his intent?

25 BY MS. MAHDAVIAN:

1 512 Q. He says here:

2 "If the privacy of membership list is compromised
3 and the information is released without prior
4 consent because of the threats that I have
5 previously received on social media and for
6 safety and security of my family, I will have to
7 consider resigning from the board and withdrawing
8 my membership." (as read)

9 MR. NEHMETALLAH: Counsel, with the greatest of
10 respect you had the opportunity to examine him. You
11 could have examined him like you're examining --

12 MS. MAHDAVIAN: I'm asking her to undertake to
13 ask him.

14 MR. NEHMETALLAH: I'm going to refuse that
15 undertaking.

16 --- REFUSAL

17 BY MS. MAHDAVIAN:

18 513 Q. And when he says that, "I ask you to defend
19 the by-laws of the Iranian Canadian Congress," do you
20 agree as at this point that he was wrong in saying that
21 the by-laws are paramount?

22 A. I can't answer the question on his behalf.

23 514 Q. Well, I'm asking you to answer as the
24 president of the organization who has received a letter
25 from another board member who is making claims that are

1 inaccurate at law.

2 A. You need to repeat your question.

3 515 Q. As the president of ICC, sitting here today
4 you've confirmed that the PIPEDA doesn't apply; correct?

5 A. Yes.

6 516 Q. And, therefore, the reliance on the reference
7 to PIPEDA in the by-laws is not going to protect...

8 A. I believe we got different counsel after
9 that, and that's dated March 23rd.

10 517 Q. So then at that point in time, there wasn't a
11 discussion about this between you and Bijan? Did you
12 agree with him at this point in time?

13 A. Yes.

14 518 Q. Now, he also sent an email, and I have to
15 look for it somewhere in here, where he puts his name and
16 a bunch of other people down. Do you know what I'm
17 talking about?

18 A. I just saw it somewhere.

19 519 Q. Yes, it's tab J. Or no. Is this -- who are
20 these people listed on tab J?

21 A. Members of the organization.

22 520 Q. All right. Some of them are related to you?

23 A. Yes.

24 521 Q. Your sister?

25 A. Yes.

1 522 Q. Your mother?

2 A. Yes.

3 523 Q. All right. Your friends?

4 A. Yes. I see two names.

5 524 Q. Dorna and Donna (ph.)?

6 A. Yes.

7 525 Q. And Sadie, the lawyer that gave you the
8 advice that she did; yes?

9 A. You want me to confirm she's my friend or
10 not?

11 526 Q. Yes.

12 A. No, she's not my friend.

13 527 Q. And these are people who are writing you
14 collectively on March 25th?

15 A. This is something Bijan sent me.

16 528 Q. Oh, okay. So they all wrote Bijan?

17 A. You need to confirm it with him.

18 529 Q. Well, I'm asking you. You received this
19 email. Did you ask him? Did you ask him, make any
20 inquiries as to where these names were coming from?

21 A. Yes.

22 530 Q. All right. It says here:

23 "We the undersigned members ask you not to
24 release the information of the members of the
25 organization to anyone without obtaining consent

1 from each member. According to the
2 by-laws..." they refer to by-laws "...PIPEDA
3 clearly states..." blah-blah-blah, "...we do not
4 want any of our information to be released to the
5 four individuals. Please defend our rights" (as
6 read)

7 Is this something that Bijan drafted, to your
8 knowledge?

9 A. I don't know that.

10 531 Q. And I believe some of these names still
11 appear on the 91 membership -- the membership list with
12 91 names. So what happened?

13 A. Could you be more specific with the names?

14 532 Q. Yes. Specific with the names?

15 A. Yes.

16 533 Q. Oh, sure. For example, Bijan Ahmadi, his
17 name appears on the list and yet he said that he wants
18 his name not released.

19 MR. NEHMETALLAH: Counsel, she can't -- she can't
20 give evidence on the state of mind of other individuals.
21 If they changed their mind, they changed their mind but
22 she can't give evidence on that.

23 BY MS. MAHDAVIAN:

24 534 Q. Well, so what I'd like to know is were there
25 any discussions with individuals, including with Bijan,

1 that you're aware of that you were part of that led to
2 them changing their mind between March 25 and May 19th?

3 A. If you would be more specific on the names,
4 then I could be --

5 535 Q. Bijan --

6 A. -- following up.

7 536 Q. For starters, Bijan?

8 A. Bijan has decided to keep his membership
9 status.

10 537 Q. Did you have --

11 A. That's clear.

12 538 Q. -- a discussion with him?

13 A. As why?

14 539 Q. Yes.

15 A. No.

16 540 Q. And what about your mother and your sister?

17 A. They decided to stay on the membership list,
18 if it's there.

19 541 Q. Yes? And did you have a discussion with them
20 about this?

21 A. No.

22 542 Q. What about your friends, Dorna and Donna?

23 A. Is that in your list?

24 543 Q. I'm just looking quickly. Do you know if
25 they are?

1 A. I don't know if they are in that list.

2 544 Q. And do you think it was appropriate for Bijan
3 as a board member to be going out and talking to people
4 and collecting names, et cetera?

5 A. He's also a member.

6 545 Q. Yes.

7 A. But the appropriateness of that, that I can't
8 confirm on his behalf.

9 546 Q. And is it your position that the information
10 that was sent in the various emails that I've identified
11 in January and March and April, contained accurate
12 information about the issue that's before the Court?

13 A. At that time best of our knowledge, yes.

14 547 Q. When you say "at that time," say for example
15 the email that was sent in April, at that point you had a
16 lawyer and at that point the lawsuit had been commenced.
17 Sorry, I'm just going to get the -- if you go to tab C,
18 March 29 --

19 MR. NEHMETALLAH: In the responding or reply?

20 MS. MAHDAVIAN: In the reply.

21 MR. NEHMETALLAH: Which page?

22 MS. MAHDAVIAN: Page 21.

23 THE DEPONENT: Yes.

24 BY MS. MAHDAVIAN:

25 548 Q. Why does -- first of all, who drafted this

1 email?

2 A. I believe Pouyan.

3 549 Q. Pouyan did?

4 A. Yes.

5 550 Q. All right. And did you approve it before it
6 went out?

7 A. Yes.

8 551 Q. And did the board -- entire board see it
9 before it went out?

10 A. No.

11 552 Q. So when the email refers to -- and it's
12 middle of the paragraph -- "We appreciate that many
13 members are displeased over the prospect of their
14 membership information being made public," do you
15 consider that to be an accurate statement?

16 A. No.

17 553 Q. All right. So as at this point, you had a
18 lawyer and you knew, three months in, that the four
19 individuals had provided Affidavits saying that they did
20 not want the list for improper purposes and they never
21 said they would be making it public. So why did this
22 communication go out, which you approved?

23 A. Repeat your question.

24 554 Q. Why did this communication go out saying that
25 the membership information would be made public when

1 you've agreed that it was wrong?

2 A. By being made public, I believe he's
3 indicated that to other members.

4 555 Q. Where? Where does it say that?

5 A. It doesn't say that in here but the intention
6 is that to other members.

7 556 Q. Do you agree that this statement, this email,
8 is inaccurate, it's misinforming the members?

9 A. Well, other members are part of the public,
10 so.

11 557 Q. Okay now you're smiling and you think this is
12 funny. Soudeh, this is funny for you?

13 A. No.

14 558 Q. Okay. So let's go back to the question. You
15 agree that this email contains misinformation or at least
16 incomplete information?

17 A. Incomplete information.

18 559 Q. Right. And it's misleading; correct?

19 MR. NEHMETALLAH: Counsel, misleading is --

20 THE DEPONENT: No.

21 MR. NEHMETALLAH: -- a question of the state of
22 mind of the person reading it.

23 BY MS. MAHDAVIAN

24 560 Q. Well, excuse me. When it says that the
25 members' information will be made public, what do you

1 think someone who received this is going to understand?

2 You approved this communication as the president of ICC?

3 A. Yes.

4 561 Q. Did you want them to understand that their
5 information would be made public?

6 A. No.

7 562 Q. So why didn't you accurately state the facts?
8 Why didn't you tell Pouyan to change the email that was
9 going out?

10 A. My perception was that this is going to other
11 members.

12 563 Q. And scaring the hell out of them; right?
13 That's what you guys were after?

14 A. No.

15 564 Q. To create fear among the membership, that all
16 their information was going to be released in public?

17 A. No. I'm going to clarify something here.
18 And this email was sent out to a public or a group of
19 members only. This is March 29th.

20 565 Q. What does that mean?

21 A. The email you're referring to.

22 566 Q. Yes?

23 A. It was only sent out to the members only.

24 567 Q. Okay. So?

25 A. So by "public" in this group is a group of

1 members.

2 568 Q. That's not set out there, Soudeh, but it's a
3 nice try on your part. Really. And again you're
4 smiling.

5 So why didn't it say very clearly that the four
6 Applicants whose rights apparently you respect were only
7 looking to get the membership list and had sworn
8 Affidavits that they would do nothing improper, why
9 doesn't it say that? You approved this communication?

10 A. I don't have an explanation for that. My
11 intention was this is going to members and it will be
12 distributed between members.

13 MS. MAHDAVIAN: Jonathan, I'm going to take five
14 minutes to see if I have any last-minute questions.

15 MR. NEHMETALLAH: Of course.

16 MS. MAHDAVIAN: And then I think we can break.
17 So let's take five.

18 --- Recess taken at 1:00 p.m.

19 --- Upon resuming at 1:09 p.m.

20 BY MS. MAHDAVIAN:

21 569 Q. All the emails that were sent out by ICC to
22 ICC members, are these all drafted by Pouyan?

23 A. Yes. Mostly.

24 570 Q. And they were all -- mostly?

25 A. Yes.

1 571 Q. Are there any of them that was not drafted by
2 him?

3 A. No. Here's the thing. I'm going to correct
4 that. He drafts it and if there's any -- I review it.
5 If there's any correction, those are the correction that
6 I --

7 572 Q. So no one other than him and you deal with
8 communications?

9 A. Not the communications that you're referring
10 to. Other communications, we're not talking about all
11 the communications.

12 573 Q. Like, what are you talking about?

13 A. What are you talking about? Be more clear so
14 that I can answer your questions.

15 574 Q. I'm asking about the emails that were sent
16 out regarding this case.

17 A. They're drafted by Pouyan.

18 575 Q. Pouyan.

19 A. And reviewed by me.

20 576 Q. No other board member gets involved in that?

21 A. No.

22 577 Q. All right. And just back to -- because, I'm
23 sorry, I have to understand, when Pouyan refers to the
24 confidential member list that only he has access to,
25 we're talking about the list that we've said is on

1 NationBuilder?

2 MR. NEHMETALLAH: I think any time a reference is
3 made to a list, all of the corporation's records with
4 respect to membership information is held digitally
5 through NationBuilder.

6 BY MS. MAHDAVIAN:

7 578 Q. All right. And since the AGM 2018 when he
8 became vice-president and later secretary, was he the
9 only person with access to that list as an admin?

10 A. You have to be more specific, the period. It
11 was a transition time.

12 579 Q. Yes, okay. So let's break it down. 2018
13 April was the AGM till December 2018. Who had -- who had
14 the list?

15 A. The list of...?

16 580 Q. Members.

17 A. During the transition from the AGM to this
18 current board, I'm not a hundred percent sure but for a
19 period of time it might have been -- access might have
20 been the previous president, who is Bijan, might have
21 access for that transition time.

22 581 Q. How long is the transition time?

23 A. That I have to confirm.

24 582 Q. All right. So once the new -- when did the
25 new board take over formally; what date?

1 A. Like, the new board is in place right after
2 the AGM.

3 583 Q. So then what transition are you talking
4 about?

5 A. Transition of the information and --

6 584 Q. Okay, so at some point it was Bijan. You,
7 did you have access?

8 A. Yes.

9 585 Q. And Pouyan?

10 A. At that point, yes.

11 586 Q. Well, Pouyan wasn't the secretary then, so
12 did he still have access?

13 A. He has the access ever since he became the
14 secretary.

15 587 Q. Okay, but I'm not talking about the 2018
16 period. He became the secretary after Zangiabadi left;
17 correct?

18 A. Yes.

19 588 Q. So during the period Zangiabadi's the
20 secretary, did he have access?

21 A. He should have, yes.

22 589 Q. Do you know?

23 A. I'm not sure.

24 590 Q. Anyone else to your knowledge?

25 A. No.

1 591 Q. And is there a log-in for admin or is it a
2 log-in that's personal to people? How does it get set
3 up?

4 A. That I have to confirm. It's only one
5 log-in, I believe.

6 592 Q. It's only one log-in?

7 A. I'm not too sure --

8 593 Q. Is it a shared log-in?

9 A. I have to confirm that. I don't know.

10 594 Q. Can you please confirm that? Yes?

11 MR. NEHMETALLAH: Yes. Sorry. Yes, I'll
12 undertake to confirm the type -- the type of account the
13 corporation uses for NationBuilder.

14 --- UNDERTAKING

15 BY MS. MAHDAVIAN:

16 595 Q. Well, I just -- what I'm trying to find out
17 is who -- who has access to the list, who can add people
18 in --

19 MR. NEHMETALLAH: Yes. For example, if its user
20 name would be admin, password would be admin.

21 MS. MAHDAVIAN: Yes.

22 MR. NEHMETALLAH: Not that that -- for the
23 record, that's not it but --

24 BY MS. MAHDAVIAN:

25 596 Q. And there are logs that can verify who has

1 accessed the member list at any given point, are there?

2 MR. NEHMETALLAH: That would need to be asked of
3 NationBuilder. We can't provide that information.

4 BY MS. MAHDAVIAN:

5 597 Q. All right. Okay. Well, can you ask them?

6 MR. NEHMETALLAH: Undertake to --

7 BY MS. MAHDAVIAN:

8 598 Q. Ask NationBuilder -- because they won't give
9 us that information -- we've tried -- whether there are
10 logs that are kept of dates and people who have accessed
11 the members list?

12 MR. NEHMETALLAH: Yes, we can provide that.

13 MS. MAHDAVIAN: For the period in question.

14 MR. NEHMETALLAH: We can provide that for the
15 period in question.

16 --- UNDERTAKING

17 BY MS. MAHDAVIAN:

18 599 Q. And coming back to Mr. Zangiabadi, can you
19 explain to me, Soudeh, as the president, how the by-law
20 amendments work? So you guys propose changes to the
21 by-law; yes?

22 A. Yes.

23 600 Q. And then you said you sent an email to the
24 membership to tell them that there would be changes to
25 the by-law?

1 A. Before the AGM.

2 601 Q. Before the AGM. And then at the AGM by
3 virtue of the votes, the by-laws would then -- the new
4 ones would come into effect?

5 A. Yes.

6 602 Q. All right. And so then technically as of
7 April 29, 2018, which was the AGM, according to you, the
8 new by-laws were in play; right? Because they had been
9 approved by the membership?

10 A. Yes.

11 603 Q. All right. So the new by-law, article 5,
12 section 2, says:

13 "Any member of the ICC who holds permanent
14 residency status and meets the other eligibility
15 requirements for nomination shall have right to
16 run for a position on the board. However,
17 nominees who do not hold Canadian citizenship may
18 only be elected for a maximum of one position on
19 the board and a board member with PR status shall
20 not hold the position of president, vice-
21 president, treasurer and secretary." (as read)

22 That's what your by-law says. So how is it that
23 despite this article in your new by-law, Zangiabadi
24 became the secretary? It's contrary to your own by-law.

25 A. We passed that decision in the board.

1 604 Q. But it's contrary to the by-law. Aren't
2 these by-laws so important? How do you justify going
3 against your by-laws?

4 A. Well, the decision was made on the board.

5 605 Q. So the board has discretion to ignore the
6 by-laws?

7 A. No.

8 606 Q. But the board did ignore the by-law?

9 A. Could you just -- in this particular case
10 you're referring to?

11 607 Q. That's what we're talking about.

12 A. I have to confirm his status currently, so --

13 608 Q. The current status doesn't matter to me. I'm
14 talking about as of the AGM of last year when he took
15 over the office of secretary, you confirmed to me in your
16 evidence earlier that he was not a Canadian citizen?

17 A. Not at that point, no.

18 609 Q. Yes. And he still took over as secretary;
19 right?

20 A. Yes. But I don't know his -- date of him
21 becoming a citizen. That I don't know.

22 610 Q. I'm not asking you that. I'm saying that
23 contrary to the by-laws, he became a secretary?

24 A. Yes.

25 611 Q. Right. And, sorry, the decision or the

1 motion that you're referring to, where is that, approving
2 him?

3 A. All the decisions for the board members is on
4 the -- should be in the very first minutes.

5 612 Q. Do we have that?

6 MR. NEHMETALLAH: What is the date of the minute?

7 MS. MAHDAVIAN: Yes, I don't know what she's
8 referring to.

9 MR. NEHMETALLAH: What are you referring to?

10 THE DEPONENT: It was a meeting, board meeting,
11 and it was done -- the decision was done at the board
12 meeting.

13 MS. MAHDAVIAN: All right. Do we have it?
14 Sorry. Just off the record.

15 --- Off-the-record discussion at 1:17 p.m.

16 --- Upon resuming at 1:18 p.m.

17 BY MS. MAHDAVIAN:

18 613 Q. Tab N are the minutes that you have produced
19 to us, or Pouyan sent these to me earlier and now you've
20 produced them. Which meeting are you referring to?

21 A. I have to check. These are the outstanding
22 meetings that you asked for? I have to check it was --
23 if there was any other, like, minutes before this. It
24 was a meeting before this, so the minutes should be out.

25 614 Q. All right.

1 A. But you asked for -- I believe you asked for
2 the outstanding minutes and we provided you with the
3 outstanding minutes.

4 615 Q. No. I had asked for minutes because they had
5 not been published or put on the website in February when
6 I was retained, and this is what Pouyan sent me. That's
7 all he sent me. And you've reproduced it in your record.

8 But, anyway, I would like -- I think I've already
9 asked for all minutes since the AGM but, in particular,
10 I'd like to have the decision around going against the
11 by-law and passing a motion and accepting Zangiabadi as
12 secretary?

13 MR. NEHMETALLAH: We've already provided the
14 minutes for -- we've already provided that undertaking.

15 BY MS. MAHDAVIAN:

16 616 Q. Right. All right. So we'll get that.

17 And also just back to the by-laws again, I
18 believe -- and you'll correct me, Soudeh, because you
19 know the by-laws better than me, but another amendment
20 that was introduced was article 13 which says the by-laws
21 of ICC may be repealed or amended by by-law or a new
22 by-law relating to the requirements of subsection 1552 of
23 the Canada Corporations Act.

24 So the Canada Corporations Act is referenced in
25 the by-laws. "May be enacted by a majority of the

1 national directors at a meeting of the national board of
2 directors." (as read)

3 And then at the end of that clause, it says,
4 "by-law shall not be enforced or acted upon until the
5 approval of the Ministry of Industry has been obtained."
6 (as read)

7 So their own by-laws refers to seeking approval
8 of the Ministry of Industry?

9 MR. NEHMETALLAH: Yes, it's a different Ministry.
10 It's -- the Ministry that they're governed by is the
11 Ministry of Consumer Services by the Ontario Corporations
12 Act. The government -- the Ministry of Innovation,
13 Science and Economic Development Canada only regulates
14 and governs those that are -- those corporations that are
15 governed by the CCNA -- or, sorry, yes, the Canada
16 non-profit act.

17 MS. MAHDAVIAN: Okay. Well, I'm simply asking --
18 there's a reference in their own by-laws about getting
19 approval of the Ministry. I'd like to know if that
20 approval was obtained. Because otherwise --

21 MR. NEHMETALLAH: For the by-laws?

22 MS. MAHDAVIAN: Yes. These by-laws, according to
23 their own by-laws, are not enforceable.

24 MR. NEHMETALLAH: What I can undertake to provide
25 is the approval sought from the relevant Ministry -- from

1 the relevant -- the relevant governing Ministry I think
2 is the best way to phrase that.

3 --- UNDERTAKING

4 BY MS. MAHDAVIAN:

5 617 Q. Sure, that's okay, I'll take that. And
6 then... Oh, yes. And the corporate head office of ICC,
7 has that been changed?

8 A. The mailing address stays the same but we do
9 not rent the office any more.

10 618 Q. All right. Well, I guess let me take a step
11 back. What is the registered head office of ICC?

12 A. It's 45 Sheppard.

13 619 Q. Sheppard?

14 A. Yes.

15 620 Q. Okay. And what mailing address are you
16 referring to?

17 A. 45 Sheppard.

18 621 Q. So you've changed the mailing address but the
19 registered head office stays the same?

20 A. No. It's the same.

21 622 Q. All right. Because there was a postal office
22 that's registered as your head office when I did a
23 corporate profile check.

24 A. I believe that was in the past. Before 2014.
25 Sometimes even in 2014/15 it was a postal office.

1 623 Q. So has that been changed?

2 A. Ever since the office -- the new office was
3 rented, the address was changed to 45 Sheppard.

4 624 Q. And my last question is how is ICC financing
5 this lawsuit?

6 A. The --

7 MR. NEHMETALLAH: Ah --

8 MS. MAHDAVIAN: That's not privileged.

9 MR. NEHMETALLAH: I know it's not privileged
10 but...

11 THE DEPONENT: I can provide that information.
12 It's certain donation that board members put in and as
13 well as some members of the organization.

14 BY MS. MAHDAVIAN:

15 625 Q. Board members and some members?

16 A. Yes.

17 626 Q. All right.

18 A. For the litigation only, for this --

19 627 Q. For Jonathan. Okay. And is there -- is
20 there a directors and officers liability insurance?

21 A. At this point, yes.

22 628 Q. At this point but was there one before?

23 A. When you're referring to?

24 629 Q. Well, when they made this request and before
25 the lawsuit was commenced.

1 A. I -- I have to check the date, but for a
2 period of time there was no insurance and then there was
3 insurance. But I have to check the date.

4 630 Q. All right. Why don't I do it this way.
5 Please let me know when the insurance --

6 MR. NEHMETALLAH: The current insurance -- you're
7 entitled to the current insurance policy.

8 --- UNDERTAKING

9 BY MS. MAHDAVIAN:

10 631 Q. Yes. And I'd like to know if it applies to
11 this case. Is the policy responding?

12 MR. NEHMETALLAH: I need confirmation. My
13 understanding is no, it doesn't apply.

14 BY MS. MAHDAVIAN:

15 632 Q. All right. So then I need to know the date
16 of the insurance, if it applies, and if so, what the
17 particulars of the policy are?

18 MR. NEHMETALLAH: I've provided that.

19 BY MS. MAHDAVIAN:

20 633 Q. Have the directors reported themselves?

21 MR. NEHMETALLAH: My understanding is this action
22 is not against the directors. It's --

23 MS. MAHDAVIAN: No, it's not, but I'm just asking
24 if they have.

25 MR. NEHMETALLAH: To the best of my knowledge,

1 no. They're not named.

2 MS. MAHDAVIAN: All right. Well, subject to the
3 many, many undertakings and --

4 MR. NEHMETALLAH: Many.

5 MS. MAHDAVIAN: -- the few refusals, those are my
6 questions. Thank you.

7 --- WHEREUPON THE EXAMINATION ADJOURNED AT 1:24 P.M.

8

9 I HEREBY CERTIFY THE FOREGOING
10 to be a true and accurate
11 transcription of my shorthand notes
12 taken to the best of my skill and ability.

11

12 _____
13 KATHRINE MCMENEMY, CSR
Computer-Aided Transcription

14 Reproductions of this transcript are in direct violation
15 of O.R. 587/91 Administration of Justice Act January 1,
16 1990, and are not certified without the
17 original signature of the Court Reporter

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