

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 Cross-Examination POUYAN
TABASINEJAD, the Deponent herein, on an Affidavit sworn
May 22, 2019, taken at the offices of Network Reporting &
Mediation, One First Canadian Place, 100 King Street
West, Suite 3600, Toronto, Ontario, M5X 1E3, on the 13th
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
SOUDEH GHASEMI Observer

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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.

1 --- UPON COMMENCING AT 1:06 P.M.

2 POUYAN TABASINEJAD: Affirmed.

3 CROSS-EXAMINATION BY MS. MAHDAVIAN:

4 1 Q. You've just been affirmed; yes?

5 A. That's correct.

6 2 Q. Okay. And just as a reminder, you need to
7 give verbal answers. Don't nod your head.

8 A. Sure.

9 3 Q. And I also reminded you not to eat while
10 we're on the record, please. And give clear answers so
11 that it gets reflected.

12 A. Yes.

13 4 Q. So just for the record, can you state your
14 full name, please?

15 A. Pouyan Tabasinejad.

16 5 Q. And the reporter has the spelling, obviously.
17 And can you just confirm to me that this is your
18 signature on your Affidavit?

19 A. Yes.

20 6 Q. Okay, thank you. And that Affidavit is May
21 22nd, 2019, and you're here to be cross-examined on that
22 Affidavit. You understand that?

23 A. I believe that's the date, yes.

24 7 Q. Yes? Okay. And I want to confirm that your
25 answers bind the Respondent, the Iranian Canadian

1 Congress?

2 A. Yes.

3 8 Q. And there's nothing affecting your ability to
4 give testimony today?

5 A. No.

6 9 Q. Okay, great. Are you working?

7 A. I'm a Ph.D. student.

8 10 Q. Okay.

9 A. -- (overtalking)

10 11 Q. Sorry?

11 A. I'm a candidate, a Ph.D. candidate.

12 12 Q. So you're not employed?

13 A. It's a full-time job so I get paid for it and
14 that's my job.

15 13 Q. Okay. And how long have you been in Canada?

16 A. Since 1997.

17 14 Q. '97. And how old are you?

18 A. 28.

19 15 Q. And I take it you're a citizen?

20 A. That's right.

21 16 Q. And when did you first join ICC as a member?

22 A. I believe I joined ICC as a member in 2016,
23 perhaps late 2015, but sometime around there.

24 17 Q. So just before the first time you ran?

25 A. Yes, around that time.

1 18 Q. So then the next question I was going to ask
2 you, so the first time you ran for a position on the
3 board was in 2016?

4 A. That's correct.

5 19 Q. And you have served one term and since 2018
6 have been serving a second term?

7 A. That's correct.

8 20 Q. And, therefore, you've participated in two
9 elections?

10 A. I have participated in two elections as a
11 candidate, yes.

12 21 Q. All right. And your Affidavit says that you
13 are the vice-president, policy chair and secretary of the
14 ICC?

15 A. Presently I'm not the policy chair.

16 22 Q. Oh, you're not.

17 A. Yes.

18 23 Q. Okay. So who is the policy chair?

19 A. Saman Tabasinejad. Same last name. The
20 first name is S-a-m-a-n.

21 24 Q. And that's your sister?

22 A. That's correct.

23 25 Q. And when did you step down as policy chair?

24 A. After the last board election after the last
25 AGM I was appointed vice-president and Saman was

1 appointed the policy chair.

2 26 Q. So the answer is since 2018?

3 A. That's right.

4 27 Q. So I just want to very briefly, if you can
5 tell me what your role as a vice-president is, roles and
6 responsibilities, really briefly?

7 A. Vice-president, my role is to assist the
8 president in carrying out their -- carrying out their
9 executive responsibilities and help in any way that's
10 needed, the president.

11 28 Q. And as secretary, what are your roles and
12 responsibilities?

13 A. As secretary, my responsibility is to keep
14 the records of the organization as well as keep the
15 members list up to date.

16 29 Q. Okay. And the minutes?

17 A. So the records are the minutes. Sorry.
18 That's what I meant. Yes.

19 30 Q. All right. And, sorry, before I move on,
20 what was your role when you were on the board the first
21 time around?

22 A. So between 2016 and 2018?

23 31 Q. Yes.

24 A. As policy chair, my role was to basically
25 engage in the policy formulation, research, you know,

1 anything related to -- I mean, knowing and things related
2 to political advocacy in conjunction with the president.

3 --- The Reporter requests clarification.

4 --- Off-the-record discussion at 1:11 a.m.

5 --- Upon resuming at 1:12 p.m.

6 BY MS. MAHDAVIAN:

7 32 Q. So between 2016 and 2018, you didn't hold any
8 formal office, you were just the policy chair; correct?

9 A. As far as I understood about the policy chair
10 was a role -- I mean what do you mean by formal office?

11 33 Q. I mean you weren't a president, vice-
12 president, secretary or treasurer?

13 A. No, I was not.

14 34 Q. Those are the identified offices under the
15 by-law?

16 A. That's correct, no, I wasn't.

17 35 Q. All right. And I'll come back to the policy
18 thing after but when did you become the secretary?

19 A. August.

20 36 Q. Of?

21 A. Of 2018.

22 37 Q. All right. So between May 2018, after the
23 election, and August, the secretary was Younes?

24 A. Younes Zangiabadi.

25 38 Q. And why did he cease to be the secretary?

1 A. He was starting a Masters program and it was
2 in another country, so he had to -- he couldn't fulfill
3 that role any more.

4 39 Q. Is he a part of the board still?

5 A. Yes.

6 40 Q. And is it possible to be part of the board
7 when you're not physically in Canada? Do the by-laws
8 provide for that?

9 A. As far as I know, there's nothing in the
10 by-laws that says no about that. And he attends all our
11 meetings by phone and he often visits and is in person
12 also on the -- comes to the board meetings.

13 41 Q. And isn't it the case that he wasn't a
14 Canadian citizen at the time that he took over as
15 secretary?

16 A. From what I understand -- I mean when he ran,
17 he -- we had to get a special dispensation that the
18 members voted on to allow him to run as a board member
19 and to run -- to basically gain an exception for the
20 citizen rule that we had in the by-laws.

21 So he -- at that moment, he was not. I don't
22 know whether he's become a citizen since.

23 42 Q. Well, a special dispensation to run versus
24 taking over an office that your by-law clearly says has
25 to be occupied by a Canadian citizen are two different

1 things. What I'm asking is he wasn't a Canadian citizen
2 when he took over as the secretary?

3 A. I don't know when or what his citizenship is
4 or was at any point. I really don't know.

5 43 Q. The board didn't inquire?

6 A. As far as I know, I -- there was nothing -- I
7 have no idea. I have no information about his
8 citizenship status.

9 44 Q. Would you agree with me that if he wasn't a
10 Canadian citizen, that it was contrary to the by-laws to
11 have him hold office as a secretary?

12 A. I'm not aware of that rule in the by-laws.

13 45 Q. Really?

14 A. No.

15 46 Q. All right. Well, why don't we take a look at
16 that. Article 5, section 2.

17 A. Do you mean section 5? Oh, article 5,
18 section 2. Okay. I'm sorry. Yes. Eligibility for
19 nomination for the elections. Okay.

20 47 Q. All right. So it says any member -- if you
21 read that -- I mean I'll read it for you. It sounds like
22 it might be the faster way to do this.

23 "Any member of the ICC who holds permanent
24 residency status and meets the other eligibility
25 requirements for nominations set out in the

1 by-laws shall have the right to run for a
2 position on the board. However, nominees who do
3 not hold Canadian citizenship may only be elected
4 for a maximum on one position on the board. A
5 board member with PR status shall not hold any of
6 the four executive positions on the ICC board,
7 and those executive roles are president,
8 vice-president, treasurer and secretary." (as
9 read)

10 So that section in the by-law clearly states that
11 someone who is a permanent resident is not permitted to
12 hold those four executive roles?

13 A. Mm-hmm.

14 48 Q. So do you agree with me that if Younes was a
15 permanent resident, it was contrary to your own by-laws
16 for him to hold that role?

17 A. So from what I'm seeing here, this is to do
18 with the elections. If he received the special
19 dispensation for -- to allow him to run despite being --
20 not being a citizen, then I believe that covered it.

21 That's my understanding. I haven't thought about
22 this. I wasn't -- I didn't make this decision about what
23 happened and he was elected by -- he was appointed by a
24 member --

25 49 Q. You're the vice-president of ICC?

1 A. Mm-hmm.

2 50 Q. There is a very clear statement in this
3 by-law that says a board member with PR status shall not
4 hold any of the four executive roles. It doesn't talk
5 about the election any more.

6 A. I can't say anything. I told you my
7 position.

8 51 Q. Well, I'm asking you if you agree --

9 A. I told you I --

10 --- The Reporter Appeals.

11 THE DEPONENT: Sure. Go ahead.

12 BY MS. MAHDAVIAN:

13 52 Q. This is the third time I'm asking. It's a
14 really simple question. Do you agree that if Younes was
15 a permanent resident at the time he became a board
16 member, it was contrary to the by-laws for him to become
17 the secretary?

18 A. I don't agree, so.

19 53 Q. You don't agree?

20 A. No.

21 54 Q. I don't need to -- I have just the separate
22 piece of paper. It's the same as your by-law; okay? So
23 I'm not going to mark that. All right.

24 And was this an issue that was discussed among
25 the board, about Younes and the fact that he didn't

1 qualify?

2 A. I don't -- I don't know. I didn't --

3 55 Q. You weren't on the board?

4 A. I don't remember whether it was discussed. I
5 don't.

6 MS. MAHDAVIAN: All right. I believe I've asked
7 for the minutes from the AGM onwards; correct, Jonathan?

8 MR. NEHMETALLAH: I did give that undertaking,
9 yes.

10 BY MS. MAHDAVIAN:

11 56 Q. Yes. And was he doing minutes in the three
12 or four months that he was the secretary?

13 A. As the secretary he would have, yes.

14 57 Q. And you don't remember if any discussion or
15 decision was made about this after the AGM, about which
16 office he would hold?

17 A. So there was a discussion at -- so the way
18 that it works is that the board would elect different
19 people -- I mean the board decides who to appoint into
20 these different positions.

21 58 Q. After the AGM?

22 A. After the AGM.

23 59 Q. So there was a meeting specifically about
24 titles and roles?

25 A. Yes. That would be the first meeting.

1 60 Q. All right. And did the issue of his status
2 as a permanent resident --

3 A. I don't -- I don't recall.

4 61 Q. That, you don't recall?

5 A. No.

6 62 Q. But you recall there was a meeting to that
7 effect?

8 A. I recall it in the sense that at the first
9 meeting of every new board, that's what happens in every
10 organization that I've been on.

11 63 Q. All right. And then just briefly at
12 paragraph 6 of your Affidavit, if you want to just pull
13 it up, so you refer to your tenure at the -- as a policy
14 chair and you were responsible for policy formulation and
15 advocacy activities and you conducted numerous media
16 interviews, elected officials, government stakeholders,
17 et cetera.

18 Did the policy committee report to the board?

19 A. Yes.

20 64 Q. And was that report in writing?

21 A. No. Usually not.

22 65 Q. It was not?

23 A. No.

24 66 Q. So who did you report to?

25 A. I reported to the board.

1 67 Q. The entire board?

2 A. Yes.

3 68 Q. Oh, I see. And so how would that work? As
4 part of the board meetings, the policy chair would just
5 provide an update?

6 A. That's correct.

7 69 Q. And would those updates then be reflected in
8 the board minutes?

9 A. They should be.

10 70 Q. Did the policy committee have its own
11 meetings?

12 A. Yes.

13 71 Q. And were there minutes of those?

14 A. Usually not. There were action items but
15 there were no notes.

16 72 Q. And who kept those records?

17 A. They weren't really records. So I would
18 send -- I would write down action items of mine in some
19 notes, and then I would say -- over the week I would say,
20 okay, so this committee member wanted to do X, wanted to
21 do Y, and I would just follow up with them.

22 73 Q. I see. Okay. Well, whatever notes or action
23 items you have during your tenure as policy chair, may I
24 have those?

25 MR. NEHMETALLAH: We can give best efforts

1 certainly.

2 THE DEPONENT: I --

3 MR. NEHMETALLAH: It sounds like they're quite
4 temporal, those.

5 THE DEPONENT: I don't even know if --

6 MS. MAHDAVIAN: They're what?

7 MR. NEHMETALLAH: Like, they would be temporal in
8 nature. Like, they would be disposable or something
9 along those lines.

10 MS. MAHDAVIAN: I don't know what it is.

11 MR. NEHMETALLAH: We can give best efforts.

12 --- UNDERTAKING

13 BY MS. MAHDAVIAN:

14 74 Q. Sure. And also if I may have the, again,
15 whatever notes or action items are available from the
16 current policy chair with respect to the activities that
17 the policy committee has engaged in since 2018 -- since
18 Pouyan stepped down, I guess?

19 MR. NEHMETALLAH: So any --

20 MS. MAHDAVIAN: Because he's saying there's no
21 minutes.

22 BY MS. MAHDAVIAN:

23 75 Q. And there are still no minutes? No.

24 A. And it's --

25 --- The Reporter Appeals.

1 THE DEPONENT: Sorry. No, there are no minutes.

2 MS. MAHDAVIAN: Yes. Don't shake your head.

3 MR. NEHMETALLAH: I'm going to give the
4 undertaking. Any notes or action items from policy
5 committee from 2016 onwards, does that cover --

6 MS. MAHDAVIAN: Yes.

7 MR. NEHMETALLAH: Yes.

8 --- UNDERTAKING

9 BY MS. MAHDAVIAN:

10 76 Q. Thank you. And does the policy committee get
11 its direction from the board?

12 A. Yes.

13 77 Q. As to -- so what issue for political advocacy
14 to pursue comes down from the board?

15 A. Yes.

16 78 Q. Okay, thank you. I just want to briefly ask
17 you, because I asked Soudeh --

18 A. Sorry. I mean the board -- the board, if
19 it's a big decision, it will go to the board. Otherwise,
20 it would be often between the president and the policy
21 chair. It would usually be following up on priorities
22 that the board has already identified. So not everything
23 would be decided by the board, just to make it clear.

24 79 Q. Can you give me an example of something that
25 wasn't decided by the board?

1 A. So when we -- so the policy -- so let's say
2 that we had a series of consultations -- and you can find
3 this on our website -- we had priorities during my time
4 during -- we had priorities during my time as the policy
5 chair.

6 80 Q. Okay.

7 A. That was a direction from the board. How the
8 policy committee followed up on those and advanced those
9 priorities, that was accepted. I mean --

10 81 Q. So that was your discretion in other words?

11 A. Mine -- everything was approved by the
12 president, as it still is.

13 82 Q. And that was Bijan at the time?

14 A. At the time it was Bijan, yes.

15 83 Q. Okay. Thank you. That helps. So I
16 understand the by-law was amended at the 2018 AGM; is
17 that correct?

18 A. That's correct.

19 84 Q. And did the decision to amend the by-laws
20 come up before the AGM, obviously?

21 A. Yes.

22 85 Q. So you were part of that board that decided
23 to have the by-laws amended?

24 A. Yes.

25 86 Q. And do you remember what the reasoning was to

1 introduce the amendments?

2 A. So it was the result of a long process that
3 happened even before I was elected, from what my
4 understanding was. Those amendments were the result of
5 that.

6 87 Q. So what was the reason, just briefly?

7 A. I mean I can't give you the reason because I
8 wasn't at those -- obviously, I wasn't there when it was
9 being decided before I was elected.

10 88 Q. But did you get an understanding from the
11 discussions that were held as to why these amendments
12 were being made?

13 A. I can't tell you every reason, no. Because,
14 again, there were -- many of those decisions, from what I
15 understand, the bulk of them were made before I was -- I
16 mean, there was a committee that was in charge of that
17 and I was -- that was before --

18 89 Q. Of the by-laws?

19 A. This is before I was on-board, yes.

20 90 Q. All right.

21 A. From my understanding.

22 91 Q. Okay, got it. Now, do you know, as the
23 secretary who is in charge of records including by-laws,
24 whether these by-laws, amended by-laws, were filed?

25 A. I'm not aware if they were filed. Because I

1 became the secretary in August, so if they were filed
2 before that, I wouldn't know.

3 92 Q. Article 13 of the by-laws specifically refers
4 to the fact that these by-laws are not enforceable until
5 the approval of the Ministry has been obtained. That's
6 what your by-law actually says. So now that you are the
7 secretary, can you please inform us whether that approval
8 was obtained, and if so, when?

9 A. Oh, I really don't know. I don't know if it
10 was done before. I'm not sure.

11 93 Q. So as the secretary, you don't have that
12 information?

13 A. I don't.

14 94 Q. So we could all be working under the
15 operation of by-law -- under the assumption that these
16 by-laws are not operational?

17 A. I don't know whether they're operational.
18 Even if that was true, I don't know.

19 95 Q. But you've sworn an affidavit, Pouyan, saying
20 that these are the by-laws?

21 A. That's correct.

22 96 Q. Did you not take steps to inform yourself
23 whether the by-laws were approved properly?

24 A. I'm not a lawyer but as far as I understand,
25 these are the by-laws of the organization.

1 MS. MAHDAVIAN: And so, Counsel, what's your
2 position? Has that been done?

3 MR. NEHMETALLAH: Our position is I gave an
4 undertaking yesterday to inquire with respect to whether
5 they've been filed with the Ministry.

6 MS. MAHDAVIAN: And who would you be inquiring
7 of? Because the secretary here doesn't know, the
8 president there didn't know. So who else are you going
9 to ask?

10 MR. NEHMETALLAH: Counsel, the undertaking I gave
11 was to inquire with the Ministry, the relevant Ministry,
12 with respect to the by-laws.

13 MS. MAHDAVIAN: Okay, that's fair. Thank you.

14 BY MS. MAHDAVIAN:

15 97 Q. Just back to the policy during your time with
16 the policy committee, so I understand that the
17 interaction was between the board in terms of directions,
18 it was up to you as the chair how to implement that.
19 What about input from members, was there any type of
20 dialogue where you obtained input from members?

21 A. Who obtained? In what capacity?

22 98 Q. What do you mean?

23 A. In what capacity would I receive input from
24 members? Are we going back to 2016/18?

25 99 Q. Yes.

1 A. When I was --

2 100 Q. I'm talking about the -- sorry. Did I not
3 say policy? Oh, I'm sorry. I meant during your time as
4 policy chair and to your knowledge even now that your
5 sister is the policy chair, does that committee take
6 input from members? And if so, how do you arrange for
7 that, how do you accommodate for that?

8 A. So as I said before, the policy committee
9 takes its direction from the board.

10 101 Q. I know but do you get input from members?
11 That's what I'm saying.

12 A. What do you mean by "input"?

13 102 Q. Do you get members to tell you if they agree,
14 don't agree, what else you should look into? Anything.
15 Input.

16 A. The Iranian Canadian Congress as a whole has
17 consultation processes, and that is with all
18 stakeholders. Not just members, with all the entire
19 community.

20 103 Q. Oh, okay. So in 2018 what were some of these
21 consultations that took place?

22 A. I can't recall them off the top of my head
23 but we've had multiple consultations.

24 104 Q. Where members -- a notice is sent to members
25 and if they've been invited, to attend?

1 A. Sorry, in 2018?

2 105 Q. I'm talking during your time.

3 A. You just said 2018. So when I was the policy
4 chair --

5 106 Q. Yes.

6 A. -- the Iranian Canadian Congress itself had
7 consultation, and I can -- I can give that to you. I
8 don't recall exactly what they are.

9 107 Q. Okay. Well, why don't you do that. Why
10 don't you, during the time that you were the policy
11 chair, let me know what consultation processes were held
12 dealing with policy?

13 A. We have held many.

14 108 Q. All right. So do I have that undertaking?

15 MR. NEHMETALLAH: While Pouyan was policy chair,
16 what -- public consultation?

17 MS. MAHDAVIAN: He called it a consultation
18 process.

19 MR. NEHMETALLAH: Consultation process.

20 MS. MAHDAVIAN: I'm asking if it was public. He
21 said it was with all stakeholders.

22 THE DEPONENT: It is public.

23 MR. NEHMETALLAH: I can make best efforts. I'm
24 admittedly a little unclear but I think we can clarify
25 and make best efforts.

1 While Pouyan was policy chair, what consultation
2 was undertaken?

3 --- UNDERTAKING

4 BY MS. MAHDAVIAN:

5 109 Q. Thank you. With respect to paragraph 9 of
6 your Affidavit, you say that you ran as an incumbent
7 candidate for six seats along with nine other candidates.
8 So two of them are the Applicants, two of them were part
9 of the ICC4ALL who I know, so that I'm wondering who the
10 other people were?

11 A. The other people who are now part of the
12 board.

13 110 Q. Oh, they are. Okay. So the six seats was
14 then occupied by the six remaining people?

15 A. No, no. Right now on the board? So I don't
16 understand what you're asking.

17 111 Q. Okay, fair enough. So there were six
18 vacancies?

19 A. That's correct.

20 112 Q. You were running as an incumbent?

21 A. Yes.

22 113 Q. How many incumbents were there?

23 A. Incumbents, I believe... I don't recall.
24 Sorry. I don't have the best memory when it comes to
25 dates. I don't recall.

1 114 Q. It's not a date.

2 A. Or I mean it is, who came on at which point.

3 So I mean I was an incumbent I know.

4 115 Q. So the five other people who got the seats,
5 they were people who were running for the first time; you
6 don't remember?

7 A. I can go through them. I don't recall who
8 came onto the board at which time. I can go through
9 them.

10 So there was Mohsen Khaniki, Younes Zangiabadi,
11 Saman Tabasinejad, Shudadula Taberki (ph.) and...

12 Anyway, yes. So I don't see exactly what you're
13 asking but, I mean, these are the people who -- there are
14 people who won, so. And some people -- and somebody
15 dropped out at some point, perhaps. I don't know.

16 116 Q. Well, that's what I want to come to. My
17 information is that Mehdi Shams had also put up
18 nominations to be running as a candidate; yes?

19 A. I wasn't involved in that. I was a candidate
20 myself. I wasn't --

21 117 Q. You don't know who the other candidates were?

22 A. I didn't keep track of every candidate that
23 was running. But he might have run. I mean I think he
24 did run. He ran most of the times.

25 118 Q. I'm sorry, your mumbling is very hard to

1 understand --

2 A. So he might have run. He ran multiple times
3 and he dropped out a couple of times. I really can't
4 keep track. So if --

5 119 Q. Do you have any information about the fact
6 that he was not permitted to run this time?

7 A. So Mehdi Shams, when he didn't -- when he --
8 so Mehdi Shams was asked multiple times to give his
9 police background check and he didn't. That's -- and we
10 had a deadline. They had a deadline. The elections
11 committee had a deadline of when he could give his police
12 background check and he never did.

13 120 Q. I see. Did you give a police background
14 check?

15 A. Yes.

16 121 Q. So is that a requirement?

17 A. As far -- again, I'm not -- that's not a
18 question you should be asking me. You should ask the
19 elections committee. I wasn't involved.

20 122 Q. No, I'm asking you because it's part of the
21 by-laws I think is what the ICC's relying on to suggest
22 that's the election process --

23 A. I wasn't involved --

24 123 Q. Okay, I'm not done. Don't talk over me
25 because then it will be problematic for the court

1 reporter.

2 Your lawyer took the two witnesses to the by-laws
3 with the whole protocol set out, and Section 2 I believe
4 deals with eligibility, and all it says is that there
5 should be no criminal conviction. It doesn't talk about
6 a police background check.

7 A. I can't answer this question. I don't know.

8 124 Q. So your suggestion then is the election
9 committee specifically asked each candidate to provide a
10 police background check?

11 A. As far as I understand, yes.

12 125 Q. And you provided yours?

13 A. Yes.

14 126 Q. Okay. All right. Thank you.

15 As someone who has been on the ICC board and
16 apparently other boards, you're aware that there's a
17 process to follow under the various by-laws and acts in
18 terms of when to give notice about an AGM?

19 A. Yes.

20 127 Q. All right. And so when you determined the
21 time and place of the notice, that is sent to the members
22 with some number of dates, I think; is that right? I
23 think your Affidavit says the by-laws require 30 days but
24 in 2018 the board gave 45 days; correct?

25 A. That's correct.

1 128 Q. And in this case, the time for the election
2 had to be changed; correct?

3 A. Yes, that is correct.

4 129 Q. All right. And are you aware, as someone who
5 has been on various boards, whether you can just change
6 the time without actually providing clear notice to
7 people?

8 A. I'm not aware and I wasn't involved in this
9 decision.

10 130 Q. I understand that. Is it because you're
11 saying you recused yourself?

12 A. Yes.

13 MS. MAHDAVIAN: I would like to receive,
14 Jonathan, copies of the board minutes during the
15 campaigning months where Pouyan was on the board but he
16 says he recused himself from decision-making.

17 MR. NEHMETALLAH: Yes.

18 MS. MAHDAVIAN: I don't know how many months that
19 is.

20 MR. NEHMETALLAH: If the -- if the election
21 period was 45 days, I can -- I can certainly undertake
22 for the two months --

23 MS. MAHDAVIAN: Yes, I think it would be two
24 months.

25 MR. NEHMETALLAH: -- immediately prior.

1 --- UNDERTAKING

2 BY MS. MAHDAVIAN:

3 131 Q. Is it monthly, the board meetings?

4 A. It depends on when it was called. I wouldn't
5 say it's strictly monthly.

6 MR. NEHMETALLAH: I'll give best efforts to
7 provide the minutes during the election period.

8 MS. MAHDAVIAN: Yes, please.

9 --- UNDERTAKING

10 BY MS. MAHDAVIAN:

11 132 Q. So just to be clear, yesterday I asked for
12 all board meetings from the AGM onwards, which would be
13 May 2018 onwards. I think April would be one month here
14 and probably March?

15 MR. NEHMETALLAH: Provided it's monthly, it
16 probably would be April or March. If there was only one
17 prior, we'd obviously have to see but --

18 MS. MAHDAVIAN: Well, basically any meetings with
19 respect to the election in which as a board member Pouyan
20 participated, I'd like to see those.

21 MR. NEHMETALLAH: Absolutely I can provide that
22 undertaking.

23 --- UNDERTAKING

24 BY MS. MAHDAVIAN:

25 133 Q. Thank you. And would the board meetings to

1 your knowledge reflect that you recused yourself from
2 decision-making?

3 A. I don't know.

4 134 Q. Did you not look at the minutes when they
5 came out?

6 A. I don't recall. It was a year ago.

7 135 Q. Sorry?

8 A. I don't recall. It was a year ago.

9 136 Q. Okay. And -- but you were at all meetings
10 during that time?

11 A. I don't know if I was at every meeting.

12 137 Q. Do you recall being at meetings where
13 discussions were held about when and how to set up the
14 AGM, where to book it, all of those things?

15 A. No.

16 138 Q. You don't recall or no, you weren't there?

17 A. I don't recall being at any of those
18 meetings.

19 139 Q. So you were not only not there, you were also
20 recusing yourself? Which is it?

21 A. I wasn't there and I don't remember but I
22 would have recused -- I would have recused myself from
23 any decision.

24 140 Q. Okay. So we'll see what the minutes say.

25 So paragraph 15 talks about -- you say that at

1 the time of the elections, the secretary, Mehran,
2 provided a list of members. The procedure for
3 transferring the membership registry from ICC to election
4 was a single coordinated transaction. How do you know
5 this? What is the source of your information?

6 A. This is my understanding from what I was
7 told.

8 141 Q. What's the source of your information?

9 A. From the secretary.

10 142 Q. From Mehran?

11 A. Yes.

12 143 Q. So why haven't you indicated that he's the
13 one who advised you of this?

14 A. I mean how else would I know?

15 144 Q. Well, I don't know. You could know because
16 you were there at the meeting.

17 A. I wasn't -- I wasn't there. And that's --
18 that is the policy of -- that is the process, as far as I
19 understand, of the organization generally.

20 145 Q. All right. So, in other words, paragraph 15
21 is based on information from a third party; it's not your
22 direct --

23 A. My direct experience? I didn't see them
24 actually literally transferring them, no.

25 146 Q. Paragraph 19, in light of the unforeseen

1 circumstances -- we're referring to the van attack and
2 the vigil -- the online voting had completed and closed,
3 the election committee and the board decided.

4 Were you part of that meeting?

5 A. No.

6 147 Q. You didn't attend that board meeting?

7 A. I don't even know how the decision was made.

8 148 Q. So how do you come about putting this in your
9 Affidavit? How do you know this?

10 A. This is from the elections report.

11 149 Q. From the elections report?

12 A. Yes. As far as I remember, yes.

13 150 Q. So can we just go, and you can show me where
14 in the election report you're referring to? Sorry, which
15 tab?

16 MR. NEHMETALLAH: Tab F. My apologies.

17 THE DEPONENT: Yes.

18 BY MS. MAHDAVIAN:

19 151 Q. Sorry. Did you find it?

20 A. I mean it just says the committee assigned --
21 they were told. I mean that's --

22 152 Q. Where are you looking?

23 A. So if you look at the elections committee
24 reports --

25 153 Q. What page?

1 A. -- it says --

2 154 Q. What page of the record?

3 A. 78.

4 155 Q. Okay. Where am I looking?

5 A. At the last paragraph, at the last point
6 there, it says that the elections committee assigned
7 volunteers to remain, there was modification --

8 156 Q. But that's what you say in your Affidavit.

9 A. About who decided?

10 157 Q. Yes.

11 A. I mean that was my understanding of --

12 158 Q. Well, where do you get that understanding?

13 That's what I'm trying to get at. Where do you get it?

14 A. I was a candidate at that time --

15 159 Q. Yes.

16 A. -- that's -- that I would have gotten that.
17 Like, that's the position.

18 160 Q. Where would you have gotten that from?

19 A. I mean as -- as a candidate, I was informed
20 that things were changing.

21 161 Q. How? By whom? When?

22 A. Through communications that we have through
23 conversations that I would have at the AGM, afterwards we
24 --

25 162 Q. This was all before the AGM, supposedly?

1 A. Sure, but the information that I have, I got
2 it after the AGM; right?

3 163 Q. That's not what you say in your Affidavit,
4 Pouyan.

5 A. I didn't say when I got this information.
6 Point 19 is that I heard this on a date before AGM.

7 164 Q. Well, actually, that is. It says in light of
8 the unforeseen circumstances, the election committee and
9 the board decided to extend the hours. So that would
10 mean before the AGM?

11 A. Sure, but I'm saying I learned of that
12 decision, who made that decision, after.

13 165 Q. So are you now saying the information came to
14 you after or are you saying you knew it because you were
15 a candidate before? Because these are now very
16 inconsistent information.

17 A. I mean, I would have under -- I would have
18 understood. I don't know when the information --

19 166 Q. Isn't it a fact that you knew it because you
20 were part of the board and you were part of those
21 discussions?

22 A. So were your Applicants also not told --

23 167 Q. I don't know but I'm not --

24 A. -- about that decision?

25 --- The Reporter Appeals.

1 168 Q. -- here to answer your questions, Pouyan.
2 You're here to answer mine.

3 A. Sure.

4 169 Q. Yes?

5 A. Yes.

6 MS. MAHDAVIAN: All right. So I'd like to know,
7 Counsel, where the source of his information is because
8 it's not reflected in the election report.

9 MR. NEHMETALLAH: We can provide -- we can give
10 an undertaking for the source of his information as well
11 as the date of when --

12 MS. MAHDAVIAN: Except that he swore an
13 affidavit, sitting here today can't tell me where he's
14 getting his --

15 MR. NEHMETALLAH: From --

16 MS. MAHDAVIAN: I don't know who you're going to
17 consult.

18 MR. NEHMETALLAH: From what I've heard, his
19 answer, he indicated he understood this at the time and
20 he learned after the fact.

21 MS. MAHDAVIAN: Well, so who are you going to
22 undertake to ask?

23 MR. NEHMETALLAH: Well, I can -- you can ask him
24 when he found out about this.

25 MS. MAHDAVIAN: Well, he's just given me a couple

1 of the different answers, so.

2 MR. NEHMETALLAH: From what I heard, I heard one
3 answer. He said he learned about it after.

4 MS. MAHDAVIAN: No. He said that he was a
5 candidate and he was informed and there were discussions.
6 Then he said I probably found out at the AGM. Those are
7 two different things.

8 MR. NEHMETALLAH: I'll let him clarify.

9 THE DEPONENT: So there are multiple kinds of
10 issues here; right?

11 It's in light of unforeseen circumstances, in
12 light of the fact that online voting was closed, de-da,
13 de-da, de-da, some of these are rationalizations and some
14 of these are who made the decision. Who made the
15 decision, I don't think I knew at that time who made the
16 decision. This was my -- I gathered that information in
17 preparing this Affidavit.

18 In terms of the rationale, that was shared
19 immediately with everybody, from what I understand. I
20 mean, I believe there was a communication that went out
21 to all members about -- about what happened.

22 170 Q. Is that in the record?

23 A. It should be, yeah. I mean that --

24 171 Q. Why don't we take a --

25 A. -- that the date was changed.

1 172 Q. Go off the record and you tell me where that
2 communication is?

3 MR. NEHMETALLAH: It's the next exhibit, Counsel.
4 It's "E."

5 MS. MAHDAVIAN: Oh, "E"? Okay.

6 MR. NEHMETALLAH: Yes.

7 --- The Reporter requests clarification.

8 MS. MAHDAVIAN: Stay on, please.

9 THE DEPONENT: There it is right there. It says
10 "we are considering it in consultation with the elections
11 committee."

12 --- The Reporter requests clarification.

13 THE DEPONENT: It says, we are considering voting
14 -- changing the voting time for the election -- we are
15 changing the voting time of the -- voting time and the
16 time for general meeting on Sunday as following, and this
17 is -- it says before that due to this unforeseen change,
18 after careful consideration and consultation with the
19 elections committee, and it's signed off by the board of
20 directors.

21 BY MS. MAHDAVIAN:

22 173 Q. This is your source of information?

23 A. Yes. Yes.

24 174 Q. All right. So why didn't you just say so?

25 A. I honestly -- to know -- I think this --

1 anyway, I didn't say so. Here we go. Now I know. Now
2 we know.

3 175 Q. What?

4 A. Now we know where it came from.

5 176 Q. Okay.

6 A. I didn't say it before. Now we know.

7 177 Q. All right. Okay. And --

8 MR. NEHMETALLAH: Counsel, to be fair, he does
9 identify it in paragraph 21.

10 MS. MAHDAVIAN: Well, I'm asking him today.

11 BY MS. MAHDAVIAN:

12 178 Q. Did you read your Affidavit before you showed
13 up today?

14 A. I wrote this Affidavit and I read it, yes.

15 179 Q. You wrote it?

16 A. Mm-hmm.

17 180 Q. You did?

18 A. Yes.

19 181 Q. You wrote the Affidavit, not your lawyer?

20 A. Okay, sorry, what is -- what is the question
21 here? I -- the information is clear where it came from.
22 I don't understand why I have to recall every moment of
23 where I got every --

24 182 Q. It's not that, Pouyan.

25 A. That's what it feels like.

1 183 Q. Just because you're not a lawyer, I'll
2 explain it to you. I'm really not trying to be
3 condescending. But affidavits, proper ones, identify the
4 source of information if it's not yours directly. Okay?
5 And so since you said that you weren't at the board
6 meeting and you were obviously not on the election
7 committee, I was entitled to explore the source of your
8 information.

9 A. Sure.

10 184 Q. Okay?

11 MR. NEHMETALLAH: And to be sure, Counsel, it
12 identifies --

13 THE DEPONENT: (overtalking).

14 MR. NEHMETALLAH: -- improper formatting. If
15 there's improper formatting, it falls on me.

16 MS. MAHDAVIAN: Well, it's --

17 MR. NEHMETALLAH: But to be sure, he identifies
18 the source of the information at paragraph 21.

19 MS. MAHDAVIAN: Okay. Well, we'll just leave it
20 there.

21 BY MS. MAHDAVIAN:

22 185 Q. The four individuals delivered sworn
23 Affidavits in December 2018; correct?

24 A. That's correct.

25 186 Q. All right. And did you receive and review

1 all four as they came in?

2 A. Yes.

3 187 Q. Did you review the Corporations Act to which
4 the Affidavits refer? Section 307?

5 A. I believe it was quoted in the Affidavit, if
6 I'm not mistaken.

7 188 Q. Yes, but did you review the actual --

8 A. I don't recall whether I reviewed it.

9 189 Q. -- section? No, you don't?

10 A. I mean it was quoted. I read that. I don't
11 recall whether I -- at that moment I had done that,
12 whether I had actually said that and read it in December.

13 190 Q. Okay, you're right. So I'm just looking, and
14 just by example, the Affidavit of Babak Payami, if you
15 want to bring it up, it's Exhibit "B" of tab 3. And it's
16 not a quote in the Affidavit but it's a quote in the
17 cover letter. So Section 307 is set out in there.

18 Did you make note of the fact that Section 307
19 provides a reference to ten days, that the information
20 requested has to be provided within ten days?

21 A. If it was in this original thing, I would
22 have.

23 191 Q. It's at the last line, not more than ten days
24 prior --

25 A. Then I would have, yes.

1 192 Q. And did you also see in Babak's letter he
2 refers to Section 307 sub 5 which refers to the offence
3 that would be committed by the corporation if they failed
4 to furnish that list?

5 A. Yes.

6 193 Q. All right. And you agree that the Affidavits
7 were in accordance with the requirements of Section 307?

8 A. I don't know.

9 194 Q. Well, did you have a chance to look at the
10 section? It provides what language needs to go in the
11 Affidavit.

12 A. I don't know.

13 195 Q. You don't know if you did?

14 A. I'm not a lawyer. Again, I don't know.
15 You're asking if I agree --

16 196 Q. You don't need to be a lawyer. The wording
17 and the language suggested is right in the section of the
18 Act.

19 A. That's your opinion?

20 197 Q. It's not an opinion. It's a fact, sir. Do
21 you want me to pull it up for you to see?

22 A. I don't know what you're asking me.

23 198 Q. Did you look at it?

24 A. Did I look at what?

25 199 Q. The section of the Act that has the language

1 and the requirements that are needed to --

2 A. You're asking whether I had seen it. I said
3 it's quoted so, therefore, I saw it.

4 200 Q. Yes.

5 A. So I don't know what else you're asking.

6 201 Q. I'm asking if you took a moment to see if the
7 Affidavits that were delivered were in keeping with the
8 requirements set out very clearly --

9 A. With the requirements inside here, as in that
10 they are saying that this is an affidavit that X, Y and
11 Z, that I'm only using it for certain --

12 202 Q. Yes, yes, yes. That's exactly right.

13 A. I don't recall whether I checked it against
14 that very carefully or not.

15 203 Q. But today, sitting here today, now that
16 you've had six months with this, do you agree that the
17 Affidavits meet those requirements?

18 A. It seems to me that strictly the Affidavit
19 meets the requirement set out strictly in 307.

20 204 Q. Great. Thank you.

21 Now, based on my review, these Affidavits came in
22 on different days, but the last of them was sent or sworn
23 and sent on December 17th. Do you have reason to
24 disagree with me?

25 A. I would have to review it but at the moment I

1 can't think of any reason.

2 205 Q. Well, you can let me know if you disagree but
3 that's the date of Shayan's Affidavit, which is sworn
4 December 17th. So if we use that date, ten days from
5 that date brings us to December 27. Do you agree that
6 the list that they were requesting was due as of December
7 27th?

8 A. I don't agree.

9 206 Q. You don't agree?

10 A. No. I mean that wasn't our understanding at
11 the time.

12 207 Q. I'm asking your understanding today.

13 A. I mean you're talking about it at the time,
14 so I can't --

15 208 Q. No. I'm asking you today.

16 A. No, I don't agree.

17 209 Q. You don't agree it was due ten days later?

18 A. No.

19 210 Q. Tell me why? On what basis? What are you
20 relying on to say it wasn't due within ten days?

21 A. So we said exactly what our reasoning was in
22 the Affidavit and why we were under the impression --

23 211 Q. I'm asking you today, sitting here today, do
24 you agree -- what your reason was for not providing is
25 separate. I'm asking you, based on the requirements of

1 the Act, do you agree that a list was due as of December
2 27th?

3 A. No.

4 212 Q. Okay. Tell me why?

5 A. I -- I told you -- my reasoning or our
6 reasoning for not providing the list was provided both to
7 the Applicants and is in our Affidavit, so it's all
8 there.

9 213 Q. Which is what? PIPEDA?

10 A. Yes.

11 214 Q. So sitting here today, are you still taking
12 the position that PIPEDA applies?

13 A. I -- I am telling you at the moment, at that
14 time, we believed that PIPEDA precluded us from providing
15 the list.

16 215 Q. I'm asking you today, sitting here today --

17 A. I'm not a lawyer. I'm not a judge. All I'm
18 telling you --

19 216 Q. You know that's a copout. I'm asking you
20 today --

21 MR. NEHMETALLAH: Counsel, he gave his answer.

22 MS. MAHDAVIAN: No.

23 MR. NEHMETALLAH: He said he can't give --

24 MS. MAHDAVIAN: Today.

25 MR. NEHMETALLAH: -- a legal determination.

1 MS. MAHDAVIAN: Come on, it's not a legal
2 determination.

3 MR. NEHMETALLAH: It's a legal determination.

4 MS. MAHDAVIAN: It isn't.

5 MR. NEHMETALLAH: You're asking what the law is.

6 MS. MAHDAVIAN: He's telling me reasons why the
7 list wasn't due on December 27th. That is a legal
8 determination.

9 MR. NEHMETALLAH: He said he -- the reasons he
10 gave, he says what he understood at the time.

11 MS. MAHDAVIAN: I'm asking him today.

12 MR. NEHMETALLAH: He's not giving --

13 MS. MAHDAVIAN: Six months into this --

14 MR. NEHMETALLAH: I'm refusing the question. He
15 can't answer it. He can't give a legal determination.

16 --- REFUSAL

17 BY MS. MAHDAVIAN:

18 217 Q. So you're telling me that the wording in
19 Section 307, which is meant to be read by lay people and
20 lawyers alike, doesn't clearly set out the fact that the
21 members registry should be provided within ten days?

22 A. I've already answered the question.

23 218 Q. No, you haven't.

24 MR. NEHMETALLAH: I'm --

25 MS. MAHDAVIAN: This is a new question.

1 MR. NEHMETALLAH: My apologies.

2 BY MS. MAHDAVIAN:

3 219 Q. Yes, it's a new question. Do you agree that
4 Section 307 refers to the members right here? I'll read
5 it for you. It says that:

6 "...the members of the corporation, the number of
7 shares owned by each person and the address of
8 each such person as shown on the books of the
9 corporation made up to the date not more than ten
10 days prior to the date of the filing of the
11 Affidavit." (as read)

12 So within ten days, all of that information is
13 due. Do you agree that that's the language in the Act?

14 A. You quoted, yes.

15 220 Q. Yes, you agree that's the language in the
16 Act?

17 A. You've quoted the Act.

18 221 Q. And you agree that as of today's date, ICC
19 has not provided the list as of December 27th over to us?

20 A. The ICC provided this in May of current
21 members of the organization to your Applicants.

22 222 Q. That wasn't my question but let me repeat it
23 so you can hear it. You agree that as of today the list
24 from December 27th has not been provided?

25 A. Your Applicants have the list of current

1 members in their possession right now at this moment.

2 223 Q. One last time and I'll move on. That's --
3 clearly you're evading a very simple question.

4 The December 27th list has not been provided;
5 agree or disagree?

6 A. What is the December 27th list? What does
7 that mean?

8 224 Q. That means the current members as of December
9 27th. As of December 27th.

10 A. The list --

11 225 Q. As of December 27th. I don't care about May.

12 A. The list that your Applicants received was
13 the current list of those who were currently members at
14 the time that they received it, which is the point of the
15 Act. You and -- there was no information of anybody who
16 was not a member as of the date that your clients
17 received the list.

18 226 Q. What? That makes no sense what you just
19 said.

20 A. I'm not a lawyer. I don't know how to
21 describe it, but I've told you --

22 227 Q. Oh, you're a Ph.D. student though. You're
23 super smart.

24 A. Not in law. Apparently --

25 228 Q. Let's try that again. Last time. I promise

1 this is the last time. It's a fact, the December 27th
2 list that would have had 737 names on it, has not been
3 provided to the Applicants; correct?

4 A. Your Applicants have a current list as of
5 May. That is when they received it.

6 229 Q. I'm going to move on. So the board's
7 position when they received this request for the members
8 list was what? They're not entitled to it?

9 A. Our understanding -- and we set out in the
10 communications -- I sent it in the communication that was
11 sent to your clients -- was that though we understood
12 their desire to want to communicate with members, because
13 of the organization's by-laws, which reflect the
14 sensitivities in the community --

15 230 Q. The by-laws reflects sensitivities in the
16 community?

17 A. Yes. And they were written by our founders.
18 And when the founders wrote them --

19 231 Q. I'm pretty sure PIPEDA wasn't in play when
20 the founders created this organization.

21 A. As per my understanding, the reference to
22 PIPEDA has been there since the beginning, at least as
23 long as I've been around, so.

24 232 Q. Okay.

25 A. So that was our understanding. We tried as

1 much as we could -- we were told by the Privacy
2 Commissioner that we did not -- that the best practice
3 under PIPEDA was to ask for the consent of anybody whose
4 information we gave.

5 233 Q. Okay. So was the board unanimous in its --
6 in its decision?

7 A. I don't recall. You can check the minutes.
8 I believe this was in the minutes.

9 234 Q. Why don't we?

10 A. Sure.

11 235 Q. These are minutes you would have prepared,
12 December '18?

13 A. Unless otherwise noted, I would have. I
14 don't know if it was from December 2018.

15 236 Q. Well, that's when the request was received.
16 Okay. That's Exhibit "N," like Nancy, and I'm looking at
17 page 161. This is the only minute from December of 2018
18 that's been produced. Was there only one meeting held
19 where this was discussed or was there a special meeting?

20 A. As -- as far as I recall, this was before
21 litigation, this was the meeting. If that's what the
22 minutes say, then that's the case.

23 237 Q. So where is it reflective of who agreed or
24 who disagreed?

25 A. It should have a vote here, but -- I don't

1 know why it doesn't say. From what I recall, it was --
2 and this would be -- from what I recall, this was passed
3 unanimously.

4 238 Q. So you have a recollection of that?

5 A. From what I recall. Originally, there was no
6 disagreement, from what I understand.

7 239 Q. Originally there was no disagreement. So
8 subsequently there was disagreement?

9 A. I believe Mr. Hooman Shirazi has since
10 disagreed.

11 240 Q. Thank you. Sir, are there notes that you
12 keep once minutes are made or do you discard your
13 notes?

14 A. No, these would be my notes.

15 241 Q. That's it?

16 A. They should reflect everything.

17 242 Q. So do you do minutes right after each
18 meeting?

19 A. I type them up while it's happening and then
20 they're circulated and approved.

21 243 Q. All right. So in that case, why haven't the
22 rest of the minutes been supplied?

23 A. What are the rest of the minutes --

24 244 Q. I mean these minutes go up to January of
25 2019. We're in June of 2019.

1 A. These are the ones that were approved by the
2 -- at the time that I put them -- that they were put up
3 onto the websites. So I don't know when -- and they were
4 the ones that were sent to your clients, so.

5 245 Q. Are there minutes after January of 2019?

6 A. We've had meetings since.

7 246 Q. So did you prepare minutes?

8 A. Minutes have been prepared.

9 247 Q. And approved?

10 A. No, they have not been approved.

11 248 Q. Why's that?

12 A. There is a backlog.

13 249 Q. Backlog?

14 A. There is a backlog of minutes, yes, that
15 haven't been approved.

16 250 Q. Interesting.

17 A. Yes.

18 251 Q. How does that happen?

19 A. People get busy.

20 252 Q. How long does it take just to read a one-page
21 minute?

22 A. To read one?

23 253 Q. As secretary, isn't it your duty to ensure
24 that minutes don't get into a backlog?

25 A. My -- as secretary, my role is to prepare the

1 record.

2 254 Q. Right.

3 A. Prepare the minutes.

4 255 Q. And the record hasn't been updated?

5 A. The minutes are being kept.

6 256 Q. So I've asked for, I believe, the minutes to
7 be circulated. When do you think we can get that?

8 A. As soon as the board approves them.

9 257 Q. All right. And is there a board meeting
10 coming up?

11 A. Not that I know of.

12 258 Q. No?

13 A. There's not one scheduled. We usually have
14 one.

15 259 Q. Do you -- do you have meetings during the
16 summer?

17 A. We may, yes.

18 260 Q. Okay. All right. So we'll get the minutes,
19 I guess, when the board approves them.

20 And how do you -- have you sent emails to the
21 board attaching the minutes?

22 A. Yes.

23 261 Q. All right. Can I have those?

24 MR. NEHMETALLAH: In draft form?

25 MS. MAHDAVIAN: Yes.

1 MR. NEHMETALLAH: The emails in draft? Yes, I'll
2 provide that undertaking.

3 --- UNDERTAKING

4 BY MS. MAHDAVIAN:

5 262 Q. And so presumably every month you sent
6 minutes, draft minutes, to the board asking for approval
7 and they just haven't gotten around to it?

8 A. Yes.

9 263 Q. So we'll want those emails.

10 MR. NEHMETALLAH: As long as it's clear the
11 understanding is these are in draft form.

12 MS. MAHDAVIAN: Yes.

13 MR. NEHMETALLAH: They're not final minutes of
14 the organization.

15 MS. MAHDAVIAN: Yes. Yes, we understand.

16 --- UNDERTAKING

17 BY MS. MAHDAVIAN:

18 264 Q. And how does the board approve it? What's
19 the process there?

20 A. The -- it's -- any motion, like any motion,
21 it's approved by it.

22 265 Q. No, what I mean is do you approve it at the
23 next meeting; is that how it works?

24 A. The next meeting. Whenever they're
25 introduced.

1 266 Q. What?

2 A. Whenever they're introduced.

3 267 Q. I'm just trying to figure out -- because
4 these minutes don't actually reflect that they are
5 approved or that a motion was introduced to approve them,
6 so I'm trying to understand the process behind it. Is it
7 done by email prior?

8 A. Sometimes it would be done by email, yes.

9 MS. MAHDAVIAN: Yes? So, Jonathan, can I also
10 get whatever format the approval comes in? Like, if it's
11 by email that the board approves certain minutes. Pouyan
12 says there's different ways that approval comes in.

13 MR. NEHMETALLAH: Are you looking for a statement
14 or are you looking --

15 MS. MAHDAVIAN: I don't know. Normally, the
16 meetings that I participate in, minutes from the last
17 meeting --

18 MR. NEHMETALLAH: Are reflected in the minutes.

19 MS. MAHDAVIAN: -- are reflected in the next
20 month's meeting and they're approved. Or if there's an
21 issue with them, that's discussed in the meeting. These
22 minutes that you've recorded don't have that at all.

23 MR. NEHMETALLAH: I'll make best efforts to
24 indicate how the minutes were -- I'll undertake to
25 provide best efforts to indicate how the minutes were

1 approved.

2 --- UNDERTAKING

3 BY MS. MAHDAVIAN:

4 268 Q. And I'd like to see it if it's in writing?

5 MR. NEHMETALLAH: And provide if in writing.

6 --- UNDERTAKING

7 BY MS. MAHDAVIAN:

8 269 Q. So coming back, so you said originally the
9 board was unanimous in that the members registry as of
10 December 27 should not be provided to the four people;
11 correct?

12 A. Mm-hmm.

13 270 Q. Yes?

14 A. Yes, that's correct.

15 271 Q. All right. But the board did not get a legal
16 opinion?

17 A. I was not part of any legal opinion.

18 That's --

19 272 Q. But I asked about the board. I'm not asking
20 you.

21 A. An official legal opinion?

22 273 Q. Yes.

23 A. As far as I understand, the opinion that was
24 had was primarily from the Privacy Commissioner. That
25 was what we based our understanding on.

1 274 Q. That's not a legal opinion though; right?
2 Are you saying that's legal?

3 A. Well, I mean it's based on -- it's a legal
4 pertaining to the Act, so the privacy act, so, you know,
5 by PIPEDA itself. (sic)

6 275 Q. Are you saying it's legal, it's a legal
7 opinion that you're relying on?

8 A. I'm saying that it -- it was our effort to
9 try to make sure that we were complying with the Act.

10 276 Q. Right now I'm asking about legal opinions.
11 You mentioned the Privacy Commissioner. I'm trying to
12 understand if your suggestion is that --

13 A. My understanding is, and you have to ask
14 Soudeh Ghasemi this --

15 277 Q. I did.

16 A. And she -- my understanding was that some
17 board members approached individuals in the community
18 that would have some knowledge of this issue.

19 278 Q. Well, I'm going to come to that because you
20 refer to it in your Affidavit. Right now I'm asking you
21 as a board, did you obtain a formal legal opinion before
22 sending out the answers that you started sending out?

23 A. So legal opinion being...? Exactly how would
24 you define that?

25 279 Q. Hiring a lawyer, getting them to look at the

1 request --

2 A. We did not hire a lawyer.

3 280 Q. And why is that?

4 A. We were a small community organization, we're
5 under considerable financial -- I mean limitations, and
6 we believed that it was not required at the time.

7 281 Q. Did you inquire what the cost would be? Did
8 you make inquiries of a lawyer and say, hey, how much
9 would you charge if you want to get an opinion?

10 A. I'm not aware that that was done.

11 282 Q. I'm sorry?

12 A. I'm not aware that that was done, but I
13 believe that some -- I mean my understanding is that
14 lawyers are expensive. So that was what that was based
15 on.

16 283 Q. More expensive than getting in litigation?

17 A. I don't think we thought that this would
18 happen, so.

19 284 Q. That's right, you didn't think it would;
20 right?

21 A. We made best-faith efforts.

22 285 Q. Questionable. Now, at one point, as I
23 understand it, Bijan Ahmadi said he would resign if the
24 members list was released?

25 A. I believe -- I'm not sure the exact wording

1 but I believe that he might have said that he would
2 consider resigning. That's from what I remember. If you
3 have --

4 286 Q. Well, you've attached it as an exhibit to
5 your Affidavit.

6 A. That said that a board member was resigning?

7 287 Q. Yes. So March 23rd, 2019, so this would
8 probably be right after --

9 A. So what page is this?

10 288 Q. I'm sorry. It's Exhibit "I." It's an email
11 that he sends to Soudeh and yourself, VP; right?

12 A. That's correct.

13 289 Q. And it's Saturday, March 23rd, which is after
14 the Application Record has been served?

15 A. Mm-hmm.

16 290 Q. Yes?

17 A. When was the Application Record served?

18 291 Q. Well, first line says, "I'm writing to you
19 regarding my concern..."

20 A. Okay. 21st. Yes, okay. So, yes, it was
21 sent on -- received on March 21st on notice, yes. Go
22 ahead.

23 292 Q. And I think it's -- hang on. At the last big
24 paragraph, he says:

25 "If the privacy of membership lists is

1 compromised and the information is released
2 without prior consent, because of the threats
3 that I have previously received on social media
4 and for the safety and security of my family and
5 myself, I will have to consider resigning from
6 the board and withdrawing my membership." (as
7 read)

8 So did he ever bring that up in a meeting, that
9 he would resign?

10 A. As far as I remember, no.

11 293 Q. So it was just --

12 A. And, again, I have to note he's saying I
13 would have to consider.

14 294 Q. Yes, you're right, he did say that. I'm
15 asking if he actually brought it up in a meeting?

16 A. As far as I know, no.

17 295 Q. No?

18 A. As far as I'm aware.

19 296 Q. And did you think it's appropriate for a
20 board member to be saying something like that to you as
21 vice-president and to Soudeh as president, basically put
22 his personal safety, personal interests, at play when
23 really the organization is the one who needs to consider
24 what it has to do?

25 A. So I disagree with your characterization.

1 He's saying that it's a very important issue for our
2 members. He then --

3 297 Q. Except he says "the safety and security of my
4 family and myself"?

5 A. Yes. You're focussing on just that sentence
6 though. There's a lot of -- there's many other
7 sentences: "As board members of the executive" -- sorry.

8 "As board members" -- I'm quoting here.

9 "As board members and executives of the ICC, I
10 believe the privacy of members or safety and
11 well-being must be our highest priority as well."

12 (as read)

13 So I don't understand exactly what your question
14 is or why you think that it's a self-serving --

15 298 Q. Those are your words, not mine. I --

16 A. -- communication. I think that was your
17 implication.

18 299 Q. No. You know, you don't get to do that.

19 But, in any event, I was referring to the fact
20 that he's putting his personal interests, his interests
21 of his family, his safety, his family safety, at issue
22 and he's putting that on you and Soudeh as president and
23 vice-president, saying if you don't defend, I will have
24 to consider resigning and withdrawing my membership. Did
25 you think that's an appropriate statement for a board

1 member to be making?

2 A. He's a free individual. He made a statement.
3 I don't understand why -- I don't understand what -- what
4 do you want me to say?

5 300 Q. Do you understand that board members have
6 fiduciary obligations? Do you understand that term?

7 A. Sure.

8 301 Q. Yes?

9 A. Yes.

10 302 Q. You're familiar with that?

11 A. Somewhat. Not as much as you are.

12 303 Q. Okay, fair enough. Do you understand that as
13 board members, you have to act in the best interests of
14 the organization?

15 A. Sure.

16 304 Q. Yes?

17 A. Yes.

18 305 Q. And not put your personal interests ahead of
19 the organization?

20 A. When it comes to the organization, sure, yes,
21 I understand that.

22 306 Q. Well, that's what we're talking about.

23 A. Sure.

24 307 Q. The organization.

25 A. Sure.

1 308 Q. Right? We're not talking about Bijan Ahmadi
2 here.

3 A. Sure.

4 309 Q. Yes? Okay. Thank you. So the community
5 legal advice that was received I understand from Soudeh
6 came from Sadie Etemad?

7 A. I wasn't involved in getting --

8 310 Q. Did you hear who she spoke to?

9 A. If that's who Soudeh says she spoke to, then
10 that's who she spoke to.

11 311 Q. So this is the first you're hearing of it?

12 A. It's the first time I'm recalling being asked
13 the question specifically, so.

14 312 Q. Now nice try. Did you know that she spoke to
15 Sadie Etemad?

16 A. When did I know?

17 313 Q. When she spoke to Sadie Etemad on December
18 20th, according to her?

19 A. The moment -- on December 20th was I called
20 and told that she talked to Sadie --

21 314 Q. Also very cute, but there's minutes that you,
22 as secretary, recorded which says Soudeh will speak to
23 somebody -- what were the words you used? Hang on.

24 A. Sorry. What page is this?

25 315 Q. I'm looking for your minutes. Exhibit "N,"

1 December 18th, "Soudeh will circulate her response and
2 consultation with lawyers."

3 A. Mm-hmm. Okay.

4 316 Q. According to Soudeh, she spoke to Sadie on
5 December 20th, a couple days after this?

6 A. Okay.

7 317 Q. Did she circulate her response about her
8 consultation?

9 A. I don't remember. I genuinely don't know.

10 318 Q. Okay.

11 A. We were told somehow but --

12 319 Q. You were told somehow?

13 A. I mean somehow I know now. I don't know and
14 at some point I knew I don't know when I learned it.

15 MR. NEHMETALLAH: I think he's saying he doesn't
16 recall when he found out that she had spoken to --

17 MS. MAHDAVIAN: I think he's trying to back-pedal
18 out of answering.

19 BY MS. MAHDAVIAN:

20 320 Q. So when did you find out --

21 MR. NEHMETALLAH: I don't think --

22 BY MS. MAHDAVIAN:

23 321 Q. Let me ask. You know what?

24 A. What is bad about this? Okay, I don't -- I
25 don't recall --

1 322 Q. What is bad about it?

2 A. Mm-hmm.

3 323 Q. The consultation was with a family law
4 lawyer.

5 A. Okay.

6 324 Q. Yes.

7 A. That wasn't my decision and I wasn't -- I
8 didn't undertake that myself.

9 325 Q. Well, did the board discuss when they
10 unanimously decided we're refusing to provide this
11 information, did the board discuss that maybe the
12 consultation should be with a corporate lawyer? Or did
13 they say, Soudeh, you go and ask whoever you like?

14 A. Soudeh was entrusted as the president of this
15 organization to consult with lawyers. That's all I can
16 say.

17 326 Q. All right. Did you feel it was sufficient,
18 as a VP and as a secretary and as a board member, it was
19 sufficient to get a consult with a family law lawyer?

20 A. I told you I wasn't aware of who was --

21 327 Q. I'm asking you --

22 A. Did I feel back then whether it was --

23 328 Q. After you found out the consult was with a
24 family law lawyer, did you feel it was sufficient to
25 leave it at that?

1 A. I'm not going to engage in counterfactuals.

2 I --

3 329 Q. You're what?

4 A. I'm not going to engage in counterfactuals.

5 I believe -- I trust Soudeh that she did what she thought
6 was best at the time.

7 330 Q. Well, what did you think was the best thing
8 to do?

9 A. I deferred to Soudeh. Soudeh was the
10 president and she made that decision.

11 331 Q. Well, I'm asking you what did you think
12 should have been done? What should ICC have done when
13 they received a formal legal request served under the
14 Corporations Act?

15 A. I believe the ICC as well as Soudeh, as the
16 president, did what we thought was in the best interests
17 of the corporation and its members.

18 332 Q. So seeking a consult informally from a family
19 law lawyer was the best thing ICC could have done?

20 A. I told you I trust Soudeh and I trust her as
21 the president. That was her prerogative and that is
22 her --

23 333 Q. That's her prerogative?

24 A. I believe that she did -- I believe that she
25 did her -- she did the right thing with what she knew at

1 the time, did the best that she could have done.

2 334 Q. Your loyalty is admirable, but I'm asking
3 about you having your own fiduciary obligations. Did you
4 think that as a director of this organization, as an
5 officer of this organization, that it was sufficient to
6 rely on the president's chat with a family law lawyer
7 friend?

8 A. I disagree with the characterization of chat.
9 Individuals were consulted, the Privacy Commissioner was
10 consulted, and I believed and I continue to believe that
11 at the moment with what we knew, that was the best thing.

12 335 Q. Okay, what about after December 20th? Why
13 not a lawyer after? Why not a formal opinion after? Why
14 do you wait until --

15 A. I've already answered this question. ICC is
16 a small community organization. We're under tremendous
17 financial stress -- I mean limitations. We are all
18 volunteers, we are not getting paid to do what we do.

19 336 Q. Right.

20 A. And the facts are that considering --

21 337 Q. What does that have to do with you not
22 getting paid? You're paying a lawyer through the
23 organization's funding; right?

24 A. I'm saying that, and I just told you that
25 financially we have considerable constraints.

1 338 Q. How much did the organization have in its
2 coffers in December of 2018?

3 MR. NEHMETALLAH: I don't think that's relevant.

4 MS. MAHDAVIAN: Yes, it is.

5 MR. NEHMETALLAH: I don't think that's relevant.

6 MS. MAHDAVIAN: He's saying that there were
7 limitations and that's what caused them not to go out and
8 get a legal opinion.

9 MR. NEHMETALLAH: He said that financial -- they
10 have financial burdens, sure, but I don't think the
11 specific financial situation of the corporation is
12 relevant at all.

13 BY MS. MAHDAVIAN:

14 339 Q. Has the financial status of the company been
15 published anywhere?

16 A. So what do you mean? When --

17 340 Q. At any given point during the relevant
18 period. Do we through the financial statements --

19 A. So between December and now, you're asking
20 whether we've published a financial statement?

21 341 Q. From the AGM. At the AGM would there have
22 been a financial report provided?

23 A. At the AGM there was a financial report
24 provided, yes.

25 342 Q. Okay.

1 A. As far as, again, I know.

2 343 Q. And it was provided to the public?

3 A. As far as I know it should have been and it
4 should be on our website.

5 344 Q. Do you know offhand if that financial report
6 reflects how much ICC has?

7 A. Sorry, has?

8 345 Q. Yes.

9 A. Has not.

10 346 Q. Then? Had.

11 A. I mean it would; right? As a financial
12 report, it would give you a sense --

13 347 Q. I'm asking you, do you know if it had that
14 information. Yes?

15 A. So a financial report, it had the information
16 that a financial report --

17 348 Q. Do you remember what it was?

18 A. I don't know what you mean by "has." I don't
19 understand. So the financial report would say
20 exactly what the -- what -- I mean it's a typical
21 financial report with a balance sheet. The balance
22 sheet -- the balance of the organization would be on that
23 report.

24 349 Q. Great. Do you remember what it was?

25 A. No.

1 350 Q. And you're saying it's on the website?

2 A. I wasn't the treasurer at the time. I was
3 not -- nor was I a president or any of the four
4 executives roles that you're talking about. From my
5 recollection, yes.

6 351 Q. All right.

7 A. But --

8 352 Q. Okay. Well, in case it's not on the website,
9 can we please get a copy of the financial report?

10 MR. NEHMETALLAH: The financials provided --

11 THE DEPONENT: For the AGM.

12 MR. NEHMETALLAH: -- for the 2018 AGM?

13 MS. MAHDAVIAN: Yes.

14 MR. NEHMETALLAH: Yes. Counsel, I think also it
15 may be a good time for a break.

16 --- UNDERTAKING

17 MS. MAHDAVIAN: Sure. So just a reminder,
18 Pouyan, you're not to speak to your lawyer --

19 A. Sure.

20 MS. MAHDAVIAN: We'll take a five-minute break.
21 Or to Soudeh for that matter.

22 --- Recess taken at 2:16 p.m.

23 --- Upon resuming at 2:32 p.m.

24 MS. MAHDAVIAN: Back on the record. So before I
25 forget, Jonathan, so I've checked over the break. The

1 financial statement of 2018 is not on the website. It
2 goes up to 2017.

3 MR. NEHMETALLAH: I provided the undertaking so
4 I'll --

5 BY MS. MAHDAVIAN:

6 353 Q. All right. And so as part of that, I would
7 like an updated income statement or whatever financial
8 document there is about the status of the company's
9 finances?

10 MR. NEHMETALLAH: Why is that relevant? I
11 understand the 2018 AGM. I'm not sure why the current
12 financial status --

13 MS. MAHDAVIAN: Well, I'd like to know what has
14 happened to the finances since then and if any of it has
15 been used towards this lawsuit.

16 MR. NEHMETALLAH: I'm going to take that under
17 advisement.

18 --- UNDER ADVISEMENT

19 BY MS. MAHDAVIAN:

20 354 Q. All right. No problem. And then as well,
21 just circling back, paragraph 26 when you say, "I
22 abstained from all board decisions in relation to the
23 election process," --

24 A. So what page is this on?

25 355 Q. This is paragraph 26 of your Affidavit.

1 A. But what page is that?

2 356 Q. Oh. Page 7 of your record.

3 A. So I can find it more quickly. Yes?

4 357 Q. "I abstained from all board decisions in
5 relation to the election process."

6 Did you actually formally send an email to the
7 board or anything like that saying that, that you were
8 recusing yourself or abstaining?

9 A. I don't think there was any email.

10 358 Q. Because you understand that you were in the
11 unique position of being an incumbent, so, therefore, you
12 were part of the board but still running while the other
13 candidates did not have that advantage?

14 A. I abstained from all board decisions. I
15 didn't perceive that I had an advantage.

16 359 Q. No? You didn't have inside information that
17 others would not have had?

18 A. What kind of information?

19 360 Q. Board information.

20 A. No.

21 361 Q. Information of what was going on. For
22 starters, did you know what was the number of members?

23 A. I don't recall, no.

24 362 Q. You don't know or you don't remember?

25 A. No. I -- no. As far as I remember, I didn't

1 have any information.

2 363 Q. In advance of the election, were you part of
3 the meeting of the board when they were discussing when
4 to hold the AGM, what date?

5 A. I don't think so but I would have to check
6 the minutes.

7 364 Q. So I don't know what date that discussion
8 would have first been brought up, so I'd like minutes of
9 whatever date that is, if it's not March and April of
10 2018.

11 MR. NEHMETALLAH: The minutes where holding the
12 2018 AGM was discussed; correct?

13 MS. MAHDAVIAN: Yes. When it was first raised,
14 as in when do we hold the AGM. Because my understanding
15 is it was held a month earlier than normal. Normally
16 it's held in May. Last year, in 2018, it was held in
17 April.

18 THE DEPONENT: I don't know if that's true, if
19 that's normal or if that year was a blip itself. I'm not
20 sure.

21 MR. NEHMETALLAH: I could -- I could -- I could
22 dig it up, I think.

23 MS. MAHDAVIAN: Okay, great. Thank you very
24 much.

25 MR. NEHMETALLAH: I'll provide that undertaking,

1 for clarity of the record.

2 --- UNDERTAKING

3 BY MS. MAHDAVIAN:

4 365 Q. Thank you. Now, you say at paragraph 27 that
5 you did not have access to the members registry and you
6 campaigned for yourself by only relying on the list of
7 members that you personally gathered. How did you -- how
8 did you gather that list?

9 A. So these were individuals that I knew
10 supported me politically and otherwise.

11 366 Q. How many people were on that list?

12 A. I can't give you an exact number.

13 367 Q. Is the list available?

14 A. It was literally on a piece of paper.

15 368 Q. I'm sorry?

16 A. It was on a piece of paper. It was a
17 physical list that I just kept, with my friends and
18 people who I knew that I believe would support me.

19 369 Q. So was it a hundred people? 200 people?

20 A. I would say it's less than 50.

21 370 Q. Less than 50?

22 A. Yes.

23 371 Q. Oh. So you were going in with 50 followers?

24 A. That's not what I said.

25 372 Q. All right. Tell me what you mean then. 50

1 names meant what? People who would support you?

2 A. So paragraph 27 is specifically referencing a
3 list. What I'm saying is that there were no -- I did not
4 have access to any members lists. All I had was access
5 to a list of my own supporters that I'd identified, of my
6 own supporters.

7 373 Q. But supporters are different from members.
8 You say "I relied on the list of members that I
9 personally gathered." I'd like to know how you got that
10 list --

11 A. Sure. I understand what you're saying about
12 why that word is used, so somebody can become a member
13 immediately, both. So for me, they're just individuals
14 of that who were my supporters. These are people who
15 became members, some of them maybe weren't --

16 374 Q. So you're saying that word shouldn't have
17 been "members"; it should have been "supporters"?

18 A. No, I mean it's members and prospective
19 members. So people who -- sure, yeah, maybe the word
20 doesn't capture exactly what you're trying to get at at
21 this moment, but what I'm really saying --

22 375 Q. I'm not trying to get at anything. This is
23 your Affidavit.

24 A. The question that you're asking at this
25 moment. I'm not saying (indiscernible) -- I'm saying

1 that it's not a word that's trying to...

2 376 Q. Sir, you say that you had a list, and it
3 sounds like you were adding to it as you went along,
4 "throughout my years of involvement with ICC."

5 So at this point in time, you would have had two
6 years of involvement, three years of involvement with
7 ICC?

8 A. 2018, I would have had two years of
9 involvement with ICC and then my own political activity
10 that was before that when I ran as a candidate.

11 377 Q. But we're not talking about that right now.

12 A. Sure.

13 378 Q. What we're talking about is your years of
14 involvement -- so through the two years of involvement
15 with ICC, apparently you personally gathered and
16 identified a list?

17 A. To an extent, yes. Yeah.

18 379 Q. And so you want us to believe that that list
19 was due to your own personal efforts and did not
20 otherwise come through the fact that you were a member of
21 the board with access to information about members?

22 A. So it wasn't access to information about
23 members. They weren't taken out of any external list.
24 These are my friends and acquaintances that I brought on
25 in 2016 that remained, and they were still my friends and

1 acquaintances.

2 380 Q. Okay. All right. And you're saying that
3 list is not available?

4 A. It is not.

5 381 Q. And the stats that are in your Affidavit
6 about voter turnout percentages --

7 A. What page is this?

8 382 Q. It's all over page 8 and 9 of your Affidavit.
9 Where do you get these stats from?

10 A. The elections report, as I've indicated,
11 Exhibit "F."

12 383 Q. And where -- where do they come from though?
13 Like, how did the election committee keep track of this?
14 Is there some kind of software they use?

15 A. You should ask them. I mean I don't know
16 anything else other than the elections committee report.

17 384 Q. Do you as a board member know if they used
18 something called ElectionBuddy?

19 A. I believe that's what the elections committee
20 report says. I know whatever's in the report. I don't
21 know anything else beyond that.

22 385 Q. Okay, fair enough. Sir, do you agree that
23 you're not qualified to give facts, statements, opinions
24 about the Iranian Canadian community?

25 A. I don't agree.

1 386 Q. Oh, really? So what qualifies you to do
2 that? Do you now speak on behalf of the entire Iranian
3 Canadian community?

4 A. I never said that.

5 387 Q. Well, you're talking about the Iranian
6 Canadian community similar to the Iranian diaspora
7 community worldwide. So where do you get -- how do we
8 know your qualifications for making statements about not
9 only Iranian Canadian diaspora but worldwide?

10 A. So I have a Masters in immigration from
11 Ryerson University.

12 388 Q. Okay.

13 A. So this is -- and I've written at least one
14 project on the Iranian Canadian diaspora.

15 389 Q. Okay.

16 A. Otherwise, I mean -- but that's not what I --
17 I have made an observation as somebody who has been
18 extremely active in this community, and whether I was a
19 candidate in 2015 in the federal election where I met
20 hundreds of people -- I mean hundreds of Iranians at
21 least and since then, whether it's in the consultation
22 processes that I was involved with as policy chair, you
23 know, fielding questions and problems that members of the
24 Iranian Canadian community have had, through all of these
25 processes I believe I have gained considerable knowledge

1 about the sensitivities and the general characteristics
2 of this community.

3 390 Q. I see. But you agree that you obviously
4 haven't spoken to every Iranian Canadian who is here?

5 A. Who is here in this room?

6 391 Q. No. In the country.

7 A. As -- that's an absurd possibility. No, I
8 have not been -- I have not.

9 392 Q. Right. And that there are actually people
10 who might not share these sensitivities?

11 A. Absolutely.

12 393 Q. Right. And so when you make a comment about
13 the Iranian Canadian community being extremely sensitive,
14 you can't make an absolute statement?

15 A. So when you make -- so what I did not say in
16 this Affidavit was that every single Iranian Canadian
17 feels this way.

18 394 Q. Well, what you said is, and I quote --

19 A. Yes. No, no. I mean -- sorry. Let me
20 finish. I said the Iranian Canadian community has -- I
21 mean I implied the Iranian Canadian community has
22 concerns. That does not mean that every single Iranian
23 of the 300,000-plus that we have in Canada --

24 395 Q. Actually, you make very absolute statements,
25 Pouyan. You may want to reread your Affidavit.

1 A. Sure.

2 396 Q. "Iranian Canadian community is extremely
3 sensitive. Iranian Canadians not only carry with
4 them this cultural memory but also have a real
5 fear of negative..." (as read)

6 These are all very absolute statements that
7 you're making as though you're speaking for the entire
8 Iranian Canadian community.

9 A. I don't see it that way at all.

10 397 Q. I mean the words are there.

11 A. I mean by your logic --

12 398 Q. And you did say you drafted this; correct?

13 A. So by your logic, nobody would ever be able
14 to say anything about any community unless every single
15 person in that community --

16 399 Q. I'm not here to answer your questions. What
17 I'm saying is you've put this --

18 A. No, that wasn't a question. That was a
19 statement. But okay.

20 400 Q. No, actually you asked me. But in any event,
21 you refer to statements that you are wanting this court
22 to accept as being representative of the Iranian Canadian
23 community -- which is a large one; you agree? It's a
24 pretty big community?

25 A. So what are you asking?

1 401 Q. The community, Iranian --

2 A. The community, the Iranian Canadian community
3 is large, yes, that is correct.

4 402 Q. Yes.

5 A. Or relatively, yes.

6 403 Q. Do you know offhand, based on your vast
7 experience, how many we're talking about?

8 A. The numbers are -- actually, nobody really
9 has great numbers. The census says -- I believe that
10 last one's at around 200,000. Other estimates put it at
11 somewhere around 300,000. It depends on how you're
12 defining it, whether you're defining it by language --
13 sorry, whether you're defining it by language, ethnic
14 heritage, place of birth, et cetera.

15 404 Q. Good. Between 200,000 to 300,000 shall we
16 say?

17 A. Sure, we can say that.

18 405 Q. Now, you say in paragraph 41 that the ICC
19 by-law does not provide the board with any process to
20 terminate a membership?

21 A. (Deponent nods head up and down).

22 406 Q. Okay. So if that's the case, what have you
23 been doing with people who have written to you saying we
24 want to terminate our membership?

25 A. What I meant in paragraph 41 was that the

1 board does not have the ability to terminate membership.

2 That has --

3 407 Q. Does that mean that individuals have an
4 ability to terminate their membership?

5 A. Absolutely an individual can withdraw their
6 membership at any time.

7 408 Q. I see. So what you're referring to is that
8 ICC can't turn away someone as a member; is that what
9 you're saying?

10 A. As far as I understand, we don't have that
11 ability, can't turn away -- nor can we terminate
12 someone's membership once they're a member, of our own
13 volition. If they decide to withdraw, that's -- those
14 are two separate things.

15 409 Q. Now, if they decide to withdraw, what's the
16 process? How do you -- how do you deal with that
17 mechanically?

18 A. Their membership is cancelled.

19 410 Q. It's cancelled?

20 A. Yes.

21 411 Q. Can you explain or elaborate mechanically
22 what happens?

23 A. I don't understand what you mean by
24 "mechanically."

25 412 Q. Well, the membership is housed in this

1 NationBuilder software; yes?

2 A. Yes.

3 413 Q. And you, as the secretary, are the holder of
4 this list?

5 A. That's correct.

6 414 Q. So when someone sends an email in and says I
7 don't want to be part of ICC any more, that email comes
8 to you?

9 A. Yes.

10 415 Q. What do you do then? You log in?

11 A. Yes.

12 416 Q. All right. And what do you do?

13 A. So I log in and I find the individual in our
14 database, and I list that individual's membership as
15 cancelled, and I write a note that this individual's
16 membership is cancelled on this date. That's it.

17 417 Q. All right. So you change the status,
18 basically?

19 A. The tag or status, yes.

20 418 Q. So tell me is the tag and status two
21 different things?

22 A. I mean these are all just words that people
23 make up. I mean it's a database, right, and there are
24 parameters, and you change the parameters and there are
25 subparameters. I mean I wouldn't make a distinction

1 between tag and status.

2 419 Q. I guess what I'm interested, Pouyan, is to
3 know if that person is eliminated altogether from the
4 database and their history as a member or does their name
5 remain and the status change?

6 A. I see.

7 420 Q. That's what I'm trying to understand.

8 A. Sure, I think I understand. So absolutely --
9 yeah, it's a bit difficult I understand from the outside
10 to grasp what's happening.

11 421 Q. Yes.

12 A. And I think this is -- it's going on a lot
13 now with databases generally. Information doesn't get
14 deleted. I mean membership information doesn't get
15 deleted. And as far as I know -- I don't know how we
16 would -- if somebody came up and said "I want my
17 membership information deleted," I don't think we could
18 even do it, I mean legally. I don't think we would, but
19 we've never had that come up yet.

20 However, what we have been asked is -- so when
21 someone changes their status or they expire out of
22 membership, they just -- the tag just changes. The names
23 are still there, the addresses are still there, the
24 entire history, everything that they provided us is still
25 there.

1 422 Q. Okay, thank you. So then technically when
2 the tag or status changes, then they fall off the current
3 membership list?

4 A. Exactly. That's exactly it.

5 423 Q. All right.

6 A. The membership list is something that is
7 generated out of the status.

8 424 Q. So it's a live --

9 A. Exactly.

10 425 Q. -- thing that keeps changing; is that it?

11 A. That's exactly it. It's like your Friend
12 list on --

13 --- The Reporter Appeals.

14 THE DEPONENT: Sorry. It's like your Friend list
15 on Facebook. I don't even know --

16 BY MS. MAHDAVIAN:

17 426 Q. You what?

18 A. It's like your Friends list -- It's like your
19 friends list on Facebook.

20 427 Q. Oh, friends.

21 A. It's like your Friends list on Facebook.

22 And, you know, the person doesn't stop existing because
23 you -- but, yeah. And you can make sure Facebook always
24 keeps that data forever.

25 428 Q. Yes. All right. Paragraph 45, you say the

1 board has received a large number of emails from members
2 asking the board to maintain privacy, and you've attached
3 at Exhibit "I" copies of emails received. By my count,
4 there were about 20 of these emails. Is that what you're
5 referring to as a large number?

6 A. Yes.

7 429 Q. And other than the emails at Exhibit "I," has
8 the Board received or have you as the secretary received
9 any other requests to not be part of the report any more?

10 A. Sorry. Not be part of the membership you
11 mean?

12 430 Q. Sorry. Part of the membership, yes.

13 A. Sure. So I believe Exhibit "I" is just
14 people talking about -- sorry. Because we had --

15 431 Q. Oh, maybe I am mixing up --

16 A. -- to -- yes, it's a little confusing. We
17 have to -- Exhibit "I" is mostly, not exclusively, people
18 who are just concerned and say they don't want their
19 membership to be released.

20 432 Q. Okay.

21 A. I believe.

22 433 Q. All right.

23 A. Whereas the other exhibit is, I believe it's
24 about 15 people or thereabouts, of emails saying people
25 want to actually withdraw.

1 434 Q. Okay.

2 A. I believe. So let me see.

3 435 Q. Fair enough. Now, the people at Exhibit "I,"
4 do they fall into the category of Exhibit "K"? Have you
5 done a crosscheck to tell us whether the Exhibit "I,"
6 people who express concern subsequently then asked to
7 withdraw?

8 A. I wouldn't be surprised if some of them were
9 the same people, or they may have just allowed their
10 membership to expire. So I'm not sure. I haven't cross-
11 referenced them.

12 436 Q. So since they're redacted, we can't do that.
13 Would you be able to undertake to let us know?

14 A. If that's important to you, sure, I'll do
15 that work.

16 MR. NEHMETALLAH: I'll --

17 MS. MAHDAVIAN: Yes, it is.

18 MR. NEHMETALLAH: If they're asking, it's
19 important.

20 I'll undertake -- I'll undertake to be sure
21 cross-referencing the names between -- what are the
22 exhibits?

23 MS. MAHDAVIAN: Exhibit "I."

24 MR. NEHMETALLAH: So cross-referencing the names
25 in Exhibit "I" and --

1 MS. MAHDAVIAN: With Exhibit "K."

2 MR. NEHMETALLAH: Absolutely, we can provide that
3 undertaking.

4 --- UNDERTAKING

5 BY MS. MAHDAVIAN:

6 437 Q. Now --

7 A. Sorry, but just in terms of saying that X
8 number of names have occurred twice, right? Because
9 we've removed the names for a reason and we don't want
10 to --

11 438 Q. I'm sorry, I didn't understand what you said.

12 MR. NEHMETALLAH: So, yes, we're going to
13 cross-reference and give them the number --

14 THE DEPONENT: Number, okay.

15 MR. NEHMETALLAH: -- of how many --

16 BY MS. MAHDAVIAN:

17 439 Q. Really, at the end of the day, I want to
18 know -- because Bijan was one such member who threatened
19 to withdraw from the membership and consider resigning.
20 We know he didn't do either of those things.

21 A. Oh, I see.

22 440 Q. Yes? And then there was another email sent
23 again by -- I believe by Bijan where he added a bunch of
24 people's names to his emails saying these are the people
25 who don't want to --

1 A. Oh, yeah. I believe -- yeah. So --

2 441 Q. So I don't know what happened --

3 A. Sure.

4 442 Q. -- between that and --

5 A. So these individuals, I mean, are -- from
6 what I remember -- and I talked to Bijan about this, and
7 I kind of asked him if they should if they can send
8 emails, and he said they're very old and they really
9 couldn't speak English. And so that's the -- kind of the
10 situation, so. But --

11 443 Q. Shima Ghasemi is old?

12 MR. NEHMETALLAH: You're talking about two
13 different --

14 THE DEPONENT: Sorry.

15 BY MS. MAHDAVIAN:

16 444 Q. What are we --

17 A. I'm talking about the names. Because you
18 mentioned a bunch of names. It's just three that he has
19 to remove. Anyway, but, yeah, that's fine. We will
20 cross-reference.

21 MR. NEHMETALLAH: Counsel, I'm not sure what was
22 asked or what was answered, too.

23 MS. MAHDAVIAN: All right.

24 THE DEPONENT: That's fine.

25 BY MS. MAHDAVIAN:

1 445 Q. Exhibit "J" is an email that Bijan has --
2 another email -- Bijan seems to be very active on this;
3 do you agree with me? He's very vocal and opinionated
4 about this issue?

5 A. Yes. I mean he's one of the many people that
6 I think cares about this issue.

7 446 Q. And would you agree with me that his views
8 have generally influenced the board on this issue?

9 A. I wouldn't agree with that.

10 447 Q. So him sending these emails and bombarding
11 you, as vice-president and the president, with, you know,
12 concerns that this privacy should be maintained, I'm
13 going to resign if you don't do it, you don't think
14 demonstrates an effort on his part to influence and
15 interfere with the board?

16 A. I didn't see it as an effort to interfere,
17 no.

18 448 Q. Now, the names that he puts on his email --
19 this is March 25th -- where he continues to refer to
20 PIPEDA and the by-laws where PIPEDA is referred to, "we
21 do not want any of our information to be released to Ms.
22 Mahdavian and his clients. Please defend our rights and
23 our privacy in court." (as read) And so he attaches a
24 whole bunch of names or refers to a bunch of names there.

25 Were these people, do you know, at some point

1 sent emails of their own asking for withdrawal? Again I
2 can't verify because your emails are --

3 A. Again, I mean I think this is a similar
4 question to what you asked earlier. It's the same kind
5 of situation. Off the top of my head, some of them might
6 be but -- I mean, I can't answer that at the moment
7 because, again, like we said, they're redacted. It would
8 require me remembering all the withdrawn members'
9 information, names.

10 449 Q. So based on your -- you're the one who would
11 have received these requests; correct?

12 A. Yes. Yes.

13 450 Q. And you are the one who would have gone in to
14 change the status as you've explained?

15 A. Yes.

16 451 Q. And other than the emails that have been
17 attached as Exhibit "K" asking specifically to have their
18 names removed or withdrawn or membership cancelled, was
19 there any other requests made to you personally?

20 A. I don't recall. If there were any requests
21 made to me personally, I would -- I would direct them
22 towards the letter that we sent and tell them to email
23 the secretary -- (indiscernible)

24 452 Q. What?

25 A. I would direct them to the email that we sent

1 to the members.

2 453 Q. Which email? That's in May.

3 A. Oh, sorry. Then what are we talking about?

4 I'm confused.

5 454 Q. Well, these are in March.

6 A. Oh, I'm --

7 455 Q. Aren't they?

8 MR. NEHMETALLAH: Again, we're on different
9 exhibits.

10 THE DEPONENT: You said "K"; right?

11 MR. NEHMETALLAH: She's on Exhibit "J."

12 THE DEPONENT: She said "K." Didn't she say "K"?

13 BY MS. MAHDAVIAN:

14 456 Q. Well, I was on "J" and then I asked you if
15 these names are the ones that appear in Exhibit "K"
16 because I don't know --

17 A. And I said I couldn't cross-reference and
18 then you asked -- then you asked me --

19 457 Q. Anyway.

20 A. -- whether anyone other than the people that
21 are here asked me --

22 458 Q. Did you receive anything else, yes.

23 A. There shouldn't be anything other than I -- I
24 made it a point for everything to go through emails.

25 459 Q. Good. So we have a record.

1 A. We should, yes.

2 460 Q. All right. Now, tell me as well, there's a
3 reference here, tab K. The first email on tab K is from
4 ICC secretary to ICC secretary, and then it's email from
5 admin ICC to ICC secretary. Is that all you?

6 A. No, it's not. So, again, this goes back
7 to -- it's not all me.

8 461 Q. Okay.

9 A. Would you like me to explain more?

10 462 Q. Yes.

11 A. So this goes back to the database and emails
12 and all of this stuff. So what's strange, I think what
13 you're saying, is that it says to Pouyan Tabasinejad --
14 (indiscernible)

15 --- The Reporter Appeals.

16 THE DEPONENT: To my name, ICC VP, and then the
17 email there is info@icccongress.ca.

18 So the reason it says that is because when we
19 send out emails, the default Send email is through --
20 goes to our info email. This is because of the database,
21 because that's how the database kind of works. Even
22 though I write -- it says from Pouyan Tabasinejad, IC --

23 BY MS. MAHDAVIAN:

24 463 Q. It's all right. I know. I know. I know.

25 A. Just put "PT" as -- on the record as I'm

1 being fine with that.

2 So ICC VP, even though it says that's the from
3 line, the email will actually be info. Does that clear
4 that up? So info --

5 464 Q. So let me stop you there. What I'm trying to
6 understand is these -- there are two forwards here. One
7 is from admin ICC to ICC secretary. I'm asking if admin
8 ICC is you?

9 A. So, no. That's what I'm trying to explain.
10 Admin ICC is the info account.

11 465 Q. Oh.

12 A. Yes. That is the original info account.

13 466 Q. I see. Got it.

14 A. If I send you an email right now, if one
15 sends you an email right now from the info account, it
16 would go -- it would come in as admin ICC. If it was
17 going through the database, it would come in as Pouyan
18 Tabasinejad or whoever else we decided on that email
19 campaign would be the from.

20 467 Q. Now -- so then do we know who is forwarding
21 this to ICC secretary and asking please remove her and
22 send her a confirmation?

23 A. This should be the admin -- they didn't sign
24 up with a name but the admin account should be our
25 communications director. Sorry.

1 468 Q. Who is that?

2 A. Mohsen.

3 469 Q. Mohsen. I think he's the name you forgot on
4 the board?

5 A. The new people? Sorry. I'm not good at
6 this.

7 470 Q. If she is not a member, you can just still
8 remove her information from the database?

9 A. Yeah, I didn't do that and I don't know why
10 he worded it like that. He's not familiar with how the
11 database works, so I think -- I wouldn't pay anything to
12 that. Their information is not removed and I wouldn't do
13 that.

14 471 Q. All right. Is the NationBuilder software,
15 does it have backups on a regular basis, to your
16 knowledge?

17 A. I don't know.

18 472 Q. All right. Are there audits that have to
19 take place every so often to make sure the information
20 contained in the database is not corrupted or lost or
21 viruses affecting it?

22 A. We've never had experience with information
23 being lost or viruses or anything of that sort. And a
24 lot of organizations, as far as I know, use NationBuilder
25 and I've never heard of that happening.

1 473 Q. And is information, are you able to add
2 information in or amend information in the database
3 without using the date or time log?

4 A. Date or time log?

5 474 Q. Yes. So in other words, does NationBuilder
6 work in a way where whatever you do on a certain day, the
7 date and time of it is recorded?

8 A. Yes, it should. Most everything should be.
9 Some information might be kept in the back. I don't know
10 but most -- if I understand what you're saying, a lot
11 of --

12 475 Q. So it can be traced?

13 A. Yes. A lot of it is -- most everything that
14 you would do is tracked and can be accessed.

15 476 Q. And do you receive -- do you -- when I say
16 "you," ICC -- does ICC receive logs from NationBuilder
17 about the usage and the number of memberships and
18 whatever activity is going on?

19 A. I mean it's available on a database, so when
20 I log on, I can see it, if that's what you're asking.

21 477 Q. Yes.

22 A. So you're saying metadata, like --

23 478 Q. Yes.

24 A. -- higher-level data that --
25 (indiscernible) -- list and all this stuff, yes, I have

1 access to that.

2 479 Q. Can I get an undertaking for that?

3 A. It's part of the database. So it's not --
4 it's not a report, if that's what you're asking.

5 480 Q. Well, is there a way to transfer that
6 information?

7 A. I -- I wouldn't -- I mean you're asking for
8 the entire database and everything that's happened on the
9 database, and I don't -- I mean I don't --

10 MR. NEHMETALLAH: Sorry.

11 THE DEPONENT: -- think that that's required.

12 MR. NEHMETALLAH: Just for clarity, what exactly
13 are you asking for, and then I think we can determine if
14 we can provide it.

15 MS. MAHDAVIAN: Yes, sure. What I'm asking for
16 is the metadata relating to the membership list and all
17 activities around the membership list, at, least as of
18 the date of the requests my clients made for the
19 membership list.

20 MR. NEHMETALLAH: So when you say "metadata," are
21 you asking for the -- like a statistical analysis? Like,
22 a higher-level overview? Or are you looking for I guess
23 back-end data?

24 MS. MAHDAVIAN: Well -- yes.

25 MR. NEHMETALLAH: Like, the logs from the

1 organization?

2 MS. MAHDAVIAN: Yes.

3 MR. NEHMETALLAH: I've already provided the
4 undertaking I believe for Soudeh that I would -- I can
5 check again but I think the undertaking was to provide or
6 inquire with --

7 MS. MAHDAVIAN: NationBuilder.

8 MR. NEHMETALLAH: -- NationBuilder with respect
9 to the logs they keep. What I can advise was already --
10 and just for the record, NationBuilder does real-time
11 backups, so -- which are deleted after a few days. So
12 there's no way to get a backup from them of what the
13 database itself looked like in December because that's
14 gone after a few days, and the backup's done to create a
15 redundancy, so that if one server goes down, you have it
16 in seven or eight other places.

17 But what we still need to get from them is a log
18 of things like access to the database, and if it's
19 possible to see if changes were made to the database.

20 BY MS. MAHDAVIAN:

21 481 Q. Okay. So, basically -- and I'll ask you on
22 this after, but what I am looking for is the user
23 activity?

24 MR. NEHMETALLAH: Yes, which is what I understood
25 was the law.

1 THE DEPONENT: Yes, that wasn't what I understood
2 that you asked. I don't know if that's possible.
3 That's -- we only have one log-in and it's -- I don't
4 know if that's possible because that sounds like an
5 immense amount of data that -- I don't know if that's
6 possible.

7 MR. NEHMETALLAH: What I could advise is we'll
8 inquire with NationBuilder. My suspicion is -- I have
9 experience with other databases -- they do keep logs of
10 when and where access was made --

11 MS. MAHDAVIAN: Yes, they should.

12 MR. NEHMETALLAH: -- and when -- basically when
13 and where either somebody logged into the system or
14 something like that.

15 MS. MAHDAVIAN: Yes.

16 MR. NEHMETALLAH: That's -- and I'll provide
17 another undertaking now --

18 MS. MAHDAVIAN: Okay.

19 MR. NEHMETALLAH: -- just for redundancy --

20 MS. MAHDAVIAN: Yes.

21 MR. NEHMETALLAH: -- that we'll inquire with
22 NationBuilder -- so undertaking to inquire with
23 NationBuilder about an access log that would require all
24 the back end, and that would include all the back-end
25 information.

1 --- UNDERTAKING

2 MS. MAHDAVIAN: Yes, please. And if they say
3 it's possible, to then get it for us?

4 MR. NEHMETALLAH: Oh, yeah.

5 MS. MAHDAVIAN: Yes? So not just the inquiry --

6 THE DEPONENT: Sorry. I mean --

7 MR. NEHMETALLAH: One thing -- so -- one second.
8 I can inquire with them to see if that exists.

9 --- UNDERTAKING

10 I'm going to take under advisement the provision
11 of it because I need to determine things like privilege
12 or -- like, if there's any identifying information. But
13 that section I'll take under advisement, the provision of
14 that log.

15 --- UNDER ADVISEMENT

16 MS. MAHDAVIAN: I don't see how privilege
17 attaches to it.

18 MR. NEHMETALLAH: Not privilege but if there's
19 personal information or things of that nature.

20 MS. MAHDAVIAN: All right.

21 THE DEPONENT: So everything is done during --

22 MR. NEHMETALLAH: Just one second. So I'll take
23 that section, the provision of it, under advisement.

24 MS. MAHDAVIAN: Right.

25 MR. NEHMETALLAH: But I will certainly provide

1 and I will absolutely indicate to you what the answer is
2 from.

3 MS. MAHDAVIAN: Yes, please. So whatever they
4 say can be made available.

5 BY MS. MAHDAVIAN:

6 482 Q. And so, Pouyan, to your point --

7 A. Sorry. Can I just clarify now that I
8 understand what you're asking for?

9 483 Q. Yes.

10 A. What I was saying is that information of a
11 person, so especially cancellations, that is there and
12 you can see exactly when it was cancelled.

13 484 Q. Okay.

14 A. That's what I meant. And you can see when
15 people are expired. That's what I'm trying to tell you.

16 485 Q. Okay.

17 A. That's what I understood that you were asking
18 because we're talking about a membership list. So that's
19 what I was saying. But go ahead.

20 486 Q. But -- like, I asked if I can see that and
21 you said it's all on the database. So I'm trying to find
22 a way to get that information to know when a certain
23 membership --

24 A. So the database is --

25 487 Q. -- was cancelled or expired?

1 A. NationBuilder is used for all of our
2 activities, so in order -- so to get -- anyway, I'll let
3 Jonathan take care of that.

4 But that's what I'm trying to tell you is that if
5 an individual's tag is changed, we know when it was
6 changed. That's what I'm trying to tell you.

7 488 Q. So I'm going to try this one more time. So
8 what you've given me is great, you'll tell me from
9 NationBuilder what they say is available about users and
10 when they went on and what they did.

11 You're going to consider whether you'll provide
12 me with the information once you determine if it's
13 available.

14 Now Pouyan is talking about how the tags changing
15 and the status changing is right there in the database
16 and the dates are reflected. I would like to know if I
17 can get that information but I don't know in what
18 format --

19 MR. NEHMETALLAH: So I don't think you can
20 because what it would be is it would be the database
21 itself. Like, when you review the database and you're
22 looking at it on the screen, my understanding is say you
23 pull up Payami's --

24 MS. MAHDAVIAN: Membership?

25 MR. NEHMETALLAH: -- membership, it will say --

1 and I don't know if it is but let's assume he wanted it
2 cancelled, and he asked on May 14th to cancel it. What
3 it will show is that he's non-active, he's not an active
4 member, and then the tag would say it was changed from
5 active to non-active on X date.

6 So when you pull it up and when it's pulled up,
7 you see the date the change was made to the tag, but it's
8 not -- so it only comes up when you view individual
9 entries.

10 MS. MAHDAVIAN: Right.

11 MR. NEHMETALLAH: So you can see when somebody
12 became -- when their membership expired or you can see
13 when they became a member.

14 BY MS. MAHDAVIAN:

15 489 Q. Okay. Now, you were talking about having
16 only one log-in?

17 A. Mm-hmm.

18 490 Q. Does that mean that different people can use
19 that log-in?

20 A. Soudeh and I are the only ones who have
21 access to it.

22 491 Q. Soudeh and you?

23 A. Yes.

24 492 Q. Okay.

25 A. As far as I know, Soudeh doesn't use the

1 database.

2 493 Q. Well, how do you know that?

3 A. That's what I've been told by her. But you
4 can ask her, or I assume you did ask her.

5 494 Q. Well, she said she uses it and so I'm just
6 wondering. Because you've made statements about how
7 you're the only one with access to the confidential
8 members list, but you're now telling me that at a
9 minimum, Soudeh has access to it.

10 A. Soudeh has access to everything that I have
11 access to. Soudeh's the president. So as far as I
12 understood, she's not extremely active on that, on the
13 NationBuilder platform.

14 495 Q. But so when -- would we be able to tell when
15 it was her who went on or not?

16 MR. NEHMETALLAH: So, again, only from my
17 personal experience, my understanding is from other
18 similar web servers, when you get the access log, one of
19 the points of data that you receive is the IP address of
20 access. So you won't see a name and you won't see -- you
21 may not even see the same IP address because the
22 individual could be logging in from a different location,
23 but you will see the IP addresses, and my understanding
24 is -- and this is all hypothetical, but my assumption is
25 it works like others, but you'll see IP addresses and

1 you'll see dates and time of access, and you may even see
2 the amount of information uploaded and downloaded and you
3 may see duration of access, but you certainly wouldn't
4 see the name.

5 But one of the things you could do is the IP
6 information could perhaps -- generally speaking, people's
7 homes have the singular IP address through their Internet
8 service provider. So if you see a single address like 30
9 or 40 times, you could probably infer it's one of their
10 homes. But that's the most information we have --

11 BY MS. MAHDAVIAN:

12 496 Q. And today sitting here, can you confirm that
13 other than you and Soudeh, no one else had access and no
14 one else was using the NationBuilder?

15 A. No one else should be using the
16 NationBuilder.

17 497 Q. So at one time Bijan had access to it is my
18 understanding?

19 A. I'm assuming when he was the president he had
20 access.

21 498 Q. All right, so how do we know he wouldn't
22 have, for example, since he had it at one time, how do we
23 know he didn't access it?

24 A. That's something you have to ask from Soudeh.
25 So Soudeh was given the information of the access to

1 him -- from him, and then she gave it to me after Younes
2 left, so now that's something you have to ask her.

3 499 Q. Is there a password associated with it?

4 A. There is a password.

5 500 Q. So do you have yours and she has hers or do
6 you share a password?

7 A. It's one log-in, so.

8 501 Q. Shared?

9 A. Yes.

10 502 Q. So then you can't actually say that Bijan has
11 not accessed it, for example? To the best of your
12 ability, you're saying it was just you and Soudeh, but
13 you can't say for certain?

14 A. Soudeh and I are the only ones who have
15 access. That's my knowledge.

16 503 Q. And you haven't given Bijan access?

17 A. No.

18 504 Q. But you don't know if Soudeh has?

19 A. I'm assuming you asked Soudeh. I mean
20 Soudeh -- as far as I understand, Soudeh and I are the
21 only ones who have access. Soudeh has only given the
22 access to me. The president and secretary are the only
23 ones who have access to the --

24 505 Q. All right. So just for completion, can I
25 also find out if we can get logs of any password changes

1 or user changes, log-in-change information in the last
2 six months?

3 MR. NEHMETALLAH: Yeah, I can -- I can undertake
4 to --

5 MS. MAHDAVIAN: Great.

6 --- UNDERTAKING

7 MR. NEHMETALLAH: I mean all of these are going
8 to be undertakings to inquire of NationBuilder.

9 MS. MAHDAVIAN: Yes. Yes. I understand. And if
10 they say yes, then you can let us know if you'll give it
11 to us or not.

12 MR. NEHMETALLAH: Yes, correct.

13 --- UNDER ADVISEMENT

14 BY MS. MAHDAVIAN:

15 506 Q. Paragraph 47, you say: "As a result of this
16 action" --

17 A. Sorry, what page was it again?

18 MS. MAHDAVIAN: 13.

19 THE DEPONENT: Okay.

20 BY MS. MAHDAVIAN:

21 507 Q. "As a result of this action and members'
22 perceived threat to their privacy," how do you know that,
23 the members' perceived threat to their privacy?

24 A. So I mean I think that was the point that --
25 I mean the exhibits that -- the numbers of people who

1 both withdrew and expressed that they had a problem with
2 the --

3 508 Q. Okay. So that's what you're basing it on?
4 Anything else?

5 A. I mean -- yeah, I mean Exhibit "K" is right
6 here. Exhibit "I" and "J" are also -- I mean they're the
7 ones I directed reference, and we've talked about today
8 as well, so.

9 509 Q. And what we've talked about is the fact that
10 Exhibit "K" has about 20 emails who sent an email saying
11 we don't want to be part of this? (sic)

12 A. Of the current members at the point when they
13 sent it. So of the hundred-some-odd that they had. It
14 was a fair amount, yeah.

15 510 Q. All right. So as of December when you had
16 737 current members, out of those, about 20 of them have
17 decided to leave; is that right?

18 A. As -- that we know of that decided to
19 withdraw.

20 511 Q. Yes.

21 A. And then we have whoever didn't renew --

22 512 Q. Right. And --

23 A. -- and allowed their membership to expire.

24 513 Q. Do you agree that this statement about
25 perceived threat came about because of the emails that

1 ICC was sending out?

2 A. No, I don't. I don't understand what you
3 mean.

4 514 Q. Well, how else would members know that their
5 privacy was in jeopardy?

6 A. Because we -- I don't understand.

7 515 Q. Well, you're talking about a perceived threat
8 about privacy. How else would members know that their
9 privacy is in jeopardy or is being threatened other than
10 ICC communications?

11 A. So ICC communications were to members only at
12 the moments that -- so it was sent out to individuals who
13 we felt that we had an obligation to inform of the
14 situation. They --

15 516 Q. What -- sorry. Stopping you there, what were
16 you informing them of?

17 A. We were informing them that this request had
18 been made, that the information that the ICC had on them
19 would have been shared with the Applicants who made that
20 request.

21 517 Q. Where did you say that? In the first
22 communications --

23 A. So I believe it was actually in your -- in
24 your application.

25 518 Q. Yes, so starting with the first

1 communication, show me where you said that. And you're
2 right, it is in my reply. My reply. It's tab C.

3 A. Okay.

4 519 Q. Behind my letter are the excerpts from your
5 communication.

6 A. Excerpts. I mean it would be nice to see the
7 whole thing.

8 520 Q. It is the whole thing.

9 A. Pardon? You said excerpts. Oh, you mean
10 highlighted out of the excerpts. Okay, I'm sorry. I
11 misunderstood. Go ahead.

12 521 Q. Well, January 15, tell me where you say that
13 an application was delivered under Corporations Act?

14 Is this something you drafted, by the way?

15 A. I don't recall. I believe I was -- I was --

16 522 Q. Soudeh said all of these were drafted by you.

17 A. Yes, I probably would have. But I mean it's
18 a collaborative thing. You asked me another question. I
19 I'm trying to answer that.

20 So you asked when did we say that people had made
21 this request?

22 523 Q. Yes.

23 A. "Upon a member filing a request" -- so that's
24 one. Okay. So this was in January. It was made
25 explicit in...

1 524 Q. Sorry. I mean I don't want you to -- I'm not
2 done. So you don't actually refer to the fact that the
3 four Applicants have delivered an application -- have
4 delivered an affidavit?

5 A. So page 21 on your --

6 525 Q. Page 19.

7 A. So --

8 526 Q. I'm on page 19. Don't go moving around.

9 A. No, no. You were talking about all
10 communications. Sorry. Not one specific --

11 527 Q. I'm doing one by one.

12 A. Okay. Go ahead. Yes. So --

13 528 Q. This is January 15 --

14 A. On January 15. Mm-hmm.

15 529 Q. -- an email I believe for the first time is
16 sent to the members. Is that right; is that fair?

17 A. That is the first email regarding this issue,
18 I believe so.

19 530 Q. And in this first communication, reference is
20 made all over the place to by-laws and PIPEDA; correct?

21 A. Mm-hmm.

22 531 Q. Yes? You have to say yes or no.

23 A. I don't know what you mean by all over the
24 place. It is mentioned --

25 532 Q. Several?

1 A. As far as I count, it's twice, but if that's
2 a bunch --

3 533 Q. Yes.

4 A. Yes.

5 534 Q. And then it says that -- it doesn't say
6 anything about a request, an affidavit having been
7 delivered requesting this --

8 A. It doesn't say that a request has been
9 delivered. It says that members of the organization have
10 the right to request to -- the list of members according
11 to the Ontario Corporate Act.

12 535 Q. Right. And it says, therefore, to comply
13 with our by-law and applicable federal provincial
14 regulations. What does that mean? What does provincial
15 regulation mean? What are you talking about?

16 A. So I believe the -- the provincial
17 regulations is referenced in the Ontario Corporate Act,
18 the federal regulations is referencing PIPEDA, and the
19 by-laws are referencing our own reference to PIPEDA in
20 our --

21 536 Q. So by regulation you mean statute; is that
22 what you mean?

23 A. Yes, I'm sorry, it's not in proper language.

24 537 Q. I'm just trying to understand --

25 A. Yes, that's fine, yes.

1 538 Q. Yes.

2 A. That's statutes, laws, regulations.

3 539 Q. All right. And, sir, do you understand that
4 PIPEDA applies only to organizations that engage in
5 commercial activity; do you know that?

6 A. That wasn't my understanding.

7 540 Q. All right. Have you looked at the PIPEDA
8 legislation?

9 A. I have somewhat. I mean not with your eye
10 but I have looked at it.

11 541 Q. Right. And you know that the test for
12 whether PIPEDA applies or not is based on the definition
13 of commercial activity?

14 A. My understanding was and continues to be that
15 if -- if an organization's by-laws reference it, then
16 they're still subject to PIPEDA.

17 542 Q. And where do you get that understanding even
18 today?

19 A. So that was what the Privacy Commissioner
20 more or less told us, so.

21 543 Q. All right. I would like to understand
22 whether you've received an update from the Privacy
23 Commissioner in light of this litigation.

24 A. As far as I understand, we haven't, no.

25 544 Q. Right. And that information from the Privacy

1 Commissioner, is that in writing somewhere?

2 A. No. It was from a phone call, I believe,
3 that was memorialized.

4 545 Q. By Bijan?

5 A. By Bijan it was memorialized. I don't think
6 that Soudeh had a memorialized issue on it unless Soudeh
7 also had a conversation with the Privacy Commissioner.

8 546 Q. Yes, she's told us that she kept no notes and
9 she doesn't know who she spoke to.

10 A. I mean --

11 547 Q. Did you, ICC, anyone on the board, think to
12 ask the Privacy Commissioner to provide you with
13 something in writing so that you could make sure that you
14 were, you know, covering all bases?

15 A. I don't believe that request was made.

16 548 Q. Do you know if they would have provided
17 something to you in writing?

18 A. I don't know.

19 549 Q. All right. So then you go on to say that
20 when a request is made, the member filing a request, we
21 should provide her or him with the information of members
22 who have provided the ICC prior consent for release of
23 their information.

24 So is that something that's set out in the
25 Ontario Corporations Act?

1 A. That was our attempt to both kind of in good
2 faith attempt to deal with the Applicants and their
3 requests to communicate with members, but at the same
4 time to get the consent of members and try to --

5 550 Q. You agree with me that Section 307 of the
6 Corporations Act mentions nothing about consent being
7 obtained?

8 A. PIPEDA does and that was our -- that --

9 551 Q. Was that my question? Did I ask you about
10 PIPEDA?

11 A. You know the law better than I do but, no,
12 PIPEDA is not referenced.

13 552 Q. The question was really simple, Pouyan. Does
14 the Corporations Act Section 307 mention anything
15 about --

16 A. No, it does not.

17 553 Q. -- prior consent being needed?

18 A. No, it does not.

19 554 Q. Right. So then you decided to introduce a,
20 what is that, a new rule that starting today, anyone
21 joining ICC can make the decision as to whether they want
22 the ICC to disclose their information.

23 A. Mm-hmm.

24 555 Q. Yes? So how did you --

25 A. Sorry. Is this referencing still the --

1 556 Q. Sorry. It's the green part and it's very
2 hard to read.

3 A. Yeah, I can't. Okay. So please... Okay.

4 557 Q. It's really hard to read.

5 A. Yes, I see this.

6 558 Q. Right. So how did you implement that?

7 A. So, I mean, as you can see, we linked the
8 consent form in the email, and this email was sent, you
9 noted, three times. They would -- people would download
10 the consent form, complete it and -- complete the form
11 and sign it and send it back to -- send it to the email
12 of the ICC secretary.

13 559 Q. No, but you say from now on anyone joining
14 ICC. The consent form apparently is being sent to
15 current members, so I'm trying to find out how you
16 implemented this new "give us consent."

17 A. Sorry. Oh, okay, you're back to the green
18 part. I mean anybody who would have joined at any other
19 point -- so every time we sent out the email, we sent it
20 out to current members, so anybody who received it would
21 have had the chance to consent. Is that your question?

22 560 Q. No. My question is, you say from today,
23 January 15, anyone joining ICC -- to me, that suggests a
24 new member.

25 A. Okay.

1 561 Q. -- can make a decision as to whether they
2 want ICC to disclose their information --

3 A. I don't --

4 562 Q. -- or to another member.

5 A. Yeah, I don't know if I see it that way. I
6 would say that that's saying kind of anybody who is a
7 member of the ICC, or becomes one, would be subject to
8 this policy. I think that's what --

9 563 Q. But do you agree with me that members who
10 joined prior to this new rule did not --

11 A. Did not what?

12 564 Q. -- have that opportunity to consent or opt
13 in?

14 A. This email is --

15 565 Q. Is that the attempt to get them to do that?

16 A. Yes, yes. Absolutely.

17 566 Q. I see.

18 A. Yeah.

19 567 Q. But you agree that previously that didn't
20 exist?

21 A. Sorry?

22 568 Q. That you hadn't actively sought their
23 consent; correct?

24 A. Honestly, we didn't know this was a
25 possibility and it hasn't happened in the history of the

1 board ever.

2 569 Q. Right.

3 A. So it's 12 years now and it's never happened.
4 This is the first time.

5 570 Q. And as well, when you make a statement like
6 "We would like to again reassure you that your
7 information is fully protected," sir, how can you give
8 that assurance when Section 307 of the Corporations Act
9 clearly says that the information has to be released?

10 A. So I mean this email was written with
11 information that we had at the time, upon our
12 understanding at the time.

13 571 Q. Which you've confirmed was without the board
14 getting legal advice?

15 A. That's correct.

16 572 Q. Now, page 20, there's another communication
17 that goes out. This time it's March 23, and it is after
18 the application has been delivered. Correct? Because
19 it, in fact, receives -- it refers to a notice from the
20 attorney of four members of the ICC that they have begun
21 court proceedings to obtain the complete membership list
22 including contact information of the membership?

23 So why so far in two communications have you not
24 referred to Section 307 and specifically explained that
25 they are entitled, they delivered an affidavit, and ICC

1 has refused to provide the membership list, why is that
2 not there?

3 A. That wasn't our understanding. If that was
4 our understanding, we would have provided the list right
5 away. I mean I don't -- that wasn't our understanding.

6 573 Q. It wasn't your understanding that affidavits
7 were delivered based on Section 307?

8 A. It wasn't our understanding that we were
9 obligated to give the list at the moment, especially in
10 regards -- in light of the fact that our by-laws
11 reference PIPEDA.

12 574 Q. When did you get the understanding that you
13 have to deliver the list?

14 A. After conversation with counsel and --

15 MR. NEHMETALLAH: Just wait. That's -- this
16 involves discussions that are subject to litigation
17 privilege.

18 BY MS. MAHDAVIAN:

19 575 Q. I'm just asking for a date.

20 A. I mean sometime before when we sent out the
21 May 13th email.

22 576 Q. Well, no, no. That's a pretty wide -- that's
23 a pretty wide -- but nice try.

24 A. I mean I don't know what to tell you.

25 577 Q. When did you -- when did you understand that

1 in fact the list was due?

2 So your lawyer was retained March 26th. He came
3 on the record on March 26th.

4 MR. NEHMETALLAH: Counsel, I'm uncomfortable with
5 this series of questions. Like, I know you just think
6 you're just asking for a date but it does delve very
7 closely into the advice they received and I don't
8 think it's appropriate --

9 MS. MAHDAVIAN: I'm not asking what the advice
10 was.

11 MR. NEHMETALLAH: I know but it's still subject
12 to privilege. It's a refusal.

13 BY MS. MAHDAVIAN:

14 578 Q. What I'm asking is when did ICC finally
15 understand that the initial approach that they had taken
16 was incorrect and that in fact under the Corporations
17 Act, which is the governing statute, the current
18 membership list is due?

19 MR. NEHMETALLAH: Counsel, we're refusing that
20 question.

21 --- REFUSAL

22 THE DEPONENT: So do you mind taking a break.

23 MS. MAHDAVIAN: Yes, sure.

24 --- Recess taken at 3:25 p.m.

25 --- Upon resuming at 3:34 p.m.

1 BY MS. MAHDAVIAN:

2 579 Q. Just on page 20 still of my Reply, you say at
3 the bottom of your communication of March 23rd to the ICC
4 members -- and, by the way, Pouyan, at this point in
5 time, how many active current members were there when you
6 were sending these emails --

7 A. I don't recall.

8 580 Q. -- to your members?

9 A. I don't recall.

10 581 Q. You don't know? You haven't looked into that
11 as --

12 A. I can't give you exactly what they -- I
13 mean -- at any given moment I can't tell you --

14 582 Q. In March of 2019.

15 A. I can't tell you that. I mean it's not...

16 583 Q. It's --

17 A. It's impossible for me to remember that.

18 MS. MAHDAVIAN: Okay. I believe I asked for
19 that, Jonathan?

20 MR. NEHMETALLAH: I'm pretty sure we gave best
21 efforts to try to do different points in time.

22 MS. MAHDAVIAN: Yes. Okay. So if I haven't, I'm
23 asking for it now.

24 MR. NEHMETALLAH: It was for the day the letters
25 or around the same general period the emails were sent

1 out.

2 BY MS. MAHDAVIAN:

3 584 Q. Yes. Okay. Now, you say at the bottom of
4 this email that we are also planning in-person
5 consultation meetings. Did that happen?

6 A. No, it did not.

7 585 Q. How come?

8 A. I can't tell you exactly why it didn't happen
9 but it hasn't happened.

10 586 Q. Would you say -- I mean based on the numbers
11 of emails that I've seen, which is about 20, that the
12 large majority of people didn't really care that much
13 about this whole privacy issue?

14 A. I don't agree with that.

15 587 Q. No?

16 A. No.

17 588 Q. You only have 20 emails of people actually
18 saying I don't want to be part of it?

19 A. That was 20 emails out of the current members
20 at whenever -- I mean I don't know which 20 emails you're
21 referencing, but --

22 589 Q. Exhibit "K."

23 A. Exhibit "K" being -- requesting memberships
24 to be terminated. It says requesting memberships to be
25 terminated when we had a hundred-some-odd members.

1 590 Q. Sorry?

2 A. When there were only a hundred-some-odd
3 members. That means one-sixth-ish of the membership at
4 the time who openly -- (indiscernible) actually was
5 communicated and we knew --

6 591 Q. No, but you've said --

7 A. No, no. I mean -- sorry, but that said I
8 want to withdrew my membership. So that's not an
9 insignificant number.

10 592 Q. Well -- well, you've been sending emails
11 since January about this, about privacy -- we're
12 protecting your privacy, don't worry, we have your back.
13 Correct? Since January you've been sending these
14 emails?

15 A. We've been attempting to keep our membership
16 aware of the issue in a simple and understandable
17 language.

18 593 Q. Right. So the whole privacy issue has been a
19 live issue since January of 2019; is that fair?

20 A. Live as in members have been informed of it?

21 594 Q. Well, that's -- yes. Through your email
22 communications only is the way that the members have
23 known about it; correct?

24 A. The members have known about it only through
25 our email communications which have only gone out to

1 members, and, yes.

2 595 Q. Right. And so I will find out by way of
3 undertaking how many members at any given point were
4 getting these notifications; correct?

5 A. Yes. I mean if that's --

6 596 Q. The emails that were sent you're saying were
7 only sent to active members?

8 A. Whoever was a member at the time should be
9 the only one to see -- (overtalking).

10 597 Q. And in terms of other than the May people
11 who -- Exhibit "K" are the emails that were sent after
12 you sent the May email, were there people who told you
13 I'm going to let my membership lapse because I don't want
14 to be part of this because I don't want my membership
15 information to go out?

16 A. Told me -- emailed me and told me that
17 they're going to let their membership lapse?

18 598 Q. Yes.

19 A. I don't believe I have any emails saying that
20 people would let their membership lapse.

21 599 Q. So, in other words, the presumption you want
22 us to make and the court to make is that people let
23 memberships lapse because of their concern for privacy?

24 A. I think many people were -- are concerned
25 that this happened. They might not have known that

1 withdrawal was a possibility and that --

2 600 Q. You specifically said so.

3 A. In May 13th, yes. So --

4 601 Q. But as a result of May 13, you only got 20 of
5 them; right?

6 A. 20 of 120. So approximately --

7 602 Q. But prior to that, you didn't catch any
8 flies; right?

9 A. So prior to that, nobody was -- we -- I mean
10 our understanding was that the -- nobody's information
11 would be given without their consent, and we hoped that
12 we would reach some kind of settlement, and that's what
13 we assumed.

14 603 Q. Settlement with the four people?

15 A. Yes, with the Applicants, yes, because
16 they -- anyway, so that's -- that was kind of our
17 understanding. We didn't think anybody would want the
18 information of anybody who hadn't given their consent or
19 who didn't want to give their information out. So --

20 604 Q. I'm sorry. I'm losing -- I'm losing your
21 answer. I don't know what you're talking about any more.

22 A. So I'm telling you the emails before May
23 13th, none of them -- all of them assumed -- we were on
24 the assumption that we wouldn't have to give the
25 information to anybody without their consent. That was

1 our --

2 605 Q. So I accept what you're saying up to March 23
3 because you still hadn't hired a lawyer.

4 A. Okay.

5 606 Q. Okay? But the next email that goes out is
6 March 29th, three days after you hire a lawyer, and you
7 continue to maintain this erroneous legal position.

8 And, in fact, there's a statement in there, "We
9 appreciate that many members are displeased over the
10 prospect of their membership information" -- that's the
11 blue part -- "being made public." (as read)

12 A. I don't know what you're asking me.

13 607 Q. So where do you get this? How do you know
14 many members are displeased? Where do have the numbers
15 from -- that data from?

16 A. I mean that was an understanding that we had.
17 We know --

18 608 Q. From where?

19 A. Okay, well give me a moment and I can look
20 through my Affidavit if I can find any specific --

21 609 Q. Please, take two moments.

22 A. -- emails.

23 610 Q. Are you talking about Bijan and his family
24 members?

25 A. I don't believe that that's a fair

1 characterization of what that email is, but that is one.
2 That is one case of that happening.

3 611 Q. And that constitutes many?

4 A. That constitutes 20 people. You don't call
5 that many. What do you want to call it?

6 612 Q. Some.

7 A. I don't -- some is like five for me.

8 So there's another individual here. This is --
9 sorry, that's also after the May... Sorry. Again, yeah,
10 this one was sent March 26th from an individual --

11 613 Q. Which page are you on?

12 A. Sorry. This is page 95. So March 26th,
13 again somebody is saying that they would like their --
14 that they have an issue with this.

15 614 Q. And I don't have the name of this person so I
16 have no idea, but they are quoting information that's
17 wrong about PIPEDA. So --

18 A. So you're saying it's wrong, and I'm telling
19 you that this was not only our understanding of the
20 by-laws and how they related to the Corporations Act, I
21 mean or generally how -- the by-laws really. I don't
22 think anyone really knew what a Section 307 request was
23 until this litigation. But I think people -- it's a
24 general --

25 615 Q. Sorry. I'm going to stop you there. When

1 you say nobody really knew what a Section 307 request was
2 until this litigation, by "no one" do you mean the board?

3 A. No. What I'm saying is -- we're talking
4 about members; right?

5 616 Q. I see. Okay, yes.

6 A. So what I'm telling you is that as far as
7 members were concerned, and I think it's a fair
8 assumption that they made and it's an assumption that we
9 made as well, the by-laws of the organization are what
10 covers the organization.

11 The by-laws of the organization state that
12 information cannot be shared. Then -- I mean they were
13 under that impression and it specifically references
14 PIPEDA. I don't understand why that is seen as being
15 suspect. That's a genuine -- that's a genuine concern
16 they had and that's a genuine expectation that they had
17 based on their reading of the by-laws.

18 617 Q. It's a misassumption. It may be a genuine
19 concern but it's a misassumption.

20 A. So it's a misassumption to someone who is
21 very well-versed in corporate law perhaps --

22 618 Q. Well, you had every perhaps opportunity --

23 A. -- but not everybody is. No, when -- I'm
24 sorry --

25 619 Q. -- during the months of January, February,

1 March, to get a legal opinion, verse yourself and then
2 properly inform your members?

3 A. So what we're not talking about here -- we've
4 already had that conversation. What we're not talking
5 about here is what I thought. We're talking about what
6 members have thought when they signed up.

7 620 Q. Pouyan, isn't it a fact that you and everyone
8 on the board just completely chose to turn a blind eye to
9 this, not get legal advice, not do the right thing,
10 misinform people, scare the crap out of them, and make
11 them believe that their information is going to be made
12 public? You actually make a statement in ICC's email
13 communication of March 29 that the information will be
14 made public. That's wrong.

15 A. I don't -- I don't believe that that's --
16 that's a mischaracterization. I think --

17 621 Q. Excuse me.

18 A. I think that --

19 622 Q. Where do you have it anywhere in any of these
20 documentations in this court record, where do you have
21 proof that the information was going to be made public?

22 A. Let me explain. By "public" I mean what --
23 by "public" -- so we have -- we have had -- it fluctuates
24 between something like a thousand to what we have now,
25 about a hundred members. These are a thousand to a

1 hundred members. Not all of them know each other. As
2 far as they're concerned -- and, again, with the history
3 of diaspora and the history of the Iranian nation and
4 community, they are concerned. They have no -- they
5 have -- it's very difficult for individuals in our
6 community, many individuals in our community, to feel
7 that anybody who makes a Section 307 request will
8 necessarily abide -- and I'm not saying that your
9 Applicants are doing this, but I'm saying the fear among
10 many would be that they would be concerned. They
11 wouldn't understand that, okay, a Section 307 is made so
12 that -- you know, the reasons for it. They would feel
13 that -- many of them would feel concerned that the
14 information is being given to anyone that they don't
15 know.

16 623 Q. That concern, if it actually exists, Pouyan,
17 is being planted in their heads by you --

18 A. Absolutely disagree.

19 624 Q. -- the person who drafted --

20 A. Absolutely disagree.

21 625 Q. -- this ICC email, sir. Nobody would have
22 thought that other than you placing these ideas --

23 MR. NEHMETALLAH: Counsel, is that a question or
24 a statement?

25 BY MS. MAHDAVIAN:

1 626 Q. So please tell me where you've received an
2 email, prior to email communications going out about this
3 being made public, of someone saying I don't want mine to
4 go public. Did you actually tell them --

5 A. Sorry.

6 627 Q. -- that --

7 A. So what are you asking exactly, how -- why
8 didn't people --

9 628 Q. Why didn't you --

10 A. Sorry. No. No. One second. So are you
11 asking me why didn't people predict that a Section 307
12 request might be made one day after 12 years of it not
13 being made any time in this organization?

14 629 Q. That's not what I'm asking you.

15 A. So then what is your question?

16 630 Q. What I'm asking is why didn't you inform
17 people properly and say a Section 307 request has been
18 made, it's the law. At this point you have counsel --

19 A. So again --

20 631 Q. You have to let me finish. It's the law, and
21 we have to deliver this. It's -- it's the law.

22 A. You're re-asking a question that you asked me
23 before. You're changing the question. Your question was
24 did we make -- you're basically asking are members -- are
25 the members' concerns about privacy legitimate in this

1 situation, and I'm telling you they are legitimate and
2 they are genuine --

3 632 Q. No. What I --

4 A. People have genuine concerns about the
5 integrity of their information.

6 633 Q. What I asked you, actually, is isn't it the
7 case that whatever concern the members have expressed is
8 as a result of this fearmongering that went on with the
9 email communications you were sent --

10 A. And I'm telling you no.

11 634 Q. -- where, for example, as of March 29th,
12 you're telling people that their information will be made
13 public. That's an absolutely inaccurate completely --
14 completely false statement.

15 A. So a public -- okay. Public -- as far as
16 most people would be concerned, public is if it's shared
17 between a thousand people within an organization.

18 635 Q. No.

19 A. That's public.

20 636 Q. Now you're trying to justify --

21 A. No, no. That -- no, no.

22 MR. NEHMETALLAH: Counsel, let him answer.

23 Continue the answer, please.

24 THE DEPONENT: That's public as far as most lay
25 people are concerned. Perhaps you don't consider that

1 public because it's part of the corporate membership
2 family.

3 BY MS. MAHDAVIAN:

4 637 Q. It has nothing to do with corporate.

5 A. No, no, no. Sorry. Let me --

6 638 Q. (overtalking)

7 MR. NEHMETALLAH: Let him answer, please.

8 THE DEPONENT: And I've told you before and
9 you're trying to rehash a question that I've already
10 answered. I'm telling you that Iranian Canadians care
11 about privacy and they care about privacy on the whole to
12 a greater degree than the average community.

13 BY MS. MAHDAVIAN:

14 639 Q. I'm going to stop you there. How many of
15 them have told you they care about privacy, personally
16 told you?

17 A. When I was signing up members, absolutely it
18 was something that came up over and over again. If I
19 signed up a member tomorrow for ICC, chances are it's --
20 that they would say is my information going to be safe if
21 I become a member of the ICC.

22 640 Q. So, I'm sorry --

23 A. And that is a fact. And I will tell you --

24 641 Q. Wait --

25 A. -- if you ask your Applicants, they will say

1 the exact same thing.

2 642 Q. I'm sorry. Are you referring to the 2018
3 elections when you were going around getting members?

4 A. No. I'm telling you that any time that I
5 have attempted to recruit friends or family --

6 643 Q. Yes?

7 A. -- to become members of the ICC --

8 644 Q. Yes?

9 A. -- in advance of an AGM or for any other
10 reason --

11 645 Q. Yes?

12 A. -- they always, almost without fail, would
13 ask me what is going to happen with my information. And
14 they've asked me personally. That's something I've faced
15 personally.

16 And, again, I'm telling you this as an Iranian.
17 I -- your Applicants would know -- would feel -- I
18 guarantee you have felt -- have fielded similar concerns
19 when they were asking -- when they were signing up
20 members. That is my feeling.

21 646 Q. But, sir, it has nothing to do with being
22 Iranians. Any person might not want their personal
23 information necessarily publicized, but it's wrong to say
24 that it was going to be made public because that's not
25 what was happening here.

1 A. I've already told you what public means to a
2 lay person.

3 647 Q. I don't want my personal information made
4 public.

5 A. I've already told you what "public" means to
6 a lay person.

7 648 Q. But if some other member in an organization
8 wants to reach out to another member to have a
9 conversation about how this board is not acting properly,
10 that's not making it public.

11 A. I've -- I've already told you that -- what
12 "public" means to a lay person and I've already --

13 649 Q. But you can't say that.

14 A. -- and I've told you --

15 MR. NEHMETALLAH: Counsel, he's already answered
16 what "public" means to him.

17 MS. MAHDAVIAN: No. He's now giving opinion
18 about what it means to a lay person.

19 THE DEPONENT: And it means it to me as well. It
20 doesn't mean it to you perhaps. But what I'm trying to
21 say is that as far as most people would be concerned, if
22 my information is shared with 1,000 people, even if
23 they're members of an organization that I paid \$10 to
24 sign up for, that to me is public.

25 BY MS. MAHDAVIAN:

1 650 Q. Do you --

2 A. That's what I --

3 651 Q. -- do you understand that democracy involves
4 openness, transparency, communication, dialogue,
5 fairness; do you understand that?

6 A. I understand that -- what are you trying to
7 ask me? I don't know what you mean by that.

8 652 Q. Which part of it?

9 A. The abstract terms. I don't know --

10 653 Q. Abstract?

11 A. Yeah. Dialogue? What does that mean? Yes,
12 we spoke. We had -- you're -- two of the Applicants --

13 654 Q. You're someone who ran for the NDP --
14 --- The Reporter Appeals.

15 THE DEPONENT: Two of your Applicants came to
16 open debates and they presented their case. Your
17 Applicants had their own channels and ICC made their
18 own -- the ICC's channels available to them. They had as
19 much --

20 BY MS. MAHDAVIAN:

21 655 Q. How did ICC make its own channels available?

22 A. They had --

23 656 Q. How?

24 A. Their material was shared just like mine and
25 every other candidate on the ICC's website and Facebook.

1 There was no other --

2 657 Q. Can you point me to that?

3 A. I mean it's --

4 658 Q. Are you talking about their bios; is that
5 what --

6 A. Yes, their bios. Their bios were --

7 659 Q. So their bio is what you're talking about --

8 A. My bio was also there.

9 660 Q. Yes. Okay, but when you say they had access
10 to ICC channels, what exactly -- is that the only thing?

11 A. So I can explain, if you --

12 661 Q. Sure.

13 A. -- allow me to. So they had access to ICC's
14 website, so that email list that you're talking about of
15 members, they were -- all of their bios were emailed to
16 everybody, just as mine was. Mine was at the bottom of
17 that web page and -- (indiscernible) -- one of the
18 ICC4ALL candidates --

19 662 Q. Well, it's alphabetized.

20 A. Exactly, it is alphabetized.

21 663 Q. So what?

22 A. So I'm trying to tell you that there was no
23 way that there was no effort to advantage an incumbent.

24 Two, when I say "channels," I mean that your --
25 two of your Applicants, two of your clients, as well as

1 the ICC4ALL individuals were invited to speak at a public
2 debate which was live-streamed and then posted on the
3 Facebook page. They were allowed to speak and speak
4 directly to the -- to the membership, and they did.

5 664 Q. Okay.

6 A. There was -- we --

7 665 Q. So that's just a public debate. What else?

8 A. They received as much as anybody else did.

9 666 Q. Really?

10 A. That's what I'm trying to tell you.

11 667 Q. Okay. And so while you were on the board and
12 chair of policy and you were running around town getting
13 letters and petitions signed and the ICC board was
14 reporting on the wonderful activity of Pouyan, you didn't
15 think that was putting your name out there even more,
16 whereas this wasn't happening for the other candidates?

17 A. We had -- as an ICC board member, I did my
18 duty as an ICC board member, and I will not apologise for
19 that.

20 668 Q. I'm not asking you to.

21 A. I'm supposed to --

22 669 Q. I asked a different question.

23 A. It seems as if you are. It seems as
24 if you're asking us not --

25 670 Q. You have to stop assuming what my questions

1 are going towards.

2 A. It's --

3 671 Q. Just answer.

4 A. Either way, I'm saying I will not apologise
5 for the fact that I did my -- that I filled my role
6 competently as -- as a board member of the ICC.

7 Your clients had many chances to talk to the ICC
8 members. They're involved, some of them, in activities
9 outside of the ICC. They have organizations that they're
10 involved with that they sit on the board of. They have
11 many potential paths towards getting known in the
12 community. I --

13 672 Q. But that's different, and you know that and I
14 know that and a judge is going to know that, too. The
15 fact that one member is part of a different volunteer
16 organization is not the issue.

17 A. Your clients --

18 673 Q. The issue here is that members of ICC who
19 join ICC are -- their information can be shared with
20 other members for the purposes -- and the Act says that.
21 It defines the purpose for which --

22 A. And your client --

23 674 Q. -- this is going to be shared.

24 A. -- have access to the current members.

25 675 Q. You know, it will be fine.

1 MR. NEHMETALLAH: Counsel, this is evolving into
2 a legal debate.

3 MS. MAHDAVIAN: We'll deal with that -- yes,
4 we'll deal with that at court. I'm not interested in
5 persuading you because you're either not open to
6 understanding the law or you're stuck, unfortunately, in
7 the position that you are.

8 MR. NEHMETALLAH: Counsel, this is an
9 examination. You don't need to lecture him on the law.

10 BY MS. MAHDAVIAN:

11 676 Q. All right. Anyway -- so I wanted to go back
12 to the communications that were being sent out. So the
13 next one that goes out is now April 30th. At this point,
14 you've had a month with your lawyer and you continue to
15 say things like "we want you to know that we are
16 continuing to do all we can to protect the information of
17 our members." (as read)

18 Why is it that even at this point, a month in,
19 you haven't released the current membership list? Why
20 are you waiting?

21 A. Sorry. Is your question about the wording of
22 the email?

23 677 Q. No. April 30th you continue to say we're
24 doing what we can to protect.

25 A. I believe I've answered your question. We

1 felt that we had a genuine -- when we had a genuine kind
2 of question about whether -- whether our by-laws required
3 that. And, again, I will say --

4 678 Q. Sir, at this point you've had a month with
5 your --

6 MR. NEHMETALLAH: Counsel --

7 BY MS. MAHDAVIAN.

8 679 Q. -- very reputable law firm, Bay Street law
9 firm, that you've hired. Are you telling me that at this
10 point you continued to have a question about whether the
11 by-laws applied?

12 MR. NEHMETALLAH: Counsel, you're asking about an
13 update regarding the legislation -- or not the
14 legislation, regarding the litigation. Anything they may
15 have thought that informed that was through discussions
16 with counsel and it's subject to privilege. He's going
17 to refuse to answer that.

18 --- REFUSAL

19 BY MS. MAHDAVIAN:

20 680 Q. Did this email get vetted by your lawyer?

21 A. Is that privileged?

22 MR. NEHMETALLAH: You're not answering that, no.

23 --- REFUSAL

24 MS. MAHDAVIAN: I'm sorry?

25 MR. NEHMETALLAH: He's not -- we're not answering

1 that. That's a refusal.

2 BY MS. MAHDAVIAN:

3 681 Q. So is it -- is it your position then that
4 it's only on May 13, when you send the email out that you
5 do, that you realize that the by-laws don't apply?

6 MR. NEHMETALLAH: No, you're not answering
7 that.

8 --- REFUSAL

9 BY MS. MAHDAVIAN:

10 682 Q. Because that email, and I think it's in your
11 materials, talks about, "After extensive consultation
12 with legal counsel"?

13 MR. NEHMETALLAH: Sorry, Counsel, where --

14 MS. MAHDAVIAN: Well, the actual email I don't
15 think appears. It's just part of Exhibit "K" where
16 people were using that email to say let's withdraw.

17 MR. NEHMETALLAH: Page 165 has it.

18 MS. MAHDAVIAN: Oh, does it? Okay.

19 MR. NEHMETALLAH: Yes.

20 BY MS. MAHDAVIAN:

21 683 Q. Right. Okay. "After extensive consultation
22 with legal counsel." So extensive consultation with
23 legal counsel as of May 13 is about a couple of months of
24 legal consultations, do you agree?

25 Don't look at your lawyer.

1 A. Am I under privilege?

2 684 Q. He will object if it's improper. Don't look
3 at your lawyer to see if you should answer or not.

4 A. Okay. What are you asking me?

5 685 Q. My question is, extensive consultation at
6 this point is about two months with your lawyer?

7 A. We hired our lawyer on May -- on March --

8 686 Q. 26th?

9 A. -- 26th, like we indicated, and this email
10 went out at this time.

11 687 Q. So that's about a month-and-a-half of legal
12 consultation?

13 A. I can't tell you how much legal consultation
14 was actually during this time. I can say that we hired
15 him then and --

16 688 Q. Right.

17 A. -- and this is --

18 689 Q. And so you're finally at this point conceding
19 that the members list needs to be produced; correct?

20 A. So we're not -- I wouldn't say -- I would say
21 that our position hasn't -- for the interests of the
22 corporation and also in the interests of moving on with
23 the business of the corporation, we decided that -- and
24 honestly to -- to attempt to kind of resolve this issue
25 and bring your members back into the -- your Applicants

1 back into the fold so we can kind of move on, we think
2 that this is -- you know --

3 So, anyway, in the interests of doing that and
4 reducing the financial burden to the corporation, we
5 again, keeping our same position, which is we don't want
6 to give out anybody's information who doesn't consent to
7 it. So that's -- the individuals who are allowed to
8 withdraw before the date.

9 And then, again, it's an effort to -- it's an
10 effort to balance the desires of your clients and what we
11 see as the genuine concern that many in the Iranian
12 Canadian community have --

13 690 Q. You continue to say that. I've only seen 20
14 emails of people asking to be removed from the
15 membership. I have not --

16 A. 20 emails again --

17 691 Q. I have seen one email of someone saying
18 please protect my privacy. Where are these many Iranians
19 who are concerned? Where are they?

20 A. You're misrepresenting the facts.

21 692 Q. I'm not.

22 A. Yes, you are.

23 693 Q. I'm going with what you're telling me.

24 MR. NEHMETALLAH: Counsel, he already answered
25 that. Everybody he signed up has indicated this to

1 him.

2 MS. MAHDAVIAN: Please --

3 THE DEPONENT: And --

4 --- The Reporter Appeals.

5 THE DEPONENT: Sorry. And I'm going to repeat
6 again that there were only a hundred-some-odd members
7 when we sent out that email. The fact that 20 of them
8 withdrew their membership within a week, within five
9 days, and I'm absolutely certain that many did not even
10 get that communication --

11 BY MS. MAHDAVIAN:

12 694 Q. How are you certain?

13 A. I mean it's just impossible. I mean, I know
14 that they didn't.

15 695 Q. How?

16 A. Because -- first of all, because we can see
17 who opened the emails, and then second of all, those who
18 had not opened the emails, I called them, as you
19 mentioned in your reply. So -- and many of them I
20 couldn't get in contact with before the deadline.

21 So the fact that -- the fact that 20 of 100-some-
22 odd withdrew, and let's say even if we reached -- reached
23 half of those people, which still -- I mean half of those
24 people truly understood what the situation was -- I mean
25 20 out of 60 people, that's a third of the

1 membership with -- at that time withdrew. And these are
2 not the people who expired. They withdrew.

3 696 Q. All right.

4 A. So to -- sorry. To say that it's just 20
5 people is a mischaracterization. That's a third. That's
6 33 percent.

7 697 Q. It's not a mischaracterization. You have
8 been -- ICC has been actively -- actively --
9 communicating to the membership in January, in March, in
10 April, and May, maybe there's only a hundred, and I don't
11 know, we're going to get the numbers, but at every given
12 point you're trying to scare them about their information
13 going, quote, "public." You've said that in emails.
14 It's wrong but you still said it.

15 You're scaring them, you're making them worry
16 about this, all with a view to reducing the number of
17 names you will ultimately be forced to give. Isn't that
18 what happened?

19 A. That is not what happened and --

20 698 Q. Isn't it the case that you waited until May
21 13th, sir, because you knew a whole bunch of memberships
22 would expire and would not be renewed because you
23 deactivated the renewal membership email --

24 A. That is -- that is not the case.

25 699 Q. And in the end --

1 A. We reached out to your clients and we offered
2 them to actually, earlier than this date, to actually --

3 MR. NEHMETALLAH: Wait.

4 THE DEPONENT: Sorry.

5 MR. NEHMETALLAH: Don't mention settlement on the
6 record.

7 THE DEPONENT: Anyway, so that is not -- that is
8 not the case.

9 BY MS. MAHDAVIAN:

10 700 Q. This was an active, intentional campaign by
11 the board to reduce the number --

12 A. That is -- and I explained --

13 701 Q. -- of members, quote, "current members" --

14 A. And I explained to you why it's not the
15 case.

16 702 Q. -- that would ultimately be put --

17 --- The Reporter appeals.

18 THE DEPONENT: Sorry. I explained to you why
19 that was not the case and I explained to you that I
20 personally have -- had individuals multiple times when I
21 was trying to sign up members confirm with me and ask me
22 what the situation was with the information. PIPEDA is
23 explicitly referenced in our by-laws and it is a complete
24 mischaracterization to state that --

25 BY MR. NEHMETALLAH.

1 703 Q. Well, all --

2 MR. NEHMETALLAH: Let him finish answering.

3 MS. MAHDAVIAN: Well, he's done. He keeps
4 repeating himself. All --

5 THE DEPONENT: (overtalking).

6 MR. NEHMETALLAH: He's going to answer -- answer
7 the question.

8 THE DEPONENT: It's a complete mischaracterization
9 to say that we're somehow delaying or letting people
10 expire. No. We just want a situation where people have
11 -- can give us consent to do -- to give their information
12 to your Applicants. That's all we want. I don't
13 understand why that's such an issue.

14 BY MS. MAHDAVIAN:

15 704 Q. It's an issue because you're ignoring your
16 obligation under Corporations Act which does not provide
17 for you to seek consent. So you are favouring a
18 legislation under PIPEDA and your by-laws over a
19 governing statute that tells you, you have to turn it
20 over in ten days.

21 You delay it by six months, Pouyan, by six
22 months, and reduce it down to 90 people and that's the
23 list you turn over.

24 A. (overtalking).

25 705 Q. That is active intentional interference with

1 a legal request that was made legitimately in December of
2 2018?

3 A. We didn't do anything out of genuine --

4 706 Q. You didn't seek legal advice, you continued
5 to keep your head in your sand, you said we're acting in
6 our best interests, so we didn't know, and even after you
7 get legal advice, you don't turn over the list. You keep
8 sending emails, "don't forget, this is your last chance,"
9 "don't forget," scaring people into removing their names,
10 not renewing their membership.

11 A. Sorry, what --

12 707 Q. This is all part of a plan.

13 MR. NEHMETALLAH: Counsel, you're
14 mischaracterizing your --

15 THE DEPONENT: Where do we scare people? Like, I
16 don't understand. Where do we --

17 BY MS. MAHDAVIAN:

18 708 Q. Scare? How about you look at the emails
19 you're sending out to --

20 --- The Reporter appeals.

21 THE DEPONENT: What I'm saying is --

22 MR. NEHMETALLAH: Counsel, you're going to need
23 to -- you're going to have to ask questions of my client.
24 He can't answer statements.

25 BY MS. MAHDAVIAN:

1 709 Q. Paragraph 55 of your Affidavit, you say the
2 board --

3 A. Sorry. What page is it again?

4 710 Q. Page 15. "The board also informally
5 consulted with various community members." Tell me who
6 they are.

7 A. I can't tell you who they are.

8 711 Q. Well, that's your Affidavit. You swore it.

9 A. I am relying on information from my fellow
10 board members.

11 712 Q. Well, you need to identify it?

12 A. Soudeh, as we said, and I'm sure she told
13 you, she consulted with individuals in the community,
14 different board members, and consulted with different
15 individuals in the community.

16 713 Q. You swore an affidavit saying that the board
17 informally consulted with various community members. You
18 failed to identify them. You --

19 A. I -- okay, I consulted personally with my
20 mother. That is a fact.

21 714 Q. Wonderful, but I'm asking is she a -- someone
22 who's got a legal background?

23 A. No. I'm -- no, no. You said community
24 members to see whether they had concerns.

25 715 Q. No.

1 A. That was our whole conversation.

2 716 Q. It says community members with legal
3 background. The board informally consulted with
4 various --

5 A. Oh, I'm sorry.

6 717 Q. -- community members including community
7 members --

8 A. Okay. You said including. So this is
9 different. What you were just asking me was whether --
10 and I was under the impression that you were still on
11 this line of questioning, which was whether community
12 members have a genuine concern that was implanted by our
13 emails, you know, whatever.

14 718 Q. I'm asking about paragraph 55.

15 A. Sorry. Yeah. No. Yes.

16 719 Q. Again, you're assuming what my question is
17 and where I'm going with it. Just answer the question.

18 A. Okay. So I -- I'll repeat that I
19 misunderstood what you were asking me.

20 720 Q. Okay.

21 A. I thought you were asking legal -- again,
22 you're asking the same question that you asked previously
23 and I told you. I already answered this question. I
24 honestly can't do this again.

25 MR. NEHMETALLAH: Well, he's already answered

1 that. He's already stated the community member with the
2 background. That came from Soudeh's cross-examination.

3 BY MS. MAHDAVIAN:

4 721 Q. So the only -- the only individual with a
5 legal background that the board consulted was this --

6 A. As far as I know -- I'm relying on Soudeh.
7 As you saw in the minutes, she was the one who was --

8 722 Q. So of all the Iranian lawyers in the
9 community, many of them who do corporate law, the one
10 person you consulted with is a family law lawyer.

11 A. I already answered this question. I'm sorry.
12 I already answered this question. You keep on asking the
13 same question over and over again.

14 723 Q. Well, because --

15 A. I can't --

16 724 Q. Because you go on to say "the overall
17 consensus." So to me that means there was more than one
18 person that you consulted. "The overall consensus was
19 that in light of the ICC by-laws and code of conduct,
20 releasing the membership would fall in a legal, 'grey
21 area.'" This is straight out of your Affidavit.

22 So who -- who was this consensus? Just Soudeh
23 and Sadie chitchatting? Who else?

24 A. So, I mean, again, I'm relaying to you what
25 was told to me by Soudeh. Soudeh said that she only

1 talked to that one person, but I was -- I was under the
2 understanding that it was multiple kind of individuals
3 that would have some understanding of the situation. And
4 as community members and --

5 And, like, and when we say, like, by-laws here, I
6 mean it's -- it's -- some of it can be seen as kind of --
7 I believe that those conversations included taking into
8 account the sensitivities and why --

9 725 Q. That's not what's in this -- that's not
10 what's in this --

11 A. And why the by-laws --

12 726 Q. -- paragraph.

13 A. No, let me finish. Why the by-laws would be
14 inside this -- the organization -- sorry -- why the
15 PIPEDA reference would be in the by-laws to begin with.

16 But I've already answered your question,
17 honestly, and I don't --

18 727 Q. No, you haven't.

19 A. I mean that's why -- yes, I have. That's why
20 we're going back to page --

21 728 Q. So you -- you swore an affidavit that says
22 that there were various community members including
23 community members with legal background. When you swore
24 this Affidavit, you were obligated to make sure that this
25 information was accurate, sir?

1 A. It was accurate --

2 729 Q. No, obviously it wasn't because you said
3 community members with legal background. Now you're
4 saying there's only one.

5 A. I -- I relied on the information that I
6 received from the individual who the board empowered to
7 undertake this consultation.

8 730 Q. So that --

9 A. And you've spoken to that person.

10 731 Q. So that individual misinformed you?

11 A. I -- I'm not saying that. I'm telling you
12 that -- you are referencing the cross-examination that
13 you had with someone else that I wasn't there for -- yes,
14 you are -- with Soudeh Ghasemi that I wasn't there for.

15 732 Q. No. I'm referencing --

16 A. I'm telling you that I --

17 733 Q. -- what you're telling me.

18 A. I'm telling you that I was informed by the
19 board that this consultation had taken place.

20 734 Q. With many people?

21 A. With -- yes, with various individuals, which
22 is what I said. Not many.

23 735 Q. Oh. So then is it the case that Soudeh then
24 didn't tell us all the people she spoke with?

25 A. I don't know.

1 736 Q. Is that possible?

2 A. I don't know what the cross-examination --

3 737 Q. Because if either she said --

4 --- The Reporter appeals.

5 THE DEPONENT: Sorry.

6 BY MS. MAHDAVIAN:

7 738 Q. Either she's not telling us the full truth or
8 she's not telling you the full truth. It can't be
9 anything else.

10 A. It could just be a case of broken telephone.
11 I honestly don't --

12 739 Q. Broken telephone, we've all been here
13 directly speaking to each other.

14 A. No, no. I've already answered --

15 MR. NEHMETALLAH: Counsel, he's already answered.
16 We're, like, trodding well-trod ground here.

17 MS. MAHDAVIAN: All right.

18 MR. NEHMETALLAH: He's already said he's aware of
19 one lawyer who was asked and various community members
20 aside from that.

21 BY MS. MAHDAVIAN:

22 740 Q. Who are they? Who are the community members?
23 I'm asking.

24 A. I -- I don't have --

25 741 Q. By way of undertaking, I'd like to know who

1 the various community members were that were consulted,
2 please?

3 MR. NEHMETALLAH: Other people that the board
4 spoke to about this issue?

5 MS. MAHDAVIAN: I have no idea. This is his
6 statement in the Affidavit.

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

8 --- UNDERTAKING

9 BY MS. MAHDAVIAN:

10 742 Q. Now, you also say in this same paragraph,
11 "accordingly, the ICC board was advised." By whom?

12 A. I believe this should be referencing the
13 Privacy Commission. Or it's talking about the same thing
14 again where it's on the same point. I --

15 743 Q. "Was advised that in order to avoid exposure
16 to liability from both the Applicants and other members,
17 this issue required a clear guidance by the court."

18 When was this advice given to you?

19 A. Huh?

20 744 Q. When was this advice given?

21 A. Sorry. I mean I already answered that --
22 that this was -- it's part of the consultation that
23 already took place that we've already kind of -- went
24 over. And, in addition, it's referencing the previous
25 point, point 54, which is Exhibit "M," which is the

1 conversation with the federal Privacy Commissioner.

2 And our understanding from that conversation was
3 that if we gave the membership list without getting
4 consent, we would -- we would possibly be in violation of
5 PIPEDA and would open ourselves up to legal action on the
6 basis of that Act. That's what that's saying.

7 745 Q. So you were concerned about getting sued by
8 members by releasing their information; is that what the
9 ICC board was concerned about?

10 A. That was one of the many reasons that we had.

11 746 Q. So you favoured the rights of those members
12 over the rights of these members who were entitled to
13 receive the membership list as of December?

14 A. Again, we've -- this whole process and all
15 our conversations with you and your Applicants from the
16 beginning have been, I think, an effort for the ICC to
17 balance the interests of the many members who have a
18 problem with, even if you think it's just 20.

19 747 Q. What conversations with my clients are you
20 referring to?

21 A. Since the beginning when they first made that
22 Section 307 request --

23 748 Q. When the letter was written to them saying --

24 A. -- and we --

25 749 Q. -- go fly a kite?

1 A. No. And we --

2 MR. NEHMETALLAH: Counsel, the letter didn't say
3 go fly a kite.

4 THE DEPONENT: And we undertook -- and we
5 undertook to gain consent from our members to balance the
6 demands of your clients and the concerns that are genuine
7 from our -- from our members.

8 BY MS. MAHDAVIAN:

9 750 Q. So this --

10 A. Sorry. We've done that over and over again.

11 751 Q. Yes.

12 A. And this is still a part of that. We've
13 never -- we've really tried to balance these and we've
14 tried to be as accommodating as possible within this
15 situation that we're in.

16 752 Q. Do you agree that the best thing that ICC
17 could have done in order to ensure that it's taking into
18 account everybody's interests, balancing as you say
19 you're doing, that you could have sought directions from
20 the court?

21 A. I don't agree with that.

22 753 Q. Really?

23 A. And I don't understand.

24 754 Q. It says here that the advice you received was
25 to get clear guidance by the court.

1 A. I don't understand what you're trying to say.

2 755 Q. I'm trying to say why didn't ICC bring an
3 application to get directions from the court as to what
4 it should do?

5 A. I've already told you --

6 756 Q. No, you haven't. This is a very specific
7 question.

8 A. Let me finish, please. I said I've already
9 told you that the ICC is a voluntary organization under
10 tremendous -- under considerable financial constraints,
11 and a lot of our -- and a lot of our kind of actions can
12 be seen through this light. I mean for us to undertake
13 an application, extremely costly.

14 757 Q. How do you know that? Did you ask? Did you
15 get a quote? Did you hire a lawyer?

16 A. We all know that lawyers cost at least
17 hundred dollars an hour, so --

18 758 Q. Did you think to go to one of your legal
19 community members and ask them to do this on a pro bono
20 basis?

21 A. I --

22 759 Q. The person that you chatted with, for
23 example.

24 A. I don't believe that anybody offered to do
25 that.

1 760 Q. Did you ask?

2 A. My understanding is that they were asked and
3 my understanding -- and then I would say again that I --

4 761 Q. Wait a minute.

5 A. I would say, ask the person who was -- who
6 undertook the consultation according to the minutes.

7 MS. MAHDAVIAN: I'm going to ask by way of
8 undertaking for you to tell me, aside from who the
9 various community members were that you consulted with,
10 if there was anyone other than Sadie Etemad, who was the
11 person with the legal background, to give me the names of
12 those people who were supposedly lawyers who were
13 consulted, but to also ask, as Pouyan now is claiming,
14 apparently for the first time, that the lawyers were
15 asked if they would do this on a pro bono basis.

16 MR. NEHMETALLAH: I don't think he said that.

17 THE DEPONENT: I said my understanding is that
18 that -- those conversations, I would be surprised if they
19 didn't happen. If --

20 MS. MAHDAVIAN: Okay. So he's surprised if they
21 wouldn't happen. So ask, please, if it did happen.

22 MR. NEHMETALLAH: So are we asking if anybody
23 consulted with any lawyer about the potential for
24 pro bono legal services?

25 MS. MAHDAVIAN: Well, he's saying that they

1 didn't get a lawyer because it cost too much money, he's
2 saying that they couldn't bring an application to the
3 court because ICC has limited resources.

4 THE DEPONENT: That's --

5 BY MS. MAHDAVIAN:

6 762 Q. So I'm saying --

7 A. That's not what I said.

8 763 Q. -- did you try -- excuse me. You can't talk
9 while I'm talking.

10 Did you try to get pro bono services? The
11 Iranian community I can tell you, because I was the
12 president of the Iranian Legal Association, lots of
13 Iranian lawyers out there, many Iranian students out
14 there. I bet anything that if the ICC reached out, they
15 could get help.

16 A. That was only one -- okay. And I disagree
17 with that.

18 764 Q. All right.

19 A. And I disagree that -- with your
20 characterization. And it wasn't -- the financial burdens
21 were only one part of what I said. I said that we're a
22 volunteer organization, nobody on our board has a legal
23 background to even know -- this is the first time I've
24 even considered the possibility of us -- I didn't even
25 know it was possible to, like, procedurally to ask for an

1 application.

2 765 Q. Well, you -- you just struck a legal
3 committee, apparently, recently?

4 A. To fill some of these deficiencies. I hope
5 understand.

6 766 Q. I don't know. I'm not part of the ICC board.

7 A. I mean, it's happened since this litigation
8 has been ongoing, so.

9 MR. NEHMETALLAH: Counsel, to be sure -- I didn't
10 give this undertaking -- I'm still unclear --

11 MS. MAHDAVIAN: I just want to know, and it's on
12 the record, my request, other than chatting with a family
13 law lawyer, which is -- I don't know how you could rely
14 on that to say you sought informal legal --

15 THE DEPONENT: I think it's the first corporation
16 in history -- (overtalking)

17 MR. NEHMETALLAH: -- (indiscernible)

18 BY MS. MAHDAVIAN:

19 767 Q. What else did ICC board members do to
20 discharge their fiduciary obligations to act in the best
21 interests of this corporation who have now been served
22 with a legal request? Did they try to get clear guidance
23 from the court as apparently they were advised to do?
24 Did they get a legal opinion to make sure they were doing
25 the right thing by sending these nonsense emails out to

1 people scaring the heck out of them? Any of that?

2 And other than Sadie, who is all that Soudeh
3 said, did you speak to anybody else?

4 MR. NEHMETALLAH: I'll undertake to inquire if
5 they spoke to any other legal professional.

6 --- UNDERTAKING

7 BY MS. MAHDAVIAN:

8 768 Q. And that's not just in December when the
9 request came in. In January, in February, when I wrote
10 to -- when I wrote to ICC and said I've been retained
11 now, I'm legal counsel, I have been instructed to bring
12 an application, did you at that point in time go seek
13 legal advice?

14 A. When was this? What year was this?

15 769 Q. February 25th, 2019.

16 MR. NEHMETALLAH: Counsel, I'll do up until my
17 retainer.

18 --- UNDERTAKING

19 MS. MAHDAVIAN: Sure. But let me ask Pouyan.

20 THE DEPONENT: We may have. I honestly don't
21 know. I don't know what to tell you.

22 BY MS. MAHDAVIAN:

23 770 Q. You don't know or you don't want to say?

24 A. No, I honestly can't -- I can't tell you --

25 771 Q. That's only from a few months ago --

1 A. -- conversations that I've had. I don't know
2 what you're expecting -- you have a better memory than I
3 do. I don't -- I can't answer that question. I don't
4 know.

5 772 Q. In fact, Pouyan, you wrote a response to me
6 and you regurgitated the position that Soudeh had taken
7 in her -- I think it was December and talked about PIPEDA
8 and whatever, and I said go get advice from a lawyer.
9 Did you at that point go get advice from a lawyer?

10 A. I don't recall. Honestly --

11 773 Q. That's March 1. In fact, all that happened
12 is --

13 A. Sorry. You're asking me if on March 1 I --
14 immediately between March 1 and March 26?

15 774 Q. Yes.

16 A. So you're asking between those three weeks?
17 I mean I don't know what -- what is the point of that
18 question.

19 775 Q. The point is --

20 A. I mean at some point obviously --

21 --- The Reporter Appeals.

22 THE DEPONENT: -- we retained counsel. Sorry.
23 Go ahead.

24 BY MS. MAHDAVIAN:

25 776 Q. The point is Bijan calls the Privacy

1 Commissioner again on March 1, and that's all you keep
2 doing. But you don't bother going and sitting down with
3 a lawyer and talking to a lawyer now that there's a
4 lawyer involved.

5 A. If you don't like our strategy, I mean I
6 don't know what to tell you. Again, I've told you before
7 we're not lawyers.

8 777 Q. That's not about being lawyers, sir. It's
9 about being responsible board members.

10 A. A responsible board member with --

11 778 Q. Yes.

12 A. -- more legal training.

13 779 Q. It has nothing to do with legal. Not every
14 board has a lawyer on it but every board can get a legal
15 opinion.

16 So paragraph 61, you say: "Due to the switching
17 of roles and the absence of some ICC board members, the
18 board has been facing a backlog." (as read)

19 So what switching of roles are you talking about?

20 A. It's the same one that was in August that I
21 mentioned.

22 780 Q. So since August of 2018 the backlog is as a
23 result of that?

24 A. Yeah. I mean there were real issues when the
25 rules were changed, yes. I mean --

1 781 Q. And yet you've managed to produce minutes
2 from -- that predate August and minutes that postdate
3 August?

4 A. I --

5 782 Q. So how does that switch in August affect --

6 A. I mean I don't know if you want me to get
7 into group dynamics. Okay. So, I already had the roles
8 of VP, I took on the roles of the secretary.

9 783 Q. Yes.

10 A. To juggle both is not a simple task. And
11 I'll be frank, I was doing a lot of work and I continue
12 to put in a lot of hours for this organization.

13 784 Q. I believe you.

14 A. And what I -- but I mean I'm not
15 saying na-ne-na-ne-na, that kind of thing, but -- sorry,
16 but -- or, oh, woe is me, I guess -- I'm not saying it
17 like that. I'm saying, frankly, I mean it's extremely --
18 it's not simple to do this kind of task and switch back
19 and forth between the more managerial/administrative
20 stuff into the recordkeeping stuff and then -- yeah, I
21 mean I have -- my time is limited.

22 785 Q. When is the -- has there been any discussion
23 among this board about when the 2019 AGM is going to take
24 place?

25 A. We were hoping to have it take place before

1 what we were -- we were under the impression that we had
2 to within 15 months, I believe --

3 786 Q. No. Before this court application -- the
4 court application was March 21 -- was there any
5 discussion in the board of holding the AGM before you
6 even knew this lawsuit was coming down the pipe?

7 A. Holding the AGM at all?

8 787 Q. Yes.

9 A. So you're saying before December?

10 788 Q. No. Before March.

11 A. Sorry. Before March 1st? Not that I recall,
12 no.

13 789 Q. So in the meetings of February, March --
14 because we don't have those minutes. We only have --

15 A. I can't guarantee they won't show up in the
16 minutes. Honestly, I don't know. Again, maybe you have
17 a better memory than I do.

18 790 Q. It's not a memory. I don't even have the
19 minutes, so --

20 MR. NEHMETALLAH: I think we undertook to --

21 THE DEPONENT: Yeah, multiple times.

22 BY MS. MAHDAVIAN:

23 791 Q. I don't have --

24 --- The Reporter Appeals.

25 BY MS. MAHDAVIAN:

1 792 Q. Sir, I don't have -- so I don't know -- if a
2 discussion has taken place in the months of February,
3 March about the AGM, when should we have the AGM, what
4 date, when should notice -- those types of discussions?

5 A. It's -- it's possible that -- I don't think
6 it was -- I -- I don't recall it being discussed at --
7 before the litigation started. I don't recall.

8 793 Q. Because we know, obviously, since the
9 litigation we're all agreed that the AGM should be on
10 hold, but I'm trying to figure out before the litigation.

11 A. You know, I -- I can't tell you certainly but
12 not that I remember.

13 794 Q. We'll see what the minutes say, I guess.

14 A. Sure.

15 MS. MAHDAVIAN: All right. I'm going to take
16 just a short break. I have some probably cleanup
17 questions and I'll just figure out what they are.

18 --- Recess taken at 4:21 p.m.

19 --- Upon resuming at 4:31 p.m.

20 BY MS. MAHDAVIAN:

21 795 Q. Would you agree, Pouyan, based on your
22 experience as a board member that the typical pattern is
23 that there's a spike in membership leading up to the AGM
24 normally, members paying to become members or renew?

25 A. Sorry. Is that a question or a statement?

1 796 Q. Yes.

2 A. You're saying that there is a spike in
3 membership?

4 797 Q. Yes. My understanding is that typically the
5 biggest number of renewals or members -- new members
6 joining is leading up to the AGM so obviously people can
7 vote. Do you agree with that?

8 A. With a caveat. I would say that the biggest
9 spike in memberships are around contested elections.

10 798 Q. Contested elections?

11 A. Yes.

12 799 Q. And if it's not a contested election, you
13 won't have as many; is that what you're saying?

14 A. I haven't -- I would say -- maybe I would --
15 I would say that it's the contestation, it's the election
16 itself that drives a lot of that effort to enter. So if
17 people feel like -- but, yeah, that's basically what I'm
18 saying, if that makes sense.

19 You're basically -- you're right. I'm just
20 saying the reason behind. It may be unneeded information
21 but --

22 800 Q. So is there an agreement on that, that --

23 MR. NEHMETALLAH: I understood that there was an
24 agreement, that there is a --

25 THE DEPONENT: There is --

1 --- The Reporter Appeals.

2 BY MS. MAHDAVIAN:

3 801 Q. All right. And you're saying it's especially
4 sexy when there's a contested election?

5 A. Your words. Not sexy to me.

6 802 Q. When was the first time online voting was
7 introduced for ICC?

8 A. As far as I know, the first time -- this is
9 before I was -- I don't think I had -- I think the first
10 time was in 2017.

11 803 Q. So when you were running in 2016, there was
12 no online voting; correct?

13 A. I can't say. It was a long time ago. I know
14 it's not good to hear. I don't...

15 804 Q. I mean that's easily verifiable?

16 A. It is easily verifiable. I'm sorry, I'm not
17 trying to not answer your question. I just don't want to
18 say something that --

19 805 Q. So can we by undertaking confirm that --

20 MR. NEHMETALLAH: Confirmation when the --

21 BY MS. MAHDAVIAN:

22 806 Q. -- online voting was first introduced.
23 My information, it was 2017, that the 2016
24 election --

25 A. I --

1 MR. NEHMETALLAH: What we've heard through the
2 cross-examinations, I think, has been 2017, and I'm
3 fairly confident of that, but I'll give the undertaking.

4 --- UNDERTAKING

5 BY MS. MAHDAVIAN:

6 807 Q. Thank you. Yesterday Soudeh confirmed that
7 the board decided to disable the email reminders that go
8 out. Why is that?

9 A. So I don't know what Soudeh said but -- so
10 this is actually like a complicated thing that happened
11 before I was secretary. So -- and what I've learned --
12 because you mentioned it in your application record, I
13 dug into it and saw what was happening.

14 So my understanding is around May of 2018, after
15 the election, there was a post on Let's Talk Iranian
16 Canadian Congress in Farsi by Mohamed Tajdoulat (ph.).

17 --- Off-the-record discussion.

18 THE DEPONENT: So Mohamed Tajdoulat, basically
19 what he was saying in that post was oh, look, I was sent
20 this expiry reminder, and he was basically saying that I
21 can use this expiry reminder to game (ph.) the system,
22 and this is -- and I have the post.

23 BY MS. MAHDAVIAN:

24 808 Q. To game the --

25 A. To game the voting kind of system. So from

1 what I understand, it was done after that.

2 And I should note, and I'm not saying that to
3 kind of throw it out there, but I should note that one of
4 your Applicants actually commented underneath that post
5 and said something to the effect of this is why we don't
6 trust them. So -- and I believe that was -- the name on
7 Facebook is Kamnoosh Irani (ph.), so.

8 Anyway, I'm not trying to throw it out there, but
9 this was something that caught -- it was a criticism that
10 was made of the board that this expiry system could be
11 taken advantage of.

12 809 Q. Okay, I'm going to stop you. So this was a
13 post in May 2018?

14 A. May 17th, I believe somewhere around there,
15 2018.

16 810 Q. Can we have a copy of that post?

17 A. Yes. I believe I --

18 MR. NEHMETALLAH: Yes. Just for the record
19 though, it is publicly available. It is on the -- but
20 I'll --

21 MS. MAHDAVIAN: Well, I mean he's obviously dug
22 deep and --

23 THE DEPONENT: Yeah, I mean --

24 MR. NEHMETALLAH: -- he remembers the date, which
25 is --

1 MR. NEHMETALLAH: What date is this? May...?

2 MS. MAHDAVIAN: 17.

3 THE DEPONENT: May 17. I mean don't quote me but
4 I believe it was May 17.

5 MS. MAHDAVIAN: All right. And --

6 MR. NEHMETALLAH: May 17 Facebook -- sorry.
7 Facebook posting re --

8 MS. MAHDAVIAN: Let's Talk ICC.

9 MR. NEHMETALLAH: Yes. Like regarding, I guess,
10 online renewals.

11 MS. MAHDAVIAN: Well, according to Pouyan, this
12 is --

13 THE DEPONENT: Expiry. This is about the expiry.

14 MR. NEHMETALLAH: Online expiries. Okay.

15 THE DEPONENT: Expiry notifications.

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

17 --- UNDERTAKING

18 THE DEPONENT: I mean, I went in to see those, so
19 this is what I was --

20 --- The Reporter Appeals.

21 THE DEPONENT: So I went in to see what was
22 happening and why this occurred.

23 BY MS. MAHDAVIAN:

24 811 Q. All right. And, I'm sorry, was this then
25 discussed in the board, the decision to disable the

1 renewal function?

2 A. I don't -- I don't believe it was discussed.
3 I believe that it was a discussion that happened between
4 the secretary and the president. I don't know if it was
5 discussed with the board. But I know it was --

6 812 Q. So between Soudeh and --

7 A. From what I understand. And the secretary at
8 the time, from what I understand.

9 813 Q. And Younes?

10 A. And Younes.

11 814 Q. So are you saying that this function was
12 disabled as of May?

13 A. On or about May. So it was in response to
14 that. I don't know exactly when and I don't have that
15 information from NationBuilder.

16 MS. MAHDAVIAN: Well, so then that's something if
17 he can't tell me, I'd like to know when it was
18 disabled.

19 MR. NEHMETALLAH: I'm almost certain we provided
20 that earlier, when the online renewal, but I'll
21 provide --

22 THE DEPONENT: That's different.

23 MS. MAHDAVIAN: No. The online application
24 process in his Affidavit is -- no, it's in his May 13
25 email that says that online registration is not

1 available.

2 THE DEPONENT: You're asking me something else.

3 BY MS. MAHDAVIAN:

4 815 Q. I'm now asking about the renewal reminders
5 that are sent --

6 MR. NEHMETALLAH: Renewal notices.

7 THE DEPONENT: Expiry notices.

8 BY MS. MAHDAVIAN:

9 816 Q. Your email is sent saying your membership is
10 going to expire soon, why don't you join --

11 MR. NEHMETALLAH: When that was disabled?

12 MS. MAHDAVIAN: Yes.

13 MR. NEHMETALLAH: I will give -- the undertaking
14 I will give --

15 THE DEPONENT: If it's possible.

16 MR. NEHMETALLAH: Everything's best efforts.

17 What I'll do is I will get the date the renewal notice
18 function was disabled.

19 --- UNDERTAKING

20 BY MS. MAHDAVIAN:

21 817 Q. Yes. Can you ask Younes please, undertake to
22 ask Younes if he's the one who disabled the function?

23 A. Sure.

24 --- UNDERTAKING

25 BY MS. MAHDAVIAN:

1 818 Q. And if so, what date?

2 MR. NEHMETALLAH: I can ask who disabled the
3 function.

4 --- UNDERTAKING

5 MS. MAHDAVIAN: Yes. Well, he's saying it was a
6 discussion between Soudeh and Younes.

7 THE DEPONENT: That's what it was.

8 MR. NEHMETALLAH: Okay. One moment.

9 BY MS. MAHDAVIAN:

10 819 Q. Was that not something that the board should
11 have decided on? Like, how is that a decision that the
12 president just makes on her own?

13 A. I mean I don't -- I think that the idea
14 was -- and I've spoken to Soudeh about it since -- I
15 believe that the idea was that we would try to see how it
16 could be kind of fixed eventually and to kind of see how
17 we could go forward. But, I mean, there was a
18 considerable amount of pressure. I mean --

19 820 Q. One post is considered pressure?

20 A. Well, it was one post Liked by a bunch of
21 people. I mean usually there's a cross-share. I don't
22 know where else it was cross-shared to. And people were
23 commenting underneath. I mean, it becomes one of those
24 things.

25 And frankly, I'll be completely honest,

1 immediately after the election, your clients and the
2 ICC4ALL group generally really had the elections
3 committee and ICC and the legitimacy of the new board,
4 because of irregularities, I mean they said don't vote
5 online, de-da de-da, and this caused -- I mean, there was
6 pressure as a result of that. I mean like it seriously
7 undermines the legitimacy of the board and the
8 organization and the election.

9 So, you know, I mean within -- within the
10 situation that we had with the information that we had
11 and under this pressure that we were under, I mean that
12 the board was under at the time, the secretary and the
13 president, I think that it was not an illogical,
14 irrational thing to do.

15 821 Q. Was the decision announced to the membership
16 that this was going to happen?

17 A. I don't think so.

18 822 Q. Why is that? What didn't you say, "in
19 response to the concerns expressed, we are hereby
20 disabling --"

21 A. I don't know. I can't answer that question.
22 This happened before I was secretary.

23 823 Q. But you were a board member. I mean, you
24 can't do that. Just because you weren't secretary --

25 MR. NEHMETALLAH: He already said it was between

1 the secretary and the president, the decision.

2 BY MS. MAHDAVIAN:

3 824 Q. No, but you ultimately knew as a board member
4 that this was done; no?

5 A. I actually didn't, and I told you I didn't,
6 so that was --

7 825 Q. So you're saying you just found out as a
8 result of this litigation in my reply materials?

9 A. I mean, it was a decision that was made by
10 the secretary. It was kind of a switch on NationBuilder
11 that was flicked.

12 826 Q. Yes.

13 A. And it was flicked, and we kind of -- it
14 became -- I became aware of it after the reply and had to
15 dig through it and see what that decision was, what
16 happened. And then people started kind of -- that's when
17 I was kind of told and pointed to this post, which --
18 yeah.

19 827 Q. Well, we also know that the board disabled
20 the online registration; correct?

21 A. After May 13th.

22 828 Q. After May 13?

23 A. Is that what you're referencing?

24 829 Q. Yes. So I wanted to know when. So you're
25 saying it was after --

1 A. So I mean it's whenever the email was sent.
2 So when -- in the email that's sent, it says immediately,
3 and I believe it was done immediately after.

4 830 Q. So let me ask you though because Mr. Shams
5 has been writing to you since March to renew his
6 membership, so I would assume that he couldn't do it
7 online?

8 A. No, that's -- okay, I'll let you finish. Go
9 ahead.

10 831 Q. Isn't that the case?

11 A. No, that's incorrect. So he was -- he was
12 forwarded multiple times to the link where he could renew
13 it online and he didn't do so. He said he wanted to do
14 it in person or something to that effect. And he -- and
15 after that, his -- I mean after being dealt with by the
16 communications kind of thing, the communications
17 director, which again was not -- it's not me, it's not
18 the secretary, his email was forwarded to me as the
19 secretary and I informed him after going through the kind
20 of by-laws and talking to the -- like, about the previous
21 practice of the ICC, I saw that yeah, I mean if somebody
22 wants to do it in person, they can, and then they should
23 be allowed to do so.

24 So I offered -- I offered for him to meet me, to
25 give me some times over the next two weeks from when I

1 sent that email -- I don't know when it was exactly,
2 sometime in March or early May or something like this
3 anyway. Sorry. Anyway, so he -- and he said I want to
4 come to the next board meeting and that's when I want to
5 renew it. I -- I mean between --

6 832 Q. Are the board meetings open?

7 A. The board meetings -- so the practice has
8 been the board meetings are open to the extent that if --
9 any member can request to attend a meeting, and as long
10 as kind of the board doesn't determine that -- some
11 session, some discussion of that meeting should be
12 in-camera, then they can attend.

13 Anyway, we have not had an in-person board
14 meeting since partly because of this case and how much
15 time it's taking with some of the board members, so kind
16 of we've -- what we've done instead, we've mostly phoned.
17 So my determination was, and maybe I should have -- I
18 mean, when you mentioned his name in your reply, I was
19 kind of was really surprised because my understanding was
20 he was given the link to renew online. He didn't. I
21 then asked him so okay maybe he had a problem to do it
22 online, and I asked him do you want to do it in person,
23 give me some times over the next two weeks, and he said
24 kind of no, like, don't worry about it. Like, in a sense
25 that I'd rather just wait until the next board meeting.

1 And to me, that signalled -- and maybe I should
2 have emailed and said, look, we don't have any in-person
3 board meetings scheduled for awhile, but to me that
4 signalled it's not that urgent. And I made a mental note
5 to myself that I would email him back when the board --
6 sorry, the next time the board meeting -- the board had
7 an in-person meeting, so.

8 And since then I've contacted him and he's
9 renewing his membership today.

10 833 Q. Today?

11 A. Yes.

12 834 Q. Wow. Today's the day, huh?

13 A. Mm-hmm.

14 835 Q. Now, I appreciate that you said that you dug
15 deep and you spoke to Soudeh to find out why the renewal
16 notices were disabled and not going out, but did you ask
17 her why instead of shutting down the system, a
18 rectification or some kind of solution wasn't offered?

19 A. I -- I didn't ask. I assume that the answer
20 would be -- I mean none of us are tech wizards. I mean,
21 it's a generic online platform. We don't have the
22 resources to make a custom platform and kind of there's
23 only so much you can do with an existing platform, so.

24 836 Q. And, I'm sorry, I don't understand, perhaps
25 you can explain to me what you understood Mr. Tajdoulat

1 meant when he said that this can be used to game the
2 system?

3 A. So basically what my understanding was from
4 that post --

5 837 Q. Yes?

6 A. Well, I mean the understanding of the people
7 who made that decision of the secretary and the president
8 at the time was -- from that post was, look, this
9 undermines the legitimacy and the credibility of the
10 election.

11 838 Q. If a renewal notice is sent?

12 A. That's what I'm trying to say. So it's like
13 a specific kind of thing. So the renewal notice was
14 somehow -- so what that post was saying, basically, from
15 my understanding, is that the renewal notice can be used
16 to give a person multiple votes. That's what I
17 understand from that post. And that was seen as a kind
18 of way of delegitimizing the organization and casting
19 aspersions.

20 839 Q. I don't -- actually, my understanding from
21 the evidence that I believe my client gave was that it
22 was the fact that after you register -- not when you
23 receive a reminder that you should go renew but, rather,
24 after you register online, there's no way to verify that
25 multiple people using a credit card might be receiving

1 additional duplicate ballots and had nothing --

2 A. What are you --

3 840 Q. -- to do with the renewal.

4 A. What evidence -- what evidence are you
5 talking about because what I'm talking about wasn't in
6 your client's evidence?

7 841 Q. No. This was Cross-examination yesterday by
8 your lawyer.

9 MR. NEHMETALLAH: But I think we're talking about
10 two different things.

11 THE DEPONENT: This is a different --
12 --- The Reporter Appeals.

13 MR. NEHMETALLAH: It seems like these are two --
14 I think he's talking about issues with the renewal notice
15 that were discussed online and you were discussing issues
16 with just signing up.

17 BY MS. MAHDAVIAN:

18 842 Q. Yes. But I guess what I'm still trying to
19 understand, am confused about, is how can an email that
20 says don't forget to renew your membership be used to
21 game the system and why would the board disable that
22 function to just remind people to renew. That makes
23 absolutely no sense.

24 A. So I mean, I can't get into the
25 technicalities of why -- the decision that was made was

1 based on that criticism that was made and Liked and
2 shared or whatever, commented on by multiple people. So
3 that was the perception and that was the claim that was
4 made. And I assume that the secretary at the time kind
5 of saw that and said that there was some legitimacy to
6 that claim or at least a concern enough for them -- and
7 took that to the president and they made the
8 determination that it was better to safeguard the --

9 843 Q. And for sure this was done in May of 2018 --

10 A. I can't tell when --

11 844 Q. -- as opposed to --

12 A. I said it was done sometime after. Sorry. I
13 just want to correct the original. It was done sometime
14 after that post. That's all I can say. I don't know
15 exactly when.

16 845 Q. All right.

17 MR. NEHMETALLAH: And we gave the undertaking --

18 BY MS. MAHDAVIAN:

19 846 Q. Yes. Thank you. So now that online
20 registration has also been disabled, the only way for
21 people to join is to come to your office in North York?

22 A. At the moment -- so at the moment that is --
23 we have decided that we would like -- or that it's -- for
24 people to truly understand what the situation is and
25 with -- with all of these -- with the new board policy

1 and these relatively idiosyncratic kind of legal
2 obligations that we have and then the situations in which
3 membership can be shared with other members -- I'm sorry,
4 the membership registry can be shared with other members,
5 we decided that -- and considering the fact that many in
6 our community don't have the language ability to kind of
7 dig that up themselves and really understand, that we
8 would -- we would rather -- we would for the time being
9 have people come in in person so that the situation can
10 be explained to them before they sign up or they renew
11 their membership.

12 847 Q. So if someone is not in Toronto or Ontario,
13 that's it, they're out of luck?

14 A. So far we haven't had that situation. So
15 I've thought about what could be the ways of going around
16 that. So, again, we haven't -- hopefully before we --
17 once this litigation is over and then we can really sit
18 down and -- or even, sorry, before that I mean -- but --
19 so before the memberships really start ramping up, any
20 requests --

21 848 Q. You're sort of --

22 A. Sorry.

23 849 Q. I'm sorry. You're --

24 A. No. No. So --

25 850 Q. Not to be disrespectful, you're rambling --

1 A. No. No. That's fine. So what I'm saying is
2 before the requests starts ramping up, so we're coming up
3 with a way to do that. If somebody lives outside of
4 Toronto, absolutely -- or Ontario, absolutely I would
5 find a way to -- to do -- to fulfill both of these kind
6 of -- to allow them to register while at the same time
7 informing them which was the reason for closing the
8 online renewal.

9 851 Q. I'm going to put it to you that in my view,
10 you disabled the online registration because that was
11 just another way to discourage people from joining, so
12 that the list that you ultimately handed over would be
13 smaller?

14 A. I disagree with that. First of all, that was
15 never our intention. Second of all, I mean we gave your
16 Applicants the list, you know -- I mean five days after
17 we informed people and changed that. I mean within those
18 five days, there's no reason that we would expect many
19 people would sign up at that time.

20 852 Q. And what is it that you tell people who come
21 in in person?

22 A. We tell them the --

23 853 Q. Is there a script prepared that you all read
24 from that can make sure to be a unified explanation?

25 A. So far, it's only Soudeh that's gone, that's

1 done this. I can dig into exactly what we said, but
2 we're all so familiar with this case at the moment, but I
3 can try to see what the script is.

4 854 Q. The membership form was changed as well?

5 A. I can't recall exactly how it was changed but
6 we can -- that's -- yeah, we can get that to you.

7 855 Q. You didn't change it?

8 A. I changed it. I don't remember -- I mean I
9 was -- (indiscernible) -- that changed it. I don't
10 remember what the changes were exactly.

11 But it was basically -- from what I remember, it
12 was basically the membership form just took into account
13 that this -- that Section 307 request could be made, from
14 what I remember.

15 856 Q. So it says the words Section 307?

16 A. I'm not sure about that, but basically what
17 it's saying is that 'do you understand' more or less what
18 it's saying, to paraphrase, 'do you understand that your
19 membership -- your information -- your contact
20 information may be shared with other members of the
21 corporation?'

22 857 Q. Okay. All right. And can you please tell
23 me -- and, I'm sorry, at this point I don't know if I've
24 asked this, but how many members expired after -- between
25 the date my clients delivered their December Affidavit

1 and your May 18 list or whatever that date was?

2 A. So --

3 858 Q. Expiries versus terminations or
4 cancellations.

5 A. So I can get that to you. I don't have that
6 information off the top of my head but I can get that to
7 you. It's relatively easy.

8 MR. NEHMETALLAH: I don't even know if we can --
9 I'm just thinking practically. I mean you have the
10 ballpark number; right? You know -- you have the
11 number -- I provided you the number on the December list
12 and I -- and you have the purported May 17th list.

13 MS. MAHDAVIAN: So I --

14 MR. NEHMETALLAH: And you have some sense that it
15 was at least 20 -- or it was around 20 cancellations, so
16 it would be the difference between those numbers less 20.

17 BY MS. MAHDAVIAN:

18 859 Q. So you're telling me that the expiry versus
19 termination is 737 minus 20 minus 91?

20 MR. NEHMETALLAH: Yes, that's --

21 BY MS. MAHDAVIAN:

22 860 Q. So that's 600 members expired?

23 A. It would be -- 787 minus 20, that's 717.

24 (sic)

25 861 Q. Plus 91?

1 A. Plus 91?

2 862 Q. Well, the 91 --

3 A. Minus 91.

4 863 Q. 91 plus 20 is 111 minus the number at
5 December?

6 MR. NEHMETALLAH: I guess it would be the
7 existence of the list on May 13th, the size of the list
8 on May 13 -- or the day before that email got sent out.

9 MS. MAHDAVIAN: Why?

10 MR. NEHMETALLAH: Because the terminations come
11 after.

12 THE DEPONENT: Yes, it would be 797 minus 120,
13 something in that ballpark.

14 MR. NEHMETALLAH: I mean, ultimately it's a
15 ballpark too because the number that I provided you for
16 the December list included --

17 BY MS. MAHDAVIAN:

18 864 Q. Had some duplicates?

19 A. There are duplicates.

20 865 Q. You said that. Okay. So --

21 MR. NEHMETALLAH: But it's a sizeable number. It
22 seems like it's about, you know, 500-and-something?

23 BY MS. MAHDAVIAN:

24 866 Q. What I would like to know is -- and the
25 reason this is important and, quite frankly, what we will

1 be saying to the court is that each month that passed
2 after you didn't deliver on December 27th, another group
3 of people expired, and as you waited, as the months went
4 by, more people expired.

5 So I'd like to know per month how many kept
6 expiring. That's what I want.

7 MR. NEHMETALLAH: So you want the monthly --

8 THE DEPONENT: I mean, this is the same thing --
9 Sorry, but this is the same thing you asked for earlier;
10 right?

11 MS. MAHDAVIAN: No, it isn't.

12 MR. NEHMETALLAH: Oh, it is. Because we've
13 already undertaken to do the dates the emails went out;
14 right? And those -- one was in January, one was in
15 March -- or two were in March.

16 MS. MAHDAVIAN: Yes, one was end of January, one
17 was in mid-March, and one was in April.

18 MR. NEHMETALLAH: Yes. So I think that covers --
19 and then we have the dates, the May 5th --

20 BY MS. MAHDAVIAN:

21 867 Q. Yes. So at the end of the day, whatever I
22 guess graph you want to use, I'm interested to know how
23 the membership pool was shrinking each month?

24 MR. NEHMETALLAH: Yes, I appreciate that. I
25 think you'll notice as well probably the largest would be

1 around the time of the AGM would have been held because
2 the evidence has been borne out that there was a lot of
3 people signed up.

4 MS. MAHDAVIAN: So that would be --

5 MR. NEHMETALLAH: Because there was about 500
6 people who signed up for the last AGM.

7 MS. MAHDAVIAN: 500?

8 MR. NEHMETALLAH: Yes, and of that 500, their
9 expiry would have been in April of 2019. So that right
10 there, my assumption would be, would have been accounted
11 for --

12 MS. MAHDAVIAN: The largest -- okay. And so
13 whatever information you're giving me with metadata logs,
14 whatever --

15 MR. NEHMETALLAH: Yes, I think you'll see that.
16 I think -- I can undertake but I think you're going to
17 get multiple -- like, one answer that will answer
18 multiple undertakings.

19 --- UNDERTAKING

20 MS. MAHDAVIAN: All right. Okay, sure, I mean,
21 that's fine and that seems to be the most efficient way
22 to do it.

23 MR. NEHMETALLAH: I feel confident you're going
24 to receive this information you're looking for through
25 other undertakings.

1 BY MS. MAHDAVIAN:

2 868 Q. And so you told me earlier, and we'll finish
3 up soon, but you also made calls to people?

4 A. So -- yeah. So --

5 869 Q. Was this action authorized by the board or
6 did you just decide to do it on your own?

7 A. So myself and Soudeh are authorized -- myself
8 and Soudeh are authorized by the board to do what is
9 needed with this case. That's -- that's --

10 870 Q. What does that mean?

11 A. So I mean we're authorized to take care of
12 this case.

13 871 Q. Ah.

14 A. So that --

15 872 Q. So you two are the instructing clients kind
16 of? Yes?

17 A. You could say that.

18 MR. NEHMETALLAH: I can advise they're the
19 instructing clients.

20 THE DEPONENT: I mean, so the board trusts us and
21 our kind of judgment. They know what the situation --
22 they know -- they were informed of the May 13th policy
23 change and they all agree -- well, they agreed to it,
24 and --

25 BY MS. MAHDAVIAN:

1 873 Q. Sorry. What policy change?

2 A. The May 13th email, the one that summarized
3 the policy change and the whole situation.

4 874 Q. Okay.

5 A. Right? I mean May 13, am I --

6 MR. NEHMETALLAH: No, you're correct.

7 THE DEPONENT: You made me think -- so -- so they
8 were aware of that change but --

9 BY MS. MAHDAVIAN:

10 875 Q. And that's in a meeting? That's in a
11 meeting?

12 A. I don't know if it's in any of the minutes
13 that we gave you. It would have been after --

14 876 Q. It wouldn't be in the minutes you've given me
15 but would it be in a meeting?

16 A. That we were empowered? Yes. Yes.

17 877 Q. That you discussed and decided on a policy
18 change?

19 A. It should be, yes. So the... Sorry. What
20 was your --

21 878 Q. I'm sorry, while we're on that, May 13 --

22 A. I want to answer your question.

23 879 Q. -- where is the policy change you're talking
24 about?

25 MR. NEHMETALLAH: The email that's sent out to

1 say that beginning May 19th --

2 THE DEPONENT: No, no. The policy change --

3 MR. NEHMETALLAH: Is that not the May 13th email?

4 BY MS. MAHDAVIAN:

5 880 Q. No. I mean, if you take a look at May 13th
6 email, Exhibit "O," it just says, "After extensive
7 consultation..."

8 MR. NEHMETALLAH: Yes, so what it says is, if
9 you'll forgive me, Counsel, I'll get involved.

10 MS. MAHDAVIAN: Please do.

11 MR. NEHMETALLAH: In the second paragraph, or
12 rather --

13 THE DEPONENT: Even in the first paragraph.
14 Sorry.

15 MR. NEHMETALLAH: In order to access the list of
16 members -- yeah, it's the first paragraph.

17 THE DEPONENT: The board has decided --

18 MR. NEHMETALLAH: Yes, the board has decided it
19 will be making available the list of membership to all
20 current members in good standing.

21 BY MS. MAHDAVIAN:

22 881 Q. Oh, I see. So you're describing that as a
23 policy change, as opposed to following the law?

24 MR. NEHMETALLAH: It's a policy -- I mean this is
25 a legal question.

1 THE DEPONENT: Okay. So your original --
2 question.

3 BY MS. MAHDAVIAN:

4 882 Q. You've decided to finally comply with the
5 law?

6 MR. NEHMETALLAH: Counsel, that's a legal
7 determination --

8 THE DEPONENT: (overtalking). I feel like I'm
9 going back in --

10 MS. MAHDAVIAN: We're all laughing because it's
11 true.

12 THE DEPONENT: Okay, so what is -- what is the --
13 so your question was, was that discussed with the board?

14 BY MS. MAHDAVIAN:

15 883 Q. Yes.

16 A. The policy change was discussed with the
17 board. I -- what I did was I looked at -- as the
18 secretary, I looked at NationBuilder, I saw who -- I
19 looked on NationBuilder, I looked at who opened the
20 emails that were sent out.

21 884 Q. Yes?

22 A. So there's like an opening thing that tells
23 us, allows us to track it. Those who had not opened the
24 emails by I believe Thursday is -- or -- it might have
25 actually been on Friday. It was on the day that -- hours

1 before the midnight. Anyway, the day when the policy was
2 to go into effect, I called I believe everybody on the
3 list, at least --

4 885 Q. How many?

5 A. I can't recall. I honestly --

6 886 Q. I'd like to know the number?

7 A. Sure. But all I --

8 MR. NEHMETALLAH: We can provide -- yes.

9 --- UNDERTAKING

10 THE DEPONENT: I don't know if it's possible to
11 give you the full number. I can tell you the number of
12 people who --

13 BY MS. MAHDAVIAN:

14 887 Q. Well, you just told me you called everybody
15 who didn't open the email?

16 A. At that point.

17 888 Q. Yes.

18 A. Sorry. I'm going to stop you there. I can't
19 take a snapshot of --

20 MR. NEHMETALLAH: They may have already --

21 THE DEPONENT: They may have opened it since;
22 right?

23 --- The Reporter Appeals.

24 BY MS. MAHDAVIAN:

25 889 Q. I understand, but did you not write down

1 their number to call them? Did you not make notes after
2 you spoke to them?

3 A. I mean I --

4 890 Q. I mean you're the secretary.

5 A. There's no reason for me to hide this. I
6 don't -- it would be difficult for me to find that
7 information, I think. But if I can find out for you,
8 I'll -- we'll find it for you. But if I can finish.

9 --- UNDERTAKING

10 BY MS. MAHDAVIAN:

11 891 Q. Roughly how many phone calls did you make?
12 Was it one? Was it ten?

13 A. It must have been -- it must have been in the --
14 50?

15 892 Q. You made 50 phone calls?

16 A. Yes.

17 893 Q. So you had time to make 50 phone calls? You
18 volunteered to make 50 phone calls?

19 A. I volunteered many more hours for this
20 organization. That was a small task, relatively, but
21 yeah, I -- that was my afternoon.

22 So I called everybody and I tried to explain to
23 them, using the language that we had on our -- on our
24 email, and in Farsi as needed, I translated, and -- to
25 inform them what was happening, and that was -- that was

1 that, yes.

2 894 Q. And did you catch any fish as a result of
3 those calls?

4 A. There was only -- I think -- I can't -- I
5 didn't keep track of who told me yes, because I told them
6 all to email, but I told them -- it was maybe -- it was
7 maybe three, four.

8 Not that many people picked up. It was kind
9 of -- I -- I realized that I was operating under the
10 assumption that people knew what was happening, but then
11 I realized that people weren't opening their emails, it
12 was going to promotions or spam or it was bouncing back,
13 and I felt like I had a duty to inform people.

14 895 Q. So in the email that you send out on May 13,
15 you say because of the significant financial burden that
16 the legal action has put on the organization, we've
17 decided to make the list available.

18 Does that mean if ICC had more money than God, it
19 would continue to resist to deliver the list?

20 A. I don't agree with that characterization.

21 896 Q. Really? Because it says it's because of the
22 significant financial burden that we're turning over the
23 list, as opposed to this is our legal requirement so
24 we're now -- we now realize and concede that we have to
25 deliver the list?

1 A. So again -- and this is the thing that's been
2 throughout our conversation and throughout this
3 litigation -- this was another attempt by the ICC, again
4 after, unfortunately, attempting to balance our interests
5 with those of your clients and failing, with the consent
6 of your own clients, this is an attempt for us to get
7 back to the work of the organization and to not spend the
8 money of this organization on this case and attempt to
9 satisfy your clients and the needs of our -- and the
10 desires of our members, and that's all this was --

11 897 Q. Pouyan, let me ask you, if you're the one who
12 had delivered an affidavit under Section 307 that you're
13 now intimately familiar with and you knew that within ten
14 days of your Affidavit you would be getting 700 and
15 whatever number of names, and six months later they offer
16 you 90 names, would you be satisfied with that?

17 A. Absolutely.

18 898 Q. Really? You --

19 A. Yes. Because -- sorry. Let me finish.

20 899 Q. Yes.

21 A. Because I would have the names of everybody
22 who is now a member of this organization, and that is the
23 organization.

24 900 Q. And you would be satisfied that you had to
25 wait six months and that had they acted in accordance

1 with the --

2 A. If you want me to be frank -- (overtalking)

3 901 Q. -- legal requirements, you would have
4 instead -- I'm not done with my question, so --

5 I mean, you have to understand that between
6 December and May, when the list -- your list, a list, was
7 released, there was a shrinkage of about 600 -- we've
8 talked about this now -- and so that there's something
9 very wrong with that picture?

10 I disagree, and if I were making that request --
11 and I'm trying to be as good-faith as possible -- even
12 though I might be somewhat -- I would have obviously
13 wanted the list earlier if I asked for the list. I would
14 try to understand as a fellow Iranian who knows the
15 massive sensitivity of this community, and if I truly
16 wanted -- I was truly acting in the best interests of the
17 ICC, then I would not be stubborn and I would not ask for
18 the membership information of people who -- especially
19 those who expressly don't want to give their membership
20 information, and I would be happy. Because if I want to
21 call an SGM or if I want to run in an election or if --
22 whatever I want to do, those members' names are the
23 members' names. There's no one else. Those are the
24 people who are the current members. I wouldn't need
25 anyone else. If I truly --

1 902 Q. Sir, if they had received the names in
2 December, in January, in February, there would be a lot
3 more members on that list, potentially a lot of their
4 supporters on that list that they would have then been
5 able to call their special meeting. So the board
6 waited --

7 A. Sorry -- I'm sorry.

8 903 Q. -- until 600 names expired --

9 A. Your client said that they had 500 members.

10 MR. NEHMETALLAH: Supporters.

11 THE DEPONENT: Sorry. Supporters that -- no, no.
12 I'm sorry. Let me finish.

13 BY MS. MAHDAVIAN:

14 904 Q. No. My client said --

15 --- The Reporter Appeals.

16 --- Off-the-record discussion at 5:06 p.m.

17 --- Upon resuming at 5:06 p.m.

18 BY MS. MAHDAVIAN:

19 905 Q. I will leave that and I will just move on.

20 I do want to ask you about the code of conduct
21 because you brought that up.

22 A. Did I?

23 906 Q. Yes, in your Affidavit you refer to it.

24 A. Oh.

25 907 Q. And attached it.

1 A. Can I ask which exhibit it was?

2 908 Q. Yes. Yes, it's Exhibit "H." Exhibit "H" is
3 a code of conduct that I understand was introduced in
4 2018 at the AGM?

5 A. Mm-hmm. Yes.

6 909 Q. All right. Have you -- did you read this
7 code of conduct as a board member before it was passed?

8 A. Yes. I mean, I've read it in the past.

9 910 Q. Who drafted this?

10 A. I believe this was part of the same by-law
11 changes that we spoke about earlier.

12 911 Q. Well, that's not a by-law. That's something
13 different.

14 A. I mean I believe this was part of the same
15 process.

16 912 Q. Well, do you know who drafted it?

17 A. I believe it was the same -- the same people
18 who drafted the by-laws.

19 913 Q. Well, I don't know who those people are.

20 MR. NEHMETALLAH: We undertook to find out.

21 THE DEPONENT: Yes, and we said that it was --

22 BY MS. MAHDAVIAN:

23 914 Q. You don't know?

24 A. Part of it is the -- was the by-law
25 committee that was --

1 915 Q. Was it Bijan?

2 A. He might have been involved. I wasn't on the
3 board at the time. I hope you understand. I wasn't on
4 the board at the time that the by-law changes were first
5 being formulated. This was a process that was ongoing.

6 916 Q. So you're talking about the by-law committee
7 of 2016?

8 A. Yes. I believe that -- if -- I don't know
9 but I believe that this was one of them. I mean --

10 917 Q. Okay. So can we please verify what he's
11 saying? Because he wasn't on the board.

12 MR. NEHMETALLAH: Yes, to be sure, we can
13 undertake to determine or at least attempt to
14 determine --

15 THE DEPONENT: So if you can look right here, the
16 initial version of this -- (indiscernible) -- was
17 approved by the ICC board of directors in July 2008;
18 right? Revised version was adopted by the board of
19 directors in June 2017. The fact that you're trying to
20 get me to say who drafted this, I mean --

21 BY MS. MAHDAVIAN:

22 918 Q. I'm not trying to get you to --

23 A. (overtalking).

24 --- The Reporter Appeals.

25 MR. NEHMETALLAH: So I wasn't aware it was

1 drafted in 2008. That may be an onerous undertaking.

2 MS. MAHDAVIAN: I'm not asking for the initial
3 version. I'm just asking if you know who was involved in
4 this particular version.

5 MR. NEHMETALLAH: So the revised version from
6 June 2017?

7 MS. MAHDAVIAN: Yes.

8 MR. NEHMETALLAH: I can -- I can certainly
9 look -- who was involved with revising the version for
10 June.

11 BY MS. MAHDAVIAN:

12 919 Q. You would have been a board member at that
13 time?

14 A. I mean, I told you they approved it. You're
15 asking me who drafted it and you asked me if Bijan Ahmadi
16 drafted it. I mean I -- anyway, I think I answered.

17 MR. NEHMETALLAH: I think what he's saying is it
18 was a process that started before 2016, before he was a
19 board member, and then it only got in June 2017, the
20 revisions.

21 MS. MAHDAVIAN: Yes.

22 MR. NEHMETALLAH: The undertaking still stands.
23 I can make best efforts to determine that.

24 BY MS. MAHDAVIAN:

25 920 Q. Well, in fact, here's what I'm asking. I'd

1 like by undertaking a copy of the initial version.
2 Presumably that was available if it's referred to in this
3 code of conduct. And I'd also like to know who updated
4 it or made it more current, which was proposed to the
5 board in 2017/2018?

6 MR. NEHMETALLAH: I will undertake to provide the
7 initial, or make best efforts to determine if we have
8 copies of the initial code of conduct and provide it to
9 you.

10 --- UNDERTAKING

11 MS. MAHDAVIAN: Yes.

12 MR. NEHMETALLAH: As well, I'll give you an
13 undertaking, a separate undertaking -- I think they're
14 separate -- to determine who was involved in the drafting
15 of the revised version.

16 --- UNDERTAKING

17 MS. MAHDAVIAN: Yes. Thank you.

18 BY MS. MAHDAVIAN:

19 921 Q. Have you read this?

20 A. I read it in the past. Not recently but --

21 922 Q. I'm looking at section 2, personal integrity,
22 under subheading B, priorities of duties, it says,
23 "outside activities should not hinder an individual's
24 performance of his or her duties of ICC." (as read)

25 A. I think I know where you're going.

1 923 Q. "Individuals working at the ICC shall have
2 time commitments to the work of the organization
3 and accept responsibility towards tasks they are
4 assigned to complete." (as read)

5 Do you see that?

6 A. Yes.

7 924 Q. All right. So I've heard endlessly about how
8 these are volunteer members, that they don't have time,
9 that they're busy professionals, and yet your code of
10 conduct very clearly sets out what is expected of someone
11 who joins. Do you agree?

12 A. Sure.

13 925 Q. So do you agree that the fact that there's a
14 backlog of minutes from January of 2018 is not taking
15 your duties as secretary seriously and responsibly?

16 A. I don't agree.

17 926 Q. Do you agree that the board and you not
18 making sure that the board approves those minutes is
19 acting responsibly (sic) and simply letting the thing
20 backlog and --

21 A. I don't agree.

22 927 Q. You don't agree?

23 A. No.

24 928 Q. What happens if someone in is in violation of
25 this code of conduct; do they get thrown out?

1 A. I believe there's some kind of process. It
2 hasn't happened as far as I know.

3 929 Q. And what about under conflict of interest,
4 under ethical conduct sub A, "Individuals should consider
5 their voluntary duty above their personal interests"?

6 A. Sorry, this is under...?

7 930 Q. Section 3, conflict of interest, ethical
8 conduct:

9 "Individuals should evaluate decisions and
10 proposed courses of action against the following
11 checklist. Yes to each question. Is it legal?
12 Individuals should consider seeking legal
13 advice." (as read)

14 So it's in their code of conduct. It tells you
15 you need to get legal advice if you don't know, and yet
16 this board did not seek legal advice.

17 A. It said consider. It said consider, not --

18 931 Q. Did you consider?

19 A. Absolutely we considered.

20 932 Q. What --

21 A. And I told you what -- what the reasoning was
22 for -- at that -- for not hiring counsel --

23 933 Q. It says very clearly --

24 A. -- at that point.

25 934 Q. -- if you're in doubt, get legal advice?

1 A. Consider. Consider seeking legal advice.

2 That is what it says.

3 935 Q. "Individuals should act in a prudent and
4 balanced manner. By virtue of refusing to get
5 early legal advice, getting proper legal
6 direction, this board of directors has put this
7 organization squarely in the middle of
8 litigation." (as read)

9 Is that acting prudently?

10 A. I believe that we acted prudently with the
11 information that we had available and the interests and
12 desires of --

13 936 Q. The information you chose not to get?

14 A. No, we --

15 937 Q. The legal advice you chose not to get?

16 A. If it wasn't up to your standards,
17 we undertook --

18 938 Q. It's not a standard, sir.

19 A. No. We undertook to get the information that
20 we thought was relevant to the case and that was needed
21 for our case, and we did.

22 MS. MAHDAVIAN: All right. Well, as long as
23 you're satisfied.

24 I believe those are all my questions subject to,
25 I think, a few refusals and the many undertakings. Thank

1 you for your time.

2 THE DEPONENT: Thank you.

3 --- WHEREUPON THE EXAMINATION ADJOURNED AT 5:13 P.M.

4

5 I HEREBY CERTIFY THE FOREGOING
6 to be a true and accurate
7 transcription of my shorthand notes
8 taken to the best of my skill and ability.

7

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KATHRINE MCMENEMY, CSR
Computer-Aided Transcription

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