

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

UNIVERSITY OF GUELPH CENTRAL STUDENT ASSOCIATION
Applicant

- and -

**CANADIAN FEDERATION OF STUDENTS
AND CANADIAN FEDERATION OF STUDENTS - ONTARIO**
Respondents

CROSS-EXAMINATION OF LUCY WATSON
on her Affidavit sworn March 8, 2010
held at the offices of ASAP Reporting Services,
200 Elgin Street, Suite 1105
Ottawa, Ontario
on Thursday, March 11, 2010 at 1:55 p.m.

CONDENSED TRANSCRIPT WITH INDEX

APPEARANCES:

Ryan Treleaven for the Applicant

Gordon Douglas for the Respondent,
Canadian Federation of Students

Zoe Thoms for the Respondent,
Canadian Federation of Students - Ontario

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[1] Ottawa, Ontario

[2] --- Upon commencing on Thursday, March 11, 2010

[3] at 1:55 p.m.

[4] **AFFIRMED: LUCY WATSON**

[5] **CROSS-EXAMINATION BY MR. TRELEAVEN:**

[6] **1 Q.** On the record.

[7] Ms. Watson, have you been examined

[8] before in a court proceeding?

[9] **A.** I have been, a long time ago.

[10] **2 Q.** So then I guess just to

[11] refresh, and I understand that you have sat through

[12] a number of these examinations, so you likely know,

[13] that we need to have verbal responses and that it's

[14] best for us to try to not interrupt each other so

[15] there is a clean transcript.

[16] Of course, if you don't understand

[17] any of the questions that I have asked or you would

[18] like me to clarify them, please just feel free to

[19] ask.

[20] **A.** Right. Thank you.

[21] **3 Q.** Can you just tell me a little

[22] bit about your background and involvement with the

[23] CFS?

[24] **A.** Certainly. I first became

[25] involved with the Canadian Federation of Students

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[1] as an undergraduate student at Carleton University,

[2] and, as such, was a member of the organization.

[3] And my involvement continued on

[4] through my degree. I was elected as the Ontario

[5] representative on the National Executive and was

[6] also -- following that term, sometime after that, I

[7] was hired as an employee of the organization.

[8] **4 Q.** And are you now an employee

[9] and member, or only employee?

[10] **A.** I am an employee.

[11] **5 Q.** Okay. And that is currently

[12] as director of organizing?

[13] **A.** Correct.

[14] **6 Q.** And can you just tell me a

[15] little bit about what that role entails? I don't

[16] know if it's going to be able to --

[17] **A.** I can certainly try. It is

[18] prime -- I am primarily responsible for working

[19] with the voting member local associations and the

[20] individual members in the implementation of the

[21] campaigns and, to some extent, the services of the

[22] organization.

[23] I am also responsible, in part,

[24] for some of the general administrative duties of

[25] the Canadian Federation of Students, and that

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[1] takes -- it takes a number of different forms. It

[2] might be anything from, you know, answering the

[3] telephone to helping prepare general meetings

[4] binders for an upcoming general meeting.

[5] I am also -- I am also responsible

[6] for maintaining a lot of the internal records of

[7] the organization, assisting with the coordination

[8] of the general meetings, National Executive

[9] meetings.

[10] **7 Q.** Okay, great. Now, it sounds

[11] as though you have a significant history with the

[12] CFS, and I gather you are familiar with the bylaws

[13] of the organization?

[14] **A.** I am.

[15] **8 Q.** In paragraph 4 of your

[16] affidavit, you mention that as a member of the

[17] Federation, the CSA is bound by the bylaws of the

[18] Federation.

[19] It's fair to say that the CFS is

[20] equally bound by the bylaws; correct?

[21] **A.** All member local associations

[22] that comprise the Canadian Federation of Students

[23] are equally bound by the bylaws of their

[24] organization.

[25] **9 Q.** Yes. And the bylaws

Page 4

[1] essentially provide the rights and obligations of

[2] all parties to this contract, which is essentially

[3] the bylaws?

[4] **A.** Agreed.

[5] **10 Q.** And so in the same way that

[6] members have certain obligations, such as to pay

[7] fees, they also have certain rights?

[8] **A.** As set out by the bylaws.

[9] **11 Q.** As set out by the bylaws?

[10] **A.** Yes.

[11] **12 Q.** One of those rights is to

[12] have a referendum on the question of defederation?

[13] **A.** Provided that it's triggered

[14] in the appropriate manner as set out by the bylaws.

[15] **13 Q.** Now, you would agree that one

[16] of the implied terms of this contract or the bylaws

[17] is a term of good faith? And I can parse that out,

[18] if you'd like.

[19] **A.** If you could.

[20] **14 Q.** So I would say that the duty

[21] of good faith would include avoiding arbitrary

[22] decision making; is that correct?

[23] **A.** Yes.

[24] **15 Q.** And ensuring procedural

[25] fairness?

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[1] A. Yes.
[2] 16 Q. Avoiding conflicts of
[3] interest?
[4] A. Agreed.
[5] 17 Q. Ensuring that rules are
[6] applied consistently?
[7] A. Agreed.
[8] 18 Q. Transparency in dealing with
[9] all members?
[10] A. Agreed.
[11] 19 Q. And if I can take you to
[12] paragraph 7, now, you outline in this paragraph the
[13] general process through which amendments to bylaws
[14] can be made?
[15] A. Yes.
[16] 20 Q. Now --
[17] A. And, sorry, just to stop you,
[18] amendments to the bylaws in the form of repealing
[19] them or adopting new bylaws, as well as amendments.
[20] I'm not sure how you define an amendment, but just
[21] to be precise.
[22] 21 Q. That's good for
[23] clarification, absolutely.
[24] A. Yes.
[25] 22 Q. Now, I understand that

Page 6

[1] significant amendments were made to the bylaws,
[2] respecting referendums on the question of continued
[3] membership, at a recent semiannual general meeting;
[4] is that correct?
[5] A. I'm not sure how you would
[6] define "significant".
[7] 23 Q. That's fair. There were some
[8] amendments made, and I am just wondering: When was
[9] the date of that meeting, just to clarify,
[10] approximately? Give me a month and I'm fine.
[11] A. End of November.
[12] 24 Q. Okay.
[13] A. 2009.
[14] 25 Q. So now I am going to test
[15] your memory even more. With respect to the
[16] amendments, one of the amendments was you limited
[17] the numbers -- sorry, the CFS chose to limit the
[18] number of referendums that could be held in a year;
[19] is that correct?
[20] A. The voting member local
[21] associations, a motion was put forward by a voting
[22] member local association to specify how many
[23] referenda on continued membership, provided those
[24] referenda were triggered in the appropriate manner,
[25] could be held within a given time.

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[1] 26 Q. Do you recall how many that
[2] is?
[3] A. I would have to review the
[4] bylaws to be precise.
[5] 27 Q. Do we have a copy of the
[6] amended bylaws anywhere?
[7] MR. DOUGLAS: I don't think it is
[8] in the materials.
[9] MR. TRELEAVEN: It might not be,
[10] in which case I don't know if it is even worth an
[11] undertaking.
[12] MR. DOUGLAS: Well, I think
[13] they're available on the Internet. Are the bylaws
[14] available on the Internet?
[15] THE WITNESS: Yes.
[16] BY MR. TRELEAVEN:
[17] 28 Q. We went and they weren't
[18] actually updated. Has that been recent, then?
[19] A. Yes. No, my understanding is
[20] they were updated a number of weeks ago.
[21] 29 Q. Because I checked at the
[22] start of this process and they weren't, but that
[23] could have happened since.
[24] But suffice to say an amendment
[25] was adopted that limited the number of referendums,

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[1] provided they were properly triggered within a
[2] year?
[3] A. My understanding is the
[4] language actually specifies within a semester, an
[5] academic semester, but, again, we would have to
[6] refer to the actual language in the bylaws.
[7] 30 Q. Another amendment was that
[8] the threshold amount of signatures expressed as a
[9] percentage of a certain member association
[10] necessary to trigger a referendum was increased?
[11] A. It was amended, yes.
[12] 31 Q. And it was increased from the
[13] bylaws that are applicable to this dispute, being
[14] 10 percent, and it was increased to 20 percent; is
[15] that correct?
[16] A. That is my understanding.
[17] 32 Q. Paragraph 13, I will give you
[18] a second to review it.
[19] A. Yes.
[20] 33 Q. You were involved with the
[21] decision to, I guess, bring about the referendum
[22] oversight committee in the bylaws?
[23] A. No, I was not.
[24] 34 Q. Sorry. You were involved
[25] with the CFS and were involved in discussions that

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[1] led to that decision?

[2] **A.** I was a member of the

[3] National Executive at the time. I was not present

[4] at the general meeting at which those bylaws were

[5] amended.

[6] **35 Q.** So then you have no

[7] knowledge, I guess, as to why there was no

[8] tie-breaking system foreseen with the referendum

[9] oversight committee or a dispute resolution term?

[10] **A.** I can't speak to that.

[11] **36 Q.** By tie-breaking, I just mean

[12] the fact that it is two members from the CFS and

[13] two members from the local association.

[14] **A.** Yes. Yes. I can't speak to

[15] that.

[16] **37 Q.** Perhaps we could go to your

[17] bylaws now, which -- just so you can keep your

[18] affidavit open. You might want to go to our

[19] application record. It is at tab -- well, it is at

[20] tab 5, the first "5" that you see.

[21] **A.** Yes.

[22] **38 Q.** I will take you to page 46.

[23] I am wondering if you can point me

[24] to anywhere in the bylaws where a requirement that

[25] a petition must be verified is expressed?

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[1] **A.** And when you say "be

[2] verified", does the language have to include those

[3] specific words?

[4] **39 Q.** For now, yes.

[5] **A.** I don't see the language "be

[6] verified".

[7] **40 Q.** So then I take it that you

[8] would suggest that verification is a part of the

[9] process of determining whether a petition is in

[10] order?

[11] **A.** In order to determine whether

[12] or not a petition is in order, the National

[13] Executive -- it is incumbent upon the National

[14] Executive to undertake a thorough review, and that

[15] would include, in part, determining whether or not

[16] the names that appear on a petition are valid.

[17] **41 Q.** Is there a policy within the

[18] CFS that outlines the criteria that must be met in

[19] order for a petition to be found to be in order?

[20] **A.** Could you specify what you

[21] mean by "policy"?

[22] **42 Q.** Policy or written document,

[23] or anywhere if I, as a member of the CFS, if I

[24] were --

[25] **A.** Yes.

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[1] **43 Q.** -- could see a list of

[2] criteria that must be met so that I would know that

[3] a petition that I was reviewing was "in order"?

[4] **A.** I don't know if such a policy

[5] exists in written form.

[6] **44 Q.** Now, you mentioned that it

[7] was incumbent upon the CFS, when making a

[8] determination if a petition was in order, to verify

[9] the names and ensure that they were valid.

[10] In the verification process, do

[11] you know of any policy or written document that

[12] outlines the procedure through which verification

[13] is to be carried out?

[14] **A.** Just to back up a little bit,

[15] you said the Canadian Federation of Students. Do

[16] you mean the Canadian Federation of Students or do

[17] you mean the National Executive?

[18] **45 Q.** I mean the National

[19] Executive, and that is a good point to clarify.

[20] My understanding is that the

[21] position that has been taken by the CFS in this

[22] case is that the decision as to whether or not a

[23] petition is in order rests solely within the

[24] discretion of the National Executive --

[25] **A.** Yes.

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[1] **46 Q.** -- is that fair? So, yes.

[2] So my question was in terms of whether --

[3] **MR. DOUGLAS:** I was just coughing.

[4] **THE WITNESS:** I was about to ask

[5] for you to repeat it, so that's okay.

[6] **BY MR. TRELEAVEN:**

[7] **47 Q.** No. That's fair. So the

[8] question is: When the National Executive is making

[9] this determination, is there any written document

[10] that indicates the criteria for verification?

[11] **A.** I don't know if there's a

[12] written document that exists that sets that out.

[13] **48 Q.** Does the National Executive

[14] believe that the verification criteria must be

[15] based on a standard of perfection; and by that I

[16] mean, if a corresponding student number had two

[17] numbers transposed, would the National Executive

[18] consider that name to potentially be valid?

[19] **A.** The National Executive

[20] strives to review any petitions that are received

[21] in a fair manner and exercise good faith in that

[22] review.

[23] The criteria that is employed, to

[24] my understanding, with respect to a review of names

[25] that appear on a petition requesting a vote on

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[1] continued membership, includes, as I set out in my
[2] affidavit, that there be a reasonably legible name
[3] and student number, and that the student number
[4] correspond to the name as set out on the petition;
[5] that it be accompanied by a unique signature.
[6] **49 Q.** I am going to direct you to
[7] paragraph 19 and 20, so if you could perhaps review
[8] both of those?
[9] **A.** Yes.
[10] **50 Q.** And so just to confirm,
[11] paragraph 19 is where you lay out the criteria that
[12] you just mentioned in your last answer, and
[13] paragraph 20 --
[14] **A.** Sorry, can I just add?
[15] **51 Q.** Yes.
[16] **A.** When you were asking me about
[17] very specific criteria, that obviously -- obviously
[18] part of that process has to include ensuring that
[19] the individual is a student at the institution, and
[20] also a member of the voting member local
[21] association that is -- that's in question.
[22] **52 Q.** Yes. Paragraph 20, when I
[23] read it, seems to indicate that the National
[24] Executive takes the position that it has additional
[25] discretion with respect to the criteria that you've

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[1] mentioned.
[2] By that, I mean even if you were
[3] to review a petition that met the criteria in 19
[4] and the additional criteria that you have mentioned
[5] that I don't think are in dispute, that they
[6] actually are a registered member of the union, that
[7] in certain circumstances the National Executive
[8] could still decline to declare a petition in order?
[9] **A.** The statement that is set out
[10] in paragraph 20 is -- is -- these are -- these
[11] extenuating circumstances that may come to the
[12] attention of the National Executive would be taken
[13] into consideration by the National Executive.
[14] **53 Q.** And that discretion could
[15] lead to a determination that a petition that met
[16] all of the criteria you have outlined would still
[17] be found not to be in order?
[18] **A.** I wouldn't want to speculate
[19] as to what decision the National Executive would
[20] arrive at as a result of these types of extenuating
[21] circumstances.
[22] **54 Q.** But you would agree that it's
[23] within their authority to come to that conclusion?
[24] **A.** It is a responsibility of the
[25] National Executive, and the National Executive is

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[1] -- has the authority to ensure that a petition is
[2] in order. And, as such, there are a number of
[3] criteria in effect, but I don't want to speculate
[4] as to what -- what particular criteria outweighs
[5] other criteria that the National Executive is
[6] considering when reviewing a petition to determine
[7] whether or not it is in order.
[8] **55 Q.** All right. I understand
[9] that, and I appreciate the position you're in.
[10] What I am asking is more a question about your view
[11] of the National Executive's authority, and I know
[12] you just mentioned weighing different factors.
[13] **A.** Hmm-hmm.
[14] **56 Q.** If, for a moment, we can
[15] assume that a petition has all of the substantive
[16] requirements, but, for example, the CFS believes
[17] that the signatures were obtained during homecoming
[18] while people were incredibly drunk and yet still
[19] had a legible name, would the executive have the
[20] power or the authority to say this petition is not
[21] in order because of these extenuating
[22] circumstances?
[23] **A.** Well, I think your question
[24] is answered primarily by a reading of the bylaws,
[25] which sets out that the National Executive is

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[1] responsible for reviewing the petition to determine
[2] whether it is in order.
[3] **57 Q.** That's fair. So dovetailing
[4] from a question of sort of extenuating
[5] circumstances around how petitions are given, I
[6] would like to take you to what we have been
[7] referring to as the counter petition, and I believe
[8] in your materials it is referred to as the unity
[9] petition.
[10] If maybe we can just have a copy
[11] put up before you? Again, it doesn't matter what
[12] page.
[13] **MR. DOUGLAS:** She is looking at
[14] page 375 in volume 3.
[15] **MR. TRELEAVEN:** Thank you.
[16] **MR. DOUGLAS:** Or 2 -- sorry, 3.
[17] **BY MR. TRELEAVEN:**
[18] **58 Q.** So as I imagine you're
[19] familiar with most of the materials that have been
[20] filed in this litigation, you understand that there
[21] have been allegations on both sides with respect to
[22] how the referendum petition and the counter
[23] petition have been circulated?
[24] **A.** Yes.
[25] **59 Q.** If we could also pull up a

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[1] copy of the referendum petition, which I believe is
[2] in volume 2 of your record, and, again, whatever
[3] page you would like to go to?
[4] **MR. DOUGLAS:** Let's go to page 24,
[5] a page we're familiar with.
[6] **BY MR. TRELEAVEN:**
[7] **60 Q.** And I think we are going to
[8] be able to do this just fine. I am also going to
[9] refer you to your bylaws, and specifically Bylaw
[10] 6.a.
[11] **A.** Yes.
[12] **61 Q.** The second paragraph of Bylaw
[13] 6.a spells out the language that must be used on a
[14] petition calling for a referendum on the question
[15] of continued membership?
[16] **A.** It does.
[17] **62 Q.** And that sentence, which I
[18] can just read for the record, is:
[19] "We, the undersigned,
[20] petition the National
[21] Executive of the Canadian
[22] Federation of Students to
[23] conduct a referendum on the
[24] issue of continued membership
[25] in the Canadian Federation of

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[1] Students."
[2] Correct?
[3] **A.** That's what it reads.
[4] **63 Q.** There is no mention of
[5] tuition in that statement, is there?
[6] **A.** Are you talking about the
[7] statement, the clause in the bylaw, or the
[8] statement that appears --
[9] **64 Q.** Either.
[10] **A.** -- in this version of a
[11] petition?
[12] **65 Q.** Either. Just the documents
[13] that are in front of you.
[14] **A.** And can you repeat my
[15] question? Do I see the word "tuition"?
[16] **66 Q.** Yes.
[17] **A.** I do not see the word
[18] "tuition", no.
[19] **67 Q.** Okay. So now with respect to
[20] the counter petition, do you know who drafted the
[21] petition?
[22] **A.** The petition that is before
[23] me?
[24] **68 Q.** Yes.
[25] **A.** I do not.

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[1] **69 Q.** When did you become aware of
[2] the existence of the counter petition?
[3] **A.** Mid fall. No, not mid fall.
[4] Early fall, if we define fall technically.
[5] **70 Q.** Do you know when the National
[6] Executive received a copy of the counter petition?
[7] **A.** No, I don't recall. I
[8] believe I state in my affidavit that it was in
[9] October, in early to mid October.
[10] **71 Q.** So I guess it is fair to say
[11] that you were unaware of this petition's existence
[12] while it was being circulated?
[13] **A.** I heard or I read a news
[14] report that referred to a petition that was being
[15] circulated. I don't know if it was referring -- to
[16] my recollection -- I can't recall if it was
[17] referring to something that could be defined as the
[18] unity petition or not.
[19] **72 Q.** Now, is it fair to say,
[20] looking at the counter petition or the unity
[21] petition, that the purpose of the petition is
[22] primarily to reduce the probability, or, if not
[23] primarily, at least partially, to reduce the
[24] probability of a referendum on the question of
[25] defederation from being held?

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[1] **A.** Can you rephrase that?
[2] **73 Q.** Is it fair to say that one of
[3] the purposes of the counter petition is to reduce
[4] the probability that a referendum on the question
[5] of continued membership may be held with respect to
[6] the CSA?
[7] **A.** I can't speak to the
[8] purposes. I --
[9] **74 Q.** So I understand you didn't
[10] draft the document?
[11] **A.** Correct.
[12] **75 Q.** But when you read the
[13] document, would it be fair to say that upon
[14] reviewing it, one of the purposes is to reduce the
[15] potential of a referendum on the question of
[16] continued membership from taking place?
[17] **A.** I would describe that as
[18] being one of the goals, perhaps, of this document.
[19] The second goal is calling on the
[20] board of the University of Guelph CSA to defend
[21] student unity and continue to fight for student
[22] rights for memberships in the Canadian Federation
[23] of Students, but I don't think there is more
[24] emphasis on one of those statements than the other,
[25] certainly not in terms of the way it is set out

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[1] before me.
[2] **76 Q.** Can you point me to any CFS
[3] bylaw that defines or speaks to the role of a
[4] counter petition in the process of determining
[5] whether a petition is in order and whether a
[6] referendum on defederation should be held?
[7] **A.** And when you ask that, you
[8] are looking for specific language?
[9] **77 Q.** For now, yes.
[10] **A.** What precisely are you
[11] looking for, I guess is my question?
[12] **78 Q.** Does the bylaw of CFS -- or
[13] do the bylaws of CFS ever refer to a counter
[14] petition?
[15] **A.** Not to my knowledge.
[16] **79 Q.** Is there any policy of the
[17] CFS that would outline the treatment of a counter
[18] petition?
[19] **A.** If I can clarify your
[20] question, you are talking about a specific
[21] document, or are you asking about how the National
[22] Executive would consider an individual's request to
[23] remove their name from a document they signed under
[24] false pretences or had been misled into signing?
[25] **80 Q.** Well, I think my question,

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[1] for now, is going to be limited to the petition,
[2] the counter petition.
[3] In terms of if I were to look to
[4] the bylaws, is there anything in a CFS document
[5] that contemplates a counter petition, period?
[6] **A.** Yes.
[7] **81 Q.** Could you point me to it?
[8] **A.** Bylaw 1, section 6.b.i, which
[9] sets out:
[10] "... the National Executive
[11] will review the petition to
[12] determine if it is in
[13] order..."
[14] And I would -- it's my belief that
[15] determining whether or not a petition is in order
[16] includes considering other factors or circumstances
[17] with respect to that petition, including
[18] potentially the existence of a second document on
[19] which individuals who signed the first document
[20] request their names be removed.
[21] **82 Q.** And if a student created a
[22] counter counter petition, that would presumably
[23] also have to be considered by the National
[24] Executive?
[25] **A.** That is outside the realm of

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[1] my experience, so I can't speak to that.
[2] **83 Q.** So you are suggesting that
[3] Bylaw 6.1 allows the National Executive to take
[4] into consideration a counter petition which says,
[5] Please remove my name from one petition, but that
[6] that same bylaw might not provide the National
[7] Executive with the authority to consider a counter
[8] counter petition, which says, Please take my name
[9] off of this petition or the other?
[10] **A.** Well, I don't know what the
[11] language on a -- on this --
[12] **84 Q.** Counter counter petition?
[13] **A.** -- counter counter petition
[14] would say. But assuming the counter counter
[15] petition asked that a name be removed from the,
[16] quote-unquote, "counter petition", I don't know if
[17] that would fall within the realm of the bylaw that
[18] I have just stated, because the, quote-unquote,
[19] "counter counter petition" would not actually be
[20] speaking to the petition the National Executive was
[21] reviewing.
[22] **85 Q.** But in the broad discretion
[23] -- sorry, but in the broad discretion -- because to
[24] be fair, Bylaw 6 says nothing of a counter
[25] petition, but you have suggested that under the

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[1] broad authority to consider whether a petition is
[2] in order, that a petition or a counter petition
[3] that's not even considered by the bylaws can, in
[4] fact, be taken into account by the National
[5] Executive.
[6] I am confused why one petition
[7] that has absolutely no ground in the bylaws can be
[8] considered, but that the counter counter petition
[9] would somehow be excluded from that same authority
[10] in the bylaws.
[11] **A.** I am not sure I accept your
[12] statement that this is not contemplated in the
[13] bylaws. And my position is, or my earlier
[14] statement is that this document, the unity
[15] petition, speaks specifically to a document that
[16] was provided to the National Executive to review to
[17] ensure it was in order.
[18] I can't really speak to what a --
[19] how a counter counter counter petition would be
[20] viewed by the National Executive, without knowing
[21] what the language was.
[22] **86 Q.** So then the follow-up
[23] question -- we will just take a different angle on
[24] this -- is: If an individual student submitted a
[25] petition to the CFS executive asking that it be

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[1] found in order, or at least reviewed for that
[2] process, and that student discovered that a counter
[3] or unity petition was being circulated, would the
[4] first student be allowed to add names to the
[5] petition that they have already submitted?
[6] So if I -- perhaps I will
[7] rephrase. I am pointing right now to the
[8] referendum petition, and that gets submitted to the
[9] National Executive and the National Executive needs
[10] to consider whether or not it's in order, and
[11] you've told me that under the bylaws the counter
[12] petition or the unity petition, as we have been
[13] calling it, as well, can influence the decision as
[14] to whether or not this petition is in order.
[15] My question is: Is the student
[16] who originally prepared the referendum petition,
[17] who wants to see a referendum on the question of
[18] membership, who knows that the counter petition is
[19] being prepared -- are they permitted to circulate
[20] additional copies of the referendum petition so
[21] that they can maintain their threshold amounts or
[22] the threshold number of signatures that are
[23] required under the bylaws?
[24] **A.** I can't speak to that. I
[25] can't speculate as to whether or not the National

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[1] Executive would permit that.
[2] **87 Q.** Okay. So I am going to
[3] continue to work with this example, and I
[4] apologize, because I know with counter petitions
[5] and all of the terminology it can be difficult.
[6] But I think it is important that,
[7] in terms of the treatment, we understand what the
[8] bylaws allow and what they don't.
[9] You have stated earlier that in
[10] treating -- in interpreting the bylaws, all members
[11] owe each other a duty of fairness and that there
[12] should be transparency in the rules that govern
[13] this contract?
[14] **A.** Are you referring back to
[15] your definition of "good faith"?
[16] **88 Q.** Yes.
[17] **A.** Yes.
[18] **89 Q.** An individual member has the
[19] contractual right to have a referendum held on its
[20] campus on the question of continued membership,
[21] provided that the petition is found to be in order;
[22] is that correct?
[23] **A.** Can you repeat the question?
[24] **90 Q.** An individual member of the
[25] CFS, with reference to the bylaws and specifically

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[1] Bylaw 6, has a right that if they provide the
[2] National Executive with a petition that is in
[3] order, that a referendum should occur?
[4] **A.** I am confused by your use of
[5] the word "individual member."
[6] **91 Q.** Well, an individual member is
[7] required to commence the process of collecting
[8] signatures on the referendum; correct?
[9] **A.** Yes.
[10] **92 Q.** And so the individual who in
[11] our case is Curtis Batuszkin, that individual
[12] member, provided that the petition is in order, has
[13] a right to trigger a referendum on the question of
[14] continued membership?
[15] **A.** That individual? A minimum
[16] of 10 percent of individual members --
[17] **93 Q.** Yes.
[18] **A.** -- have the -- have the right
[19] to petition the National Executive or to request of
[20] the National Executive that a vote on continued
[21] membership be held.
[22] **94 Q.** And every single one of those
[23] individuals, and the other 90 percent, in fact,
[24] have the right to be treated fairly in the process.
[25] And I will take you to my

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[1] hypothetical and perhaps that will inform this.
[2] **A.** Please.
[3] **95 Q.** What I am concerned about is,
[4] if a student wanted a referendum to be held on
[5] their campus so that its members could decide
[6] whether or not they would continue to be members of
[7] the CFS, they are guided by the CFS bylaws as to
[8] how that should happen; correct?
[9] **A.** Yes. Can I ask you whose
[10] members, though? You just said if an individual --
[11] its members.
[12] **96 Q.** Let's say in this case it is
[13] difficult, because the individuals who would be
[14] starting this are both members of the CSA and CFS.
[15] **A.** But none of those individuals
[16] are -- sorry to interrupt, but none of those
[17] individuals are members of the individual who
[18] initiated the petition? I just want to be clear.
[19] **97 Q.** No, that's fair.
[20] **A.** Okay, okay.
[21] **98 Q.** But the individual -- the
[22] individual student --
[23] **A.** Yes.
[24] **99 Q.** -- is a member of the CFS.
[25] **A.** Yes.

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[1] **100** Q. And that individual student
[2] wants to have a referendum held on campus so that
[3] the collective -- all of the members of, for
[4] example, the CSA -- can vote as to whether or not
[5] they want to continue to be members of the CFS,
[6] okay?
[7] Now, when that individual tries to
[8] engage the process, they're guided by the bylaws;
[9] correct?
[10] A. Of the Federation.
[11] **101** Q. The CFS bylaws?
[12] A. Yes.
[13] **102** Q. Yes. And the CFS bylaws
[14] essentially outline the rules, which would include,
[15] you need a 10 percent -- you need 10 percent of
[16] your members, of the CSA members; correct?
[17] A. Yes.
[18] **103** Q. You need to make --
[19] A. At a minimum.
[20] **104** Q. At a threshold.
[21] A. Yes.
[22] **105** Q. You need to use the language
[23] that's outlined in Bylaw 6.a on your petition?
[24] A. Yes.
[25] **106** Q. And other various, I guess,

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[1] requirements?
[2] A. That it be in order, yes.
[3] **107** Q. That it be in order?
[4] A. Yes.
[5] **108** Q. And if that student studied
[6] all of these bylaws, they studied the Corporations
[7] Act under which the CFS, as an organization, has
[8] been created, and they were to look at all of the
[9] policies that the CFS has written, they would not
[10] see any mention of a counter petition, is that
[11] correct, at least to your knowledge?
[12] I don't expect you to know every
[13] word of the Corporations Act.
[14] A. Well, it's hard, with
[15] respect, to answer the question when I don't know
[16] what documents are in consideration.
[17] **109** Q. So it's limited to --
[18] A. If the individual turned to
[19] trade union practices, they will come across.
[20] **110** Q. Is the CFS a trade union?
[21] A. It is a union of students.
[22] **111** Q. The CFS is a non-profit
[23] corporation?
[24] A. Yes.
[25] **112** Q. And so if a student reviewed

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[1] your bylaws and prepared a petition, and let's say
[2] they used best practices. They only used the
[3] language that was required by the by-law. They
[4] didn't whisper a word when they showed it to the
[5] student. The student signed it. There was a
[6] referendum -- not a referendum, sorry.
[7] There was a verification process
[8] that was completely acceptable to all of the
[9] criteria that have ever been relied on by the
[10] National Executive, and they hit the 10 percent
[11] threshold. That student, you would agree with me,
[12] would feel as though they had a right for a
[13] referendum to be held on their campus?
[14] A. No, not until the National
[15] Executive had confirmed the petition was, in fact,
[16] in order.
[17] **113** Q. What would be holding up the
[18] National Executive, though, if everything was --
[19] everything that was required had been completed?
[20] A. If, if, this petition was
[21] delivered to the National Executive as you say --
[22] **114** Q. Yes?
[23] A. -- so no extenuating
[24] circumstances, no question with respect to the
[25] validity of the names, the signatures on the

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[1] petition, it had been verified adequately, the
[2] National Executive had no questions about whether
[3] or not it was in order, then the National Executive
[4] would determine that a vote should proceed on the
[5] question of continued membership, as it has on
[6] numerous occasions in the past.
[7] **115** Q. I guess my concern is that
[8] that student who has reviewed presumably all of
[9] your bylaws and has actually prepared this petition
[10] as we just spoke of, if a counter petition was then
[11] sent to the National Executive that had just one
[12] name or two names that were valid, then that
[13] individual's expectation of having a referendum
[14] held would have been defeated by something that is
[15] not even contemplated by your bylaws.
[16] And I am wondering whether or not
[17] that raises a concern about the transparency of
[18] CFS's bylaws?
[19] A. Is that a question?
[20] **116** Q. Yes. Are you concerned by
[21] the fact that a student can follow what's in your
[22] bylaws, and their expectations of having a
[23] referendum held may be defeated by something that's
[24] not even contemplated by those same bylaws?
[25] A. I don't know that I accept

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[1] the position that this isn't contemplated by the
[2] bylaws.

[3] The language "the National
[4] Executive will review the petition to determine if
[5] it is in order", if I were reading that, I would
[6] take that to mean that these various -- these
[7] various criteria had to be met, but there is also a
[8] possibility it wasn't exclusive of the criteria,
[9] that it include a specific question and be signed
[10] by the 10 percent of the individual members.

[11] **117 Q.** Has CFS, to your knowledge,
[12] ever disseminated or recognized a counter petition
[13] such as this before in a referendum-triggering
[14] context?

[15] **A.** Can you describe -- can you
[16] define CFS for me?

[17] **118 Q.** The National Executive.
[18] **A.** The National Executive, has
[19] it seen -- sorry, can you repeat the question?

[20] **119 Q.** Yes. Has the National
[21] Executive of the CFS ever circulated or recognized
[22] a counter petition before in a
[23] referendum-triggering context?

[24] **A.** In a referendum on continued
[25] membership, or in the case of a referendum to vote

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[1] on membership?

[2] **120 Q.** Either. I don't imagine you
[3] would have a counter petition on the latter, but --

[4] **A.** I can't speak to whether or
[5] not the National Executive -- can you repeat the
[6] question about whether the National Executive
[7] has --

[8] **121 Q.** So has the National Executive
[9] of the CFS ever circulated or recognized a counter
[10] petition in a referendum-triggering context?

[11] **A.** I don't know if the National
[12] Executive has circulated a petition similar to or
[13] identical to the document that is before me.

[14] The National Executive has
[15] considered a unity petition in another
[16] circumstance, and, just to put a finer point on it,
[17] has recognized a request on the part of individuals
[18] to remove their names from a petition requesting a
[19] vote on continued membership.

[20] **122 Q.** If I can take you to
[21] paragraph 27? Thankfully, your affidavit is not
[22] pinned under all of these other books.

[23] **A.** Yes.

[24] **123 Q.** You say that you were advised
[25] by members of the Federation that individual

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[1] student members of the CSA who were preparing the
[2] referendum petition were disseminating
[3] misinformation about the CFS.

[4] Who were those Federation members?

[5] **A.** Who informed me?

[6] **124 Q.** Yes. In the first sentence
[7] you say, "I was advised by members".

[8] **A.** One of them -- I don't recall
[9] the names. I was certainly advised by Shelley
[10] Melanson and Andrew Garvie, and there are a number
[11] of -- there are a couple of other individuals. I
[12] believe Sandy Hudson, and I can't recall -- I can't
[13] recall the other names.

[14] **125 Q.** Just because Sandy is the
[15] only one that hasn't sworn an affidavit, can you
[16] just tell me a little bit about what her role is in
[17] the Federation?

[18] **A.** She is a member of the
[19] Federation.

[20] **126 Q.** But with respect to the
[21] allegations of the dissemination of misinformation,
[22] you have no firsthand knowledge of such conduct?

[23] **A.** And by firsthand knowledge,
[24] you mean?

[25] **127 Q.** You weren't on the University

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[1] of Guelph campus and observed somebody with a
[2] referendum petition disseminating misinformation?

[3] **A.** I was not.

[4] **128 Q.** Now, upon learning of the
[5] allegations that are referred to in paragraph 27,
[6] did the CFS contact the CSA?

[7] **A.** And, again, when you say the
[8] CFS --

[9] **129 Q.** Sorry, the National
[10] Executive. I will start trying to use that all the
[11] time.

[12] **A.** Did members of the National
[13] Executive attempt to contact the CSA?

[14] **130 Q.** Yes.

[15] **A.** To discuss this particular
[16] issue?

[17] **131 Q.** The concern raised in
[18] paragraph 27.

[19] **A.** I don't know the answer.

[20] **132 Q.** Do you know if the CFS
[21] contacted the university? And by "CFS", I mean the
[22] National Executive.

[23] **A.** Contacted the University of
[24] Guelph?

[25] **133 Q.** Yes.

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[1] **A.** I don't know, but I also I
[2] don't know why they would.
[3] **134 Q.** Did the CFS National
[4] Executive carry out any independent investigation
[5] into the allegations?
[6] **A.** I can't speak to that.
[7] **135 Q.** To the extent that there was
[8] -- well, whose responsibility at the National
[9] Executive would it be to investigate such an
[10] allegation?
[11] **A.** I don't think that particular
[12] task was assigned to any one individual.
[13] **136 Q.** Now, for a moment, I am just
[14] going to take you back briefly to the bylaws and
[15] specifically the requirement we spoke about
[16] earlier, a petition on the question of continued --
[17] or continued membership must require that very
[18] neutral language that just essentially states out
[19] the question.
[20] Would it be -- when students are
[21] circulating a referendum petition, are they allowed
[22] to express their views on the organization of the
[23] CFS?
[24] **A.** I don't know what you mean by
[25] "are they allowed".

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[1] **137 Q.** I will try it again.
[2] So if an individual student
[3] believed that defederating from the CFS would be in
[4] the best interest of their fellow students,
[5] undergraduate students at the University of Guelph,
[6] then presumably when they circulate a petition
[7] seeking for such a referendum to be held, they
[8] would express that view?
[9] **A.** Not necessarily, no.
[10] **138 Q.** Would it be improper for them
[11] to express their views on membership with the CFS
[12] while disseminating or circulating a referendum
[13] petition?
[14] **A.** I think that depends entirely
[15] on what information or misinformation they were
[16] providing at the time.
[17] **139 Q.** But, for example, one of the
[18] goals of the CFS as an institution, and as
[19] expressed in the unity petition, is to oppose
[20] increases in tuition fees; is that correct?
[21] **A.** That is one of the policies
[22] of the organization.
[23] **140 Q.** If a student felt as though
[24] the CFS, as an institution, was not the most
[25] effective way to oppose tuition fees, or increase

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[1] the tuition fees, when they were circulating a
[2] petition calling for a referendum, they would be
[3] within their rights to express that view; correct?
[4] **A.** Yes.
[5] **141 Q.** If you don't mind turning to
[6] paragraph 24 -- sorry, do we need a break?
[7] **A.** I'm fine.
[8] **MR. DOUGLAS:** I'm fine. Are you
[9] fine?
[10] **MR. TRELEAVEN:** Is Madam Reporter
[11] fine?
[12] **COURT REPORTER:** Yes.
[13] **THE DEPONENT:** Twenty-four, you
[14] said?
[15] **BY MR. TRELEAVEN:**
[16] **142 Q.** Yes. You indicate that Mr.
[17] Armstrong of the CSA would not assist the CFS in
[18] the further verification of the petition.
[19] **A.** I say that Mr. Armstrong
[20] would not assist the National Executive in
[21] verifying the entries, yes.
[22] **143 Q.** Fair enough. Are you aware
[23] that the CSA's position has been that they do not
[24] have access to an up-to-date membership list that
[25] would allow for the verification of the names in

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[1] the petition?
[2] **A.** Yes, but that's not what was
[3] being asked, to my recollection, of the CSA or Mr.
[4] Armstrong.
[5] **144 Q.** Perhaps you could clarify,
[6] then, what assistance was being asked, if not to
[7] provide the information necessary for verification?
[8] **A.** Can I just look at the
[9] correspondence? Can I refer to the correspondence?
[10] **145 Q.** Absolutely.
[11] **A.** Just to refresh my memory.
[12] Anybody know where to find that?
[13] **MR. TRELEAVEN:** Exhibits K and L,
[14] I believe.
[15] **MR. DOUGLAS:** Well, maybe before
[16] that, too. You may go back to --
[17] You can start anywhere. The time
[18] frame starts about November.
[19] **BY MR. TRELEAVEN:**
[20] **146 Q.** November, yes.
[21] **A.** So your question again,
[22] please?
[23] **147 Q.** I just want to be clear that
[24] when you say that the CSA refused to assist in the
[25] verification process --

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[1] A. Yes.

[2] **148 Q.** -- beyond giving or providing

[3] the information that's necessary for verification

[4] to occur, essentially being the master list of

[5] currently-registered undergraduate students at the

[6] University of Guelph, what other steps are you

[7] saying they failed to assist you with?

[8] A. The Guelph Central Student

[9] Association is the organization at the University

[10] of Guelph that is comprised of, represents

[11] undergraduate students at that institution.

[12] And, as such, it has a standing or

[13] a recognition within the institution or within the

[14] community, if you will.

[15] And so in the event the Guelph CSA

[16] did not have in its possession an up-to-date

[17] enrolment list that it could then use in efforts to

[18] verify names on a petition -- which I should note

[19] some student unions do have, in fact, in their

[20] possession, so it would not be unusual or out of

[21] the ordinary for the Guelph CSA to have such a

[22] document -- I think it was completely reasonable to

[23] assume that Gavin or other members of the executive

[24] could, as executive officers of the Guelph Central

[25] Student Association, use or make use of their

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[1] relationships with administrators at the University

[2] of Guelph in order to move the process forward.

[3] **149 Q.** And you are aware that --

[4] sorry?

[5] A. No.

[6] **150 Q.** You are aware that the

[7] University of Guelph, at least up to the point of

[8] the commencement of this application, had taken the

[9] position that due to its obligations under the

[10] Freedom of Information and Personal Privacy Act, it

[11] could not provide that information, being

[12] up-to-date master list of students, to any third

[13] party?

[14] A. Can you repeat your question?

[15] **151 Q.** Are you aware that it was the

[16] University of Guelph's position that under FIPPA it

[17] could not provide the master list of students to a

[18] third party?

[19] A. Am I aware of that now?

[20] **152 Q.** Are you aware of that now?

[21] A. I am aware that is the

[22] position that the University of Guelph has taken.

[23] **153 Q.** Were you aware of it at the

[24] time that you made request for assistance?

[25] **MR. DOUGLAS:** Do you want to

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[1] specify --

[2] **MR. TRELEAVEN:** November 23rd was

[3] the letter we were looking at.

[4] **MR. DOUGLAS:** I just wanted to

[5] make sure, because there have been obviously

[6] multiple many requests for assistance.

[7] **THE WITNESS:** Was I aware on

[8] November 23rd that was the position of the

[9] University of Guelph?

[10] **BY MR. TRELEAVEN:**

[11] **154 Q.** Yes.

[12] A. No.

[13] **155 Q.** So you have taken the

[14] position in your affidavit, which was sworn March

[15] 8th -- when you swore this, you knew that it was

[16] the university's position that they would not

[17] provide a master list to the third party?

[18] **MR. DOUGLAS:** Wait. Again, we

[19] have this discussion. We know on March 8th that

[20] they are prepared to allow us access to the master

[21] list. I appreciate you are asking a question in

[22] past. As you know -- you refined it by saying up

[23] until the point in time when the application was

[24] commenced, and then going from there.

[25] **MR. TRELEAVEN:** Okay. So then --

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[1] **MR. DOUGLAS:** I just want to make

[2] it clear we now know, of course, the university is

[3] prepared to allow us access, subject to certain

[4] confidentiality agreements being put in place and

[5] subject, of course, to your client consenting,

[6] which of course your client has not done.

[7] **MR. TRELEAVEN:** Again, with other

[8] matters that flow from the litigation, and the

[9] commencement of this and other issues that are

[10] expressed in our correspondence and --

[11] **MR. DOUGLAS:** You asked a

[12] question: Do we know at this point in time that

[13] the university will not allow us access? No. In

[14] fact, we know the exact opposite.

[15] **BY MR. TRELEAVEN:**

[16] **156 Q.** So I would like to go back to

[17] my questions.

[18] Prior to the commencement -- based

[19] on what you know now, prior to the commencement of

[20] this application --

[21] A. Okay.

[22] **157 Q.** -- the University of Guelph

[23] took the position that it would not provide a

[24] master list to any third party. Is that your

[25] understanding?

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[1] A. You are going to have to
[2] rephrase that for me. You lost me on the time
[3] lines.
[4] **158** Q. Prior to February 16th, which
[5] is when this application was started -- let me try
[6] this again.
[7] A. Yes.
[8] **159** Q. With the knowledge that you
[9] have now, during the time frame from the time the
[10] petition was sent to you on October 19th to the
[11] commencement of this application on February 16th,
[12] the University of Guelph took the position that,
[13] under its obligations under FIPPA, it would not
[14] provide a master list of students to third parties.
[15] It might be easier if we go to the
[16] letter of Ms. Whiteside, and I will try and find
[17] it.
[18] **MR. DOUGLAS:** Tab L.
[19] **BY MR. TRELEAVEN:**
[20] **160** Q. It is the fourth paragraph
[21] down.
[22] A. So the question is?
[23] **161** Q. Based on the university's
[24] stance or position that's expressed in this
[25] February 9th letter, a third party cannot get

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[1] access, or could not, during that relevant period
[2] of time --
[3] **MR. DOUGLAS:** Which you have
[4] defined as being November 23rd, 2009 to --
[5] **MR. TRELEAVEN:** Well, October 19th
[6] to February 16th, 2009.
[7] **MR. DOUGLAS:** Fair enough.
[8] **MR. TRELEAVEN:** It doesn't make a
[9] difference, I don't think.
[10] **BY MR. TRELEAVEN:**
[11] **162** Q. During that period of time,
[12] the university would not release a list to a third
[13] party?
[14] **MR. DOUGLAS:** Is that a question?
[15] **MR. TRELEAVEN:** I am asking if she
[16] agrees that's the position that is reflected --
[17] **MR. DOUGLAS:** Well, the document
[18] is what the document says.
[19] **THE WITNESS:** It says it would be
[20] inappropriate for the university to identify
[21] specifically which students are or are not
[22] registered. It doesn't speak to a list.
[23] **BY MR. TRELEAVEN:**
[24] **163** Q. So then I will try to go at
[25] this another way.

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[1] The National Executive requested
[2] the CSA to assist in the verification process; is
[3] that correct? I mean, we are just -- I am trying
[4] to make it for the record clear.
[5] A. Yes.
[6] **164** Q. Yes. If the National
[7] Executive asked the CSA to provide information that
[8] it did not have and it could not obtain through the
[9] university, would you still consider that behaviour
[10] to be considered a failure to assist the National
[11] Executive?
[12] A. Sorry, you're going to have
[13] to rephrase that for me.
[14] **165** Q. It is the evidence of the
[15] CSA --
[16] **MR. DOUGLAS:** We're the CFS.
[17] **MR. TRELEAVEN:** Yes, and it is the
[18] evidence of the CSA.
[19] **MR. DOUGLAS:** Oh, sorry, I thought
[20] you said, Is it the evidence of the CSA?
[21] **MR. TRELEAVEN:** No.
[22] **MR. DOUGLAS:** My apologies.
[23] **BY MR. TRELEAVEN:**
[24] **166** Q. It is the evidence of the
[25] CSA --

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[1] **MR. DOUGLAS:** Thank you.
[2] **BY MR. TRELEAVEN:**
[3] **167** Q. -- that they did not have an
[4] up-to-date list from the time period of October
[5] 19th up until February 16th. It is also the
[6] evidence of the CSA that the University of Guelph
[7] would not provide it with that information.
[8] And my question to you is: If the
[9] CSA could not obtain access to the master list,
[10] would they -- would you still say that they have
[11] failed to assist you by not providing that
[12] information?
[13] A. The CSA wasn't being asked
[14] for a master list. The CSA was being asked for
[15] assistance in verifying names, but how that
[16] assistance is provided is not set out in the letter
[17] I am looking at, which is dated November 23rd,
[18] 2009.
[19] **168** Q. Okay.
[20] A. Tab D.
[21] **169** Q. So I am looking for the
[22] December -- Okay, tab H.
[23] A. Yes.
[24] **170** Q. Is it fair to say that in
[25] this email Mr. Armstrong, who is the representative

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[1] of the CSA, has directed the National Executive to
[2] take up any questions about the verification
[3] process directly with the university?
[4] **A.** Can you repeat your question,
[5] please?
[6] **171 Q.** Well, again, perhaps the
[7] document speaks for itself. I am just -- in this
[8] email, the CSA has directed the National Executive
[9] to refer their questions about verification to the
[10] university?
[11] **A.** Well, it says that the CSA is
[12] acting under the assumption that her statement is
[13] correct. And this is referring to a letter that
[14] Brenda Whiteside signed off on and stating that if
[15] Dave -- quote, "if he wished to challenge her
[16] statement", he would have to contact her, is what
[17] the letter says -- the email says.
[18] **172 Q.** And I don't know if we need
[19] any further information at this stage about that.
[20] It's something that will be I guess addressed, in
[21] terms of the meaning of that email. We can deal
[22] with that at another venue. I apologize that that
[23] line of questioning took so long.
[24] Back to the bylaws, if we could.
[25] **A.** Yes.

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[1] **173 Q.** Again, it is Bylaw 6, and I
[2] believe it is 'b'.
[3] **MR. DOUGLAS:** Well, I guess Bylaw
[4] 1, section 6.b, correct. I just want to make it
[5] clear in case there is some confusion.
[6] **BY MR. TRELEAVEN:**
[7] **174 Q.** I would just like your
[8] interpretation with respect to -- let me see if I
[9] actually have it. The bylaw we are referring to
[10] being Bylaw 1, subsection 6.b.i, states that:
[11] "Within 90 days of receipt of
[12] the petition described in
[13] Bylaw I, Section 6.a, the
[14] National Executive will
[15] review the petition to
[16] determine if it is in order
[17] and, if it is, in
[18] consultation with the member
[19] local, will schedule a
[20] referendum that is not less
[21] than 60 days and not more
[22] than 90 days following..."
[23] I am obviously doing too much
[24] dictation these days.
[25] My question is: If the CFS

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[1] National Executive fails to respond within 90 days,
[2] does that place it in violation of its bylaws?
[3] **A.** This sets out here that the
[4] National Executive -- I'm sorry, can you repeat
[5] your question?
[6] **175 Q.** I might be able to rephrase
[7] it to help you.
[8] **A.** Okay.
[9] **176 Q.** If the CFS does not make a
[10] determination as to whether or not a petition is in
[11] order within 90 days, does that place it in
[12] violation of its bylaws?
[13] **A.** I'm not sure that that is
[14] necessarily a question that I can answer.
[15] **177 Q.** You would agree it wouldn't
[16] be in accordance with the language of the bylaw?
[17] **A.** This sets out that within 90
[18] days of receipt of the petition, the National
[19] Executive would review that petition to determine
[20] if it is in order.
[21] And so provided that review has
[22] occurred or is occurring within that -- if best
[23] efforts are made to ensure that that review is
[24] undertaken, then I think that is completely
[25] appropriate.

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[1] **178 Q.** Go to paragraph 53 of your
[2] affidavit.
[3] **A.** My affidavit?
[4] **179 Q.** And at the bottom of page 18,
[5] so I guess really the middle of the paragraph, you
[6] state that the individual students, presumably of
[7] the CSA, through a democratic vote have chosen to
[8] be members in the Federation.
[9] So I take it that vote took place
[10] in 1981 that you are referring to?
[11] **A.** I don't know what year it
[12] took place. There were a series of votes that
[13] happened over a course of time, the founding years
[14] of the organization.
[15] **180 Q.** Would you be able to find out
[16] when that vote took place?
[17] **A.** Yes.
[18] **MR. DOUGLAS:** So specifically you
[19] want to know: When did the vote of CSA take place
[20] to join CFS?
[21] **MR. TRELEAVEN:** In the affidavit,
[22] I believe the proposition is that the individual
[23] students of the CSA, through a democratic vote,
[24] chose to become members, and I am wondering when
[25] they last --

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[1] **MR. DOUGLAS:** I just want to make
[2] sure when you say "members", members of CFS?
[3] **MR. TRELEAVEN:** CFS.
[4] **MR. DOUGLAS:** Thank you.
[5] **MR. TRELEAVEN:** And I would like
[6] to know when the most recent vote took place.
[7] U/T **MR. DOUGLAS:** We will obtain that
[8] information and provide it to you.
[9] **BY MR. TRELEAVEN:**
[10] **181 Q.** If we can go back to
[11] paragraph 35, I understand that you are questioning
[12] the CSA's neutrality in this application, at least
[13] in part because you say the petition is not valid.
[14] **A.** Can you repeat the question?
[15] **MR. DOUGLAS:** Or was that a
[16] question?
[17] **MR. TRELEAVEN:** I am just
[18] confirming your statement and the question will
[19] come.
[20] **BY MR. TRELEAVEN:**
[21] **182 Q.** You question the CSA's
[22] neutrality, because it's bringing this application,
[23] and part of that questioning of neutrality is
[24] because you say the petition is not valid.
[25] Maybe we just find the sentence

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[1] that says it.
[2] **MR. DOUGLAS:** That would be
[3] helpful, because I don't think that is exactly what
[4] she says.
[5] **MR. TRELEAVEN:** Okay. So then the
[6] relevant sentence -- and I agree I can separate
[7] these two out.
[8] **MR. DOUGLAS:** Sure.
[9] **BY MR. TRELEAVEN:**
[10] **183 Q.** You don't believe that the
[11] CSA has remained neutral in this process?
[12] **A.** Can you define "CSA" for me,
[13] please?
[14] **184 Q.** The CSA executive.
[15] **A.** The executive of the CSA? I
[16] do not believe they have been neutral.
[17] **185 Q.** If the CSA had a good faith
[18] belief that the referendum petition was valid, do
[19] you believe it would be appropriate for them to
[20] bring this application?
[21] **A.** I am not trying to be
[22] difficult, but can you define "CSA"?
[23] **186 Q.** Okay, yes. If the CSA
[24] executive believes that the petition is in
[25] accordance with the bylaws and they have a good

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[1] faith belief that that has occurred, is it
[2] appropriate for them to bring this application, in
[3] your opinion?
[4] **A.** I am not sure whether this
[5] speaks to whether or not it is appropriate, but
[6] this issue is an issue of a vote on continued
[7] membership in the Canadian Federation of Students.
[8] And the individuals who will be participating in
[9] that process in casting a vote are the individual
[10] members of the Canadian Federation of Students, who
[11] are undergraduate students at the University of
[12] Guelph.
[13] I am not sure what standing the
[14] CSA as a corporate entity, or what role the CSA as
[15] a corporate entity, has to play in terms of
[16] determining whether or not a petition that was
[17] submitted to the Canadian Federation of Students
[18] is, in fact, valid.
[19] **187 Q.** I am not talking about their
[20] role. I am saying: Given the CSA executive has an
[21] obligation to advocate on behalf of the interest of
[22] its members, the University of Guelph undergraduate
[23] students, who are also members of the CFS -- the
[24] question might not actually even be necessary at
[25] this stage, so I will just move on with that.

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[1] **MR. DOUGLAS:** We are facing a
[2] reality that they have commenced an application. I
[3] think the substance of her paragraph that you have
[4] referred her to is it's evident in it that she
[5] sees, if I could paraphrase it, that there is --
[6] there has been a step taken by the executive to
[7] initiate this application while, at the same time,
[8] from our perspective -- and I submit it is our
[9] perspective -- at the same time the executive has
[10] denied us an opportunity to verify the petition.
[11] So they have caught us in a catch
[12] 22.
[13] **MR. TRELEAVEN:** Well, obviously
[14] that's not our position.
[15] **MR. DOUGLAS:** Understood.
[16] **MR. TRELEAVEN:** Yes.
[17] **MR. DOUGLAS:** I am not trying to
[18] tell you that you should agree with me. I am just
[19] saying that is our perspective, and that is
[20] ultimately why we have continued to claim that the
[21] way to resolve this is to go back and verify the
[22] petition.
[23] **BY MR. TRELEAVEN:**
[24] **188 Q.** I appreciate the position. I
[25] will refer you to the correspondence that we have

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[1] already provided on that issue.
[2] So moving on, in the various
[3] different positions that you have held that are
[4] listed -- well, you know what? We don't even need
[5] to go through that.
[6] In your current position with the
[7] CFS, you receive a salary?
[8] A. Yes.
[9] **189 Q.** And does your salary come out
[10] of the CFS annual budget?
[11] A. In part.
[12] **190 Q.** In part. And the annual
[13] budget of the CFS is comprised of fees paid by
[14] university and college students across Canada who
[15] are members?
[16] A. A portion of the budget -- or
[17] a portion of the revenues.
[18] **191 Q.** A portion of the revenues.
[19] Approximately 93 percent or -- It came up this
[20] morning.
[21] **MR. DOUGLAS:** This morning you had
[22] the correct man answering that question.
[23] **THE WITNESS:** That's right.
[24] **BY MR. TRELEAVEN:**
[25] **192 Q.** And the revenues that come

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[1] from these members are important to the operation
[2] of the CFS?
[3] A. Important?
[4] **193 Q.** The CFS needs these funds to
[5] be able to fulfil its mandate?
[6] A. No, I wouldn't necessarily
[7] agree with that statement.
[8] **194 Q.** Could the CFS exist without
[9] money?
[10] A. Absolutely.
[11] **195 Q.** Could the CFS --
[12] A. The Canadian Federation of
[13] Students is an alliance of student associations
[14] that are comprised of individual members. That's
[15] what this organization is.
[16] **196 Q.** Sorry. So the work that you
[17] carry out as, I guess, the National Executive or
[18] the work that you carry out on behalf of the CFS,
[19] that could not be funded without the fees that are
[20] provided by the students?
[21] A. Well, that's a bit of a
[22] chicken and egg question, because the work that is
[23] undertaken by the National Executive or the member
[24] local associations of the Canadian Federation of
[25] Students is determined by the voting member local

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[1] associations of the Canadian Federation of
[2] Students.
[3] So if there were a change in the
[4] organization -- a significant change in the
[5] organization's revenue, that factor would be taken
[6] into account when determining what activities the
[7] organization could undertake.
[8] It is not static in terms of the
[9] work that it undertakes. It ebbs and flows
[10] depending on circumstances.
[11] **197 Q.** And not to state the obvious,
[12] but the more resources that are available, the more
[13] initiatives can be undertaken?
[14] A. Potentially.
[15] **198 Q.** Okay. Is it fair to say that
[16] if a member association were to defederate, the
[17] resources available to the CFS and to the executive
[18] would be less?
[19] A. Well, the revenue -- it's not
[20] mutually exclusive. The revenue that would no
[21] longer be coming in would also -- if, for example,
[22] individual members at Guelph at some point decided
[23] they no longer wanted to be members of the Canadian
[24] Federation of Students, those membership fees would
[25] not be remitted. But, at the same time, the

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[1] Canadian Federation of Students would not be
[2] providing services, campaigns materials, et cetera,
[3] to those students.
[4] So our revenue would decrease, but
[5] so would our expenses.
[6] **199 Q.** Yes, obviously. Is it fair
[7] to say the CFS does not want to see any of its
[8] members defederate?
[9] A. When you say "CFS", what do
[10] you mean?
[11] **200 Q.** The National Executive has an
[12] interest in maintaining its membership?
[13] A. I am not trying to be
[14] difficult, but what do you mean by "has an interest
[15] in"? The National Executive as a whole supports
[16] the idea of working together in unity to achieve
[17] certain goals as an organization for the betterment
[18] of university and college students across the
[19] country, for the benefit of those individuals who
[20] might just be contemplating a post secondary
[21] education.
[22] **201 Q.** So I guess I can put it two
[23] ways. One is there is a direct economic interest
[24] to the CFS executive to maintain its membership.
[25] The corporation that is involved and is named in

[1] this application has an economic interest in
[2] keeping its members?
[3] **A.** Given what I just said about
[4] a decrease in revenue would also result in a
[5] decrease in expenses, I am not sure I can -- I
[6] don't think I can necessarily agree to that
[7] statement.
[8] **202 Q.** If enough associations
[9] defederated, it could threaten the existence of the
[10] corporation -- I understand that the idea of the
[11] Canadian Federation of Students is something that
[12] is not constrained to a corporate structure, but
[13] within the bylaws which are at issue here, and
[14] within the confines of this legal entity, if many
[15] members defederate, it could threaten the existence
[16] of that organization, could it not?
[17] **A.** No. The mandate would still
[18] exist.
[19] **203 Q.** The corporate entity -- Let's
[20] take a quick break.
[21] --- Recess at 3:26 p.m.
[22] --- Upon resuming at 3:30 p.m.
[23] **BY MR. TRELEAVEN:**
[24] **204 Q.** Back on. Does the CFS
[25] executive have a conflict of interest policy?

[1] in writing, we will provide you with a copy of the
[2] policy.
[3] **MR. TRELEAVEN:** Yes, thank you.
[4] Actually, if we can take another
[5] break and go off the record.
[6] --- (Off the record discussion)
[7] **MR. TRELEAVEN:** And those are all
[8] of my questions.
[9] **THE WITNESS:** Thank you.
[10] --- Whereupon the cross-examination adjourned
[11] at 3:38 p.m.

[1] **A.** Just to be clear, is there a
[2] policy on conflict of interest that governs the
[3] National Executive?
[4] **205 Q.** Yes.
[5] **A.** Outside of what's provided
[6] for in relevant legislation, et cetera?
[7] **206 Q.** Yes. Outside of the
[8] contractual obligation of good faith that I've
[9] talked about, or outside of -- I don't know what
[10] statute you would be referring to.
[11] Like, is there a written policy of
[12] the CFS dealing with conflicts of interest?
[13] **A.** I don't know.
[14] **207 Q.** Can I maybe ask for an
[15] undertaking that you look and, if there is a
[16] conflict of interest policy, please provide it?
[17] **MR. DOUGLAS:** And do you want to
[18] just sort of -- so does the National Executive have
[19] a conflict of interest policy? Would that be
[20] appropriate?
[21] **MR. TRELEAVEN:** Yes.
[22] U/T **MR. DOUGLAS:** Okay. So we will
[23] make an undertaking to enquire if there is a
[24] conflict of interest policy that governs members of
[25] the National Executive, and, if there is and it is

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