

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

BETWEEN:

THE DEMOCRACY FUND

Plaintiff

and

LEIGHTON B.U. GREY and
GREY WOWK SPENCER LLP

Defendant

H E A R I N G
(Taxation Hearing)

Edmonton, Alberta
June 21, 2023

Transcript Management Services
Suite 1901-N, 601-5th Street, SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@just.gov.ab.ca

This transcript may be subject to a publication ban or other restriction on use, prohibiting the publication or disclosure of the transcript or certain information in the transcript such as the identity of a party, witness, or victim. Persons who order or use transcripts are responsible to know and comply with all publication bans and restrictions. Misuse of the contents of a transcript may result in civil or criminal liability.

TABLE OF CONTENTS

June 21, 2023	Afternoon Session	1
Discussion		1
Submissions by Ms. Amirkhani		5
Submissions by Mr. McCurrach		13
Submissions by Ms. Amirkhani (Reply)		25
Submissions by Ms. Amirkhani (Reply)		40
Submissions by Mr. McCurrach (Reply)		44
Decision		46
Certificate of Record		58
Certificate of Transcript		59

1 Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

2

3

4 June 21, 2023

Afternoon Session

5

6 D.M. Ellery

Review Officer

7

8 E Amirkhani
9 (remote appearance)

For The Democracy Fund

10 R McCurrach

For Leighton B.U. Grey and Grey Wowk
Spencer LLP

11

12 (remote appearance)

13

14

15 **Discussion**

16

17 THE REVIEW OFFICER:

Good afternoon. This is Court of King's Bench
action 2201-06197. The application client is The Democracy Fund. They are represented
by Ms. Amirkhani and two of her students from her office this afternoon. And the
respondent law firm is Leighton B. U. Grey and Grey Wowk Spencer LLP. They're
represented by Mr. McCurrach, and he also has a student from his office.

22

23 I'm the Review Officer this afternoon. My last name is Ellery, initials D.M. You were
24 originally before me on June 8th, 2022, at which time there was a dispute over the
25 jurisdiction of the Alberta court. I sent it off pursuant to Rule 10.81 to have some issues
26 determined. Those issues appear to have been determined by Justice Anderson in an order
27 of March 26 of this year. Let me just find the order. I have it here. In any event, she sent
28 the matter back for the purposes of the review and she sealed part of a file. So I have
29 received the materials from the firm, which were -- they are confidential evidence. And the
30 accounts are what appear to be new accounts and a spreadsheet which I do not completely
31 understand. I mean, I understand some of it but I will get further clarification on that. For
32 some reason, I have lost Justice Anderson's order. But she reverted the matter back. There
33 was no other direction that was contained in the order. Is that a fair comment, Ms.
34 Amirkhani?

35

36 MS. AMIRKHANI:

Yeah. The order you're referring to I believe is a
consent order. The matter -- just by way of background -- procedural background -- so I
came onto this file at the point where it was supposed to be heard. It was -- we were told
by GWS that it was set down for a special application -- a Special Chambers hearing. In
fact, it wasn't. It was a Morning Chambers hearing. And so it got all delayed and we ended
up at a consent order that amounted to this, which brings us back here today. And the issues

41

1 are basically resolved as to -- the issues are resolved, but my friend can -- can speak
2 otherwise if he doesn't agree with that.

3

4 MR. MCCURRACH: I would like to just briefly speak to that given that
5 Mr. Grey was -- was named as one of the respondents in the -- in the consent order that my
6 friend just mentioned. Number 1, or sorry, paragraph 1 in there states The Democracy Fund
7 has (INDISCERNIBLE) to amend (INDISCERNIBLE) its appointment for review for
8 lawyer's charges, filed June 1st, 2022, to remove Leighton B.U. Grey as --

9

10 MS. AMIRKHANI: Yes.

11

12 MR. MCCURRACH: -- as respondent. So I just wanted to clarify that
13 the consent order has been entered.

14

15 MS. AMIRKHANI: And I would also mention -- because it just came
16 to my attention that I provided the things that were to be filed, which is the redacted version
17 of Mr. Honer's (phonetic) affidavit and the amended application removing Mr. Grey, to my
18 assistant for filing. And it appears that she missed the boat on that --

19

20 THE REVIEW OFFICER: I have got that.

21

22 MS. AMIRKHANI: -- a little bit.

23

24 THE REVIEW OFFICER: Yes. And that is why I did not catch the order
25 because I was looking at -- I thought this was the confidential evidence. So the order is a
26 consent order. So Mr. Grey has been removed as a respondent. The redacted -- or the
27 original affidavit of Mr. Honer has been struck, which I think is in a package here, and I
28 have not opened the package. The redacted copy of the affidavit is attached to the order,
29 which I have before me and I have read. And the matter is reverted to the review office.

30

31 So this became a consent order. The actual application did not proceed. Okay. We are all
32 here then. Normally, I would start with the law firm, Ms. Amirkhani, but I am not going to
33 today because I have read the affidavit of Mr. Honer. The redacted affidavit. And I am just
34 going to start with a couple of questions of the firm, and then I will let you hit the high
35 points in the affidavit or whatever you want for your submissions, Ms. Amirkhani.

36

37 MS. AMIRKHANI: Okay.

38

39 THE REVIEW OFFICER: And then we will return to the firm. First off, are
40 we dealing with 28 or are we dealing with 29 accounts. The original materials I had at 29
41 accounts at \$414,000. The material that was provided I am going to say today because I

1 looked at it today, but it was provided by the firm in this matter, suggests there is 28 of
2 \$368,000. And then I saw something else in the affidavit that suggested that it was
3 \$390,000. So do we have an exact number of how many accounts we are looking at?
4

5 MS. AMIRKHANI: I have 37.

6
7 THE REVIEW OFFICER: Thirty-seven?

8
9 MS. AMIRKHANI: Yes.

10
11 THE REVIEW OFFICER: Okay. Thirty --

12
13 MS. AMIRKHANI: And my calculation is -- my calculation of the
14 total dollar value is \$429,442.80.

15
16 THE REVIEW OFFICER: All right. Does that sound right to you, Mr.
17 McCurrach?

18
19 MR. MCCURRACH: I think we're a little bit -- that might be the total
20 amount between the parties for the various files, but I believe in terms of the subject matter
21 of -- of the taxation hearing today the dollar figure that we have -- and this is not including
22 the CN -- CN Rail, which I believe is another matter -- the dollar amount we have is
23 \$156,105.55.

24
25 THE REVIEW OFFICER: That is how much it says is outstanding. We are
26 not looking at the amount that is outstanding. We are looking at the total amount of the
27 accounts that are being reviewed.

28
29 MR. MCCURRACH: It's my understanding that that is the total amount
30 owing on the accounts being reviewed today. I know there are other accounts, but just to
31 recap on the ones -- just to make sure we're talking about the same ones. We have --

32
33 THE REVIEW OFFICER: Okay. Well, let us not spend more time on it. We
34 will run with Mr. Amirkhani's number since she is the client and she knows what account
35 she is dealing with. Now, in the materials that were provided recently, Mr. McCurrach,
36 there was -- there are no retainer agreements contained in there. And in the affidavit of Mr.
37 Honer there is one retainer agreement that deals with -- I cannot read their names -- Jocelyn
38 (phonetic). Amber Jocelyn. Which is Exhibit N to the affidavit of Mr. Honer. Were there
39 other retainer agreements?

40
41 MR. MCCURRACH: The agreement that I have that I understand to

1 govern those relationships -- the (INDISCERNIBLE) we're dealing with today is the
2 interim period agreement, which is the one effective October 11th, 2021.

3

4 THE REVIEW OFFICER: Okay.

5

6 MS. AMIRKHANI: It is at tab A of Mr. Honer's affidavit that he is
7 referring to.

8

9 THE REVIEW OFFICER: Yes. I have got a copy of that. Now, where does
10 it talk about CN and where does it talk about the various specific files in there, and where
11 does it talk about Mr. Grey's hourly rate. I have looked through this a couple of times and
12 I just -- I am either not seeing it or it is not jumping out at me.

13

14 MR. MCCURRACH: I will have to reference the exhibits in Mr.
15 Honer's affidavit there.

16

17 THE REVIEW OFFICER: Okay.

18

19 MR. MCCURRACH: (INDISCERNIBLE).

20

21 THE REVIEW OFFICER: We will come back to --

22

23 MR. MCCURRACH: The only (INDISCERNIBLE) intermediary.

24

25 THE REVIEW OFFICER: -- that. That is something I want to know. Now,
26 the latest invoices that you attached to your materials -- and this is under cover of the letter
27 June 14th, 2023 -- contain a breakdown of specific hourly entries. Were these the accounts
28 that were provided initially to The Democracy Fund? I understand they are not. So I am
29 just trying to confirm this.

30

31 MR. MCCURRACH: The ones that you are referring to most recently
32 are the ones that have the heading respectfully TDF accounts summary by date and TDF
33 accounts summary by claim. Are those the ones that you are initially referring to?

34

35 THE REVIEW OFFICER: Yes, the ones in this June 14th letter. I have
36 gotten the accounts that are attached to Mr. Honer's affidavit. And I think those were the
37 accounts that I saw back in June of last year. I will just refer to the first one --

38

39 MR. MCCURRACH: Okay.

40

41 THE REVIEW OFFICER: -- March 25th, 2022, 30 hours, \$21,000 is all it

1 says, along with a brief three lines of what work was done.

2

3 MR. MCCURRACH: And sorry, which -- which exhibit of Mr. Honer's
4 affidavit was this referring to?

5

6 THE REVIEW OFFICER: It is the very first account in the first -- in the
7 second exhibit. I guess it is Exhibit C. What I am asking you specifically is when were
8 these accounts that you have attached to the June 14th letter -- when were they prepared?
9

10 MR. MCCURRACH: I'm -- actually, I'm not sure when these records
11 were prepared. It's my understanding they were prepared concurrently, but I don't have
12 confirmation of that.

13

14 THE REVIEW OFFICER: Okay. And is there a computer printout from
15 your office that shows time entries being put in or being recorded? That you used to prepare
16 these accounts?
17

17

18 MR. MCCURRACH: Sorry, can you -- can you repeat that for me?

19

20 THE REVIEW OFFICER: How do you keep track of your time in your
21 office when you are billing on file? How do you keep track of a .1 and how do you keep
22 track of a .5?
23

23

24 MR. MCCURRACH: We have a program at our firm that we use called
25 PC Law, which we enter those times into.
26

26

27 THE REVIEW OFFICER: Okay. So what I am asking is was there a printout
28 from PC Law that was used to generate these accounts that are attached to the June 14th,
29 2023 letter?
30

30

31 MR. MCCURRACH: I believe these are the products of the PC Law
32 system that print out and give the accounts -- the detail accounts as to who did the work
33 and how much time was put in and that they -- that they were entered.
34

34

35 THE REVIEW OFFICER: Okay. So these were prepared from PC Law is
36 what you are telling me?
37

37

38 MR. MCCURRACH: That's my understanding, yes.
39

39

40 **Submissions by Ms. Amirkhani**

41

1 THE REVIEW OFFICER: Okay. All right. Back to you, Ms. Amirkhani. Do
2 you want to just take me through your issues or your client's issues with the carious
3 accounts? And then we will come back to Mr. McCurrach.
4

5 MS. AMIRKHANI: Certainly. I just want to start by actually
6 answering or commenting on the last question you just asked: when were these accounts
7 prepared? I appreciate my friend's comment that they were prepared perhaps concurrently
8 and that this is a printout from PC Law. And as part of TDF asking GWS to itemize their
9 invoices, they provided TDF with something like 5,000 documents of internal
10 correspondence and internal work product in order to allow TDF to try and verify the work
11 that was completed. As part of that, and while my monthly summer students are here, we
12 have seen that these invoices were actually -- they appear to have been recreated post hoc.
13 They -- I can show you even just one example that I think will make clear where I'm coming
14 from. If -- is sharing my screen okay in this scenario?
15

16 THE REVIEW OFFICER: Okay. I probably cannot see it, but just tell me
17 where it is --
18

19 MS. AMIRKHANI: Oh, you're muted or my speakers are --
20

21 THE REVIEW OFFICER: -- or you can show me in the materials, but put it
22 up on the screen if you want. I have got bad eyes.
23

24 MS. AMIRKHANI: I am sorry. I can't hear you. Can you unmute your
25 speakers?
26

27 THE REVIEW OFFICER: Oh, sorry. I am muted. Yes, you can put it up on
28 the screen and if I cannot see it just tell me where it is and I will dig it out of the materials.
29

30 MS. AMIRKHANI: Just one moment and I will just pull up an email
31 that I think will answer our perspective --
32

33 THE REVIEW OFFICER: One --
34

35 MS. AMIRKHANI: -- on this question. So we have the ability to
36 share. Okay. You should be able to now see -- of course, that --
37

38 THE REVIEW OFFICER: Oh, yes. There we go. I can read this. I have to
39 use the small screen because the other one is too far away.
40

41 MS. AMIRKHANI: So we have an email from Megan Gurski

1 (phonetic). She's a paralegal at GWS. On April 1st, 2022 she's emailing Sarah Stuart
2 (phonetic), who is another paralegal, and Jocelyn Gurke (phonetic), who was a third-year
3 associate at that point in time. And it says Subject Alsom (phonetic) accounts at
4 (INDISCERNIBLE). I have attached accounts. One is the detailed account yadda yadda:
5 (as read)

6
7 Please note your time to be added to the detailed account by email for
8 tracking purposes. We need this account to equal 30 hours.
9

10 And then you see a response from a Sarah Stuart where she says Here is the listing of my
11 time on this file. Now, I don't know if this was pulled from PC Law. Of course it could be.
12 It's nicely formatted. It's possible. But this is how we understand these invoices to have
13 been created because this is one example of a number of emails of this nature. So I thought
14 that that might help you in understanding that.

15
16 THE REVIEW OFFICER: Okay. Now, is that in the affidavit of Mr. Honer?

17
18 MS. AMIRKHANI: It is not.

19
20 THE REVIEW OFFICER: It is not? Okay.

21
22 MS. AMIRKHANI: We -- it is not.

23
24 THE REVIEW OFFICER: Okay.

25
26 MS. AMIRKHANI: There is going to be a number of documents
27 unfortunately today -- and my understanding is that it's at your discretion to accept evidence
28 that's not sworn --

29
30 THE REVIEW OFFICER: Yes.

31
32 MS. AMIRKHANI: -- it's -- all evidence from GWS's people. So it's
33 not anything from our side. But you can tell me if you don't agree with anything that
34 I'm -- I'm seeking to share with you today.

35
36 THE REVIEW OFFICER: No, there is not a problem so far. What was the
37 date of that email again? March 22nd?

38
39 MS. AMIRKHANI: Yes. No, April 1st is the email from Megan
40 Gurski and the response is April 4th.
41

1 THE REVIEW OFFICER: And what year?
2
3 MS. AMIRKHANI: 2022.
4
5 THE REVIEW OFFICER: Of 2022?
6
7 MS. AMIRKHANI: 2022.
8
9 THE REVIEW OFFICER: Okay.
10
11 MS. AMIRKHANI: Yes. And that -- just for timeline, the request --
12 the first request for detailed invoices was in March of 2022, and I do believe that is in the
13 Honer affidavit. There's emails in there --
14
15 THE REVIEW OFFICER: Okay. And what was the name of the lawyer that
16 provided their time there?
17
18 MS. AMIRKHANI: That was a paralegal --
19
20 THE REVIEW OFFICER: Oh.
21
22 MS. AMIRKHANI: -- and her name is Sarah Stuart.
23
24 THE REVIEW OFFICER: Okay. In the interest of being fulsomely
25 prepared, I had prepared to speak to you about the background of the relationship between
26 these parties, but I think you -- if you have read the --
27
28 THE REVIEW OFFICER: I have read the material. Just give me an
29 overview so there is something on the record. Although this affidavit is filed --
30
31 MS. AMIRKHANI: Absolutely.
32
33 THE REVIEW OFFICER: -- but we should have what we have to consider
34 --
35
36 MS. AMIRKHANI: Sure.
37
38 THE REVIEW OFFICER: -- at least on the record.
39
40 MS. AMIRKHANI: So The Democracy Fund, which I call TDF, is a
41 charitable organization. Its principles are basically about constitutional litigation and

1 constitutional rights. They made an arrangement with Grey Wowk Spencer LLP, which I
2 will refer to as GWS, in which TDF would provide funds for claims that GWS would run
3 as the legal team for individual claimants that align with TDF's purposes. In fact, this is
4 basically COVID or vaccine fighting litigation. Anti -- well, we won't use those words. But
5 of that nature.

6
7 So the parties in October of 2021 enter into an intermediary agreement that I know you've
8 seen is at appendix A of the redacted Honer affidavit. As you alluded to, there are no terms
9 in the intermediary agreement that provide billing -- the way that this is going to be billed.
10 It doesn't say anything about a flat fee, a blocked fee contingency. It doesn't say who is
11 going to be working on the file or at what hourly rate. It's really terms about invoicing and
12 things of that nature. There were then individual retainers entered into between GWS and
13 the individual claimants. An example you've already brought to light is attached to Mr.
14 Honer's affidavit, and I can't now recall -- I think it's Exhibit N. And in there, it very
15 specifically says: (as read)

16
17 Personnel, including lawyers other than the assigned lawyer, may
18 work on a file from time to time. Where other lawyers work on your
19 file, their time will be reported at their hourly rates and our account to
20 you will include fees relating to the services of the initial lawyer or
21 lawyers.

22
23 So the specific fees we have -- that we have written down anywhere, and they're in those
24 individual retainers. And the engagement began -- things were moving -- and TD or GWS
25 began billing TDF in a block fashion. A copy of those invoices are at Exhibit C of Mr.
26 Honer's affidavit. And what you see there is that they're being -- GWS is billing TDF in
27 flat amounts. In every instance, it's an increment of 10 hours. So 10 hours, 30 hours, 40
28 hours. Every hour is billed at \$700 per hour, which is Leighton Grey's rate. And the
29 descriptions of the work completed are very vague. As you mentioned, they're two, three
30 sentences or lines and they're not really descriptive of the specific work and who did the
31 work, how long each task took, and what tasks were completed.

32
33 Admittedly, TDF did pay some of these accounts. I think -- well, I won't speculate. But the
34 reality is that they paid these accounts without really noticing what was going on and
35 eventually in and around March 2022 a more diligent lawyer took on the role of managing
36 this relationship. And at that point, Mr. Alan Honer, who is himself a lawyer, realized what
37 was going on with the billing and brought it to GWS's attention. And he asked for, you
38 know, itemized invoices at that time. In response, and I think it's important to look at, is
39 Exhibit E of Mr. Honer's affidavit. It's Mr. Grey's response to that request. Sorry, my
40 computer is giving me a bunch of trouble for no reason.

41

1 And in Exhibit E, what you see in Mr. Grey's email is that he says, Itemizing the accounts
2 would be tedious and tiresome. He says something about hours that would be required to
3 go back and make these dockets. And so from -- you know, in our submission it's quite
4 obvious that they would have to be recreated after the fact because they hadn't been tracked.
5 That is our submission on that -- the interpretation of that email.

6
7 Eventually, they do provide itemized invoices to TDF. I don't have an exact date on that.
8 But what I do know is that those initial invoices billed every single hour at \$700 per hour
9 and did not identify who was doing the work billed. TDF took further issue with this and
10 there's an email at Exhibit N of the Honer affidavit. I would argue it may be the most
11 important email that we'll see today. It's from Mr. Grey, and I will actually read it verbatim
12 because it's very important. Mr. Grey says: (as read)

13
14 Not all of the hours were expended by me, but they were all billed out
15 at my hourly rate per the terms of the retainer agreement. There was
16 never representation otherwise as between the parties, and TDF paid
17 the previous accounts as rendered. A best estimate is that about half
18 of the hours were devoted by me, and the rest by Jocelyn [being
19 Jocelyn Gurke, a third year] and the other staff.

20
21 So Mr. Grey here says that, you know, at least 50 percent of this work that's billed at \$700
22 per hour, which I would argue is quite a substantial rate, wasn't completed by him and was
23 completed by people of far less experience.

24
25 And we fast-forward. These things have gotten underway, and in December of 2022 for
26 the first time we get what we're calling the revised accounts. And what has happened in the
27 revised accounts -- and they were sent to me specifically on behalf of TDF -- is they have
28 in I suppose acknowledgment of the fact that Mr. Grey did not himself do all of this work
29 -- they've allotted 15 percent of the hours billed to Ms. Gurke at \$250 an hour, which was
30 her hourly rate at the time.

31
32 And I say -- I can say 15 percent with confidence because I've run the numbers on exactly
33 how many of the hours were allocated to her. What's very notable in these revised accounts
34 is that the way the time was allotted in most of -- well, I know not all, but almost every
35 circumstance, is that Ms. Gurke has given exactly one third of the time that's billed at Mr.
36 Grey's rate. So if Mr. Grey is billing, you know, 1.5 hours for a statement of claim draft,
37 she's billing right underneath .5. If he's billing .35, which is in itself odd because I do not
38 know any lawyers that bill in .05, she is billing .15. And so this pattern is in our submission
39 an obvious recreation and random allocation of hours to Ms. Gurke.

40
41 So that brings us to where we are now. As -- as part of the initial request for invoices, as I

1 mentioned, TDF was provided 5,000 internal documents. My students went through them
2 in detail and what we found is unfortunately that Mr. Grey's estimate is conservative in
3 saying 50 percent of the work was done by other people. In our best estimate, and of course
4 it's not a mathematical calculation -- but our best estimate is something like 80 percent of
5 the work was done by paralegals. And of course, I have evidence with me today to show
6 you that. I don't trust you to take my word on that.

7
8 And so what we've be seeking today, of course upon showing you sufficient evidence to
9 satisfy you of our position, is an overall reduction in the rate at which 80 percent of Mr.
10 Grey's hours were billed to the rate of a paralegal. And in addition to that, we have a couple
11 of categories high level where we think a lot of the documents were duplicated because
12 there were precedents that kind of carry from file to file. And we think that, you know, to
13 a lesser extent some of the hours were overbilled in that sense in that they ultimately
14 shouldn't have been quite as high as they were. And that may be a product of reconstructing
15 things after the fact, but that's -- of course, I will show you what we're talking about.

16
17 THE REVIEW OFFICER: All right.

18
19 MS. AMIRKHANI: So if --

20
21 THE REVIEW OFFICER: Thank you. Just so I am clear on the December
22 22nd, 2022 documents that you got from the firm, are those the ones that are contained in
23 the firms materials that are attached to the June --

24
25 MS. AMIRKHANI: I've never seen -- I didn't know that the firm
26 provided you materials. They weren't provided to me. So I -- if you have anything that says
27 @JG250 on any of the lines, that would be the revised accounts. But ...

28
29 THE REVIEW OFFICER: Okay. Let me just look at the affidavit of Mr.
30 Honer again and see -- I am looking at Exhibit K of his affidavit. And there is a reference
31 to a February 25th, 2022 account.

32
33 MS. AMIRKHANI: Oh, sorry. I said 2022. The revised accounts were
34 provided December 20 -- yeah, December 2022. Yes, that's correct. Sorry. Continue.

35
36 THE REVIEW OFFICER: Okay. Let me just look. Mr. McCurrach, maybe
37 you can help me while I am looking. The materials that were provided just this week to
38 me, are those the new accounts that were sent to the client on or about December 22nd of
39 2022?

40
41 MR. MCCURRACH: The ones that you're referring to that were

1 submitted most recently, are you referring to the ones that they (INDISCERNIBLE)
2 summary by date and by client? I believe those are the ones that are most recently
3 submitted.

4

5 THE REVIEW OFFICER: Yes. I am asking about what you sent to -- to the
6 client on or around December 22nd of 2022. Is it the -- is it the accounts that you sent me
7 this week.

8

9 MR. MCCURRACH: Sir, give me one second and I'll just --

10

11 MS. AMIRKHANI: Sir, I can also possibly help you. If you -- can
12 you tell me the first page of the accounts that you have there?

13

14 THE REVIEW OFFICER: The first one I've got in Mr. Honer's affidavit is
15 February 25th of 2022 for \$7,000. And then the next page is the statement of account for
16 \$7,840 worth of time.

17

18 MS. AMIRKHANI: So that -- yes, the one in the Honer affidavit is
19 old and if you look at the -- if you have the revised ones, the February 18th, 2022 entry
20 will say Continue drafting a statement of claim-JG at \$250 per hour. So that's the different
21 -- oh, I see. The --

22

23 THE REVIEW OFFICER: Okay.

24

25 MS. AMIRKHANI: -- lines are actually ...

26

27 THE REVIEW OFFICER: Okay.

28

29 MR. MCCURRACH: I'm having trouble finding the document that
30 you're referring to from December 22nd.

31

32 MS. AMIRKHANI: Steven White (phonetic) had sent it to me by
33 email if that helps you at all.

34

35 THE REVIEW OFFICER: I am just trying to put these two groups of
36 invoices together so that I can follow them a little bit better. The ones that you sent -- oh,
37 this is why I cannot do it. The ones that you sent this week do not have any dates on them,
38 but they refer to this Alstom group so let me -- well, why do we not start with you, Mr.
39 McCurrach. What do you want to say? You have got an idea of the concerns that The
40 Democracy Fund is raising. And I want to go back starting with these accounts that you
41 just provided to me, and the second bits of the accounts that were sent to your client.

1
2 **Submissions by Mr. McCurrach**
3

4 MR. MCCURRACH: So I did want to clarify one point. I've asked the
5 staff that (INDISCERNIBLE) counsel. These were not generated using PC Law. Instead,
6 the time in the accounts were recorded through using Excel programs. I just want to clarify
7 that so we're on the same page. With respect to the agreed upon rates, I think that there is
8 perhaps a misunderstanding or a miscommunication as to what rates would apply. We do
9 have the intermediary agreement, which my friend and I are in agreement that governs the
10 relationship between TDF and GWS. And then as between the clients individually and
11 GWS there are individual retainer agreements which set out the billable rate that will be
12 billed for the client which sets out -- sets out the rate, which is billable according to
13 whomever is doing the work on it.
14

15 The -- in terms of the billable rate within the intermediate agreement, nothing is specifically
16 laid out in terms of a dollar figure. However, the agreement within section 7 of the
17 intermediary agreement references that the intermediary, which is GWS, shall provide
18 regular invoices to The Democracy Fund setting out the work completed by GWS in pursuit
19 of the charitable activity in this case, which is the COVID-19 related litigation over the
20 invoice period, which is not specified. The intermediary shall not withdraw any funds held
21 in its trust account in trust for TDF in satisfaction of invoices until TDF approves such
22 invoices in accordance with paragraph C, which only provides -- paragraph C, that is --
23 provides that TDF shall approve invoices issued by GWS if it can confirm satisfactory
24 performance of the work provided for in such invoice. So before an issue is raised with
25 what was done on the accounts, GWS provided said invoices with what was deemed to be
26 sufficient details on the accounts. And up until new counsel came in, Mr. Honer, there was
27 no issue on that.
28

29 So I mean the parameters for TDF approving of the invoices was fairly broad and based on
30 the conduct of TDF paying past invoices we didn't deem that there was any issue with the
31 billing scheme that was going on. So it seems only retrospectively for whatever reasons
32 internally to TDF that an issue was drawn at the billable rate and the work being done. And
33 then upon request of greater detail, GWS provided that. There seems to be some confusion
34 as to what details on the account were pertinent. We've tried to summarize that. I mean
35 there are, as my friend has pointed out, extensive back and forth correspondence of detail
36 accounts. The most recent account summaries, the two ones by date and by client
37 respectively, which if I'm understanding your question earlier, was initially issued on
38 December 22nd of 2022. And I believe it was updated most recently in March of 2023 and
39 provided this June.
40

41 Those are a generated summary just to provide ease of reading, which condenses all the

1 documentation and detailed invoices that I believe are set out in Mr. Honer's affidavit. And
2 that's our position with respect to the billable rate. And our position that we have complied
3 with the agreement that was set out in the intermediary agreement granted by TDF and that
4 all of the accounts in -- honestly, all the details have been provided upon request and that
5 they're -- they're honest and that they should stand as they are.

6

7 THE REVIEW OFFICER: Okay. Let me just go back to your first comment.
8 So these invoices were not prepared by PC Law, is that correct?

9

10 MR. MCCURRACH: That's correct. I was initially mistaken on that.

11

12 THE REVIEW OFFICER: All right. And so you said they were prepared by
13 Excel. What does that mean? Excel? Was the time kept contemporaneously with when the
14 work was done?

15

16 MR. MCCURRACH: As the work was done within the Excel program
17 as data would have been entered -- date, work, whoever was doing it -- at the billable rate.
18 They were reported in the Excel sheet as work was being done on a daily basis or a per
19 work basis, whoever was doing the work.

20

21 THE REVIEW OFFICER: Why would you use that system when you have
22 got PC Law? That makes no sense to me. Do you do that with all of our clients? Is this the
23 only client you did this with or do you do it with all of your clients? What is the purpose
24 of having PC Law if you are keeping track of your time either on pieces of paper or on an
25 Excel spreadsheet?

26

27 MR. MCCURRACH: I'm -- I'm not entirely privy to all of the internal
28 policies of the firm admittedly, but I believe that it has to do with the fact that we have a
29 Cold Lake head office and a Calgary -- Calgary office as well and the work was shared in
30 between them. And I'm not sure if PC Law entries translate from the Calgary office as well
31 to the Cold Lake office. I don't understand the policy for doing it in Excel. It may have
32 been that the sheer volume of it happening and the amount of people working on it made
33 for an easier work flow of having the individual working on the file, recording their time,
34 and recording their work on it to submit it to an administration who would then enter it into
35 PC Law. So that's -- that's my best guess on it. And I can say that personally I do -- do my
36 own Excel entries and record that and then say at I'll our building site (INDISCERNIBLE),
37 and then I'll provide that to administration here in Calgary and then they'll upload those
38 onto PC Law. So assuming that that is the same for this -- for the people who work on files
39 for TDF. Then that -- that would be my rationale for the policy. But if you -- if you need a
40 direct answer on that, I'd be more than happy to take that back to more senior counsel and
41 administration to figure out why Excel was used first before entering it into PC Law.

1
2 THE REVIEW OFFICER: Well, was it ever entered into PC Law? That --
3 you said it was not prepared from PC Law. I am talking about the accounts now. You said
4 they were prepared from the Excel sheets, not from PC Law. I am familiar with PC Law
5 and a couple of other systems, and when you request an account or a prebill at the end of
6 the month, somebody hits a button and it spits it out and it has got everybody's time entry
7 or it has got whoever has worked on the file, and it has got the amount of time they spent.
8 That is the first thing. Who in the Calgary office worked on these files?
9
10 MR. MCCURRACH: So much of this was all done before my time, but
11 I understand that Jocelyn was from the Calgary office. And I believe that there would be
12 Steven White who worked for the Calgary office as well.
13
14 THE REVIEW OFFICER: Okay. Show me an account or one of the
15 printouts that has their time in there. Because I have seen JG. I am not sure who JG is. They
16 have some time on the February 25th, 2022 invoice involving -- does it say here? Oh, the
17 Government of Canada. On January the 28th of 2022. JG again. JG on the 14th at \$250 an
18 hour. So is JG out of the Calgary office?
19
20 MR. MCCURRACH: (INDISCERNIBLE) again. JG is Jocelyn -- I
21 can't pronounce her last name. Gurke, I believe. She was from the Calgary office and that's
22 who JG was, through her invoicing.
23
24 THE REVIEW OFFICER: Okay. Okay. So --
25
26 MR. MCCURRACH: And (INDISCERNIBLE) -- oh, sorry.
27
28 THE REVIEW OFFICER: To go back to my question about why these were
29 printed from PC instead of from this Excel spreadsheet.
30
31 MR. MCCURRACH: The account summaries instead of PC Law?
32
33 THE REVIEW OFFICER: Instead of PC Law, yes. Correct.
34
35 MR. MCCURRACH: I'm not (INDISCERNIBLE) whether PC Law
36 provided documents of this nature. I think this was just done for expediencies sake to
37 provide a quick summary. I -- I will have to inquire about that. But with -- with the Excel
38 recording that was done initially by whoever was working on the file, it was approved --
39 one that was approved -- once that's approved by the reviewing lawyer, then those entries
40 are entered into PC Law.
41

1 THE REVIEW OFFICER: Okay. So were the time entries for these files
2 entered into PC Law?

3

4 MR. MCCURRACH: That's correct.

5

6 THE REVIEW OFFICER: So you did use PC Law then to generate the
7 accounts, or you still didn't use PC Law?

8

9 MR. MCCURRACH: It's my understanding that they were generated
10 using PC Law.

11

12 THE REVIEW OFFICER: Okay. You just corrected yourself 15 minutes
13 ago saying, no, I was wrong. They were not generated by PC Law. It was done by Excel.
14 There is an allegation --

15

16 MR. MCCURRACH: Sorry, Sir, I --

17

18 THE REVIEW OFFICER: -- that these accounts or that these -- this
19 information at least that you have provided me -- and I am guessing what was provided to
20 Ms. Amirkhani's firm, and is attached later midpart of Mr. Honer's affidavit, were
21 generated after the fact. There was an email that we looked at where Mr. Grey said this is
22 becoming tedious and tiresome. And the accounts have not been scrutinized. And that they
23 refused to provide this information for what appears to be months. We were looking at this
24 back in June of 2022. And the only accounts that existed at that time were these block
25 building accounts. And the suggestion -- and it is a strong suggestion is that somebody
26 went back and recreated the accounts or the detailed entries that we are looking at now.
27 That is my simple question. And you are saying, no, it was from PC Law. And you said,
28 no, it is not from PC Law. It is from Excel spreadsheets. But your office says PCL.

29

30 In the normal courts -- and I have had the -- I do not know whether it is the pleasure or the
31 displeasure of throughout my entire practice, except for 1 month, having to build time. And
32 it was done on PC Law. Initially. And it was on another system and another firm. But you
33 keep track of your time, it goes into the computer, and bills are generated. When the client
34 asked for this breakdown of the time and the work that was done, it -- I do not know why
35 it was not provided immediately. Why a button was not punched and all of the details were
36 printed off and sent to them.

37

38 MR. MCCURRACH: Sir, to address the first portion of your question
39 about the Excel versus PC Law generation, I think the reason that there is a confusion or
40 what seems to be a contradiction is that I just think we are talking about different
41 documents. So when I am referred to what is generated by Excel, I am referring to just

1 those documents that are entered through Excel -- Excel sheet format under the TDF
2 account summary by date and the TDF account summary by a client. Those are things that
3 generated by Excel. And then when we are talking about the statements of account rendered
4 -- sorry, the statement of account for services rendered, which are rife throughout Mr.
5 Honer's affidavit, provide disbursements, billable rates. They told the fees, total
6 disbursements, and they have the balance due and owing from her office. Those statements
7 of accounts are what I'm saying are generated by PC Law. So not in any way to try -- to
8 contradict myself. I just think that we are referring to different -- different documents.
9

10 THE REVIEW OFFICER: So your PC Law program takes a .1 for sending
11 an email, a .2 for correspondence with the government, a .1 with regards to another letter,
12 and it just cranks it into one number?
13

14 MR. MCCURRACH: So those -- those items are entered into --
15 individually into PC Law. It came from people recording their time in Excel and then
16 having to enter those once approved into PC Law.
17

18 THE REVIEW OFFICER: And so every account, every month -- and I am
19 just looking at the original accounts starting March 25th, 2022. There was exactly 30 hours'
20 worth of time done by the lawyers in your office for a fee of \$21,000. And then the next
21 one on March 25th for the CP Rail, there was exactly 40 hours put in to PC Law by the
22 lawyers in your office for the total of \$28,000. Is that what you are saying?
23

24 MR. MCCURRACH: Sir, are you asking me if those billable hours are
25 correct?
26

27 THE REVIEW OFFICER: Yes.
28

29 MR. MCCURRACH: That is my understanding that they accurately
30 reflect the work that was done and are accurate.
31

32 THE REVIEW OFFICER: Okay. And so Mr. Grey's affidavit of March
33 25th, 2022 that we have already looked at, he says "It will take countless hours of unbillable
34 time to produce the dockets that you now request". What is he talking about there? If these
35 are all on your PC Law or in your Excel spreadsheets.
36

37 MR. MCCURRACH: Well, I think that the issue that the initial
38 statements account didn't provide enough minute detail that was satisfactory to counsel for
39 TDF. So I -- I wasn't privy to the conversation as to what exactly that would be -- those
40 details. But I believe that -- well, TDF was a greater breakdown of every individual task
41 that was done, and I don't think that we had -- we had the narrative on hand that TDF was

1 seeking, if I'm not mistaken.

2

3 THE REVIEW OFFICER: I think you must be mistaken because clearly the
4 client asked for a breakdown -- a better breakdown of the work that was done and the time
5 entries. That was what was ultimately provided. And I do not understand how it would take
6 countless hours of unbillable time to produce the documents when they are on your PC
7 Law and it just takes a push of a button.

8

9 MR. MCCURRACH: I'm not -- I'm not really clear on that, but -- I
10 would have to seek clarification as to why it would be arduous to do that. I am not sure.
11 That's because they had to be entered in PC Law. I'm not sure if they're entered in
12 concurrently or the billing cycle was. But I would have to seek clarification as to why it
13 was arduous to produce those details.

14

15 THE REVIEW OFFICER: Okay. And the materials that you have provided
16 that purport to be accounts, they are called statements of accounts for services rendered.
17 Not one of them has a date on them. What -- there is not -- unless I am not seeing it. I am
18 seeing for professional services, March 25th to April 25th, for example, there is no date on
19 the account, which is -- you know, it is different from the ones that are attached to the early
20 part of Mr. Honer's affidavit. It has got a file number. It has got a date. You do not have a
21 date on one of these. Now, you have got the disbursements.

22

23 MR. MCCURRACH: I'm saying dates on there -- (INDISCERNIBLE)
24 is taking account for services rendered, at least in Mr. Honer's affidavit. Which documents
25 are you referring to that are statements of claim that do not have dates?

26

27 THE REVIEW OFFICER: The ones that she just provided me this week.
28 Some of them have dates. There is one with a date on it, but that is the first one I have seen.
29 There is a second one with a date there in March. The next one does not have a date. The
30 next one does not have a date. Then there is another March 25th. Okay.

31

32 MR. MCCURRACH: Sir, the summary -- the summary sheet that I'm
33 -- that I'm looking at that we provided, the first column on the far left-hand side with the
34 ending account date -- the ending should have everything in there. It should have every
35 date. At least the document I'm looking at.

36

37 THE REVIEW OFFICER: I see it has a date for the entry, but the account is
38 not dated. But the other accounts are dated. I do not understand if this is coming from your
39 PC Law why it is leaving dates out or why it is putting them in some and not putting them
40 in others.

41

1 MR. MCCURRACH: Sir, I believe that you are referring to the -- the
2 Excel sheet that we have -- the summary. If you're referring to another document, then I
3 think I need to figure out which one that is.
4

5 THE REVIEW OFFICER: I am not looking at the Excel sheet. I would
6 describe the Excel sheet as the first four pages that you sent to me. And then it starts
7 statement of account for services rendered. File CST13, no date.
8

9 MR. MCCURRACH: Everything that I am accounting has a date on it,
10 Sir.
11

12 THE REVIEW OFFICER: Okay. Well, who sent me this stuff? It is signed
13 be Leighton B.U. Grey, K.C., dated June 14th, 2023. I'm looking at the materials that were
14 sent to me and I got this morning.
15

16 MR. MCCURRACH: Okay. In the -- I think we're referring to the same
17 one here. We're referring to the one on June 14th, 2023 without a letter head on it sent via
18 courier to --
19

20 THE REVIEW OFFICER: Correct.
21

22 MR. MCCURRACH: -- your office?
23

24 THE REVIEW OFFICER: That is right.
25

26 MR. MCCURRACH: Okay. And so we have got -- on paragraph 4 --
27 beginning of paragraph 4 -- paragraphs 4, 5, 6, 7, and 8. We've got itemized -- itemized
28 dates. For example, in paragraph --
29

30 THE REVIEW OFFICER: I see that. I am asking a more simple question.
31 The other accounts that you sent to your client initially have dates on them at the top of the
32 account. And these ones are missing. Most of them are missing a date there. The suspicion
33 is that these accounts were generated. It is very clear in the affidavit that the suggestion is
34 that somebody went back and recreated these time entries sometime after the request was
35 made back in June or December -- it was December they got some revised accounts. But
36 Mr. Honer was asking for this I believe back in June of last year. And we have gotten
37 through these emails from Mr. Grey saying it is going to be a long and tedious job. It is
38 hard to do. And then suddenly these -- these accounts come along with specific time entries
39 but none of them are dated. And I can see this would be -- it would take countless hours of
40 unbillable time to produce the documents if they were being generated after the fact if the
41 time had not been kept at the time So that is the point I am trying to make. If these had

1 been prepared at the time or even if they had been prepared months ago and you printed
2 them off, they would likely have today's date on them or the date that you printed them off.

3
4 So we are looking at the right piece of paper now. You can see what I am talking about.
5 You see where it says file number CTS13? There is no date underneath that like there is
6 the ones that were originally sent to the client.

7
8 MR. MCCURRACH: In the June 14th correspondence, for example, at
9 CST13, underneath it the itemized roman numerals there, I through VI, we have the dates
10 for the file. The different statements of account, when they were billed. I mean, for example
11 the first one, 26 October, 2021 to 23 November, 2021. So we have the dates for the itemized
12 accounts.

13
14 THE REVIEW OFFICER: Okay. Now, let us go to the email of April 20th
15 of 2022. In fact, this all predates our June meeting. So the client has been asking for these
16 accounts long before I became involved and my offices were involved. There were as many
17 as six people working on these cases at any given time. The usual estimate was between 7
18 to 10 hours per week. I'm looking for the email where he said that he spent about half of
19 the time --

20
21 MS. AMIRKHANI: It's the same email.

22
23 THE REVIEW OFFICER: The same email.

24
25 MS. AMIRKHANI: It's the set point to the same email.

26
27 THE REVIEW OFFICER: There we are. The second paragraph, and I am
28 quoting Mr. Grey again, best estimate is that about half of the hours were devoted by me
29 and the rest by Jocelyn and the other staff. So we have talked about Jocelyn and the other
30 staff. So we have talked about Jocelyn. Who else on the staff worked on these various files,
31 Mr. McCurrach? Can you just look at the account and tell me who else was involved in the
32 files please?

33
34 MR. MCCURRACH: Sir, as far as I -- as far as I'm aware, the lawyers
35 that primarily worked on it were Mr. Grey and Jocelyn Gurke. Staff beyond that I'm
36 assuming would be a reference to administrative staff.

37
38 THE REVIEW OFFICER: Sorry, I missed that. You do not know of anyone
39 else that was working on the files?

40
41 MR. MCCURRACH: Besides the lawyers? The only two that I know

1 are Leighton Grey and Jocelyn. And then any other "Staff" would be administrative staff.
2 But that really should be in the statements of account in the summaries provided. We have
3 referenced whose done what work and at their rate. So I mean it's all in there.
4

5 THE REVIEW OFFICER: Okay. But Ms. Amirkhani said that only about 15
6 percent of Ms. Gurke's time was included or contained in those invoices by her calculation.
7

8 MS. AMIRKHANI: Sorry, can I just restate? My point was --
9

10 THE REVIEW OFFICER: Yes.
11

12 MS. AMIRKHANI: -- they took one from the 100 percent that was
13 billed as Mr. Grey's time. They took 15 percent and allotted it to Ms. Gurke. It's not a
14 statement on how much work Ms. Gurke actually herself did. The statement that might be
15 better referenced at this point is that by our estimation 80 percent of the overall labour was
16 done by paralegals. That might be a better --
17

18 THE REVIEW OFFICER: Oh, okay.
19

20 MS. AMIRKHANI: -- (INDISCERNIBLE) you were thinking of.
21 Yeah.
22

23 THE REVIEW OFFICER: Okay. Let us start with the paralegals then. We
24 will go back to the percentage of work that was done on these various files by paralegals.
25 Mr. McCurrach, does that 80 percent sound accurate to you?
26

27 MR. MCCURRACH: Hello?
28

29 THE REVIEW OFFICER: Mr. McCurrach?
30

31 MR. MCCURRACH: I think we lost connection there. Do I have you
32 now?
33

34 THE REVIEW OFFICER: Okay. You are back on now. I cannot see you
35 but, yes, I can hear you. So how much time was done by paralegals on these accounts. Just
36 a percentage. You have heard the number 80 percent thrown out there. And not just thrown
37 it. Ms. Amirkhani says that is there calculation from having looked at the details. I do not
38 have the benefit of the various files you were working on or your offices were working on,
39 but I take it she does. That it is part of the 5,000 pages of documents that were sent to her
40 offices.
41

- 1 MR. MCCURRACH: I don't have an estimate on that. All that I have to
2 rely on are the statements of account and the summaries provided as to who was working
3 on what. That's all I have.
4
- 5 THE REVIEW OFFICER: Okay. So to summarize, Mr. Grey worked on the
6 files, Ms. Gurke worked on the files, and paralegals worked on the files with staff, is that
7 right?
8
- 9 MR. MCCURRACH: Sorry, can you say that for me again?
10
- 11 THE REVIEW OFFICER: Mr. Grey, Ms. Gurke, and paralegals or
12 assistants in your offices worked on the files.
13
- 14 MR. MCCURRACH: That would be our standard practice, yeah.
15
- 16 THE REVIEW OFFICER: Okay. Well, was there any different on this group
17 of files that you are aware of?
18
- 19 MR. MCCURRACH: Not that I'm aware of. Any work that was done
20 by the individuals was (INDISCERNIBLE) accordingly. So I mean, if it -- if it indicates
21 Leighton Grey or Jocelyn Gurke then that's who did the work on the file.
22
- 23 THE REVIEW OFFICER: All right. So Mr. Leighton says again on that
24 April 20th, 2022 invoice that "As many as six people working on these cases at any given
25 time". That's the two lawyers and the rest would be staff?
26
- 27 MR. MCCURRACH: I -- I can't speak to any individual file. I wasn't
28 working on them or I was for very little time. So I'm -- I'm not really sure who those
29 individuals referenced would be, or if he's -- if he's talking on every file in general or
30 specific ones in communication.
31
- 32 THE REVIEW OFFICER: Okay.
33
- 34 MS. AMIRKHANI: And Sir, I assume that if -- I know that you're
35 going to come back to me at some point.
36
- 37 THE REVIEW OFFICER: Yes.
38
- 39 MS. AMIRKHANI: But I will just make it known that I do have very
40 clear evidence that the time is copy/paste from what the paralegal said she did and billed
41 as Mr. Grey.

1
2 THE REVIEW OFFICER: Okay.
3
4 MS. AMIRKHANI: To the extent that that's going to speed this up, I
5 can show you that now and we can have a conversation about it, or I'm happy to wait if
6 that's where we're going.
7
8 THE REVIEW OFFICER: Let us just come back to it in a couple of minutes.
9 I have just got another question. The retainer agreement that is attached to Mr. Honer's
10 affidavit, your officer did not provide copies of any retainer agreements, Mr. McCurrach.
11 Is that the only written retainer agreement that you had with any of these half dozen files
12 that you were working on for The Democracy Fund?
13
14 MR. MCCURRACH: In terms of the individual retainers between the
15 clients and GWS?
16
17 THE REVIEW OFFICER: Correct.
18
19 MS. AMIRKHANI: That's what you're referring to?
20
21 THE REVIEW OFFICER: That intermediary agreement, I do not know
22 what that is. I do not mean I do not know what it is, but in terms of it being a retainer
23 agreement it is not -- it is a relationship that you have with The Democracy Fund or had
24 with them. But it is not specific to what your offices were charging and who was going to
25 work on the files?
26
27 MR. MCCURRACH: No, that should be captured under the individual
28 retainer agreements for the clients. It is my understanding that each client or client group
29 has those individual retainers --
30
31 THE REVIEW OFFICER: Okay.
32
33 MR. MCCURRACH: -- with GWS.
34
35 THE REVIEW OFFICER: Okay. So why did you not provide them in your
36 materials?
37
38 MR. MCCURRACH: I don't believe that -- I don't believe that we were
39 requested for those materials and that we had to submit those. I mean, we were
40 (INDISCENIBLE) to this hearing, providing with -- providing materials that we were
41 directed to provide. And as far as I -- as far as I'm aware, we weren't directed to provide

1 retainer agreements, but I'm sure that's something that we can provide.

2

3 THE REVIEW OFFICER: Rule 10.14 says if a lawyer is served with notice
4 of an appointment for a review of the lawyer's charges or a retainer agreement, that both
5 the lawyer must file a copy of the accounts appropriately signed with respect to the client,
6 a copy of any time records upon which the account is based, and a copy of any retainer
7 agreement between the lawyer and the client. So I have seen at least one retainer agreement
8 that was provided by The Democracy Fund in the affidavit of Mr. Honer. You didn't
9 provide any of them. You didn't provide time records upon which the account is based,
10 even though it should be available if you kept them on PC Law. I would be prepared to
11 accept what you have provided here as time records, but I'm not satisfied that they were
12 made at the time the work was done. And if they are a printout again from PC Law, I do
13 not know why they are missing the dates on half of them. It just does not make sense to
14 me.

15

16 So there is an obligation to provide them. But if you are telling me that all of them are the
17 same as the retainer agreement signed by --

18

19 MS. AMIRKHANI: I believe we have --

20

21 THE REVIEW OFFICER: -- the (INDISCERNIBLE) --

22

23 MR. MCCURRACH: I will have to -- I'll inquire to see if we did file in
24 the retainer agreements. I'm not familiar with everything that was filed.

25

26 THE REVIEW OFFICER: Okay.

27

28 MR. MCCURRACH: That's my application now.

29

30 THE REVIEW OFFICER: Just one question about disbursements. I see on a
31 number of these -- and I am looking at the initial ones that are contained in the materials
32 you sent that the initial invoices that are attached to Mr. Honer's affidavit, and you claim
33 \$200 on every one of them for research via West Law. Is that the monthly fee that your
34 offices pay for West Law?

35

36 MR. MCCURRACH: Do I have you again? I think my connection got
37 interrupted.

38

39 THE REVIEW OFFICER: Okay. Can you hear me now?

40

41 MR. MCCURRACH: Yeah, I can hear you.

- 1
2 THE REVIEW OFFICER: All right. I am just looking at the first few
3 invoices that are attached to Mr. Honer's affidavit and on each one of them you have
4 charged \$200 for case research via West Law. Is that a monthly fee that your office pays
5 for access to West Law?
6
- 7 MR. MCCURRACH: We do have a subscription to West Law. I am not
8 sure what we pay monthly for it.
9
- 10 THE REVIEW OFFICER: Well how does that happen to be just \$200 each
11 month? That is what I am leading up to.
12
- 13 MR. MCCURRACH: I will seek clarification if that is what we pay
14 every month.
15
- 16 THE REVIEW OFFICER: Okay. Well, maybe you can have somebody seek
17 that while we are continuing on here. Okay. Let us go back to Amirkhani. If you want to
18 ask any questions of Mr. McCurrach at this time, or do you want to respond generally? If
19 you want to ask him questions, I can give you that opportunity, but you do not have to do
20 it right now.
21
- 22 MS. AMIRKHANI: I don't think I --
23
- 24 THE REVIEW OFFICER: Okay.
25
- 26 MS. AMIRKHANI: Yeah, I appreciate that. I -- we've spent so much
27 time in these documents at this point that I think that we probably have a better
28 understanding of what happened.
29
- 30 THE REVIEW OFFICER: Okay.
31
- 32 **Submissions by Ms. Amirkhani (Reply)**
33
- 34 MS. AMIRKHANI: So I don't have any questions to ask on that. I will
35 just -- we have one other retainer between individuals if you want to see it. Am I correct,
36 ladies, that it's identical basically? I don't know if you see the other one? It's the same
37 standard form. If you want to see it, I'm happy to share my screen and show it to you.
38
- 39 THE REVIEW OFFICER: I do not have to see it. It says the same -- it has
40 the same provisions about Mr. Leighton's hourly rate being \$700 and other lawyers will be
41 charged out at their hourly rate I take it?

1
2 MS. AMIRKHANI: Yeah.
3
4 THE REVIEW OFFICER: Okay. All right.
5
6 MS. AMIRKHANI: So I think most productive because it is the
7 biggest piece of the pie in our eyes is to talk about who did the work. And I will share my
8 screen with you and I will actually just share to start that first email that I already showed
9 you once. Let me know if you can -- oh, sorry. Okay. So you should be seeing -- I don't
10 know what happened. There we go. An email.
11
12 THE REVIEW OFFICER: I see the email. April 4th?
13
14 MS. AMIRKHANI: Yeah.
15
16 THE REVIEW OFFICER: Okay.
17
18 MS. AMIRKHANI: And it's noted at -- note that it's from Sarah Stuart
19 and Sarah Stuart is a paralegal based on her signature line. And again, this is in response
20 to the email from another paralegal asking for her time and she says here is a listing of my
21 time on this file. And I will point out a couple of key entries and it applies to all of them,
22 but in the interest of time we're going to pick the biggest ones here.
23
24 So on March 7, we have a revised statement of claim, 1 hour. And then we can turn to the
25 statement of claim. Sorry, I should note this is on Alstom. That was the -- the subject line
26 is Alstom. So this is referring to the Alstom account. March 7th, 2022. We go to Alstom.
27 We go to the March account. March 7, revise SOC, 1 hour. Billed at \$700 per hour.
28
29 THE REVIEW OFFICER: Okay.
30
31 MS. AMIRKHANI: We go again -- if we look at March 16, we see an
32 hour and a half further revisions to statement of claim per LG's notes and also we have 1
33 hour right here -- March 16 -- further revisions to statements of claim. So we have 1 hour
34 here and 1-and-a-half hour, both on March 16th, for revisions. We look at the account.
35 March 16, revised statement per claim updates, 2 hours, revisions to statements of claim,
36 2 hours. So granted they've increased it. So perhaps of that was Leighton's time or someone
37 else's time. But at least part of that is being billed from Ms. Stuart's time, who was a
38 paralegal, at \$700 per hour. March 17, probably the grossest example is in this email.
39 Internet research and further revisions to statement of claim, 4 hours. March -- March 17.
40 Case research review and further revisions to SOC, 4 hours. Billed at \$700 per hour.
41 Another email. It is the same date, but on a different account. So it's another -- April 4,

1 2022. But this one is subject Feds for Freedom. And it is our understanding that that refers
2 to the Government of Canada accounts. Again -- sorry, this is from Sarah Stuart again. So
3 a paralegal. (INDISCERNIBLE) my time on this file. And it is also in response -- sorry,
4 there's no email there. Sorry. So we'll just focus on this email.

5
6 THE REVIEW OFFICER: I found the account here.

7
8 MS. AMIRKHANI: Sure. The Government of Canada account?

9
10 THE REVIEW OFFICER: Yeah, the Government of Canada account for
11 this time period.

12
13 MS. AMIRKHANI: And the specific bill that you're looking for is the
14 one from April -- sorry, from February 25th to March 25?

15
16 THE REVIEW OFFICER: Twenty-five, yeah.

17
18 MS. AMIRKHANI: And it actually is dated. That's the one you'll be
19 looking at there. Here we have in her email March 16, 2022. Review of
20 (INDISCERNIBLE) materials and initial drafting of supplementary information to form
21 16 complaint, 2 hours. We look at the account. March 16. Exactly the same wording. This
22 time it's billed for some reason at Jocelyn's rate, but the same 2 hours applies. Looking at
23 her email again, we have March 17, 2022. Continue drafting of supplementary information
24 to form 16 complaint, 1 hour. We look at the account, March 17, continue drafting of
25 supplementary information to form 16. Billed at Ms. Gurke's rate of 250 an hour. One hour.
26 And then, again, the grossest example in this email, we have March 21st, final drafting of
27 supplementary information to form 16 complaint and organization of exhibits, 5 hours.
28 And we see on March 21st the same and it's billed 6.5 hours. So they've tacked an hour and
29 a half hopefully from work that someone else did. But 5 of those hours were done by a
30 paralegal and billed at \$700 per hour. And I -- you can stop me at any point or I'll just keep
31 going.

32
33 THE REVIEW OFFICER: No, that is --

34
35 MS. AMIRKHANI: You have another email.

36
37 THE REVIEW OFFICER: Okay. No, let us get a few more examples.
38 Another email?

39
40 MS. AMIRKHANI: Okay. So this one is for -- it is also from Sarah
41 Stuart. It is the same date and it's for the Government of Alberta. This one is shorter so it

1 is easy. So you will be looking for the Government of Alberta -- sorry -- invoice --

2

3 THE REVIEW OFFICER: Yes.

4

5 MS. AMIRKHANI: -- from the same date. The February 25 to March
6 25 email. Or not email, invoice.

7

8 THE REVIEW OFFICER: I have got it. Okay.

9

10 MS. AMIRKHANI: And Ms. Stuart, she says Here is a listing of my
11 time on this file, March 2nd, 2022. Detailed review of questionnaires and revisions to
12 statement of claim, 4 hours. On the account. March 2nd, 2022. Detailed review of the
13 questionnaires and revisions to SOC, 4 hours. Billed at \$700 per hour. I can give you
14 another one here. This is the last of the type. And mind you, I have to believe that there's
15 actually tons of these emails in existence, but we weren't given everything. We were given
16 what we were given and so this is what we have available to us that clearly demonstrates
17 in our submissions the pattern.

18

19 Again, Sarah Stuart. Again, April 4th. This one details with the Salvation Army accounts.
20 So the Salvation Army account, that would be dated March 25th. And Ms. Stuart says here
21 is the time -- sorry, here's a listing of my time on this file. March 14, 2022. Detailed review
22 of file materials and initial drafting of statement of claim, 6 hours. March 14th, that exact
23 line. Six hours billed at \$700 per hour. And on March 22nd, 2022, Ms. Stuart says she did
24 further research and revisions to statements of claim, 2 hours. And we look at the account
25 and there's that exact line and 2 hours is billed at \$700 per hour. So those are what we call
26 like the summary emails that make it very apparent what was happening. As I say, there's
27 probably more of these in existence. They're not in our possession and I'm not in the interest
28 of delaying this more than is necessary to get a fair result. But I can tell you that in addition
29 to these emails -- or these emails were found by my students going through every document
30 that was provided to us.

31

32 And what they found is continuous examples of this, just in a more finite way. So for
33 example, where Leighton Grey is billed for drafting a demand letter, the emails make it
34 very apparent that a paralegal drafted the demand letter. Where Leighton Grey's rate is
35 charged, he -- actually, on this page already is a great example. Corporate registry searches.
36 What \$700 lawyer -- and I shouldn't really ask rhetorical questions in my submissions. But
37 that is not a task that a \$700 per hour lawyer does. That is an assistant task or paralegal
38 task. But that's all to say -- and I can give you as many examples as you want to hear from
39 me. It's very apparent that the vast, vast majority of the work that was billed for was not
40 done at \$700 per hour.

41

1 And my friend has made submissions that the intermediary agreement, being vague, gave
2 them -- made this a fair means of billing, though I do note that he also said that those reflect
3 who did the work, which we don't believe to be true. I don't know if it's appropriate to give
4 case law in these scenarios, but I can tell you I've reviewed the case law and I can provide
5 case law to the extent you want to hear it. But vagueness of an intermediary agreement or
6 vagueness in a retainer does not benefit the solicitor. It is the solicitor's job to make it
7 abundantly clear and to make their client aware the rates that they're going to face -- who
8 is going to be working on the file -- what percentage of work is likely to be charged by
9 who. What the rates for those people, including paralegals, are. And so in the absence --
10 and the case law also says in the absence of a clear statement as to how -- how accounts
11 are to be billed, the default is Rule 10.2, reasonableness and fairness. And Rule 10.2 clearly
12 states that one of the factors that determines what's reasonable and fair is the -- and I won't
13 misquote it, but I also don't have it in front of me -- it's the experience of the lawyer doing
14 the work.

15
16 So our submission is that they've, you know, taken advantage of TDF in this circumstance
17 by billing as if a top billing lawyer was doing the work when in fact it wasn't a lawyer at
18 all. So that's our submissions on the -- and again, to the extent you want to hear more, I'm
19 happy to show you more examples.

20
21 THE REVIEW OFFICER: No.

22
23 MS. AMIRKHANI: But that's the -- where we were coming from in
24 terms of --

25
26 THE REVIEW OFFICER: I am good with what you're pointing out here.

27
28 MS. AMIRKHANI: Okay. Now, do you want -- so I also have a piece
29 that's about, you know, the hours -- the actual hours that were billed? And again, I have
30 high level kind of categories we can talk about and I can show you. But do you want to
31 speak about who did the work first, or do you want me to move on and we can talk about
32 it all?

33
34 THE REVIEW OFFICER: I will give Mr. McCurrach an opportunity to
35 respond to that question. I have asked it to him already and he has told me only two people
36 worked on the file. Two lawyers worked on the file. Did you want to add anything more,
37 Mr. McCurrach?

38
39 MR. MCCURRACH: There is nothing that I have to add.

40
41 THE REVIEW OFFICER: Okay. Back to you, Ms. Amirkhani.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

MS. AMIRKHANI: Amirkhani.

THE REVIEW OFFICER: Amirkhani. I am sorry.

MS. AMIRKHANI: You had it right at the beginning. No, no, it is okay. Just reading it, it is more letters than it looks like. Okay. We will talk then about specific areas we see room for reduction or that ought to be reduced based on what we have seen in the work done. The first area is what has been termed in these accounts as biweekly team meetings. And it helps me to illustrate, even if you are looking on paper. I'm just going to continue to share my screen with these accounts because it helps. I've highlighted so I know where my eyes are going.

When you review these accounts, you'll see that the last line of -- I think every single account is some statement like two biweekly team meetings to discuss tasks to be completed. And the amount billed varies. It's not clear why. But in -- you know, on their own they don't seem absurd. So .5 for a month of biweekly team meetings, that seems very reasonable. The issue become when we group them all together. So there are the same people -- from our view of all of these documents, the same exact people are working on all six accounts. There's no, you know, different groups working on different accounts. It's Megan Gurski, Jocelyn Gurke -- unfortunately, similar names -- Sarah Stuart, and Leighton Grey. They're working on these accounts and we haven't seen names from anyone else. Steven (INDISCERNIBLE) was working on a different related matter, but he wasn't involved in these accounts.

So the same four people are working on everything. Their billing across the accounts per month shows 8 to 12 hours total per month spent on biweekly meetings when you combine them all together, which means that this group of four people would have been meeting for 4 to 6 hours every 2 weeks to discuss these files. In our submission, that seems excessive. And because we're of the belief that these were recreated post hoc, it seems like trying to go for the same thing across accounts has led to an unreasonable outcome. And in total, 55.3 hours is billed at Leighton Grey's rate across all of the accounts. We would submit something more reasonable would be in the realm of, you know, 12 hours, which would give an hour every 2 weeks for all -- you know, for all six accounts to be discussed at once. So that's our first category. I can move on to our second.

THE REVIEW OFFICER: Okay.

MS. AMIRKHANI: Our second category is -- I'll term it as generic administrative entries, and I'll show you an example that I failed to highlight. It's actually right here. Receipt of review of claimant information, client questionnaires, and relevant

1 financial documents updating spreadsheets and trackers. That is billed for, in this case, 2
2 hours. This exists across I think again every single one of these invoices. I say that and I
3 don't have one here. And for a total across all accounts of 123.4 hours, or \$86,000 and
4 change because they're billed at Leighton Grey's rate. And most notable in the CN Rail
5 case, 45 hours of this nature was billed between September 13 and October 26. In our
6 submission, this is the type of work that could be done by an assistant and it's not billable
7 work at all. And two, that's incredibly excessive for that short a time period.

8
9 CN Rail then has another 35 hours charged in the remaining months for that same type of
10 work. So again, in total, it's 100 -- over 123 hours billed to this type of -- this type of entry.
11 It's a vague entry. We have no way of knowing even what it was or, you know, whether it
12 was billed in line with the work that was being done. And in our submission, it shouldn't
13 have been billed at all. It should have been done by an assistant.

14
15 The next area of potential reduction in terms of hours we see is the cease and desist letters.
16 This one's going to be slightly messier so let me know if it becomes too much of a headache
17 and, you know, we can talk about another way to do it. But what we found -- we reviewed
18 the cease and desist letters that were available to us. They were billed across I believe four
19 accounts. Maybe more. But they're all replicas. So you know, I have gone through and I
20 have very honestly highlighted where things have changed, but it is very minor. And yet
21 hours were billed on each account for the drafting of cease and desist letters. So I can show
22 you what I hope to make -- or you mentioned you have a small screen so we'll see if this
23 becomes too small for you.

24
25 So I'm going to attempt to show you side by side. This might make it too small for you and
26 if it does you can let me know. Can you see those?

27
28 THE REVIEW OFFICER: Barely.

29
30 MS. AMIRKHANI: Barely? Okay.

31
32 THE REVIEW OFFICER: Just the big screen is too far away and the small
33 screen -- no, I can see them here now.

34
35 MS. AMIRKHANI: I can probably make them very slightly larger,
36 although I'm not working with a mouse which makes this more difficult. There we go.
37 Okay. Unfortunately, I can't seemingly make it --

38
39 THE REVIEW OFFICER: Yes, that is fine.

40
41 MS. AMIRKHANI: -- bigger, if we can go on. But what I can show

1 you -- and I think from the bolding in the headlines you'll get the sense. And I will give
2 you my -- as an officer in the court, I have gone through it and to the best of my ability
3 highlighted wherever -- there's a plug over there -- wherever I saw that there was a change.
4 But the one we're looking at over here is from CP Rail and it's a cease and desist. For the
5 cease and desist on CP Rail, they billed 4.5 hours. And for the Alstom cease and desist on
6 this side they billed 1.5 hours. And you'll see that nothing changes. I think at some point
7 there's one statement that might change, but -- sorry, I'm just pointing my computer in here.

8
9 THE REVIEW OFFICER: Were these prepared by the paralegal also?

10
11 MS. AMIRKHANI: Do you remember, off the top of your head? I'm
12 sure -- oh, yes they were. Yeah, they were.

13
14 THE REVIEW OFFICER: Okay.

15
16 MS. AMIRKHANI: And we can dig out the email that shows that if
17 you like. This was done by Megan -- okay, Megan Gurski, who is the other paralegal that's
18 not Sarah Stuart. There's also one other paralegal whose name might come up. But yeah.
19 So these are identical. And notably, I don't believe theses to be the first ones that were
20 drafted. I -- I have (INDISCERNIBLE) University of Winnipeg here. It's not because it's
21 different. It's because we believe that to be the precedent from which these were drafted in
22 the first place. Our evidence on that is shaky so I won't die on that hill. But that is why I
23 originally highlighted it.

24
25 So yeah. Effectively, no change between these two. Our understanding from the timing of
26 when things were billed is that the CN Rail cease and desist letter was drafted first. I don't
27 have a copy of that to work from. But what we do have is an email from -- and I can make
28 this one full size so you can see it better -- Leighton Grey to Megan Gurski. Again, she is
29 a paralegal. And Leighton says, Megan, we can also begin work on the CND letter using
30 the CN precedent. So our understanding is that the CN Rail, being the first one that was
31 drafted, was the precedent from which the rest of these were drafted.

32
33 In the interest of candour, I will be frank that there are some changes. I have two other
34 letters that I can show you, but I can also just tell you the Salvation Army cease and desist
35 has one extra paragraph and the Government of Canada cease and desist has an extra
36 section which spans about a page and a half. But they did bill 8.1 hours for drafting the
37 Government of Canada cease and desist. So we would say that that's still excessive. And if
38 you would like to see it, I'm happy to show it to you.

39
40 THE REVIEW OFFICER: No, that is fine. How much time -- do you have
41 the time that it was billed, the Salvation Army and the Government of Canada letters?

1
2 MS. AMIRKHANI: Yes. So the Salvation Army, they billed 3 hours.
3 The Government of Canada, they billed 8.1 hours. I said Alstom, they billed 1.5, and CP
4 Rail, they billed 4.5, and CN Rail, being what we believed to be the initial, was 3.6.
5
6 THE REVIEW OFFICER: All right. And each of these were drafted by
7 either the paralegal --
8
9 MS. AMIRKHANI: Megan Gurski.
10
11 THE REVIEW OFFICER: Okay. And then charged out at \$700 an hour?
12
13 MS. AMIRKHANI: Yes.
14
15 THE REVIEW OFFICER: Okay.
16
17 MS. AMIRKHANI: Yeah, I can tell you with great confidence that at
18 no point is any paralegal rate ever charged.
19
20 THE REVIEW OFFICER: Okay.
21
22 MS. AMIRKHANI: Yeah. So that is that category of hours. And then
23 the last one, I am happy to say, is on statements of claim. This one is less straightforward.
24 Overall, they billed 96.4 hours for drafting statements of claim. There were a couple of
25 statements of claim drafted and they vary slightly, more so than the cease and desist letters
26 did. But still, we would say that this is excessive. It is kind of -- well, not kind of. Large
27 (INDISCERNIBLE) and I can do that fund side by side again for you, doing the CP Rail
28 version on one side and the Alstom version, which is a draft, but it's all we had
29 unfortunately. We believe this to be the final draft. I don't even know if an Alstom
30 statement of claim was ever filed, but it was drafted. So -- I'm not sharing. Thank you.
31
32 There we go. So again there a little on the small side unfortunately. Nope, I can't make
33 them bigger. So we have them. And again, I've gone through and I've highlighted. I used
34 CP Rail as the baseline because it was billed first. And in total, 24.5 hours were billed on
35 CP Rail for drafting a statements of claim. This is the primary statement of claim. There
36 are two others that are cited. We could only find one, and I will touch upon it in a minute.
37 But this being the original, I've highlighted in the Alstom claim where things change.
38 They've added a -- a paragraph to the -- sorry, to the relief sought. Of course, they've
39 changed the dollar figures and things of that nature. The definitions have changed because
40 they're fact specific. And of course the plaintiffs have as well.
41

1 I'll note that this looks like a lot of highlighting because it looks like a lot of change, but
2 these are all copy/paste paragraphs that just say the plaintiff's name, their position at the
3 company, the year or the date they started working, and how long they worked before they
4 were terminated or quit. So these were basically just questionnaires turned into copy/paste
5 paragraphs. The defendants of course are different, and then the summary of the Alstom
6 policy were vary from the summary of the CP policy. But at this point, we start to see a lot
7 of copying. So this is all about how vaccines work or don't work, and their submissions.
8 This is again specific about the vaccine -- or sorry, the Alstom policy. But again, we get
9 into the nature of COVID and vaccines and *Charter* rights and the claims of the plaintiffs
10 under the constitution and the damages that they're seeking. And you know, then we have
11 a duplicate of the relief that was sought at the top. So I haven't highlighted it. It is different,
12 but it's just a copy/paste from the top.

13
14 So we are by no means saying this is a copy/paste the way the cease and desists were, but
15 the legal argument underlying the statements of claim are the same. So I mean, I would
16 charge, in my experience, 20 hours to bill a statement of claim from scratch. So to charge
17 20 hours for what is really 50 percent of a statement of claim seems excessive in our eyes.
18 And for that reason, we're basically -- we would be asking to go with 50 percent of the
19 hours billed on statements of claim, dropping it from 96.4 to 50.

20
21 THE REVIEW OFFICER: All right. And were each of these statements of
22 claim billed at approximately 24 hours?

23
24 MS. AMIRKHANI: So 16.9 hours were billed for Alstom, 24.5 were
25 billed for CP Rail, 12 hours were billed for Government of Canada, 16 hours were billed
26 for Government of Alberta, 8 hours were billed for Salvation Army, and 19 hours were
27 billed for CN Rail.

28
29 THE REVIEW OFFICER: All right. Thank you.

30
31 MS. AMIRKHANI: And this the end of our -- if you want to see more
32 statements of claims, like I said --

33
34 THE REVIEW OFFICER: No.

35
36 MS. AMIRKHANI: -- I have that ready, but yeah.

37
38 THE REVIEW OFFICER: No.

39
40 MS. AMIRKHANI: Yeah. So those are our submissions. In terms of
41 the big ticket time items, the groupings that made sense to us to do in an efficient way -- if

1 we were to go through line by line, there are small things here and there where we think
2 that they are unreasonable, but this is such a large account and there are so many invoices
3 in this case that we are trying to be reasonable and efficient. Our biggest concern is
4 certainly the rate of billing. And then these are secondary but still very valid concerns in
5 our eyes.

6
7 THE REVIEW OFFICER: Okay. Thank you. I wonder if we should -- just
8 before we take a break, Mr. McCurrach, I'm going to come back to you. The first question
9 or first issue that has been raised by Ms. Amirkhani -- I said your name hopefully correctly
10 this time -- was who did the work. And we have got two lawyers and we have got two or
11 three paralegals. And we have got what appears to be all of the paralegals time being billed
12 at \$700 per hour. What is your position on that?

13
14 MR. MCCURRACH: Well, unfortunately I don't have any knowledge
15 on that so I have nothing to speak to it.

16
17 THE REVIEW OFFICER: Okay. Now, the next issue -- oh, sorry.

18
19 MR. MCCURRACH: I am -- I am curious though. I don't have copies
20 of the correspondence referenced by my friend here. I'm just wondering -- the
21 correspondence that are inter-office emails, how the other side came to be in possession of
22 those.

23
24 MS. AMIRKHANI: Bradley Sinclair to Alan Honer in April of 2022
25 in a Dropbox-type folder email.

26
27 MR. MCCURRACH: Okay. Thank you.

28
29 MS. AMIRKHANI: I also hadn't been aware -- there was a time when
30 we were arguing over disclosure and I wasn't aware that those were available and they
31 became known to us.

32
33 MR. MCCURRACH: Okay. Thank you for clarifying.

34
35 THE REVIEW OFFICER: Okay. The second issue is the biweekly
36 meetings. What are those all about Mr. McCurrach, and why are they so high on these files
37 when there's only four or five people working on them and apparently working closely
38 together?

39
40 MR. MCCURRACH: Well, I wasn't at the firm when they were
41 happening. However, I do know that on other files of a similar nature on constitutional

1 matters that we do hold weekly or biweekly meetings as strategy sessions for particular
2 files. So I'm assuming that that was a similar protocol on these. As far as the cost or
3 justifying the cost, I don't have specific knowledge on that.
4

5 THE REVIEW OFFICER: Okay. And the general administrative entries that
6 appear to be on almost all of the invoices that total a little over 123 hours, \$86,000 worth
7 of time. The question is why wasn't that work done by an assistant?
8

9 MR. MCCURRACH: I'm not sure.
10

11 THE REVIEW OFFICER: Okay. The cease and desist letters and the
12 statements of claim are somewhat similar, but they're two different items. The cease and
13 desist letters apparently were prepared by a paralegal or an assistant and charged out at Mr.
14 Grey's rate. What was the reason for that?
15

16 MR. MCCURRACH: I'm not sure.
17

18 THE REVIEW OFFICER: All right. And is that the same for the statements
19 of claim?
20

21 MR. MCCURRACH: Yeah, unfortunately I can't provide information
22 or details on that.
23

24 THE REVIEW OFFICER: Okay. All right. Why don't we just take a 15-
25 minute break. It's 3:00. Just before you go because I want to know about the West Law, are
26 there any disbursements, Ms. Amirkhani, that you want further clarification on?
27

28 MS. AMIRKHANI: So -- and not to help my friend, but I am an
29 officer of the court. I would expect the West Law disbursements to be a per page charge.
30 You're correct that the frequency at which their \$200 exactly is odd. And so I would like
31 clarification on that. To the extent to those are not just like a per click charge, I will take
32 issue with that. But yeah, that's the only one that I really have. I am curious what the MFE
33 is, but it's \$3 per invoice so I'm not overly concerned.
34

35 THE REVIEW OFFICER: Okay. What's the MFE, Mr. McCurrach?
36

37 MR. MCCURRACH: Unfortunately, I don't know. I'll have to seek
38 clarification on that. It's the MFE charge?
39

40 THE REVIEW OFFICER: MFE, yeah.
41

1 MS. AMIRKHANI: It's always the last --
2

3 THE REVIEW OFFICER: It is not a big item, but I am curious. It is on every
4 invoice.
5

6 MR. MCCURRACH: Okay.
7

8 THE REVIEW OFFICER: Okay.
9

10 MR. MCCURRACH: Would you like me to speak to the West Law
11 disbursement?
12

13 THE REVIEW OFFICER: If you know the answer right now.
14

15 MR. MCCURRACH: Certainly. It is our position that charging for the
16 West Law subscription as a disbursement is a reasonable disbursement charge.
17

18 THE REVIEW OFFICER: Is that your monthly payment? Is that what you
19 paid West Law for unlimited use?
20

21 MR. MCCURRACH: It's my understanding that the subscription
22 monthly is -- is more than that. So it represents a portion thereof.
23

24 THE REVIEW OFFICER: Okay. Find out what it is per month please. Find
25 out what it is per month. It is not a big issue for Ms. Amirkhani I do not think, but I am
26 curious because it is one of the things we look at. Okay. Just find out what your monthly
27 subscription is and how you got to the \$200.
28

29 MR. MCCURRACH: Certainly.
30

31 THE REVIEW OFFICER: Okay. You can leave whatever these things are
32 -- WebEx on. I will stop the recorder and then we will pick this up when we get back. Ms.
33 Amirkhani, if you could give me a summary, and Mr. McCurrach also. It does not have to
34 be in writing, but I would like you to summarize what you think these accounts should be
35 reduced to if that is your position. And break it down the way you have done in terms of
36 your submissions in the last half hour so we can get some handle as to what it is your client
37 is looking for based on their complaints. All right.
38

39 MS. AMIRKHANI: Could I just before we leave in that respect then
40 ask Mr. McCurrach what is Sarah Stuart's rate?
41

- 1 MR. MCCURRACH: I'm not sure. I'll have to get an answer on that.
2 Sarah Stuart from legal?
3
- 4 MS. AMIRKHANI: Yeah. Sarah Stuart and Megan Gurski are the
5 two names so those are the -- I assume -- our office charges paralegals at one rate so if they
6 are the same that's great. I just need to -- I need to know what that is. I know a third year is
7 250, so I assume a paralegal is hundreds -- low hundred. But I would like to know.
8
- 9 MR. MCCURRACH: Okay. Yeah, I will obtain the answer.
10
- 11 THE REVIEW OFFICER: Can you find that out before we take the break?
12 Otherwise we are probably going to have -- take another --
13
- 14 MS. AMIRKHANI: I have my cell phone so I can type the answer in
15 quickly and get a number, but it'd be good to know.
16
- 17 THE REVIEW OFFICER: Okay.
18
- 19 MR. MCCURRACH: I'm sure I can find the answer for you if you can
20 give me a couple seconds here.
21
- 22 THE REVIEW OFFICER: Okay.
23
- 24 MS. AMIRKHANI: Sir, are you hearing feedback on your side?
25
- 26 THE REVIEW OFFICER: Are you getting feedback?
27
- 28 MS. AMIRKHANI: And it just stopped. Right when you said that it
29 stopped. It's just like a crackling noise but it's ...
30
- 31 THE REVIEW OFFICER: It is probably coming from my end here.
32
- 33 MR. MCCURRACH: Okay. Sorry. I got clarification on that.
34 Apparently they don't bill paralegal time. They don't have an hourly rate. They charge at a
35 Leighton Grey's rate.
36
- 37 MS. AMIRKHANI: On all files that's the position?
38
- 39 MR. MCCURRACH: I'm not sure if that's on all files, but I will make
40 that determination.
41

1 THE REVIEW OFFICER: So they keep track of their time and Mr. Grey
2 bills that out at his hourly rate?
3

4 MR. MCCURRACH: That's my understanding. I just need to clarify if
5 that's an all files or if that's just these TDF files. And so that -- the clarification I'm getting
6 with respect to the paralegal charge is that from what the lawyers -- we charge for the
7 lawyer's review and instruction of the paralegals at the lawyer's rate and that -- that's the
8 same with all files.
9

10 THE REVIEW OFFICER: So you do not bill your paralegal's time?
11

12 MR. MCCURRACH: That seems to be what I'm getting here. I'm trying
13 to seek clarification on that because that seems rather confusing to me as well.
14

15 THE REVIEW OFFICER: Well, let us not spend more time on it. if you find
16 out something during the break, Ms. Amirkhani -- you might choose a rate from your
17 calculations that you think is appropriate for the paralegals if that is a calculation that you
18 are going to do. All right. I am going to turn the recorder off and let us meet back in 15
19 minutes, which would be 3:30.
20

21 MS. AMIRKHANI: All right. Thank you.
22

23 (ADJOURNMENT)
24

25 THE REVIEW OFFICER: We're back on the record. The West Law
26 charges, Mr. McCurrach, what did you find out?
27

28 MR. MCCURRACH: So I found out that our baseline subscription is
29 1,300 to \$1,400. West Law's an interesting animal in that if you go inside -- and you have
30 to rely on the materials that are outside your subscription for that baseline costs, then there
31 are additional charges on it. However, just using the baseline, these are the 1,300 to 1,400
32 a month. If you take 15 percent of that, we have I believe 195 or 210. So my understanding
33 is that the disbursement is a 50 percent of the baseline West Law subscription in order to
34 get the cost of that back as a disbursement.
35

36 THE REVIEW OFFICER: Okay. But it is not based on the actual usage by
37 your firm for these files?
38

39 MR. MCCURRACH: Not on a -- no, not on a per client or a per work
40 basis. It's a sort of flatline disbursement charge.
41

1 THE REVIEW OFFICER: Okay. What is the MFE please?

2

3 MR. MCCURRACH: The MFE -- the description I got on that was in
4 relation to -- sorry, I'm just going to recap my conversation here. MFE -- MFE relates to
5 binders (INDISCERNIBLE) at tabs 4, anything like that. I'm not sure what the acronym
6 stands for the -- the MFE, but that was the explanation I was given. So it was sort of in-
7 office supply.

8

9 THE REVIEW OFFICER: Okay. And Ms. Stuart, no hourly rate? Ms.
10 (INDISCERNIBLE), no hourly rate?

11

12 MR. MCCURRACH: The hourly rate that we have across the board is
13 125 for their -- for the paralegals.

14

15 THE REVIEW OFFICER: Okay. All right. Let's go back to Ms. Amirkhani.
16 Do you want to make final submissions in terms of what it is that your client is seeking in
17 terms of a reduction from the -- the accounts? And as I understand it, we are dealing with
18 37 accounts that total \$429,442.80. I have only got about 29 of them. So after the hearing,
19 I am going to have my assistant send you a list that we have, Ms. Amirkhani, and then you
20 can provide us with the other six accounts or so that bring it up to the 37 accounts.

21

22 **Submissions by Ms. Amirkhani (Reply)**

23

24 MS. AMIRKHANI: I'm guessing it is that you don't have CN Rail,
25 which is the sixth account. But that is factored into my calculation.

26

27 THE REVIEW OFFICER: Okay.

28

29 MS. AMIRKHANI: I can advise that I have spent a lot of times and I
30 did just -- because there was a discrepancy in the number Mr. McCurrach said. I went
31 through the totals -- the final totals -- the hourly totals of every invoice and I know that that
32 -- that that number is what's the aggregate. And so in sum, we're seeking two things. One
33 is a reduction of certain categories of time spent, and in particular we seek to reduce the
34 biweekly team meetings from a total aggregate of 55.3 hours down to 12 hours. We seek
35 to effectively eliminate the 123.4 hours spent on administrative tasks, which I can identify
36 by highlighting on another date, collecting, sorting, updating trackers, things of that nature,
37 which we submit should have been done by an assistant. We seek to reduce the hours spent
38 on cease and desist letters from 20.7 to 5 hours, effectively representing the first draft that
39 was written for 3 hours and 2 hours for the minor changes that were made thereafter. And
40 we seek to reduce the amount of time that was spent on statements of claim from 96.4 hours
41 to 50 hours -- about 50 percent -- to represent the replication of facts across -- or elements

1 across statements of claim. In sum, that amounts to a reduction of 228.8 hours, all of which
2 were billed at Leighton Grey's rate of \$700.

3
4 In addition, in light of the evidence we've seen on our side about the amount of work that
5 was done by paralegals but billed at \$700 per hour, we seek a reduction in the rate at which
6 -- let me phrase this properly. I wrote it down because it's hard to phrase. We're seeking to
7 reduce the rate billed on 80 percent of Mr. Grey's hours to a paralegal rate, and we will
8 accept \$125 per hour as that rate, leaving 20 percent billed at \$700 and leaving Ms. Gurke's
9 hours as is. I have -- and I would say for the benefit of my friend -- the calculation that I've
10 done to reach the final figure that I'll give you. Mr. Leighton -- sorry, Mr. Grey, in total
11 603.3 hours were billed at his rate. When you reduce the 228.8 hours we're seeking to
12 reduce, that leaves 374.5 hours at Leighton Grey's rate to start. Ms. Gurke billed out 108.85
13 hours. We're not touching that. So that remains. That leaves for her amount at 250 per hour
14 \$27,212.50. We then take Mr. Grey's rate and we apply a \$125 paralegal rate to 80 percent
15 of his remaining hours, leaving 20 percent billed at 700. And at total, that gives us for Mr.
16 Grey's prior hours \$112,760. Together, those are \$138,972.50.

17
18 However, there were contributions made to these accounts by some of the individual
19 claimants. They're identified on the bills there right before the final line on some of the
20 bills. In total, across all six accounts and across all invoices, \$42,226.66 was contributed
21 by the claimants. So that brings the total billable pretax and redistribution to \$97,745.84. I
22 am of the mind that the West Law charge is improper. It is a firm management fee. It is the
23 cost of running a firm. However, I haven't factored it into my background the calculation
24 to date. And I -- I don't know what the total is. So I mean in the interest of my client
25 (INDISCERNIBLE) I should really fight for that reduction as well, but I don't know the
26 number off the top of my head. So barring that particular thing, if we add the distributions
27 and we add tax it leaves us with a total sum of -- sorry -- \$107,570.34.

28
29 THE REVIEW OFFICER: Okay. Just run the summary by me again. You
30 are reducing Mr. Grey's time to \$112,760?

31
32 MS. AMIRKHANI: Correct.

33
34 THE REVIEW OFFICER: Okay. And Ms. Gurke's time remains at 27,225.

35
36 MS. AMIRKHANI: 27,212.50.

37
38 THE REVIEW OFFICER: Okay. And what are you charging the paralegal
39 time out at? At 125?

40
41 MS. AMIRKHANI: Yes, 125.

- 1
2 THE REVIEW OFFICER: Okay.
3
- 4 MS. AMIRKHANI: I think that that's fair based on Ms. Gurke's rate.
5
- 6 THE REVIEW OFFICER: Okay. And that appears to be what the firm does
7 charge on some files. And how much does that -- what does that turn into -- calculate at?
8
- 9 MS. AMIRKHANI: Sorry, the 107,760 is -- is the aggregate of the 80
10 percent at 125 and the 20 percent at 700. I can divide them out if you want.
11
- 12 THE REVIEW OFFICER: Maybe do that. Can you send that over? And
13 send a copy to Mr. McCurrach too. And if you want -- okay, I will turn the recorder off
14 again so that I can see your numbers and Mr. McCurrach can have an opportunity to
15 respond to them. Maybe just check on those accounts and just see if that 200 has been
16 applied all the way across the board. Mr. McCurrach, when it comes --
17
- 18 MS. AMIRKHANI: I know that it hasn't. Sorry, I didn't mean to cut
19 you off.
20
- 21 THE REVIEW OFFICER: I was just saying Mr. McCurrach, the general
22 rule and what you see in the cost manual is that no West Law or computer research is
23 allowed. But that manual was prepared 10 or 15 years ago and I am inclined to allow it
24 when a firm keeps specific track of the West Law charges on the specific files. When a
25 blanket number is used, that is when I thought possibly you were charging out the full
26 amount of your monthly bill, which you are not. But when you are just calculating it, I am
27 going to use the word randomly, without it being specific, I generally do not allow it. So I
28 think that has to be removed. But I will turn the recorder off and if you could send that to
29 the Calgary office. So reviewoffice.QBCalgary@Albertacourts.ca, please.
30
- 31 MS. AMIRKHANI: I'm sorry?
32
- 33 THE REVIEW OFFICER: I will just turn the recorder off.
34
- 35 MS. AMIRKHANI: Sure.
36
- 37 (ADJOURNMENT)
38
- 39 THE REVIEW OFFICER: We are back on the record and we have the
40 spreadsheets that Ms. Amirkhani has prepared. And I'll just get you to take us through those
41 numbers again and your calculations based on the representations you made before we

1 broke please.

2

3 MS. AMIRKHANI: Yeah, and in full disclosure, when I -- I don't
4 know what happened, but when I separated out the 80 percent and the 20 percent as two
5 line items, it slightly shifted.

6

7 THE REVIEW OFFICER: Okay.

8

9 MS. AMIRKHANI: I have -- I've run them as many times as I
10 possibly can and I do believe them to be correct. But if anyone sees anything wrong, please
11 tell me. So in columns F and G we have what I originally titled perspective deletions. These
12 are the categories where we're looking to reduce the hourly rate if the hour is billed. And
13 in particular in column G for each line item, I've taken the amount of hours that were
14 actually billed, which is detailed in the tabs related to each of these titles, and I've reduced
15 it by the amount we're seeking to leave in. So for example, for team meetings, 55.3 hours.
16 For build, we believe that 12 hours is a fair amount. And so the difference is 43.3 hours.
17 That would be a deleted number of hours. The collecting and sorting we're deleting 100
18 percent of the hours in our -- in our submissions. So that's what's there. And that continues
19 on. It gives us a total of 228.8 hours that we ask to be deleted from the invoices in total.

20

21 Then if we look at columns B and C beginning at row 12, you have accumulated Leighton's
22 hours -- that being the hours billed at \$700 per -- at \$700 per hour across all of the invoices
23 and all of the accounts -- and Jocelyn's hours as billed as well, and applied the reduction in
24 hours that we seek to the total hours from Leighton Grey. So he originally bills 603.3 hours.
25 I've simply taken that and reduced it by 248.8 hours to give us a remainder of 374.5 hours.
26 And I've left Jocelyn's hours as -- as is. Just for our knowledge, if that was billed at \$700
27 per hour I've given you what that would look like, and Jocelyn's at \$250 per hour. But then
28 again, I've gone a step further, which is where we're requesting to have a percentage of
29 Leighton's hours billed at the paralegal rate of \$125. So this line item is -- his billable -- his
30 billables, after the reduction times point 2 to make it 20 percent of the hours, times \$700
31 per hour, that gives us how much is left at \$700 per hour. And then I've taken the remainder,
32 being his hours after the reduction times point 8 to give us 80 percent of the hours, times
33 125, being the paralegal rate that we're asking to be applied to that 80 percent of the hours.
34 That gives us 37,450.

35

36 We then are able to combine those three numbers, so Jocelyn's rate, the 20 percent
37 remaining at \$700, and the 80 percent at 125, to a grand total of billables at \$117,092.50.
38 We then have to apply the things that come after the hours. So as I mentioned, \$42,226.66
39 was contributed by individual claimants straight to GWS. In our submission, it would be
40 improper for TDF to double pay for something that was already by an individual claimant.
41 So I subtract that contribution. And it is calculated across each of the individual tabs related

1 to each count. That gives us a remainder of 74,865.84. I add the distributions, but subtract
2 the amount for West Law. My summer students in the interim have calculated what was
3 charged for West Law, and it amounts to 30 -- sorry, \$3,250. So I'm adding the total
4 distributions but subtracting West Law amounts to give us \$76,317.94. And then I simply
5 add .5 percent tax for GST.

6

7 THE REVIEW OFFICER: All right. Now, that is your calculation of the --
8 let me just get the number here -- the 37 accounts that were billed at almost \$430,000. You
9 are saying it should be reduced to 80,000?

10

11 MS. AMIRKHANI: Yes. And I also was surprised and I double
12 checked the numbers. But the reality is when Leighton billed \$600 hours, and we're asking
13 that 228 of those hours be removed, it's a substantial reduction when they're \$700 hours.
14 Of course, if -- if you want to play with any of the numbers either in that amount that we're
15 asking to be reduced in terms of hours or the percentage that's being allocated to paralegals,
16 that will change that figure.

17

18 THE REVIEW OFFICER: All right. But your review and your offices
19 review of the work that was done by the paralegals and the work that was done by Mr.
20 Grey are approximately a 20/80 percent split?

21

22 MS. AMIRKHANI: Yes. And I mean, as I mentioned we don't have
23 everything in the universe. We have what they provided us. It was substantial enough that,
24 if I'm frank, our -- our wording at the end was what did Leighton do. Because there was
25 actually no -- or very little. I shouldn't say no. There's very little documentary evidence of
26 what he did. I know he edited things here and there. Provided notes. But the vast majority
27 of the work is -- is from the paralegals and in our submission -- in our best estimation is 80
28 percent.

29

30 THE REVIEW OFFICER: Right. Mr. McCurrach, your turn.

31

32 **Submissions by Mr. McCurrach (Reply)**

33

34 MR. MCCURRACH: So one -- one particular aspect that I'm drawn to
35 that is problematic is with the CN -- the CN Rail. So first of all, in this matter -- in terms
36 of this hearing, we were under the understanding that CN was not included in this matter.
37 I mean, there's no outstanding -- no outstanding bill that TDF has never paid and there was
38 no documentation that as far as we're concerned was submitted by TDF or that we were
39 provided an opportunity to submit on those accounts. And so we don't think that those
40 should be included in -- in the calculation as it stands. And beyond that, we don't have
41 instructions from our client at this point on -- on the settlement if that's even on the table.

1 So if we're going to proceed on that, we'd seek an adjournment to get instructions from our
2 CN clients on this. It was our understanding that we were just dealing with the accounts
3 minus CN.

4

5 THE REVIEW OFFICER: Well, the difference between the CN --

6

7 MS. AMIRKHANI: I can just respond to that briefly to say that the
8 only reason I have the CN accounts is because I asked Mr. Sinclair to provide them to me
9 in preparation for this hearing about a week ago. I think I received them on the 12th of June
10 for the first time and it was in the context of preparing for this hearing which Mr. Sinclair
11 booked from their office. So in my submission, it should have been very apparent to your
12 office that this was going to be part of the review.

13

14 THE REVIEW OFFICER: The original accounts that were provided to --

15

16 MR. MCCURRACH: Sorry, as far as I'm aware the -- the CN Railway
17 matter -- the CST11C on our end, was not included in the materials filed yesterday. So as
18 far as I'm aware, they haven't been filed. But my friend is telling me that she was provided
19 them by -- by Mr. Sinclair.

20

21 THE REVIEW OFFICER: Well, our office has had since last June 29
22 accounts that total \$414,000. So there's an additional 15,000 of them. And if those are the
23 CN accounts and they were provided to your friend, then they are probably before me. But
24 it is only \$15,000 of the \$429,000.

25

26 MR. MCCURRACH: I have a figure that is closer to \$225,000 for the
27 CN accounts.

28

29 THE REVIEW OFFICER: Okay. So then the pile -- the CN accounts have
30 been included right from the beginning. I haven't looked through them, but -- but I have to
31 assume they are -- they are part of it. We are not just dealing with the amounts that have
32 not been paid this week or this is an application by The Democracy Fund. They are looking
33 at what I see is virtually all of the accounts. And we are not adjourning for you to try and
34 have some settlement discussions. This matter is before me as a result of -- I can see some
35 significant work that has been done settling issues that your firm raised in the first instance,
36 which was that my office had no jurisdiction and this should be dealt with in Ontario. So
37 did you have any comments about the 80/20 split or any of the other matters that we have
38 actually been over just before we went on the break?

39

40 MR. MCCURRACH: In terms of the accounts that have been paid, it
41 seems that the evidence is fairly clear that there has been some sort of error with regard to

1 what rates it was billed out at. I don't think that it's unfair, but I do have concerns about
2 how this is going to go against the CN account seeing as how we haven't gone -- we haven't
3 gone through examples or evidence of how the billing has been applied in those accounts.
4 So I mean we're -- we're just going on the supposition it seems that the billing has been the
5 same throughout and there's been no change.

6
7 THE REVIEW OFFICER: Okay. Do you have any further comments on the
8 spreadsheet or the representations that have been made? To summarize it, there are the four
9 items under perspective deletions. The TM meetings, the 43 hours there. the collecting and
10 sorting 123 hours, the cease and desist letters, and the statements of claim, all of which
11 were work apparently done by paralegals and charged out at Mr. Grey's hourly rate of \$700.

12
13 MR. MCCURRACH: Are you asking me if I have any submissions --

14
15 THE REVIEW OFFICER: Yes, I am asking you for your comments. If you
16 have got any comments on the calculation now that you have seen a specific calculation
17 that has been done by The Democracy Fund on these accounts that were rendered from
18 your office.

19
20 MR. MCCURRACH: I have no comment.

21
22 THE REVIEW OFFICER: Okay. What about the 80/20 split between the
23 paralegal and Mr. Grey?

24
25 MR. MCCURRACH: I have no comment either.

26
27 THE REVIEW OFFICER: Okay. Is there anything that you want to see in
28 closing?

29
30 MR. MCCURRACH: I have nothing further to say.

31
32 **Decision**

33
34 THE REVIEW OFFICER: All right. Well, thank you all for your
35 submissions. This file has taken some time to get back before me but there were issues that
36 were raised by the firm as to the jurisdiction of the Alberta Review Office in terms of
37 dealing with these accounts. That has been settled by an order that appears now to be a
38 consent order of Justice Anderson dated March 26, 2023. Let me just get my notes in order
39 here.

40
41 The problem seemed to have arisen when the client was unhappy with the detail or the lack

1 of details contained in the accounts. And Mr. Honer raised that with the firm sometime
2 before you were in front of me last June. And there was considerable back and forth which
3 we don't have to get into. But it took the firm a lengthy period of time to finally get some
4 further detail to the client to respond to the specifics they were looking for on these
5 accounts. And we are dealing with 37 accounts totalling almost \$430,000 over a relatively
6 short period of time.

7
8 The Rules of Court say in Rule 1042(3) that every lawyer's account must contain a
9 reasonable statement for description of the services performed, show the fee for the
10 services, and separate out the disbursements. The accounts that were originally provided
11 to the client don't provide, in my view, a reasonable statement of the description of the
12 services that were performed. I'm just looking at the very first account in the affidavit,
13 sworn May 26, 2022 of Mr. Honer. And this is the redacted affidavit I have got in front of
14 me. And there is three and a half lines of description, a reference to 30 hours, and then
15 being charged out at Mr. Grey's hourly rate of \$700.

16
17 So there was noncompliance with that -- that provision of the Rules of Court. And there's
18 caselaw that goes on to state that the client is entitled to know what it is that the firm did
19 for them and the reasonable breakdown at the amount of time if it's required. Now, initially
20 these accounts were being paid without much scrutiny. But at some point The Democracy
21 Fund looked at them more closely and asked for additional information that took, in my
22 view, a long time to come. Eventually, and I think it was by December of 2022, they were
23 provided with more detailed accounts or attachments to the accountants that were more
24 detailed.

25
26 And I am concerned about a couple of things as I have raised them already. First off, this
27 is when this request was made back early in 2022. Mr. Grey fobs off on the client or blows
28 the client off to a certain extent, to use that expression, by saying this is both tedious and
29 tiresome. And he goes on to say that it is going to take countless hours of unbillable time
30 to produce the documents that you now request.

31
32 There is confusion in terms of what I have heard today and the suggestions that were made
33 in Mr. Honer's affidavit that these detailed papers that were provided to the client were not
34 prepared contemporaneously with the doing of the work. And Mr. McCurrach has said that
35 the firm uses PC Law, and he initially said that the accounts were generated by PC Law
36 and then he said that they were generated from Excel spreadsheets. And then there was
37 confusion again as to exactly how the detailed entries that we have before us -- and I've got
38 the ones that are in the affidavit of Mr. Honer, but I also have got the materials that were
39 provided earlier this week under cover of a letter of June 14th, 2023, some of which I notice
40 do not have dates on them. So I am not sure where they came from.

41

1 But to suggest that it would be a big effort to produce these documents makes no sense to
2 me. I used to the PC Law system. I am used to other legal accounting programs that I have
3 seen in this job and at my own work, and it is very simple to produce these documents if
4 time has been entered into the computer. If it has not, then of course it is going to take a
5 long time. And again, I am not sure how it can be generated 6 months or a year down the
6 road if it has not been carefully taken into account and carefully recorded at the time the
7 work was done. So my concern is that these descriptions that have been provided were
8 generated after the fact and are not very helpful for me in terms of being able to say, well,
9 this is work that was actually done.

10
11 There were other issues though that have been raised by the client. In terms of the parties
12 that worked on the file, we know that there were a couple of paralegals. We know Mr. Grey
13 worked on the file. And we know that Ms. Jocelyn worked on the file, who is another
14 lawyer on the firm. But I am getting confused by another email from Mr. Grey in April of
15 2022 where he says that the best estimates is that half of the hours were devoted by me and
16 the rest by Jocelyn. And that appears to be the way the accounts were billed. In fact, Ms.
17 Amirkhani suggests it is closer to a 20/80 percent instead of a 50/50 percent. And he says
18 that as many as six people were working on the cases at any time, and we see from the
19 materials that of those six people two of them were lawyers and the rest were paralegals.
20 So assistants.

21
22 So there is some suggestion that Mr. Grey was either not happy by virtue of the fact that
23 the time had not been kept when it was recorded or that maybe it did not correspond with
24 what was billed. But in any event, eventually time records were provided to the client and
25 their lawyers along with some 5,000 pages of paper, which allowed an analysis to be done
26 of the work.

27
28 The actual biweekly meetings on these accounts, which total somewhere in the
29 neighbourhood of 55 hours over a short period of time, and again were billed at Mr. Grey's
30 hourly rate of \$700, does appear to be exorbitant to me. Ms. Amirkhani has suggested 12
31 hours. Fifty-five hours of additional time at \$700 an hour for five or six people who are
32 working together every day on these files does seem to be excessive. There was also a
33 comment made by Mr. McCurrach that the firm was using this Excel spreadsheet method
34 of recording its time because a number of lawyers in Calgary were working on the file or
35 a number of people in Calgary were working on the file and Mr. Grey apparently is not in
36 Calgary. So again, that does not make a lot of sense to me. And when people or a small
37 group are working on the file or talking on the file I would say somewhat regularly, and
38 these meetings appear to be on the excessive end of the scale.

39
40 Similarly, with these general administrative entries of 123 hours, which computes to
41 approximately \$86,000 on these files, is likely something that could have been done by an

1 assistant. The cease and desist orders -- I see that one of them -- well, two of them took a
2 huge amount of time. And again, they appear to have been prepared by the paralegal and
3 might have been some overview by Mr. Grey. But he charged the paralegals time out at
4 \$700 per hour, and I think that is excessive and I think it is inappropriate. Similarly with
5 the drafting and statements of claim.

6
7 And I say it is inappropriate because if we look at the retainer agreement -- and there were
8 two retainer agreements apparently that were provided to the client, one of which is
9 contained in the affidavit of Mr. Honer. And it says on the first page under legal fees in the
10 last paragraph:

11
12 We have established an hourly rate for each lawyer, which is subject to
13 reasonable increases from time to time. The following hourly charges
14 are currently applicable to the following lawyers.

15
16 And it is referring specifically to lawyers. So it is time that is going to be billed for the
17 lawyers time, not the paralegals. Mr. Grey is at \$700 an hour. That is quite an hourly rate,
18 in my view, for a lawyer outside of the larger centres in Alberta, but it is what was agreed
19 to between the parties and must be based on some experience that Mr. Grey has that
20 resulted in the client's agreeing to pay \$700 an hour. But I will tell you, that is a fairly high
21 rate. It is not completely steep by Calgary standards, but it certainly is by Edmonton
22 standards and I would think it would be extremely steep by Cold Lake standards. But that
23 is what the client agreed to. So we will consider that it is appropriate under the
24 circumstances.

25
26 When we get onto the next page of the retainer agreement in the third paragraph, and I am
27 just paraphrasing here, it says that firm personnel including other lawyers may be assigned
28 to do some work. And where other layers work on the file, their time will be recorded at
29 their hourly rates. And that clearly was not done. We have seen I guess sometime by -- by
30 Ms. Gurke. But if that is all the time that she put in on the file then that has been taken into
31 account. But there is no hourly rate given in the retainer agreement. But the amount that
32 she charged for time appears to be reasonable.

33
34 The next paragraph talks about when a legal assistant does work on the file. And again, I'm
35 just paraphrasing. But it says unless the account is subcategorized and specific charges for
36 the legal assistant's time at their calculated hourly rate, which we now know to be \$125,
37 the client will only be billed for the assigned lawyer's time spent reviewing the file and
38 providing instructions to the legal assistant.

39
40 It's fairly clear from the entries or some of the entries that counsel has shown me this
41 afternoon that this portion of the agreement was breached. Mr. Grey appears to be charging

1 out his assistant at his hourly rate and taking her work and charging it as if it was done by
2 a lawyer. That is contrary to what Mr. McCurrach said earlier. That is not contrary. He
3 actually said that the paralegal or the assistant's rates were charged out at Mr. Grey's rate.
4 But then he -- he got additional information to indicate that their hourly rate was actually
5 \$125. That provision of the agreement appears clearly to have been breached and that is
6 something that the client understandably would be surprised to find, that their assistant is
7 being charged at \$700 an hour, which is a fairly rich hourly rate under the circumstances.

8
9 We talked about the disbursements. I am of the view that the \$200 per month that was
10 charged should be coming out of these accounts. If the amounts had been actually incurred
11 specific to a file, I would have -- I would have left them in. But it's an effort to collect back
12 some of the monthly charge without providing any evidence that there was any use of that
13 facility.

14
15 The retainer agreement -- and I'm not sure if retainer agreements were entered into with all
16 of the other parties. But they were provided to my office by the firm, which they should
17 have done. But I am satisfied that each of the clients that signed one signed the same
18 agreement that I just alluded to. We have got the spreadsheet that provides a fairly detailed
19 analysis by the client as to what they think they have been overcharged in this matter. And
20 I thank Ms. Amirkhani for repairing that. I am going to leave it on the file because this may
21 not be the end of this matter.

22
23 The split of 80/20 percent between the lawyer and the paralegal would be what I would
24 consider to be somewhat consistent with what happens in situations where paralegals are
25 used extensively. I am familiar with that because I had a foreclosure practice for a number
26 of years and that was about the ratio of the split between our respective jobs. The paralegals
27 did the bulk of the work at a lower hourly rate and we supervised the work and we signed
28 the letters. But we certainly didn't charge out the paralegals time at whatever I was charging
29 or my partners were charging at the time I was in practice. So the 20/80 split appears to be
30 reasonable in a situations like this where Ms. Amirkhani and her staff have scrutinized the
31 work that was done and found that to be the reality. Excuse me one minute.

32
33 (ADJOURNMENT)

34
35 THE REVIEW OFFICER:

36 We are back on the record. The split of 80
37 percent and 20 percent appears to be reasonable and what I would expect under the
38 circumstances. The administrative -- or collecting and sorting the administrative items that
39 the client has complained about, I'm not sure that all of those should come out. But at most
40 they would be charged at the rate of the assistant. The West Law charges of \$3,250 should
41 come out.

1 Essentially, when I look at these 37 accounts and the period of time over which the work
2 was done, especially with an hourly rate of \$700 being charged for assistance time, and an
3 inordinate amount of time spent at team meetings and some overlap with the student's claim
4 and the cease and desist letters. I am going to have to reduce these accounts. Ms. Amirkhani
5 has suggested that the account should be reduced to \$80,000 -- \$80,133.84. And following
6 her rationale, I'm a little concerned that maybe there should have been some inclusion of
7 additional time for the administrative matters. And in the off chance that Mr. Grey did
8 some more work on the file than they're giving him credit for, although I do not have any
9 reason to doubt Ms. Amirkhani's calculations. I would not expect that Mr. Grey had done
10 any more work than what she has calculated, which is somewhere in the range of 52 or
11 \$53,000. But to give some leeway and give some time for the administrative sorting and
12 collecting of materials and the reduction for the team meetings and the other items. I am
13 going to reduce the 37 accounts to the -- I am just going to round it to \$100,000 all inclusive.
14 And that takes into account contributions from the other parties and the disbursements.

15
16 So now we have to figure out how much has been paid on the accounts by your client, Ms.
17 Amirkhani, because of --

18
19 MS. AMIRKHANI: Yeah, and -- sorry.

20
21 THE REVIEW OFFICER: No, go ahead. How much of the --

22
23 MS. AMIRKHANI: I can't be quoted on this. I believe it to be in the
24 realm of 183,000. I'm hoping my friend has perhaps the accounts, considering they were
25 paid to him, available. Do you by chance have them?

26
27 THE REVIEW OFFICER: Mr. McCurrach.

28
29 MR. MCCURRACH: Sorry, are you -- are you implying that OTF has
30 paid the accounts even towards CN Rail?

31
32 THE REVIEW OFFICER: Yes, I am including them all.

33
34 MS. AMIRKHANI: My understand --

35
36 THE REVIEW OFFICER: There is only 15,000 of them that are not
37 included in the materials that were filed back in June of 2022, Mr. McCurrach.

38
39 MR. MCCURRACH: Okay. I'm not sure what you're referring to, Sir.
40 My main concern here is that pursuant to the notice to respond and the purpose of this
41 hearing was to review the accounts that were specified in schedule A, which were at --

1 which can be seen at paragraph 24 of Mr. Honer's affidavit. And those included the five
2 groups that GWS had rendered since October 2021, and notably did not account for the CN
3 Rail accounts. We're concerned that a repeatable error is happening with applying any
4 decision that might be made today to those CN Rail accounts. We (INDISCERNIBLE)
5 properly with the object of today's hearing.

6

7 THE REVIEW OFFICER: Okay. Amirkhani, I just had my assistant send
8 you over a list of the accounts --

9

10 MS. AMIRKHANI: Yes.

11

12 THE REVIEW OFFICER: -- that were provided to our offices, which as I
13 say total about \$415,000. Are the CN accounts included in there? There have to be if they
14 are a couple of hundred thousand dollars. I'm not sure, Mr. McCurrach, what you thought
15 was going to happen today. And unfortunately --

16

17 MR. MCCURRACH: Sorry, I don't know --

18

19 THE REVIEW OFFICER: -- there is material that is sealed on this file that
20 I am not opening because I know Justice Anderson at least sealed an affidavit. And some
21 of my other materials are missing. But ...

22

23 MS. AMIRKHANI: So in our review just quickly here of the
24 accounts, it does appear that -- I don't know where Mr. McCurrach is getting hundreds of
25 thousands of dollars from. In my review of the accounts, CN Rail makes up 97,000. And
26 I'm also not sure how these other accounts -- it's tough because this isn't the identification
27 system we've been using. The CS (INDISCERNIBLE) is not what we've been using here.
28 So we're trying to align things. It appears you're missing the nine CN Rail accounts. And
29 perhaps I can't reference certain things, but I was previously working with another lawyer
30 at GWS on this matter. He was the one who was pursuing the jurisdictional issues and
31 things of that nature that you settled with the court. And we have been speaking about CN
32 Rail as included in this. It was -- (INDISCERNIBLE) came to have accounts because they
33 mentioned CN Rail. So I'm not positive. You are missing the CN Rail invoices. I'm going
34 to provide those to you. They are part of my calculation. There just seems to be three sets
35 of numbers and I don't know where they're all coming from.

36

37 THE REVIEW OFFICER: Okay. But if they are \$97,000 that would change
38 the number to over 500,000 and that is not your calculation either.

39

40 MS. AMIRKHANI: Yeah, and the issue is I don't know -- I appreciate
41 -- I can see how the 414,000 was calculated here. I question if the contributions made by

1 the individuals were not deducted from what your office has here as 414,000, and that
2 might be where we're hitting a snag. Because then 42,000 off of that -- and then you add
3 90 -- would get us to where my difference is. I don't see anywhere on here that it would
4 have been deducted. There's no column for that, you know, because it's not a normal thing.
5

6 MR. MCCURRACH: I think you mean between the CN Rail accounts.
7 We've got a discrepancy. From what I'm showing, we have 12 accounts with CN Rail. And
8 then similar to that is \$125,102.74.
9

10 MS. AMIRKHANI: Well, I asked your office to send me the invoices.
11 They told me it would take a week. It took a week and they sent me nine -- seven, nine,
12 how many accounts -- nine invoices that total 97,000. So how many -- you have 12. I wasn't
13 provided three of them so I haven't been able to analyze those.
14

15 MR. MCCURRACH: We have 12. And -- and it's my understanding to
16 that even the -- there were a few of these accounts for CN have past limitation dates. I
17 mean, that would sort of be another potential reviewable error.
18

19 THE REVIEW OFFICER: Why did you not raise that at the beginning when
20 you heard that we were dealing with the CN accounts?
21

22 MR. MCCURRACH: I -- I didn't think that we were going to be dealing
23 with the CN accounts. I had sort of raised the issue at the beginning that our -- our figures
24 were off and I did not think that we were addressing the CN issues until we got into the
25 actual figures and saw the calculation of those accounts were to be included in -- in this
26 end calculation.
27

28 THE REVIEW OFFICER: What were your figures again? I am just looking
29 at my notes. And I know you were using \$156,000, but that's the amount that shows to be
30 outstanding. We are not dealing with outstanding amounts. We are dealing with the gross
31 amount of the accounts.
32

33 MR. MCCURRACH: The gross amounts have been paid, Sir.
34

35 THE REVIEW OFFICER: Pardon me?
36

37 MR. MCCURRACH: Are you referring to the amounts that have been
38 paid?
39

40 THE REVIEW OFFICER: I am referring to how much -- no, I'm talking
41 about what the face value of the accounts that we're being reviewed were today.

1
2 MR. MCCURRACH: And those -- those accounts we believe to be
3 reviewed were the groups of -- the group of five accounts in Mr. Honer's affidavit, and that
4 amount was the figure that I was initially speaking to, which if you -- if I can just refer to
5 that. The amount we have for those -- those five groups of counts -- are the \$156,105.55.
6 So that -- that amount would be not including the CN accounts.
7
8 THE REVIEW OFFICER: Tell me about the accounts that are over 1 year
9 old. How many of them are there?
10
11 MR. MCCURRACH: So these ones are 12 accounts related to CN Rail.
12 And the figure for those that we have --
13
14 THE REVIEW OFFICER: What is the dates of them? I want to know how
15 old they are.
16
17 MR. MCCURRACH: Certainly. We have -- I'll just run through them
18 date by date: September 30th, 2021, October 7th, 2021, October 14th, 2021, October 26,
19 2021, November 22, 2021, December 16, 2021, January 28, 2022, February 25, 2022,
20 March 25, 2022, April 25, 2022, May 27, 2022, and finally June 27, 2022.
21
22 THE REVIEW OFFICER: Okay. So the appointment was filed on June 1st,
23 2022. How many predate June 1st of 2021?
24
25 MR. MCCURRACH: Predate -- sorry, say it again?
26
27 THE REVIEW OFFICER: The appointment was filed on June 1st, 2022.
28 How many of those CN accounts predate June 1st, 2021?
29
30 MR. MCCURRACH: So all of these would be post -- post June 2021,
31 but these were not in the affidavit of Mr. Honer.
32
33 THE REVIEW OFFICER: They are in time then. Okay. I am going to deal
34 with this. I am sure you are appealing it. I am going to try and deal with as much as we
35 can. They are all within time. You suggested that they were out of time and that is not the
36 case. So they are all within time and the calculation that has been done by the client takes
37 them into account.
38
39 MS. AMIRKHANI: Sorry, just in fairness there are apparently three
40 accounts that I have never seen. So they are not part of my calculation --
41

- 1 THE REVIEW OFFICER: Okay.
- 2
- 3 MS. AMIRKHANI: -- just to be transparent. I don't know the value of
4 those three additional accounts are. I could get you all a calculation, but I appreciate we're
5 -- and I also have an interest in wrapping this up. I can add it to my math and then you can
6 create a new product if you want. But I haven't seen three accounts.
7
- 8 THE REVIEW OFFICER: What are the three that you have not seen and let
9 us just eyeball it and I am going to give you a number today. Because as I say, I am sure
10 this is going to be appealed. And then you have got the details which you can hash out in
11 front of a judge. And Mr. McCurrach can take another run at it. Mr. McCurrach, what are
12 the three --
13
- 14 MS. AMIRKHANI: Ms. McCurrach.
- 15
- 16 THE REVIEW OFFICER: -- accounts that have not been provided?
17
- 18 MS. AMIRKHANI: And I can tell you I have -- the oldest one I have
19 starts September 13, 2021. So anything before that I don't have.
20
- 21 MR. MCCURRACH: I'm concerned here that we're -- we shouldn't be
22 talking about these accounts. They're not rightly the subject of today's review application.
23 I just want to go back to my -- my position on that. We can -- we can certainly review these
24 --
25
- 26 MS. AMIRKHANI: (INDISCERNIBLE).
- 27
- 28 MR. MCCURRACH: -- but I don't --
29
- 30 MS. AMIRKHANI: And I appreciate you've already basically ruled
31 on it, but can I make a submission on behalf of my client? That on June 1st, 2022 an
32 appointment for review of lawyer's charges was filed. And on that, it -- the entire content
33 of that is that all lawyer's accounts between the clients and the law firm which are requested
34 to be provided -- oh, I see -- referred to in paragraph 24.
35
- 36 THE REVIEW OFFICER: And in addition to that, I have already referenced
37 10.14, where copies of all of the accounts should have been included, Mr. McCurrach. We
38 spent all afternoon on this. None of these CN accounts are out of time. And Ms. Amirkhani
39 and her staff have done their calculations based on all of the information that they've got.
40 I'm still leaving -- I'm leaving the reduction at \$100,000. If there's extra accounts, then Mr.
41 McCurrach is going to have to prove that. Produce them to you, Ms. Amirkhani. And --

1 and you can have the judge sort it out or a judge can send it back for the calculation. But
2 as I said, I have ruled on the 80/20 percent. I think that is reasonable. And it is just a
3 question of adding in some more time when I have added in another \$20,000 for potential
4 deletions that I thought maybe you were a little bit harsh on. I will prepare a certificate to
5 that effect. If you can get me the additional accounts --

6

7 MS. AMIRKHANI: Yes.

8

9 THE REVIEW OFFICER: -- we will add them in. And assuming you want
10 to appeal to add the other three in there. I do not know what you are going to do. But all of
11 the accounts should have been provided to the client, Mr. McCurrach. Okay.

12

13 MS. AMIRKHANI: Thank you for your time.

14

15 THE REVIEW OFFICER: I will prepare a certificate for the \$100,000. I am
16 going to say -- I do not know how much has been paid. That is something that has got to
17 be sorted out by an application's judge because I do not have any jurisdiction to deal with
18 it. So you will be in front of a judge one way or the other and you can take your new
19 calculations to the judge and they have certainly got the ability to rejig the numbers based
20 on what I have said. Unless they disagree with me. Then they will do it on their own terms.

21

22 MS. AMIRKHANI: And if -- just before we leave, appreciating that
23 we will be in front of an application's judge at some point, is it in your view appropriate to
24 speak to costs under 10.23 at this time or should we withhold that until this --

25

26 THE REVIEW OFFICER: Save that.

27

28 MS. AMIRKHANI: -- is kind of --

29

30 THE REVIEW OFFICER: Yes, save that for --

31

32 MS. AMIRKHANI: Okay.

33

34 THE REVIEW OFFICER: -- the judge. The judge can order costs for any
35 delays and efforts that you have had to go through to get here and the fact that materials
36 were not provided pursuant to Rule 10.14. And of course the time that you have to spend
37 in front of the judge. All right?

38

39 MS. AMIRKHANI: Okay.

40

41 THE REVIEW OFFICER: All right. Thank you all --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

MS. AMIRKHANI:

Thank you very much.

THE REVIEW OFFICER:

-- for your submissions. Have a good day.

MR. MCCURRACH:

You too.

PROCEEDINGS CONCLUDED

1 **Certificate of Record**

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

I, David Michael Ellery, certify that this recording is the record made of the review in the Court of King's Bench, held in the Review and Assessment Boardroom 802 North at the Calgary Court Centre in Calgary, Alberta, on the 21st day of June, 2023, and that I was the review officer during these proceedings and was in charge of the sound recording machine during these proceedings.

1 **Certificate of Transcript**

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

I, Charlene Zaharia, certify that

- (a) I transcribed the record, which was recorded by a sound recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record and
- (b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

TEZZ TRANSCRIPTION, Transcriber
Order Number: TDS-1035279
Dated: July 10, 2023