

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse et al

HAROLD BURT-GERRANS

May 19, 2015

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Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendant

--- This is the Cross-Examination of HAROLD
BURT-GERRANS, on his affidavit sworn March 9, 2015,
taken at the offices of Davies Ward Phillips & Vineberg
LLP, 40th Floor, 155 Wellington Street West, Toronto,
Ontario, on the 19th day of May, 2015.

1 A P P E A R A N C E S:

2

3 Andrew Winton, Esq. for the Plaintiff.

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5 Matthew Milne-Smith, Esq. for the Defendant

6 & Andrew Carlson, Esq. West Face Capital

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Inc.

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9 REPORTED BY: Terry Wood, RPR, CSR

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I N D E X

WITNESS:

HAROLD BURT-GERRANS

Cross-examination by Mr. Winton 5

Re-Examination by Mr. Milne-Smith 54

The following list of undertakings, advisements and refusals is meant as a guide only for the assistance of counsel and no other purpose

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages/lines: None.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: None.

INDEX OF UNDER ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages/lines: 18/4, 23/17, 28/10, 28/18, 40/14.

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INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE NO.

None.

1 --- Upon commencing at 11:39 a.m.

2

3 HAROLD BURT-GERRANS, AFFIRMED.

4 CROSS-EXAMINATION BY MR. WINTON:

5 1 Q. Good morning, Mr. Burt-Gerrans.

6 Did I pronounce that correctly?

7 A. Yes.

8 2 Q. Great. Now, in reviewing your
9 affidavit, and, first off, in this proceeding, you have
10 sworn one affidavit dated March 9, 2015, correct?

11 A. Correct.

12 3 Q. And while you have performed other
13 work in relation to this proceeding, which we will get
14 to, previous to this affidavit, you haven't sworn any
15 affidavits or given any evidence?

16 A. Correct.

17 4 Q. I understand that the matters for
18 which you swore this affidavit of March 9th, 2015, you
19 were initially retained by Mr. Mitchell at Dentons?

20 A. Yes.

21 5 Q. Am I to understand correctly that,
22 for the activities described in your affidavit, you
23 were taking instruction from Mr. Mitchell?

24 A. No.

25 6 Q. So who were you taking instructions

1 from?

2 A. The majority of the instructions
3 came from Andrew -- I can't --

4 7 Q. Pushalik?

5 A. Yes, that's him. And Phil Panet of
6 West Face.

7 8 Q. Okay. But in any event, you were
8 taking instruction from -- first off, let's confirm
9 Mr. Pushalik of Dentons?

10 A. Yes.

11 9 Q. And, secondly, you were taking
12 instructions from Mr. Panet?

13 A. Correct.

14 10 Q. Mr. Panet being the corporate
15 counsel to West Face, correct?

16 A. Correct.

17 11 Q. The retainer agreement attached to
18 your affidavit as tab B, can you turn to that, please.
19 Actually, it's Exhibit 2.

20 This is, according to your affidavit,
21 the retainer letter pursuant to which you or your firm
22 was retained by Dentons, correct?

23 A. Correct.

24 12 Q. The first sentence states that:

25 "Dentons has retained H&A eDiscovery

1 Inc. on behalf of its client West Face
2 Capital Inc. to assist as a computer
3 forensic expert in the above-noted
4 matter."

5 And from my review of this retainer
6 letter, that is the extent of the description of the
7 scope of your retainer, correct?

8 A. Yes.

9 13 Q. You agree with me nowhere else in
10 this letter does it set out exactly what tasks you were
11 asked to perform or analyses or anything --

12 A. Correct.

13 14 Q. -- of that nature?

14 MR. MILNE-SMITH: Make sure you wait for
15 the end of his question.

16 BY MR. WINTON:

17 15 Q. Now, turning over to Exhibit 3 of
18 your affidavit, this is the retainer letter in relation
19 to the work you performed for Mr. Hopkins at Grosman,
20 Grosman & Gale LLP, correct?

21 A. Correct.

22 16 Q. And just about halfway to
23 two-thirds down the first page of Exhibit 3, there is a
24 scope of professional services section that spans
25 approximately a full page when you start from the

1 bottom third of page 1 of this letter and continue over
2 to page 2 of the letter, correct?

3 A. Correct.

4 17 Q. And you agree with me that sets out
5 in some detail what tasks you were asked to perform
6 pursuant to the July, 2014, retainer?

7 A. Correct.

8 18 Q. Now, were the instructions you were
9 provided given to you in writing or were they oral
10 instructions from counsel?

11 A. Majority of it would have been
12 oral.

13 19 Q. Okay.

14 A. A lot of it revolved out of
15 discussion.

16 20 Q. Okay.

17 A. In -- in that when we were first
18 retained, the scope really didn't exist. Like, we
19 didn't -- they didn't know sort of what would be
20 involved, so the work that we did came out of
21 discussion with Phil and Andy.

22 21 Q. And if I understand you correctly,
23 it was sort of jointly between Phil and Andy --

24 A. Yes.

25 22 Q. -- that they decided what tasks

1 they were going to ask you to perform?

2 A. Some of them, I recommended.

3 23 Q. Okay. They explained what their
4 needs were?

5 A. Yes.

6 24 Q. And then you explained to them what
7 tasks you thought ought to be performed --

8 A. Correct.

9 25 Q. -- to achieve their goals?

10 A. Yes.

11 26 Q. Were these joint discussions
12 between you and Mr. Pushalik and Mr. Panet? So
13 conference calls, for instance?

14 A. Yes.

15 27 Q. Okay. Turning to Exhibit 1 to your
16 affidavit, this is your I guess up-to-date curriculum
17 vitae as of March 9th --

18 A. Correct.

19 28 Q. -- 2015?

20 A. Yes.

21 29 Q. This wasn't prepared just for the
22 purposes of this affidavit, correct?

23 A. No.

24 30 Q. This is a CV that you use --

25 A. Regular.

1 31 Q. -- when asked by any potential
2 client?

3 A. Yes.

4 32 Q. And you keep this up to date as
5 much as reasonably possible?

6 A. Yes.

7 33 Q. And looking under the section "Work
8 Experience", do I take it the first two bullet points
9 reflect a similar position you held at H&A eDiscovery
10 from 2006 to the present?

11 A. Yes.

12 34 Q. You were promoted from senior
13 manager to director in 2011?

14 A. Yes.

15 35 Q. But essentially the tasks you
16 performed were more or less the same; is that fair?

17 A. Yes.

18 36 Q. And prior to working at H&A, you
19 were at Commonwealth Legal. Again, you were working as
20 a manager in the ediscovery technology services group,
21 correct?

22 A. Yes.

23 37 Q. And in looking at your expertise, I
24 note that you refer in the last bullet -- and I believe
25 this is also in the body of your affidavit -- that you

1 mentioned you have been appointed as an independent
2 ediscovery expert to the Quebec Superior Court,
3 correct?

4 A. Correct.

5 38 Q. In the second bullet in your
6 expertise, you describe your experience in computer
7 forensics involving capturing forensic images of
8 various digital devices and that you've performed
9 hundreds of such acquisitions and analyses, correct?

10 A. Correct.

11 39 Q. Is it fair to say that is primarily
12 for purposes of ediscovery?

13 A. No.

14 40 Q. So in what -- other than in an
15 ediscovery context, when are you performing these
16 acquisitions and analyses?

17 A. H&A regularly gets computer
18 forensics-type work regarding, you know, people leaving
19 companies: Did they copy data off their systems, you
20 know, mobile, forensics along those lines, so it goes
21 in conjunction with the ediscovery.

22 41 Q. Okay. So it's not just ediscovery
23 but also --

24 A. It's not just ediscovery. The
25 majority of the acquisition work, though, would be with

1 respect to ediscovery.

2 42 Q. Okay. So having performed hundreds
3 of acquisitions, would you say the majority of that is
4 ediscovery?

5 A. The majority of that was for
6 capturing data for ediscovery.

7 43 Q. Okay. But when you are creating
8 forensic images, it's not just ediscovery?

9 A. Correct. We actually forensically
10 image everything. We use the same procedure for both.

11 44 Q. Got it. And in your experience,
12 when you are asked to image devices and then perform an
13 analysis, the analysis you perform is at the direction
14 or request of counsel, correct?

15 A. Correct.

16 45 Q. They tell you what to search for
17 and you run the search on the image?

18 A. Correct.

19 46 Q. You don't undertake on your own
20 initiative to look for data or conduct your own
21 independent analyses?

22 A. We would look for activities, for
23 instance, in relation to -- if someone said they
24 were -- depending what the forensic issue is, we would
25 look for activities relating to that issue. It may not

1 be something specifically requested by the -- by the
2 law firm.

3 47 Q. But the issue that leads to that
4 search is an issue identified for you by counsel?

5 A. Correct.

6 48 Q. It may be they rely on your
7 expertise to help them understand what searches they
8 need to conduct?

9 A. Exactly.

10 49 Q. But at the end of the day, the
11 goals and the information they are looking for, the
12 questions they are asking to be answered, are given to
13 you by counsel?

14 A. Correct.

15 50 Q. And then, again, in bringing that
16 back to the context of this retainer for which you
17 swore this affidavit of March 9th, 2015, those goals
18 were identified for you by Mr. Pushalik and Mr. Panet?

19 A. Correct.

20 51 Q. Turning to paragraph 6 of your
21 affidavit. And I recognize paragraph 6 is, as I
22 characterize it, a general summary of what you were
23 retained to do. Would you say that's fair? A general
24 summary? The details are contained in what follows in
25 your affidavit?

1 A. Correct.

2 52 Q. You state that, pursuant to your
3 retainer, your firm made forensic images of -- let's
4 just go in order here and make sure we've captured it
5 all -- Mr. Moyse's desktop computer hard drive,
6 correct?

7 A. Yes.

8 53 Q. It then refers to hard drives from
9 West Face's servers accessed by Mr. Moyse, and I want
10 to ask you some questions about that. Which or how
11 many servers or hard drives were imaged?

12 A. We imaged the -- all of the drives
13 associated with the primary data server and the backup
14 data server.

15 54 Q. These are servers that are accessed
16 by all active users at West Face?

17 A. Yes.

18 55 Q. Not just Mr. Moyse, correct?

19 A. Correct.

20 56 Q. The images were made, as I
21 understand from your affidavit, on January 29th, 2015,
22 and I think -- I don't want to test you here. It's
23 paragraph 9, I believe, says that, right?

24 A. Yeah. The images of the -- of
25 Mr. Moyse's hard drive was done on the 29th.

1 57 Q. Okay.

2 A. But the other images were done over
3 a period of time, several different nights, because
4 the -- we try to do the imaging so that it doesn't
5 impact their operational business.

6 58 Q. Understood. Okay.

7 A. And so we had to stagger the times
8 for when the images were done to allow for various
9 business activities and other system activity. Like,
10 there's some coordinated backups that happen with their
11 database controls and things like that, so we had to
12 sort of target specific times to do specific drives.
13 We couldn't do everything at once.

14 59 Q. Got it. So sometime after -- did
15 you start with Mr. Moyse's computer?

16 A. No. The initial images that we
17 started with were from the server, but -- but it was
18 within a few days that the first image was started,
19 like, maybe the 25th or 26th of January.

20 60 Q. Okay.

21 A. It was just a couple of days ahead
22 of when we actually did his desktop.

23 61 Q. Okay. So within a couple of days
24 of the date of your retainer, you began imaging the
25 West Face servers, correct?

1 A. Correct.

2 62 Q. And it took several days. A week
3 or two, do you think?

4 A. Yeah.

5 63 Q. Is that fair?

6 A. Probably a couple of weeks. It
7 wasn't every night, and we had to sort of, like I said,
8 target specific nights to do specific things.

9 64 Q. Right. It had to be coordinated so
10 as not to interfere with West Face's business or IT
11 activities?

12 A. Exactly.

13 65 Q. Right. And in the midst of that
14 period of imaging the servers, you also, on
15 January 29th, imaged Mr. Moyse's work station hard
16 drive, correct?

17 A. Correct.

18 66 Q. Okay. You still have those images
19 that you created?

20 A. Yes.

21 67 Q. Including the images of the
22 servers?

23 A. Yes.

24 68 Q. Do you have a record of the dates
25 on which you imaged each hard drive from the servers?

1 A. Not with me.

2 69 Q. No, but do you have a record of
3 that?

4 A. Yes.

5 70 Q. Okay. And that could be made
6 available upon request?

7 A. Yes. We have a standard imaging
8 form that we do for every image that we fill in or
9 take.

10 71 Q. And you filled out a form for each
11 of the server hard drives?

12 A. Yes.

13 MR. WINTON: Can you produce those,
14 Counsel?

15 MR. MILNE-SMITH: No.

16 MR. WINTON: Okay.

17 MR. MILNE-SMITH: Counsel, just for the
18 record, we have offered to produce through the ISS all
19 documents pulled from the server that contained any
20 record of being accessed by Mr. Moyse, but we are not
21 going to turn over to Catalyst's counsel all of West
22 Face's data servers, as I'm sure is no surprise to you.

23 MR. WINTON: Oh, no, and that wasn't
24 what I was asking for. I was asking for the forms, the
25 record forms, that show what dates those images were

1 made.

2 MR. MILNE-SMITH: Oh, I apologize.

3 MR. WINTON: No, that's fine.

4 U/A MR. MILNE-SMITH: Okay. I will take
5 that under advisement.

6 MR. WINTON: Okay.

7 MR. MILNE-SMITH: Glad I clarified.

8 MR. WINTON: Yes. The whole point of
9 the images is what this motion's about, so if you gave
10 me that other undertaking, it would make things a lot
11 simpler, but I understand why you are not going to.

12 MR. MILNE-SMITH: Yes.

13 BY MR. WINTON:

14 72 Q. Now, just a few questions about the
15 architecture of West Face's network. Active users or,
16 to your understanding, users have work stations that
17 they work at, correct?

18 A. Generally, yes.

19 73 Q. And those work stations have local
20 hard drives?

21 A. Correct.

22 74 Q. But the files that they access are
23 accessed through a connection to the servers, correct?

24 A. Correct.

25 75 Q. The evidence, then, of any data

1 that's -- or files that are opened, modified, or
2 deleted would rest on the server?

3 A. Correct.

4 76 Q. And is this because West Face
5 operates through a cloud access system?

6 A. No. That's standard for any server
7 environment.

8 77 Q. Got it. So the servers themselves
9 are not hosted in the cloud?

10 A. The backup server is hosted on
11 their premises in -- on Bloor Street.

12 78 Q. Yes.

13 A. The primary data server is hosted
14 by a third-party company, so it is a dedicated virtual
15 server on a large shared disk storage system that
16 contains multiple clients of that company.

17 79 Q. Right.

18 A. So their data storage would be just
19 a slice of the complete system that the third-party
20 company hosts.

21 80 Q. Okay. So when you are imaging the
22 primary data server, it was a virtual hard drive that
23 was being imaged?

24 A. It was a virtual hard drive.

25 81 Q. The backup server was a --

1 A. Physical.

2 82 Q. -- physical hard drive?

3 A. Correct.

4 83 Q. On premises?

5 A. On premises.

6 84 Q. The next item in paragraph 6 you
7 refer to -- it's just at the very end of page 2 of your
8 affidavit, continuing on to page 3 -- you make
9 reference to West Face's e-mail traffic from
10 March 27th, 2014, to January 13th, 2015. And do I
11 understand correctly that this was an image of all of
12 the e-mail traffic at West Face between those two
13 dates?

14 A. It was an image of all available
15 e-mail traffic between those two dates.

16 85 Q. What e-mail traffic, to your
17 knowledge, was unavailable?

18 A. I have no knowledge of unavailable
19 e-mail traffic.

20 86 Q. Okay. Well, then, in answer to my
21 question, you introduced the qualifier "available", so
22 why did you do that?

23 A. So it was -- it was all the e-mails
24 that resided on the e-mail server at the time of the
25 image. Or at the time of capture, because we didn't

1 image the server. The server is owned by Microsoft,
2 its Office 365 service.

3 87 Q. So just to make sure I understand
4 this correctly, you weren't able to image the server
5 because of the nature in which the data is hosted,
6 correct?

7 A. Correct.

8 88 Q. And if I understand from what's in
9 your affidavit -- and I'm happy to take you there; it
10 doesn't need to be a memory test -- you describe in
11 paragraphs 13 and 14 how the e-mail traffic was
12 captured?

13 A. Correct.

14 89 Q. If you want to take a moment, you
15 could look at that.

16 What I understand is, in your presence,
17 Chap Chau downloaded the entire PST file for each
18 active user at West Face?

19 A. Correct.

20 90 Q. That included both their inbox and
21 whatever other sub-folders they may have created --

22 A. Correct.

23 91 Q. -- within their e-mail account?

24 A. Yes.

25 92 Q. And in paragraph 14, he also

1 provided you with PST files for employees whom you've
2 named in paragraph 14 who were former employees of West
3 Face, correct?

4 A. Correct.

5 93 Q. And if I understand your evidence
6 at paragraphs 13 and 14 correctly, you, yourself, did
7 not create the PST files?

8 A. Correct.

9 94 Q. But you were watching him do so?

10 A. It's a system-generated PST file.

11 95 Q. Yes.

12 A. So the interface screen allows you
13 to select specific mailboxes or all of them, and we
14 picked "all" and then put in the date range of
15 March 27th to January 13, and then the system goes
16 through all of the mailboxes and generates a PST file
17 for each person. So Chap didn't actually create them
18 individually, either. It's --

19 96 Q. I see. Okay. Thank you.

20 Individual PST files are named for the
21 user?

22 A. Correct, by the mailbox name.

23 97 Q. By the mailbox name?

24 A. Right.

25 98 Q. Which, in this case, is a first

1 initial, last name?

2 A. I think so. I don't recall,
3 specifically.

4 99 Q. Okay.

5 A. There were also mailboxes for
6 resources, like "boardroom".

7 100 Q. Right. So some e-mail addresses
8 may not be linked to a particular person's name but
9 maybe a role or some other address?

10 A. Like a -- yeah. So we grabbed them
11 all.

12 101 Q. Would it be possible to create a
13 list of all of the PST files that were created?

14 A. Yes.

15 MR. WINTON: Counsel, could I get such a
16 list?

17 U/A MR. MILNE-SMITH: I'll take it under
18 advisement.

19 BY MR. WINTON:

20 102 Q. Do you still have the images of
21 those PST files?

22 A. Yes.

23 103 Q. In your evidence a few moments ago,
24 when you just referred to available e-mail traffic, do
25 I understand, then, that if e-mails had been deleted by

1 a user prior to the date the PST files were copied,
2 then those deleted e-mails would not necessarily be
3 captured in those PST files?

4 A. Not completely true.

5 104 Q. Okay.

6 A. They -- when someone deletes an
7 e-mail on Office 365, the e-mail goes into a -- they
8 call it a dumpster. It is, like -- it's the technical
9 term.

10 105 Q. Okay.

11 A. And they reside -- deleted e-mails
12 reside in the dumpster for a period of time. I'm not
13 sure what the exact period of time is. It may well be
14 user -- on Microsoft Office 365 system, it might be
15 customizable. But it's -- but I don't have the exact
16 number of days that it's there, but there are deleted
17 e-mails that are restored in the export process that we
18 do, because the export process picks the items from the
19 dumpster as well.

20 106 Q. Okay. So you have the dumpster
21 emails in the PST files as well?

22 A. They would be -- but they would
23 show up in -- for me, they would show up as just items
24 inside the PST; they wouldn't appear as deleted.

25 107 Q. Okay. And to your understanding,

1 the dumpster retains deleted e-mails for a period of
2 time. Do you have any knowledge as to how long? Is it
3 a month, two months, a few days, two weeks?

4 A. The default Microsoft exchange is
5 30 days, but that's a default environment. If you were
6 to set it up in your office, the default would be 30
7 days.

8 108 Q. Okay.

9 A. But it's configurable. I don't
10 know how configurable it is within Office 365 since it
11 supports multiple clients. I don't know if they can
12 set it for a specific length of time.

13 109 Q. Okay. Now, a cloud-based e-mail
14 system, does it leave any trace of the e-mail users'
15 activity on the work station from which they are
16 accessing their e-mail account?

17 A. They have, generally, a local copy
18 of their e-mail account, which would be the OST file.
19 So that sort of stays in synchronization with the
20 cloud.

21 110 Q. Okay. But it synchronizes, more or
22 less, with the cloud PST file?

23 A. Exactly.

24 111 Q. Okay.

25 A. In simple terms, yeah.

1 112 Q. To the extent that a user was
2 engaged in e-mail activity using a particular work
3 station, deleted an e-mail, and that e-mail was removed
4 from the dumpster because the set period of time had
5 expired, is there any trace of that e-mail activity
6 resident on their work station?

7 A. There may be some trace of it still
8 in the OST file. Because the OST file, while
9 synchronizing with the cloud, as you delete stuff,
10 leaves gaps that it will then fill with new messages.
11 If it hasn't filled the gap, the old message would
12 still be recoverable from the OST file.

13 113 Q. Through a forensic review?

14 A. Through a forensic review, yes.

15 114 Q. Paragraph 7 of your affidavit, this
16 is where you describe your previous engagement in July,
17 2014, by Grosman, Grosman & Gale, and in this
18 paragraph, you refer to the forensic images that you
19 created and what happened to those images, right?

20 A. Correct.

21 115 Q. And if I understand your evidence
22 correctly, on December 18th, 2014, you sent one copy of
23 the forensic images that were created to Stockwoods
24 LLP?

25 A. No. I sent it directly to DEI.

1 116 Q. Right. To the forensic expert for
2 Stockwoods, right?

3 A. Correct.

4 117 Q. Now, the other copy of the forensic
5 images, you state here you provided them to Grosman,
6 Grosman & Gale on December 22, 2014, correct?

7 A. Correct.

8 118 Q. At whose instruction did you do
9 that?

10 A. Jeff.

11 119 Q. Jeff Hopkins?

12 A. Yes.

13 120 Q. Did he give you those instructions
14 in writing?

15 A. I do not believe so.

16 121 Q. It was oral instructions?

17 A. I think so.

18 122 Q. He called you up and he said can
19 you send me the other copy?

20 A. Yeah. Well, actually, it was
21 more -- from my recollection, it was more of a case he
22 called me and said that -- to send one copy to the DEI.

23 123 Q. Yes?

24 A. And then to -- and then I asked him
25 about the other copy, and he said to send it to him, at

1 which time I told him that I wouldn't send him the copy
2 until DEI confirmed that they had received their copy.

3 124 Q. Okay. Did you -- when you sent the
4 second copy to Mr. Hopkins, did you do so with a cover
5 letter?

6 A. Most likely, yes.

7 MR. WINTON: Can you review your
8 records, and if you find that, will you produce that to
9 me?

10 U/A MR. MILNE-SMITH: I'll take it under
11 advisement.

12 BY MR. WINTON:

13 125 Q. Thanks. And I'm going to also ask,
14 if there was any e-mail correspondence between you and
15 Mr. Hopkins during this period regarding the
16 destination of the images, if you could produce those
17 to me as well?

18 U/A MR. MILNE-SMITH: Take that under
19 advisement.

20 BY MR. WINTON:

21 126 Q. Thank you. Turning to page 4 of
22 your affidavit, paragraph 9, you were informed by
23 Mr. Chau that Mr. Moyse's computer had not been
24 assigned to another user after he was placed on
25 indefinite leave on July 16th, 2014, correct?

1 A. Correct.

2 127 Q. You had no independent knowledge of
3 whether or not that was, in fact, the case?

4 A. At the time?

5 128 Q. Yes.

6 A. No.

7 129 Q. Right. You were able to confirm
8 that fact through your review of the data on the image?

9 A. Yes.

10 130 Q. How did you do that?

11 A. Checking the system logs for what
12 user IDs had logged in and established profiles on the
13 system.

14 131 Q. Okay. So if I understand you
15 correctly, when the computer is turned on and a user is
16 starting up the computer, they have to log on to access
17 the computer?

18 A. Correct.

19 132 Q. And that log-on activity is
20 recorded on the computer?

21 A. Yes.

22 133 Q. And which log-on, I guess, identity
23 is used is one of the facts reported?

24 A. Correct.

25 134 Q. And, as I understand it, that is

1 captured in Exhibit 4 to your affidavit, correct?

2 A. Correct.

3 135 Q. We will turn to that in a second.

4 Now, the image you created, you
5 mentioned how you used a write blocker device, correct?

6 A. Correct.

7 136 Q. And as I understand it, the purpose
8 of using a write blocker is to ensure that, when you
9 are imaging the drive, you don't interfere or alter the
10 metadata associated with the data, correct?

11 A. Make sure that I don't alter
12 anything on the drive.

13 137 Q. Right. Because if you just select
14 a bunch of files, copy and paste them somewhere, that
15 will actually alter the data, correct?

16 A. Not with write blocker.

17 138 Q. No. If you don't use a write
18 blocker?

19 A. If I don't use a write blocker,
20 yes, that can alter the metadata.

21 139 Q. Right. And if you try to image a
22 drive without a write blocker, then that would
23 potentially alter the data?

24 A. It depends on the imaging tool
25 that's involved.

1 140 Q. All right. In some cases, that's a
2 possibility?

3 A. It is a possibility.

4 141 Q. And you eliminate that possibility
5 by using the write blocker?

6 A. Yes. You guarantee it by using a
7 write blocker.

8 142 Q. Right. Do you agree with me that
9 the need to use a write blocker device would be
10 somewhat common knowledge among IT specialists?

11 A. In my industry, yes.

12 143 Q. Yes. So not just forensic
13 specialists but IT specialists in general understand
14 the need for a write blocker-type of device to preserve
15 the metadata?

16 MR. MILNE-SMITH: What do you mean by
17 "IT specialist", Counsel?

18 BY MR. WINTON:

19 144 Q. I mean people who are employed to
20 run the IT departments at various companies. To your
21 understanding, do they have that knowledge?

22 A. They generally do not know such
23 devices exist.

24 145 Q. Right. Okay. And you have in the
25 past encountered situations where someone in the IT

1 department at a company may have altered metadata
2 before you had a chance to image a drive?

3 A. Yes.

4 146 Q. Trying to be helpful, they copied
5 stuff for you, and then it turns out they just ruined
6 the integrity of all the data, right?

7 A. Exactly.

8 147 Q. Right.

9 A. Generally, in our acquisition
10 processes, when we know we are doing an acquisition, I
11 usually advise them ahead of time to not do that, and I
12 provide instructions for how -- if they are going to
13 self-collect, how to self-collect without destroying
14 the metadata.

15 148 Q. Did you have that kind of
16 discussion with Mr. Chau before you attended West
17 Face's offices on the 29th?

18 A. No.

19 149 Q. Now, paragraph 10 of your
20 affidavit, you refer to the link files on West Face's
21 servers. If I understand correctly, just to make sure
22 we have the right system identified, you are not
23 talking about the image of Mr. Moyse's hard drive; you
24 were looking for link files on the server images that
25 you had created?

1 A. No.

2 150 Q. Okay. Help me out.

3 A. I was looking at Mr. Moyse's hard
4 drive for link files that point to files on the server.

5 151 Q. Right. Because the files
6 themselves, as we established, then, are only stored on
7 the server, correct?

8 A. The data files are stored on the
9 server. The link file would be on his local machine.
10 The link file would not contain any of the content of
11 the document; it's just a reference to that document.

12 152 Q. Right. And the link file is
13 created when a document is opened, correct?

14 A. Typically, yes.

15 153 Q. Right. Not when the application is
16 started up?

17 A. Right.

18 154 Q. Okay. So when a user at West Face
19 opens up, for instance, an Excel spreadsheet, let's
20 say, they're viewing a file that's actually hosted on
21 the server, correct?

22 A. Correct.

23 155 Q. They make changes to it, close the
24 file, the file is on the server?

25 A. Correct.

1 156 Q. There's no record of the data that
2 was in that file on their local hard drive?

3 A. Correct.

4 157 Q. But the link file would show the
5 activity of having opened the file?

6 A. Correct.

7 158 Q. In the last sentence of
8 paragraph 10, you refer to documents that you
9 extracted, and do I understand that the only documents
10 you extracted from the forensic images of West Face's
11 servers are the documents that Mr. Moyse had accessed,
12 created, or modified? According to the link file data?

13 A. Yes. Following the links, yes.

14 159 Q. Can you explain that, "following
15 the links"?

16 A. Well, some files on the server, we
17 found that -- had Brandon's user ID in the metadata.

18 160 Q. Yes.

19 A. But I didn't have a link file on
20 the system.

21 161 Q. Okay. So the link file isn't
22 always created every time you open a file or the link
23 file sometimes isn't retained in the system?

24 A. They are periodically system
25 cleaned.

1 162 Q. Okay. And that's not something a
2 user would do; that just happens?

3 A. No. It just happens.

4 163 Q. Right. And is that why you
5 performed the second search described in paragraph 11?

6 A. Yes.

7 164 Q. Because you understood that the
8 link files were not definitive proof as to whether or
9 not a file was opened and accessed?

10 A. Correct.

11 165 Q. There may be another way of
12 determining that?

13 A. Right.

14 166 Q. And then just to confirm, for
15 paragraph 11, you were searching for documents that,
16 through the metadata, identified themselves as having
17 been created or modified by Mr. Moyse, correct?

18 A. Correct.

19 167 Q. Not by any other users?

20 A. Right.

21 168 Q. That was at the direction of or in
22 part of following your discussions with Mr. Pushalik
23 and Mr. Panet?

24 A. Yes.

25 169 Q. Thank you. Now, you discussed how

1 the remote log-in system works for the desktop
2 computer, and you attached as Exhibit 4 the detailed
3 log for Mr. Moyses's computer from June 23rd, 2014,
4 and really up to the date the image was made,
5 January 29th, correct?

6 A. Correct.

7 170 Q. If we can turn to that, please.
8 It's page 1424 of the record. The initial log-on is
9 recorded as taking place at the beginning of this log
10 on June 17th, correct?

11 A. Correct.

12 171 Q. And help me understand how --
13 what's logged and what the time -- date and time
14 signatures mean. So the initial entry is at 12:04 --
15 and I see this is in 24-hour time, so that's
16 12:04 p.m. (sic), correct?

17 A. Correct.

18 172 Q. Event log is created, and a minute
19 later, there's record of a log-on by an account named
20 Moyses B. So there's the third entry that then states
21 12:23 and there's another log-on. How do you interpret
22 that data with those time stamps?

23 A. I don't have an answer for --
24 without looking at the rest of the log and the other
25 activities that were going on around it.

1 173 Q. So there's other activity that
2 wasn't recorded in this document attached to your
3 affidavit?

4 A. This document is just a record of
5 the specific startup/shut down and log on/log off
6 events. There are other system events that would be in
7 the log.

8 174 Q. So how did you run that? Do you
9 run a search or did you delete those from the log in a
10 capture of the log information? How did you prepare
11 this document?

12 A. I selectively took all the records
13 based on the event IDs, which is the third column, to
14 include those into the chart.

15 175 Q. So the -- now, it states log in/log
16 out, and the log out ID, if you go to about the --
17 almost halfway down the page on June 25th, 2014, at
18 10:31, the second entry for that time stamp has an
19 event ID of 4634 and records that the description is
20 "log off". Do you see that?

21 A. Correct, yes.

22 176 Q. So you recorded both when a user
23 logged on and when a user logged off the system?

24 A. Yes.

25 177 Q. But in some cases, it appears that

1 on some days a user will log on and then will log on
2 again. And so, for instance, on the 23rd, there's a
3 log on at 10:02 a.m., correct? 23rd of June?

4 A. 23rd June, 10:02, yes.

5 178 Q. There's a log on?

6 A. Right.

7 179 Q. There's a log on again at
8 4:49 p.m.?

9 A. Yes, but the types are different.

10 180 Q. Right. The types are different,
11 because the log on type at 4:49 p.m., as we see from
12 the legend on the bottom of the second page, is it was
13 a screen saver unlock, correct?

14 A. Correct.

15 181 Q. The next log on, which, again, is a
16 screen saver unlock, is the next day at 8:05 a.m.,
17 correct?

18 A. Correct.

19 182 Q. The next entry after that is at
20 10:30 a.m., and this time, it's log on type 11, which
21 is described as interactive at work station using
22 cached security. What does that mean?

23 A. It is similar to a type 2.

24 183 Q. Yes?

25 A. But the system doesn't go to the

1 network servers to validate the user ID and password;
2 it uses a copy that it has saved locally.

3 184 Q. Okay. But otherwise, it is similar
4 to logging on for the first time?

5 A. Yes.

6 185 Q. Just reviewing the log on the first
7 day, it appears that Mr. Moyse was not in the habit of
8 logging off from his system, correct?

9 A. Correct.

10 186 Q. But if he had to log on again using
11 type 11, does that suggest that he had shut down the
12 computer without logging off?

13 A. No.

14 187 Q. He just left himself -- he left the
15 computer on?

16 A. Yes.

17 188 Q. Opens it up from sleep, let's say?

18 A. Yes. From, like, a hibernation.

19 189 Q. From a hibernation, and logs in?

20 A. Correct.

21 190 Q. Does the log record when the
22 computer goes into hibernation?

23 A. No.

24 191 Q. Does it record when the screen
25 locks?

1 A. I'm not sure if there is an event
2 log for when the system locks, no. I can check.

3 BY MR. WINTON:

4 192 Q. Well, I'll ask -- your counsel will
5 decide if -- can you check to see if the event log
6 would record when the system locks, Counsel?

7 MR. MILNE-SMITH: It's irrelevant, other
8 than mere curiosity.

9 MR. WINTON: I'll tell you what, I'm
10 going to continue some questions. I don't want to
11 describe the relevance in front of the witness, but I
12 will continue some questions. I'm happy for you to
13 take it under advisement and then --

14 U/A MR. MILNE-SMITH: I will take it under
15 advisement.

16 BY MR. WINTON:

17 193 Q. Thanks. Turning over to the second
18 page, sir, there's a -- the top few entries are for
19 July, 2014, ending on July 16th. Do you see that?

20 A. Yes.

21 194 Q. Then the next entry is on
22 August 20th, 2014. The event log states that it was
23 stopped with a code of 6006. What is that recording?
24 What activity is being recorded for that entry?

25 A. The event log starts and stops

1 typically reflect the times that the computer starts up
2 and shuts down.

3 195 Q. Yes.

4 A. So at -- so on the 2000 --
5 August the 20th, for instance.

6 196 Q. Yes.

7 A. The log was stopped and then
8 started within -- within a minute, basically, at three
9 o'clock in the morning.

10 197 Q. Okay.

11 A. It was most likely a Windows system
12 update that required a reboot.

13 198 Q. Okay. And then the next entry, on
14 August 28th?

15 A. Is the system being shut down.

16 199 Q. Okay. Now, between July 15th,
17 2014, and August 28, 2014, is there any evidence within
18 the log that the system was shut down before
19 August 28th?

20 A. No, other than the automatic
21 restarts that appear early in the morning.

22 200 Q. But that's not a hard turning off
23 of the computer, correct?

24 A. No.

25 201 Q. That's a soft reboot?

1 A. A soft reboot, yes.

2 202 Q. Is there any evidence of a hard
3 reboot between July 16th and August 28th?

4 MR. MILNE-SMITH: What do you mean by "a
5 hard reboot"?

6 BY MR. WINTON:

7 203 Q. The actual shutting down of the
8 computer and restarting the computer not generated by
9 the system but by a user?

10 A. No.

11 204 Q. Thank you. Then on December 15th,
12 2014, there's a record of the event log starting. That
13 records the fact that someone turned on the computer on
14 that date?

15 A. Correct.

16 205 Q. And now getting back to some
17 evidence you gave earlier, it's through this log and
18 through the gap in those two entries that you can
19 conclude that no one had turned on or used the computer
20 between August 28th and December 15th, correct?

21 A. Correct.

22 206 Q. The log-on activity -- or the
23 activity that's logged on December 15th, 2014, shows a
24 log-on by Mr. Chau at 3:38 p.m., correct?

25 A. Yes.

1 207 Q. There's a -- the log stops at
2 3:46 p.m. What does that indicate to you?

3 A. That the system was shut down and
4 then restarted.

5 208 Q. Restarted a minute later at 3:47,
6 correct?

7 A. Correct.

8 209 Q. And then there's another log-on by
9 Mr. Chau at 3:49?

10 A. Right.

11 210 Q. And between 3:49 on December 15th
12 and January 14th, 2015, there's no indication that the
13 system was shut down again, correct? Because the event
14 log --

15 A. Right.

16 211 Q. -- service didn't stop?

17 A. Yeah.

18 212 Q. So the next entry, on January 14th,
19 2015, indicates that the system was shut down it says
20 "forcibly or by a power failure", and it's between
21 those two dates, but there is no record of when that
22 happened in this log?

23 A. Correct. The last record in the
24 log is -- is on the December the 15th, and then there's
25 nothing until the next time.

1 213 Q. Right.

2 A. The -- in this particular case,
3 because there would be no records in between --

4 214 Q. Yes?

5 A. -- the power-down was likely on the
6 15th.

7 215 Q. Okay. Reboot on and started up
8 again on January 14th, 2015?

9 A. Right.

10 216 Q. Mr. Chau logs in at 3 -- nope,
11 correct that, 1:28 p.m. on the 14th, correct?

12 A. Yes.

13 217 Q. And, again, we see the similar
14 pattern where there's a -- the log stops five minutes
15 later; restarts a minute after that, correct?

16 A. Right.

17 218 Q. And then a minute after that, he
18 logs on again, correct?

19 A. Correct.

20 219 Q. And then there's a 17-minute gap
21 until the log stops and restarts, correct?

22 A. Yes.

23 220 Q. There's a third log-in attempt or a
24 third log-on by Mr. Chau on the 14th at 1:56 p.m.,
25 correct?

1 A. Yes.

2 221 Q. And that continues for another
3 eight minutes until 2:04, correct?

4 A. Correct. This pattern is very
5 consistent with Windows updates being applied.

6 222 Q. Okay. It's consistent with, at
7 some point, when he first logged on, the computer
8 automatically updates itself?

9 A. Yes.

10 223 Q. You need to restart the computer
11 for the updates to take effect or it automatically
12 restarts itself?

13 A. It generally automatically restarts
14 itself.

15 224 Q. Right. And then you -- the second
16 time you log on, that's when you have logged on to
17 actually do the work you perform?

18 A. Sometimes, yes.

19 225 Q. Right.

20 A. Sometimes, additional -- not
21 necessarily in this case, but, in general, you know,
22 you may go through two or three rounds of Windows
23 updates.

24 226 Q. But you don't know that to be the
25 case in this case?

1 A. I don't know that to be the case.

2 227 Q. Are there other entries in the log
3 that would shed some light on that question?

4 A. Probably not in the log itself.

5 228 Q. Okay.

6 A. But in examining other files on the
7 operating systems associated with the operating
8 systems, you can probably determine Windows software
9 patches and things like that being installed.

10 229 Q. And the date and time they were
11 installed?

12 A. Yes.

13 230 Q. But you didn't run those analyses
14 for this computer?

15 A. No.

16 231 Q. You weren't asked to do that?

17 A. No.

18 232 Q. And, finally, on January 26th, we
19 have the same pattern of the log-on starts at 11 --
20 well, the log service starts at 11:32 and there is a
21 log-on at 11:41, correct?

22 A. Yes.

23 233 Q. On the 26th? Which suggests the
24 computer was booted up or started at 11:32, and nine
25 minutes later is when Mr. Chau logged in or the

1 administrator logged in?

2 A. Yes.

3 234 Q. Now, to your knowledge, do you know
4 who the administrator was?

5 A. I believe it was Mr. Chau.

6 235 Q. Okay.

7 A. Mr. Chau or the other -- there's
8 the IT analyst. I can't remember his name.

9 236 Q. Danny Yu?

10 A. Danny. Would be the only two
11 people that likely have that user ID and password.

12 237 Q. Okay. And then there is log-on
13 again at 1:38 p.m. on January 26. Do you see that?

14 A. Yes.

15 238 Q. And again at 2:29?

16 A. Yes.

17 239 Q. And it's a minute after the 2:29
18 log-on that the log service stops at 2:30, which
19 suggests that's when the computer was shut down?

20 A. Correct.

21 240 Q. But from reading the log here, it
22 appears as if the computer was turned on consistently
23 from 11:32, then it stops at 11:53. From 11:54 to
24 2:30, correct? So from 11:54 to 2:30, it was --

25 A. Correct.

1 241 Q. -- on continuously?

2 A. Yes.

3 242 Q. Thank you. Now, you record in
4 paragraph 17 of your affidavit that Mr. Chau informed
5 you that when he logged in to Mr. Moyse's computer on
6 December 15th, 2014, various software upgrades
7 occurred?

8 A. Correct.

9 243 Q. Right. And he volunteered that
10 information to you, correct?

11 A. Yes.

12 244 Q. And you are recording that in your
13 affidavit here as what you recall him telling you?

14 A. Yes. Actually, I questioned him
15 about it.

16 245 Q. Okay. What did you question him
17 about?

18 A. About the software updates, because
19 there were a significant number of them at that time.

20 246 Q. Yes. How did you know that there
21 were a significant number of them at that time?

22 A. Because when I was looking at the
23 deleted files --

24 247 Q. Yes?

25 A. -- there were a number of Windows

1 operating system files that were date-stamped at that
2 time.

3 248 Q. So your view of deleted files
4 showed you that deletion activity; that led you to
5 question Mr. Chau, and he explained what happened?

6 A. Yes. And there were quite a few of
7 them at that time.

8 249 Q. Right. Now, in relation to his
9 activity on January 14th and January 26th, as recorded
10 here, there is no mention or interaction between the
11 two of you as to whether there were any software
12 upgrades taking place on those dates?

13 A. No.

14 250 Q. Paragraph 19 of your affidavit, you
15 analyze Mr. Moyse's computer using forensic tools.
16 What tools did you use?

17 A. FTK4, Forensic Took Kit, version 4;
18 and Encase, version 7.

19 251 Q. And you were analyzing records left
20 on the computer when files are deleted. Is that a
21 reference to link files?

22 A. No, just general files.

23 252 Q. So what records were you looking
24 for?

25 A. Just indications of deleted files.

1 253 Q. Paragraph 20 of your affidavit, you
2 refer to the ability to delete files without leaving a
3 record of doing so. You agree with me that there is
4 software readily available on the Internet that allows
5 users to delete files without leaving any record of
6 that deletion activity?

7 A. No.

8 254 Q. No? So you are saying that those
9 files that offer their services as military-grade
10 deletion software don't actually work as advertised?

11 A. They work as advertised in deleting
12 the contents of the file.

13 255 Q. Yes.

14 A. They don't necessarily work as
15 advertised with respect to leaving the fact that they
16 were used or not.

17 256 Q. Okay.

18 A. Or that certain files were deleted
19 based on their locations.

20 257 Q. Okay. So does it take -- when you
21 say the average computer user, you are referring to the
22 everyday user of a computer not having that ability?

23 A. They would be one group.

24 258 Q. Okay. Who else?

25 A. IT managers, anybody who works in

1 IT, would not be capable of doing it, either. It would
2 take someone who would be classified, for instance, as
3 a hacker, per se, to even have the -- close to the
4 skills required to ensure that they left no trail.

5 259 Q. So it's your evidence that if a
6 user attempted to delete files without leaving a record
7 of doing so, unless they rise to the level of -- of the
8 hacker level, as you put it, it's your opinion you
9 would be able to find evidence of them having deleted
10 the files?

11 A. Correct.

12 260 Q. Turning to paragraph 27 of your
13 affidavit, you refer to some evidence that on
14 July 10th, and you say or July 11th, the web file
15 sharing service box.com was accessed from Mr. Moyse's
16 computer. Why are you unable to fix the date?

17 A. The -- the Internet history record
18 that I found for accessing it doesn't have a distinct
19 date on it, but it is part of a set of records that are
20 enclosed within a date range, say.

21 261 Q. All right. So you reviewed
22 Mr. Moyse's Internet history records?

23 A. Yes.

24 262 Q. Through your review of those
25 records, you were unable to determine whether he

1 accessed files from that account, uploaded or
2 downloaded, that kind of thing?

3 A. Correct.

4 263 Q. That's just something you have no
5 information about?

6 A. Right.

7 264 Q. And while you refer to I guess
8 being informed by Mr. Panet that e-mails relating to
9 Mr. Moyse's use of this Box account would be attached
10 to the affidavit of Mr. Griffin -- this is more for
11 you, Counsel -- I reviewed Mr. Griffin's affidavit and
12 didn't see a reference to those e-mails being attached.

13 MR. MILNE-SMITH: Go off the record for
14 a second.

15 -- RECESS AT 12:43 --

16 -- RESUMING AT 12:45 --

17 MR. MILNE-SMITH: So, Counsel, while we
18 were off the record, I directed you to appendix A to
19 the affidavit of Mr. Griffin, specifically page 57 of
20 the record, paragraph 8, in which it refers to
21 Mr. Moyse being asked to retrieve some information
22 related to a project called the Buffalo Mine --
23 capital B, capital M -- that, as part of his work on
24 that matter, Mr. Moyse was asked by representatives of
25 the Buffalo Mine to create an account with box.com.

1 There is a footnote, then, to -- footnote 61, and that
2 points you to Exhibit 53 to Mr. Griffin's affidavit.
3 That is in Volume 3 of the motion record of West Face
4 starting at page 819, and there's a string of e-mails
5 starting on July 9th which relate to Mr. Moyse's
6 invitation to open a box.com account and access
7 information relating to the Buffalo Mine. Fair enough,
8 Counsel?

9 MR. WINTON: That's fine. Thank you.

10 MR. MILNE-SMITH: And Mr. Carlson has
11 reminded me that those e-mails are also on the USB that
12 we provided to counsel to Catalyst containing
13 Mr. Moyse's e-mails, relevant e-mails.

14 BY MR. WINTON:

15 265 Q. Thank you. Okay. Just turning
16 back to Exhibit 1 to your affidavit, sir. This is your
17 CV, second page. The section "Training and
18 Professional Development", this lists the -- either
19 specifically or by broad description -- the courses or
20 professional development training you've received as a
21 director of eDiscovery and Litigation Support, correct?

22 A. Not completely. The third one, I
23 instruct.

24 266 Q. Right. This is a course you teach
25 at the Institute of Law Clerks of Ontario?

1 A. Yes.

2 267 Q. On ediscovery?

3 A. Yes.

4 268 Q. But the other entries are courses
5 you have taken?

6 A. Yes.

7 269 Q. Ringtail, the fourth entry, that's
8 an ediscovery software tool?

9 A. Yes.

10 270 Q. The OBA, Ontario Bar Association,
11 and Institute of Law Clerks of Ontario conferences or
12 seminars you have attended, those are ediscovery
13 conferences and seminars?

14 A. Yes.

15 MR. WINTON: Subject to the questions
16 taken under advisement, this examination is over.
17 Thank you.

18 MR. MILNE-SMITH: Thanks.

19 -- RECESS AT 12:48 --

20 -- RESUMING AT 12:54 --

21 RE-EXAMINATION BY MR. MILNE-SMITH:

22 BY MR. MILNE-SMITH:

23 271 Q. Mr. Burt-Gerrans, you'll recall
24 that Mr. Winton was asking you a series of questions
25 about deleted e-mail items?

1 A. Okay.

2 272 Q. And you described how, based on
3 system default settings, e-mails could be removed from
4 the dumpster?

5 A. Removed -- well, they are removed
6 from the dumpster after a specific date.

7 273 Q. Right.

8 A. Or a specific time period.

9 274 Q. Okay. So I want to make sure I
10 understand that process. If one individual sent an
11 e-mail to, let's say, three other individuals -- more
12 than one is the point -- and one of the recipients
13 deleted it, would that have any effect on the OSTs of
14 the other participants in that e-mail, senders or
15 receivers?

16 A. No. It's individual.

17 275 Q. Okay. What record, if any, might
18 exist of that e-mail in respect of the sender?

19 A. After the duration of the dumpster,
20 there would be none.

21 276 Q. Sorry, what -- at -- after -- what
22 is the dumpster?

23 A. Sorry. If I delete an e-mail --

24 277 Q. Yes.

25 A. -- when I delete it, I don't see it

1 anymore, but it still sits in the dumpster for a
2 specific period of time.

3 278 Q. Right.

4 A. After that period of time,
5 there's -- it would be gone, and there will be no
6 recovery from it.

7 279 Q. And does one person deleting the
8 e-mail have any effect on the other people who sent or
9 received the e-mail?

10 A. None whatsoever.

11 MR. MILNE-SMITH: Okay. Those are all
12 my questions. Thank you.

13 -- OFF THE RECORD --

14 BY MR. MILNE-SMITH:

15 280 Q. Mr. Burt-Gerrans, I believe I asked
16 you about PSTs?

17 MR. WINTON: You asked about OSTs.

18 BY MR. MILNE-SMITH:

19 281 Q. I asked about OSTs. And would
20 there be any difference with respect to PSTs?

21 A. No.

22 MR. MILNE-SMITH: Thank you.

23 --- Whereupon the cross-examination concluded at 12:58
24 p.m.

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REPORTER'S CERTIFICATE

I, TERRY WOOD, RPR, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath by
me;

That the testimony of the witness and
all objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

Dated this 25th day of May, 2015.

Terry Wood

NEESONS

PER: TERRY WOOD, RPR, CSR

CERTIFIED COURT REPORTER

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff/Moving Party

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/Responding Parties

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SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff/Moving Party

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/Responding Parties

**ANSWERS TO UNDERTAKINGS, UNDER ADVISEMENTS, AND REFUSALS
(Cross-examination of Harold Burt-Gerrans held May 19, 2015)**

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
1	U/A	18	To produce the standard imaging form for each of the West Face servers (which form records the dates the imaging took place).	Redacted copies of these documents are attached as Exhibit "1".
2	U/A	23	To create a list of all of the PST files that were created.	As stated by Mr. Burt-Gerrans in his Affidavit (at paragraphs 12-13) and during his cross-examination (at qq. 84-102), Mr. Burt-Gerrans created forensic images of the PST files of each and every active user of West Face's email system for the period from March 27, 2014

No.	Category	Page No.	Question / Undertaking	Answer or precise basis for refusal
3	U/A	28	To produce the cover letter from H&A eDiscovery Inc. to Jeff Hopkins of Grosman, Grosman & Gale LLP enclosing the second copy of the forensic image of Mr. Moyse's personal electronic devices.	to January 13, 2015. The imaged PSTs corresponded to West Face's over 90 source mailboxes, including the mailboxes of each West Face Partner (Greg Boland, Peter Fraser, Thomas Dea, and Anthony Griffin) and employee (e.g. Brandon Moyse, Supriya Kapoor, Philip Panet, Aland Wang, and Chap Chau), as well as mailboxes of distribution groups (e.g. human resources) and resources (e.g. boardrooms and food/drink requests).
4	U/A	28	To produce any email correspondence between Mr. Burt-Gerrans and Mr. Hopkins in December 2014 regarding the destination of the forensic images of Mr. Moyse's personal electronic devices.	A copy of this letter is attached as Exhibit "2". The original copy was printed on H&A's letterhead and signed by Mr. Burt-Gerrans. Copies of these emails are attached as Exhibit "3". Catalyst's counsel was a recipient and/or sender of each of these emails.
5	U/A	40	To determine whether the event log of Mr. Moyse's West Face computer records when the system locks (i.e. the precise time that the screen-saver is activated, such that the user has to log back in by unlocking the screen-saver).	West Face's computers do not record when the screen-saver is activated. While it is possible to configure the event log so that it records this information, this setting is not turned on by default, and West Face never changed this default setting.

May 29, 2015

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Court File No: CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

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