Court File No. CV-14-500766

ONTARIO
SUPERIOR COURT OF JUSTICE

KT/lms

B E T W E E N:

UNIVERSITY OF TORONTO GRADUATE STUDENTS' UNION

Plaintiff

- and -

CANADIAN FEDERATION OF STUDENTS and
CANADIAN FEDERATION OF STUDENTS - ONTARIO

Defendants

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This is the Cross-Examination of TERRENCE HATHERELL, on his affidavit sworn the 26th day of May, 2014, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, on the 11th day of June, 2014.

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APPEARANCES :

DANIEL DEL GOBBO } -- for the Plaintiff
NADIA ZAMAN }
(Summer Student)

TODD J. BURKE -- for the Defendant, Canadian Federation of Students

TUDOR CARSTEN -- for the Defendant, Canadian Federation of Students - Ontario

ANDREW MONKHOUSE -- for Ashleigh Ingle

ALSO PRESENT :
Bradley Evoy
Ashkan Hashemi
Lucy Watson

INDEX OF PROCEEDINGS

TERRENCE HATHERELL, affirmed
CROSS-EXAMINATION BY MR. DEL GOBBO:

1. MR. DEL GOBBO: So, I would like to thank you, Mr. Hatherell, for coming in today. I understand that it is a busy time and I appreciate that you could find the time to make yourself available for cross-examination. Before we get started, just for purposes of the record, your affidavit I will enter as an exhibit to the transcript. This is the affidavit of Mr. Hatherell, sworn on May 26th, 2014, on which he is being cross-examined today.
MR. BURKE: This is Exhibit 1?
2. MR. DEL GOBBO: It is Exhibit 1.

--- EXHIBIT NO. 1 : Affidavit of Terrence Hatherell, sworn May 26, 2014

BY MR. DEL GOBBO:

3. Q. So, Mr. Hatherell, you understand that your answers are binding on Deloitte LLP?
A. I do.
4. Q. And do you understand that you are here to be cross-examined on your affidavit that you

swore in response to the application brought by my client, the University of Toronto Graduate Students' Union?
A. I do.
5. Q. And I will try to refer to the University of Toronto Graduate Students' Union, because that is a mouthful, as UTGSU or as GSU. But at any time you have any questions, just let me know.
A. Sure.
6. Q. So, as I understand it, you are a partner with Deloitte LLP?
A. I am.
7. Q. Can you tell me a little bit about your background?
A. So, I am a chartered accountant, chartered professional accountant, certified in risk management assurance. I have been with the firm...I started in September of 1991. I lead our business risk practice in Canada, and I serve as part of our global internal audit leadership team representing the Americas.
8. Q. Okay. And before you held your current role, did you hold any other roles at Deloitte?

A. I did. I was the leader of our Toronto practice, our Toronto risk practice. I was a director of operations, which is the senior most individual within the risk practice in Toronto.

9. Q. Have you always worked at Deloitte, or did you hold any positions before that?

A. I started with Arthur Andersen out of school. In June 2002, Deloitte acquired Arthur Andersen, and at that time, myself and the rest of the Andersen firm joined Deloitte.

10. Q. Okay. Now, Mr. Hatherell, do you have any legal training?

A. I do not.

11. Q. So, you are not a practising lawyer?

A. I am not.

12. Q. Now, before this matter, did you or Deloitte LLP have any experience working for CFS or CFSO?

A. We did as a firm.

13. Q. Sorry, I don't mean to interrupt you, but just to clarify for the sake of the record, by "CFS" I am referring to the Canadian Federation of Students, and "CFSO" I am referring to the Canadian Federation of Students - Ontario, provincial component. Sorry, just so that is clear.

A. Okay. My understanding is that we served as the financial statement auditors for the national organization of the Canadian Federation of Students.

14. Q. And when was that?

A. My understanding is it ceased in the mid 2000s, so around 2006 is when we stopped serving as the financial statement auditors for the federal organization.

15. Q. And in that capacity, you audited the financial statements of CFS, as you said. Did you have any experience with the CFS by-laws in that capacity?

A. I am not aware of experience. I am not sure, one way or the other.

16. Q. So, prior to this matter then, you didn't have any prior experience with the CFS or CFSO by-laws?

A. So, me personally myself, no, I had no involvement with the Federation or the by-laws.

17. Q. So, is it fair to say that your current understanding of the CFS and CFSO by-laws is based on information that CFS and CFSO provided to you as part of its mandate?

A. Correct.

18. Q. Okay. So, I understand that you were retained by CFS and CFSO to conduct a verification of signatures on petitions that were received by them in the fall term 2013 with relation to the UTGSU; is that correct?

A. Yes.

19. Q. So, you explain in your affidavit that you and your colleague, Mr. Yasser Youssef, were both retained to work on this matter, and he is a senior manager for Deloitte?

MR. BURKE: You have to answer yes or no. You can't nod your head.

THE DEPONENT: I was waiting for him to finish the question.

MR. BURKE: I see.

20. MR. DEL GOBBO: Thank you, Mr. Burke.

BY MR. DEL GOBBO:

21. Q. I should have made that clear at the outset, that, just to have a clear transcript, we need to have yes or no answers, or any additional information that you would like to provide in response to all the questions.

A. Yes. So, Deloitte LLP was retained by the Federation, both federal and Ontario. I am

the responsible partner responsible for the work that was performed. Yasser Youssef was the key resource executing the procedures.

22. Q. So, by "key resource"...I believe he is a senior manager, that is his title?

A. Yes.

23. Q. And what are his responsibilities as senior manager? You mentioned also he is the key resource who was executing the file. Can you just explain what that means in terms of execution of the mandate?

A. Sure. So, his responsibility would be overseeing all the activities that were performed, whether they were performed by other individuals. He also, in this case, performed the procedures in terms of the validation procedures.

24. Q. Okay. And how long has Mr. Youssef been at Deloitte?

A. He has been with the firm...he has thirteen years of professional experience between Deloitte and PricewaterhouseCoopers. I believe...my understanding is ten of those years are with Deloitte.

25. Q. Does Mr. Youssef have any legal training?

A. He does not, not to my understanding.

26. Q. So, he is not a practising lawyer either?

A. Not to my understanding, no.

27. Q. Do you know if before this matter if Mr. Youssef had any experience working for CFS or CFSO?

A. My understanding is that he did not.

28. Q. Okay. So, your understanding is that he didn't have any familiarity or knowledge or experience with the CFS and CFSO by-laws either?

A. That is my understanding.

29. Q. So, similarly, his understanding of the by-laws would have been predicated on the information provided to him by CFS and CFSO?

A. Yes.

30. Q. Okay. So, if we could just turn to paragraph 3 of your affidavit. So, you explain in this paragraph that you and Mr. Youssef met with Ms. Hunt, that is Ms. Vanessa Hunt of CFS, and Mr. Ashkan Hashemi of CFSO, and Jeremy Salter on behalf of CFSO, as part of an interview process on January 20th, 2014; is that right?

A. Correct.

31. Q. And this interview was conducted jointly by CFS and CFSO?

A. That is my recollection, yes.

32. Q. Was Ms. Lucy Watson of CFS present during this interview?

A. I don't recall, to be honest with you. I don't recall.

33. Q. Okay. Before this litigation commenced, had you met with Ms. Watson on behalf of CFS personally?

A. I am sorry, can you repeat the question?

34. Q. Before this litigation commenced, had you or anyone at Deloitte met with Ms. Watson in person...

A. I don't believe that we had.

35. Q. Had you had any communication with her regarding Deloitte's retainer?

A. My recollection is no.

36. Q. So, you mentioned the interview on January 20th. Was there only one interview with CFS or CFSO, or were there subsequent meetings before the retainer was finalized?

A. My recollection is there were subsequent discussions.

37. Q. There were subsequent discussions. Okay. By "discussions" you mean in-person meetings or e-mail communications?

A. My recollection is conference calls.

38. Q. Okay. I see you are discussing, for example, at paragraph 10 of your affidavit a conference call that took place...or rather that a conference call was proposed on January 21st, 2014, by Mr. Youssef?

A. Correct.

39. Q. So, if we could just turn to Exhibit A of your affidavit for a moment. So, this is an e-mail from Mr. Youssef to CFS and CFSO, dated January 21st, 2014, at 10:20 a.m., and you were copied on this; is that right?

A. Yes.

40. Q. Now, you can take my word for it but I looked this up earlier and your counsel will correct me if I am wrong, but January 21st, 2014 was a Tuesday. And the reason that I say that is because in the second paragraph, Mr. Youssef mentions:

"...We are available on Wednesday between 2:00 to 4:00 p.m..."

Do you see that?

A. I do.

41. Q. So, that would be January 22nd, is the Wednesday referred to in that paragraph?

A. Yes.

42. Q. So, this is the same follow-up conversation...conference call that you just described, and it is also in paragraph 11 of your affidavit.

MR. BURKE: What are you suggesting was referred to in paragraph 11?

43. MR. DEL GOBBO: Well, at paragraph 11, Mr. Hatherell states that he followed up on January 22nd, 2014. I am asking whether that follow-up was the conference call that was being discussed at Exhibit A as having taken place on Wednesday, January 22nd.

MR. BURKE: That Mr. Youssef followed up?

44. MR. DEL GOBBO: Yes, rather that Mr. Youssef followed up.

MR. BURKE: You suggested Mr. Hatherell had followed up.

45. MR. DEL GOBBO: My apologies.

BY MR. DEL GOBBO:

46. Q. But, yes, that Mr. Youssef followed up on that day.
A. That would appear to be the case. That would be consistent with my understanding.
47. Q. Okay. Did you participate on this call?
A. I don't recall whether I did.
48. Q. So, you state in paragraph 11 that: "...Mr. Youssef advised Ms. Hunt and Mr. Hashemi that Deloitte would be in a position to provide a proposal to them once conflict searches were cleared..." Do you see that?
A. Yes.
49. Q. Were there any issues discussed on this call, apart from conflict searches?
A. What do you mean by "issues"?
50. Q. Any matters, any topics discussed, apart from conflict searches.
A. I don't recall anything specifically. We would have had a general discussion with respect to the work that we could perform. So, there would have been other matters that would have been discussed, but I don't recall...

51. Q. You don't recall any specifics?
A. ...any specifics.
52. Q. So, during this call or during your initial interview, did CFS and CFSO explain to Deloitte that part of Deloitte's task would be the evaluation of the signatures on the petitions in light of the by-laws?
A. What was discussed with Deloitte were the by-laws that were relevant, and what we responded with are the procedures that we were able to perform to establish the integrity of the petition, which are the procedures that were outlined in our proposal and our engagement letter.
53. Q. Okay. So, you mentioned that what was discussed were the by-laws that were relevant. So, those were by-laws that CFS and CFSO told you were relevant?
A. They provided us with the by-laws, and highlighted the relevant by-laws that we were performing our procedures in response to.
54. Q. Did CFS or CFSO provide you with a legal opinion as to the correct interpretation of the by-laws?
A. No, they did not.
55. Q. Did Deloitte obtain any independent legal advice as to the interpretation of the CFS or CFSO by-laws?
A. No, we did not.
56. Q. Okay. So, just to make the point clear for my understanding is that Deloitte didn't have the benefit of any legal advice as to the interpretation of the requirements for a valid petition under the by-laws when it conducted its review?
A. Correct.
57. Q. Okay. So, as I understand the chronology you put forward in your affidavit, if you look at paragraph 12, I understand the next event is that Deloitte sent a proposal to CFS and CFSO regarding the petition validation on January 31st?
A. Correct.
58. Q. Now, this was a joint proposal that Deloitte was sending to both CFS and CFSO?
A. Correct.
59. Q. And I believe that you attach this proposal at Exhibit B to your affidavit, and there are some covering e-mails, but the proposal itself begins on the fourth page of the exhibit; is that correct?
A. Correct.

60. Q. So, could you just turn to the second page of the proposal itself, and the title "Our Understanding of Your Needs".
A. Okay.
61. Q. So, here you describe in the second bullet, I believe, what you understand the mandate of CFS to be...
A. Correct.
62. Q. ...is that fair? And this information was provided to you by CFS?
A. I don't recall whether the information was provided by CFS. If it were not provided by CFS, we would have likely obtained from publicly available information, such as the website.
63. Q. So, the next three bullets, you can review them...you can read them now if you would like. My only question, as you are reading, is whether it is fair to say that this represents a summary of what the CFS and CFSO asked Deloitte to do with respect to the petitions.
A. That would be accurate in terms of our understanding of what they were requesting at that point in time.
64. Q. Okay. Now, in the fourth bullet, you have outlined procedures that Deloitte

understood that they were to do for CFS and CFSO to assess the validity and integrity of the petitions; is that right?

A. Yes, at that point in time.

65. Q. And I believe these procedures were also summarized at paragraph 13 of your affidavit, is that right, subparagraphs (a) through (f)?

A. Yes. I am just reading. The procedures that are articulated in paragraph (f) correspond...they are not identical to what is laid out in the proposal, but they do relate to that in terms of the procedures that we would undertake, correct.

66. Q. And these are procedures that CFS and CFSO asked you to undertake?

A. They are procedures that we agreed with CFS and CFSO that we would undertake.

67. Q. And the genesis of these procedures, was that with Deloitte or was that with CFS and CFSO?

A. The genesis of these procedures would be with Deloitte.

68. Q. With Deloitte?

A. Yes.

69. Q. Meaning that...

A. We created these procedures.

70. Q. Okay. Did you create them in consultation with CFS and CFSO?

A. We were the ones that created these procedures in response to what we understood CFS and CFSO were trying to achieve. We submitted these procedures as part of our draft engagement letter for the review of CFS and CFSO, but we were the ones that created these procedures.

71. Q. And in the draft engagement letter, CFS and CFSO ultimately agreed to implement these procedures?

A. They did agree by signing the engagement letter that we were authorized to perform these procedures, yes.

72. Q. And presumably, by accepting your proposal that we just looked at at Exhibit B, they agreed with...they liked the proposal that they saw, for which reason they retained Deloitte?

A. Yes.

73. Q. Okay. So, if we just look at, sorry, the first sentence in your paragraph 13, you estimated that your review would be a full-week process; is that right?

A. Yes.

74. Q. And this was beginning from the date that Deloitte received the petitions and the student list from the University of Toronto?

A. Correct.

75. Q. Did you communicate this estimated timeline to CFS and CFSO?

A. My understanding or recollection is that it would have been included...it was included in the proposal and would have been communicated through the engagement letter. I believe we did reference it as well in the engagement letter.

76. Q. Okay. Thank you. So, if we could just turn to Exhibit E of your affidavit now. This is an e-mail from Mr. Hashemi of CFSO, attaching an executed copy of CFSO's engagement letter. I believe we were just speaking about the engagement letters. Now, before we get to the letter itself, I would just like to look at the cover e-mail. So, Mr. Hashemi states in the first paragraph that:

"...[He has] prepared the CFSO and CFS by-laws and will be couriering them to you this morning..."

So, "this morning"...and this e-mail is dated February 19th, 2014; is that fair?

A. Yes. So, can you tell me what

exactly was provided by CFS and CFSO to Deloitte as the materials that they would use as the basis for their review?

77. Q. My recollection of what was provided were the by-laws with...my recollection of what was provided were the by-laws.

A. And was that the full text of the by-laws or was that a summary of the by-laws?

78. Q. It was the full text of the by-laws.

A. Both CFS and CFSO?

79. Q. I don't recall whether both were provided...whether each were provided. I can certainly undertake to let you know.

A. Could you undertake to confirm that?

MR. BURKE: Yes, we will. U/T

THE DEPONENT: Todd, will you...yes.

80. MR. DEL GOBBO: Thank you. Could I also ask just for the broader undertaking, just to confirm all the materials that were provided to Deloitte during the course of the retainer as reference materials as the basis of the reports?

MR. BURKE: And materials provided by...

81. MR. DEL GOBBO: CFS and CFSO.

MR. BURKE: I will take it under

advisement. U/A

BY MR. DEL GOBBO:

82. Q. Could you look at the last paragraph of this e-mail at Exhibit E? It states that:

> "...Mr. Hashemi will be preparing a brief summary of the applicable by-laws and will send that your way [meaning to Mr. Youssef's way] later this afternoon..."

Is that fair?

MR. BURKE: It says what it says.

BY MR. DEL GOBBO:

83. Q. All right. I take that to be a yes. So, if you could just flip to Exhibit F for a moment then, and there is an e-mail here from Mr. Hashemi. It is dated the same date as his previous e-mail at Exhibit E, February 19th, 2014. Now, is this the summary that Mr. Hashemi is referring to in Exhibit E that he would send to Deloitte?

A. It appears to be the summary, but I am not aware as to whether a separate summary was sent to us. I don't know. I can certainly...

84. Q. Could you undertake to...

A. ...undertake to...

85. Q. That might be part of a previous undertaking, but...

MR. BURKE: We will give the...if he asks for an undertaking, I give the undertaking. You don't have to offer an undertaking.

86. MR. DEL GOBBO: Not that I mind him offering.

MR. BURKE: I am sure you don't. So, the question is, is there any additional summary that might have been provided by Mr. Hashemi?

87. MR. DEL GOBBO: Any additional summary of the CFS and CFSO by-laws that would have been provided by Mr. Hashemi to Deloitte.

MR. BURKE: I can give that undertaking on behalf of CFS. My friend here represents CFSO. U/T

88. MR. DEL GOBBO: All right. So, I suppose I will ask that tomorrow.

BY MR. DEL GOBBO:

89. Q. Okay. If we could just look at this e-mail again that is behind Exhibit F, February 19th, 2014, e-mail from Mr. Hashemi. You will see

that he provides what he states are applicable sections of the by-laws. Now, we can pull up the CFS and CFSO by-laws if you would like. My only question is whether you would agree that the wording of this e-mail is not the exact wording of the by-laws, but rather represents a paraphrasing. For example, if you look at the first CFS/CFSO by-law...

MR. BURKE: Well, Counsel, won't a comparison of the two become self-evident in that regard? I don't think that is necessary for this witness to take time to go back and to compare the two, which he would be required to do for the purposes of answering your question. We are all capable of reading.

90. MR. DEL GOBBO: You are probably right.

BY MR. DEL GOBBO:

91. Q. Okay. Mr. Hatherell, did Deloitte rely on Mr. Hashemi's summary in this e-mail in Exhibit F when conducting his review?

A. We included the by-law that we were assessing against in our...my recollection is in our engagement letter. And so, we relied on information provided to us by CFS and CFSO with respect to the

by-laws in terms of determining the procedures we would perform for them.

92. Q. Did you specifically rely on this summary in this e-mail in drafting your reports to CFS and CFSO?

A. I don't recall.

93. Q. I only say so because if we look at the reports themselves...if you can pull up the CFS national report behind Exhibit O of your affidavit. If you turn to the second page of that exhibit, page 1 of the report in the bottom right. If you just look at the heading "Background", and below you summarize what you determine to be the relevant CFS by-laws; is that fair?

A. Correct.

94. Q. So, if we look at the first heading "General", and here...I will read it just for the record:

> "...CFS by-law 1 dealing with membership issues, including the process for certifying and decertifying, specifically CFS by-law 1, section 6, which outlines the requirements to initiate a vote under certification..."

So, you will agree that is a summary of CFS by-law

1, and then section 6 in the second sentence?

A. Yes, that is what it appears to be.

95. Q. So, if you could flip back to Exhibit F, please, and Mr. Hashemi's e-mail under the same heading "General", do you see that?

A. Yes.

96. Q. So, I will read the wording for the record:

"...CFS by-law 1 and CFS by-law 2 deal with membership issues, including the process for certifying and decertifying. Specifically, CFS by-law 1, section 6 and CFSO by-law 2, section 5 outline the requirements to initiate a vote under certification..."

Do you see that?

A. I do.

97. Q. So, you will agree with me that the wording is, say for the references to the CFSO by-laws and Mr. Hashemi's e-mail, identical between this e-mail and the CFS report?

A. The wording is similar.

98. Q. I am sorry, I don't quite understand. If you remove the references to the CFSO by-laws in Mr. Hashemi's e-mail and you just

include the references to the CFS by-laws, is the wording not identical?

MR. BURKE: No, it is not, because if you look at CFS by-law 1, it says:

"...deal with membership issues..."

And under "General" it says:

"...dealing with membership issues..."

So, therefore, they are similar and not identical.

99. MR. DEL GOBBO: You are right, I apologize for missing the verb tense issue.

BY MR. DEL GOBBO:

100. Q. But you will agree with me that they are substantially similar?

A. Yes.

101. Q. Okay. If we could just look at the next section of the CFS report at Exhibit O under "Petition requirements", if you could read that bullet, please.

MR. BURKE: "Petitioner requirements"?

102. MR. DEL GOBBO: "Petitioner requirements".

MR. BURKE: Yes.

THE DEPONENT: Okay.

BY MR. DEL GOBBO:

103. Q. And if you look back at Mr. Hashemi's e-mail at Exhibit F under the same heading "Petitioner requirements, notwithstanding the reference to the CFSO by-law and any verb tense issues, would you agree that the wording is substantially similar?

A. Yes.

104. Q. And just for completeness, I will ask you to look at the third bullet in the CFS report under the heading "20 percent threshold", the first page at the bottom right of the CFS report. If you could read that bullet, and I will ask you the same question with respect to Exhibit F, Mr. Hashemi's e-mail of February 19th, 2014, under the heading "20 percent threshold". And will you agree that the wording there is substantially similar to the CFS report?

A. Yes.

105. Q. Thank you. All right. If we could just return to Exhibit E of your affidavit. We looked at this briefly earlier. This is the CFSO engagement letter with a covering e-mail. So, if we look at the engagement letter itself, this is on the second page of the exhibit, you can just see the

first heading there "Nature and scope of services".

A. Yes.

MR. BURKE: So, this is the letter dated February 18th, 2014?

106. MR. DEL GOBBO: Yes. Thank you for that.

BY MR. DEL GOBBO:

107. Q. And this is the executed engagement letter of CFSO. So, you will see that, under this heading "Nature and scope of services", there is a list of procedures here. And I won't ask you to pull up the exact document, but I think you will agree that these procedures are similar to the procedures that were contained in Deloitte's proposal that we looked at earlier?

A. Yes, they do appear to be similar.

108. Q. Okay. And I believe that you said earlier that CFSO agreed with the procedures that Deloitte developed in the proposal?

A. Yes, that is my understanding.

109. Q. So, CFSO agreed with...let's just take an example. If we look, for example, at the fifth bullet in this list:

"...Verification on a sample basis of

participation in a petition by members of the University of Toronto Graduate Students' Union..."

So, CFSO would have agreed with that procedure?

A. Correct.

110. Q. Okay. Could we turn to the third page of the engagement letter, page 3 of 9 at the top? This is still Exhibit E. If you could just read the first paragraph, it pertains to additional services that Deloitte may be engaged to perform.

MR. CARSTEN: Sorry, Counsel, what page are you on?

111. MR. DEL GOBBO: Page 3 of 9 of the CFSO engagement letter.

MR. BURKE: It's the paragraph at the top of the page.

BY MR. DEL GOBBO:

112. Q. Yes, the paragraph at the top.

A. Yes, I have read it.

113. Q. Now, leaving aside for a moment...I know that Deloitte was asked with respect to the CFS petition to undertake a secondary review in April. I am not asking you about that right now. I would just like to know that, in respect of this

paragraph, whether Deloitte was engaged on behalf of CFS or CFSO to undertake any additional services, apart from what you have spoken to in your affidavit.

A. My recollection is that we were not.

114. Q. So, the only services that Deloitte performed for CFS and CFSO...again, leaving aside that secondary review...would be as prescribed in the engagement letters?

A. Would be as related to what is outlined in the engagement letter, yes.

115. Q. And that is the engagement letter for CFS and CFSO?

A. Correct.

116. Q. Okay. So, relatedly, I take it that Deloitte has entered into no other agreements with CFS or CFSO, apart from the engagement letters and that secondary review, that we will discuss later, in respect of this matter?

A. I can't speak for Deloitte in its entirety. I can speak for myself. I have not entered into any additional engagements or services.

117. Q. To your knowledge, you or Mr. Youssef, no one that you supervise or have any experience with at Deloitte have entered into any

agreements...CFSO?

A. That is correct.

118. Q. Okay. So, turning back to the engagement letter, so the CFSO engagement letter at Exhibit E, the second paragraph on page 3, under the heading "CFSON responsibilities". So, this paragraph states that CFS will be responsible for contacting the University of Toronto and arranging for it to provide Deloitte the relevant student records that Deloitte needed to conduct its review; is that fair?

A. Yes.

119. Q. And later it says that:

"...Deloitte will not be responsible for obtaining any required student or university approvals related to the provision of those records..."

A. Correct.

120. Q. And I believe the same paragraph appears in the CFS engagement letter, but I won't ask you to pull it up. I think I could ask the question in a general...so, I take it that Deloitte then...apart from the context of contacting the university to obtain the letter, the student records, which I believe was done in respect of the

CFS and CFSO petitions, Deloitte didn't speak with the university in any way as part of this...

A. I can confirm to you that no one on the engagement spoke with the university about any matters, other than obtaining the records.

121. Q. Deloitte had no relationship with the university, for example?

MR. BURKE: Well, that is a broad question, and Deloitte is a large organization. But in the context of this engagement, you can ask that question.

122. MR. DEL GOBBO: That is a good point.

THE DEPONENT: Can you restate the question?

BY MR. DEL GOBBO:

123. Q. Sure. So, in the context of this engagement, apart from, as you said, reaching out to the university to obtain the requisite student records, Deloitte doesn't have a relationship with the University of Toronto?

A. In the context of this engagement and the work that we were requested to perform, that is correct.

124. Q. So, if we just continue, about

halfway down this page 3, under the heading "Professional fees and timing", do you see that?

A. Yes, I do.

125. Q. So, here Deloitte estimates that the total professional fees to carry out the procedures for both CFS and CFSO are between $11,500 and $14,000; is that fair?

A. Yes.

126. Q. So, what accounts for the range of those amounts?

A. When we estimated the work required, we weren't sure exactly how long it was going to take to conduct the procedures, and so, we typically try to provide a range of fees to estimate the level of work required.

127. Q. Okay. You mentioned that you weren't sure exactly how long it would take, but you had communicated to CFS and CFSO, I believe we discussed earlier, that the work would take approximately four weeks?

A. Yes, that is correct. I am referring to the number of hours.

128. Q. So, my understanding that...the initial validation exercise by which the reports were issued to CFS and CFSO...again, leaving aside

the secondary review of the CFS petition...costs $11,000; is that right? And if I am wrong, please correct me. I would just like to know the total amount of money that was ultimately paid.

A. That sounds directionally correct. I don't recall the exact amount of the fees, to be honest with you, but it was...they were in line, directionally in line with the fees included in the engagement letter.

129. Q. Okay. Can you provide an undertaking to provide the total amount of fees that Deloitte...

MR. BURKE: What turns on that, Mr. Del Gobbo?

130. MR. DEL GOBBO: Well, I mean there is some discussion in the affidavits as to responsibility for those fees, who would pay what portions of the fees.

MR. BURKE: But we are not here talking about a cost allocation, we are talking about...as I understand your application, it's about the verification. So, I just don't...it seems unnecessary to get into, you know, creating undertakings that have no bearing and are not going to assist the

court in any way.

131. MR. DEL GOBBO: Well, you know, we may be of a different view about that. I frankly didn't think it was very controversial.

MR. BURKE: I don't think it is controversial.

132. MR. DEL GOBBO: The only reason that I say...

MR. BURKE: Let me just finish. I don't think it is controversial. I just think it is creating unnecessary work and expense in this litigation.

133. MR. DEL GOBBO: Sorry, I thought that just producing the total amount of fees wouldn't be very time consuming. The only reason that I ask it again is because there was some discussion between UTGSU and CFS and CFSO about what portion UTGSU, if any, would be responsible for.

MR. BURKE: Refusal on the basis of relevance. /R

BY MR. DEL GOBBO:

134. Q. If we look back at this paragraph

under the heading "Professional fees and timing", at the second sentence.

A. Yes.

135. Q. "...We understand that our fees will be shared equally between CFS Ontario and CFS National..."

Do you see that?

A. Yes.

136. Q. Was this payment arrangement communicated to you by CFSO and CFS?

A. My understanding is that we were made aware that the costs would be shared between CFS and CFSO, which is why we included it in the engagement letter.

137. Q. And who made you aware of that?

A. I don't recall who specifically made us aware of it. It would have been a representative from CFS or CFSO.

138. Q. Okay. And this would have been during the negotiation of this engagement letter, the initial stages of a retainer?

A. That is correct.

139. Q. Did CFS or CFSO ever inform you around this period that any amount of the funds to pay Deloitte's retainer might actually come from

another source, not CFS or CFSO?

A. No, they did not.

140. Q. Okay. So, if we just look at the second paragraph under that heading "Professional fees and timing", again on the third page. Now, I am sorry, I am having some trouble understanding the first sentence of this paragraph. It states:

> "...We have assumed that the petition submitted to CFSO and CFS National are consistent, to be confirmed through validation procedures, and therefore data entry of petition information into an analytics readable format, i.e., Excel, and petition validation procedures outlined in this agreement are assumed to occur only once for both CFSO and CFS National..."

So, I am sorry, I don't know what you mean by saying that:

> "...the petition submitted to CFSO and CFS National are consistent..."

What do you mean by that?

A. Our assumption at that point in time is that if someone signed the national petition, that their name and signature, et cetera, would be included on the Ontario petition. So, our going-in

assumption was that we would simply need to input into Excel the names once, but our procedures were designed to assess whether there were, in fact, differences between the two petitions.

141. Q. Okay. And I will ask you a few more questions about the procedures that you took to implement the signatures into Excel later. But is it fair to say in this case that, upon your review of the petitions, that that was not done, and that, in fact, the names had to be entered separately for the CFS and CFSO petitions?

A. It is fair to say that there was a fair amount of additional work required to ensure that we had all of the names for each of the petitions input into Excel.

142. Q. I am sorry, I am still not understanding. So, when you input the names into Excel that run the petitions, was this done manually?

A. Yes.

143. Q. So, literally, someone behind a computer manually typing in every word or number on a petition into Excel?

A. Yes.

144. Q. And this was done manually for both

of the petitions, ever page of the petitions that you had received?

A. The exact procedures that were undertaken, we needed to ensure that the names that were on the petitions were included in the Excel files. What I don't recall at this point in time is whether, if a name was included on one of the petitions and we saw it on the other petition, whether we actually manually retyped it or whether we simply did a copy-and-paste into the other sheet. But our procedures were designed to ensure that we had the fullness of the names for each of the petitions included in Excel.

145. Q. Okay. If we look at the last paragraph under this heading "Professional fees and timing"...

A. Yes.

146. Q. ...and this is related to the timeline again that you communicated to CFS and CFSO. You state here that:

> "...[You] anticipate completion of all activities within three to four weeks of commencement of this project, and delivery of relevant records..."

Did you communicate this timeline equally to CFSO

and CFS?

A. My recollection is, yes, I believe it was...that timeline was included in each of the engagement letters, is my recollection. And I believe it would have also been discussed verbally with them during discussions.

147. Q. When you communicated this timeline to CFS and CFSO, did anyone from those organizations mention to you that there was discussion that a referendum might occur beginning on March 24th, 2014?

A. I don't recall whether we discussed that specifically. What I do recall is that there were time pressures...we were under time pressure. It was communicated to us clearly the sense of urgency. And I believe one of the petitions actually referenced the referendum occurring on March 24th. So, we were clearly aware that there were time pressures and that's what needed to occur as quickly as possible.

148. Q. Okay. Were you aware that there was discussion that a campaigning period might begin on March 10th, 2014?

A. My recollection is that we were not aware.

149. Q. Okay. If you look back to this paragraph where we were discussing the timeline, you state that:

"...[You] anticipate completion of all key activities within three to four weeks..."

Do you see that?

A. Yes.

150. Q. I would just like to know what you mean by the word "key". Were there any non-key activities, for lack of a better word, that were completed after this three- to four-week period?

A. In terms of the timelines of the actual work that we had performed, there may well have been key activities that were performed after the three- to four-week timeline. I just simply don't recall how long it took to execute the procedures. This was our estimate at the time we were engaged. But for all intents and purposes, the words "key activities" were the principal activities that were important as it relates to the execution of our work and ultimately the delivery of our report.

151. Q. Sure. And this is an estimate, as you said. So, these estimates, it might have been less time than three to four weeks, it might have

been more time than three to four weeks...

A. That is correct.

152. Q. ...is that fair? And sorry, you mentioned that there might very well have been key activities after this period. Do you recall specifically whether there were any key activities?

A. I don't recall specifically the timelines in terms of...off the top of a head, in terms of when we actually executed the procedures and ultimately issued our deliverable relative to the date that this was executed.

153. Q. Okay. Perhaps I will ask a more targeted question. Again, leaving aside the issue of the secondary review of the CFS petition, were there any verification procedures that Deloitte undertook after the delivery of the Deloitte reports in respect of the CFS or CFSO petitions?

A. I don't believe that there were, no.

154. Q. Okay. So, up until this point, we have been looking at the CFSO engagement letter, and I think you would agree, and I will pull it up shortly, but the CFSO engagement letter is substantially similar to the CFS letter, is it not?

A. Yes.

155. Q. Now, in your affidavit at paragraph

21...sorry, just before we get there, let's just move briefly to paragraph 16 of your affidavit, just to state briefly that Deloitte's engagement letters, you say, were finalized by February 18th, and they were sent to CFS and CFSO on that date.

A. Correct.

156. Q. So, CFS received Deloitte's draft engagement letter on that day?

A. The letters that were sent to them on that date were...my understanding, is signed copies by Deloitte.

157. Q. Yes.

A. Deloitte signed copies, as opposed to draft engagement letter...

158. Q. That CFS and CFSO had...

A. ...executed them, correct.

159. Q. Okay. Now, I am sorry, if we proceed to paragraph 21 of your affidavit. So, this is, you describe, two days later on February 20th, 2014. I understand that Ms. Hunt at the Canadian Federation of Students' sent your colleague, Mr. Youssef, an e-mail with a revised portion of the CFS engagement letter, and you have attached that revised portion at Exhibit H to your affidavit, so you can feel free to bring it...and if you turn to

the second page of that exhibit, you will see that there appears to be a blackline copy of one of the pages of the Deloitte engagement letter...

A. Yes.

160. Q. ...showing the changes that CFS was proposing; is that fair?

A. Yes.

161. Q. Okay. So, you state in paragraph 21 of your affidavit that:

"...Ms. Hunt's revisions served only to more accurately reflect that only the national executive of the CFS has the authority to determine whether a petition is in order..."

So, sorry, I am just trying to understand this. By this do you mean to say that the previous version of the engagement letter reflected that someone else, other than the national executive, had the authority to determine whether the petition was in order?

A. What I am representing with the affidavit is that the engagement letter as we had sent over to Ms. Hunt did not accurately reflect, in Ms. Hunt's view, the responsibilities of the Federation.

162. Q. Okay. So, really, the second

sentence of this paragraph is Ms. Hunt's view that the engagement letter didn't accurately reflect the national executive of the CFS...

A. That...

163. Q. ...that only the national executive had the authority to determine whether a petition is in order?

A. That is my understanding, yes.

164. Q. Okay. Thank you. Did Ms. Hunt explain to you in her view what it was about the previous version that didn't accurately reflect that only national executive had the authority to determine whether a petition is in order?

A. She did not specifically discuss with me. I am not aware as to whether she discussed with anyone on our team, including Mr. Youssef.

165. Q. Okay. And you state in paragraph 21 that:

"...These revisions to the engagement letter did not change the scope of the work requested by Deloitte..."

A. That is correct.

166. Q. So, notwithstanding these revisions to the engagement letter then, the work that Deloitte did for CFS and CFSO, that the scope of

work was the same?

A. Correct.

167. Q. Okay. So, a signed copy of the engagement letter of CFS is found behind Exhibit K of your affidavit, if you can pull that up. There is a covering e-mail from Ms. Hunt, sent on February 26th, 2014, and beneath it is the executed engagement letter.

A. Yes.

168. Q. So, I see that the letter is dated February 21st, 2014. Do you see that?

A. Yes.

169. Q. Is this when the letter was sent to CFS after inputting Ms. Hunt's suggested changes?

A. I don't recall whether that was the actual date that it was sent. It would not be unusual, where changes were made to an engagement letter as part of the finalization process, that we would not update the date of the letter.

170. Q. Okay. I only say so because we just discussed at paragraph 21 of your affidavit that Ms. Hunt suggested revisions on February 20th. So, if we look at the version of the letter that is behind Exhibit K, it is dated February 21st, and you will notice that it implements her suggested

revisions. But if you don't know that for sure, that is fine.

MR. BURKE: Your point being that the revised letter has been sent a day following?

171. MR. DEL GOBBO: Yes, whether you could...

MR. BURKE: So that that looks logical in terms of the timeline?

172. MR. DEL GOBBO: Yes.

MR. BURKE: All right. Is there anything that turns on that, though?

173. MR. DEL GOBBO: No. I am just trying to figure out the timeline.

MR. BURKE: I would...it is as it is dated, so...if nothing turns on it, then move on.

BY MR. DEL GOBBO:

174. Q. So, if you look at paragraph 25 of your affidavit for a moment, you state that:

"...On February 26th, the CFS provided Deloitte with a signed engagement letter..."

Do you see that?

A. Yes.

175. Q. And that is the engagement letter we were looking at behind Exhibit K?

A. Yes.

176. Q. And you will notice in the last page that it is signed, and Ms. Hunt has dated it February 26th as the date of signature?

A. Yes.

177. Q. So, you state, sorry, in paragraph 25 of your affidavit that:

"...This was signed after various edits and revisions to the engagement letter..."

Were there any additional edits or revisions to the letter, apart from what we just discussed, behind Exhibit H, Ms. Hunt's blacklined portion of the letter?

A. I don't recall specifically.

178. Q. Okay. Were there any discussions between Deloitte and CFS regarding the engagement letter between when her revisions were received on February 20th and when the letter was signed on February 26th?

A. I don't recall that I was involved in any discussions. That is to the best of my knowledge. There were not any discussions. What I

am not sure about is whether Mr. Youssef had any discussions with them. I am not aware.

179. Q. Could you provide an undertaking to check your correspondence to see if there was any discussion between Deloitte and CFS regarding the engagement letter between those dates, February 20th and 26th?

MR. BURKE: So I understand your question, check my correspondence to determine...

180. MR. DEL GOBBO: Check to see if there is any correspondence between CFS and Deloitte.

MR. BURKE: So, you are looking for correspondence...

181. MR. DEL GOBBO: Whether was any correspondence, yes.

MR. BURKE: ...around the engagement letter between the 21st and the 26th?

182. MR. DEL GOBBO: Yes.

MR. BURKE: We will give that undertaking...in relation to the CFS only?

183. MR. DEL GOBBO: Yes.

MR. BURKE: Okay. U/T

BY MR. DEL GOBBO:

184. Q. Okay. If we proceed to paragraph 27 of your affidavit. So, we have already chatted a bit about the process of inputting the names into Excel. I won't ask you about that, but in paragraph 28 you...and I am going to apologize for being an admitted Luddite, and I might have to ask you to explain in layman's terms in a roomful of lawyers, and I am sure not many of us understand exactly what is meant by the Excel...the VLOOKUP functionality that you are describing in paragraph 28. If you can just explain in layman's terms what those data analytics techniques are?

A. Sure. So, we received the file from the university with the student records. We input the petitions into Excel so that we had a complete list of petitioners in Excel. Using a functionality within Microsoft Excel, which is referred to as VLOOKUP within Microsoft Excel...it is a simple if/then statement that is written. So, if this is found in this particular file, then this is a result. So, it is a way to compare two lists of information to identify whether there are consistencies or differences between the two lists.

185. Q. Okay. Then in paragraph 29, you

describe that you considered randomly selecting a sample group of 100 students to ask whether they had participated in the petitions; is that fair?

A. Yes.

186. Q. So, you say "we" in this first sentence. By "we" do you mean Deloitte or do you mean...what do you mean by "we"?

A. Deloitte, Terry Hatherell, Yasser Youssef.

187. Q. Okay. And, again, this was a procedure that was agreed upon by CFS and CFSO in the engagement letters?

A. Yes, it was.

188. Q. Did CFS or CFSO provide you any by-law reference that related to this or supported this procedure?

MR. BURKE: What procedure are you talking about?

189. MR. DEL GOBBO: The sample of 100 students that we were just discussing at the beginning of paragraph 29 of Mr. Hatherell's affidavit.

THE DEPONENT: My recollection is that they did not...this was a procedure that we determined would be an appropriate

procedure to perform as part of the validation activities.

BY MR. DEL GOBBO:

190. Q. Okay. And I see from Exhibit L to your affidavit that you prepared a draft e-mail that would be sent to UTGSU members asking them to confirm that they had participated in the petition; is that fair? And, in particular, I am looking at the e-mail from Mr. Youssef to CFS and CFSO on March 5th, 2014. It starts at the bottom of the first page of Exhibit L. And on the next page Mr. Youssef provides the text of this draft e-mail; is that fair?

A. Yes, that is fair.

191. Q. So then I see in the response from Ms. Hunt of CFS on March 5th, 2014, and this is the first e-mail in the exhibit at 1:54 p.m., that CFS suggested alternate wording?

A. Yes.

192. Q. So, I understand from this e-mail and from your affidavit the plan was going to be that this e-mail will be sent out to a sample of 100 students, UTGSU members, who had signed the petitions, the CFS and CFSO petitions; is that

right?
A. Correct.
193. Q. And then they would indicate by pressing voting buttons in the e-mail, "Yes" or "No". "Yes, I did sign the petition", "No, I did not sign the petition"; is that fair?
A. Yes, that is fair.
194. Q. And if there was no response to the e-mail, I understand that the plan was going to be to follow up by telephone to these students to ask them over the phone whether they had or had not signed the petition; is that right?
A. Yes, that is accurate.
195. Q. Okay. If someone were to have clicked "No" to the e-mail, "I did not sign the petition", but then Deloitte subsequently found that their name was on the petition, would Deloitte have then struck that name from the petition?
MR. BURKE: So, Mr. Del Gobbo, as I understand it, this did not occur, so you are talking about the hypothetical, that this was not sent. This did not...this aspect of the verification procedure did not take place, so I am not sure of the relevance of something that is

hypothetical.
196. MR. DEL GOBBO: Well, it is discussed at length in Mr. Hatherell's affidavit, and, in particular, if you turn to paragraph 29 of his affidavit...
MR. BURKE: Yes.
197. MR. DEL GOBBO: ...near the end of the paragraph he states that:
"...Performing this additional procedure would not have impacted the outcome of the 20 percent threshold validation, because the 20 percent threshold had already not been achieved..."
So, you are making a statement as to how performing this procedure would have affected the validation of the petition, and I simply don't understand how that would have taken place. And I think it's a fair question, that if someone had clicked "No", was the intention going to be that then that name would have been struck from the petition if it had been discovered that the person had signed the petition?
MR. BURKE: I think he can answer that question.

THE DEPONENT: That would be a fair assumption.

BY MR. DEL GOBBO:
198. Q. Okay. Sorry, I am just trying to understand this as well. So, if someone had not responded to the e-mail and a telephone call was made and they hadn't responded to the telephone call, they weren't available, how would Deloitte have treated that person?
A. Because we didn't get to that procedure, we had not determined how we would treat it. My belief is that we would have reported that back as someone who did not confirm, and we were not able to validate that they actually signed the petition, and, as a result of that, would not likely have been included in the percentage of valid petitioners.
199. Q. Okay. And, sorry, I will ask you one more question. If they had not responded to the e-mail, a student, and Deloitte had contacted them over the phone and a student had said that they couldn't remember whether they signed the petition, how would Deloitte treat that person?
A. Once again, because we didn't

undertake those procedures, I don't have, you know, defined procedures in terms of what we would have actually done in terms of how we would have treated it. My view would be that if they were not able to confirm, we would have considered alternate procedures which may have been providing them with only their name and signature for them to validate, so that we could consider them a confirmed petitioner. We would do whatever we could to try to confirm. If at the end of those procedures they were still unsure as to whether they signed it or not, we would have reported that back, it would have been included in our report.
200. Q. Okay. And as you said earlier, in the case of someone that you couldn't contact by phone and you couldn't confirm that they would be included that they had signed the petition, you would have likely had made the determination that they would have been...their signature would have been struck from the petition?
MR. BURKE: I think what he said was that it would have been part of the report.
201. MR. DEL GOBBO: That was with respect to my last question about someone who couldn't recall whether they had signed the

petition. But in response to my earlier question where someone had not responded to the e-mail and then not responded to the telephone call...and we can read the transcript back if you would like...but I believe your answer was that their name would not have been included in the petition.

THE DEPONENT: Yes. We would have included it in the report as we weren't able to confirm that they did sign the petition, and we likely would have included it in the reconciliation to get down to the number of valid petitioners. So, your assertion is accurate in that it is likely that we would not have included them in the confirmed petitioners.

BY MR. DEL GOBBO:

202. Q. Okay. Thank you. So, again, if I just return to your affidavit at paragraph 29, you state:

"...Performing this additional procedure would not have impacted the outcome of the 20 percent threshold validation because the

20 percent threshold had already not been achieved..."

Now, I understand that you say that in the context, because, as a result of the process that you undertook, you had determined that there weren't 20 percent of members of the UTGSU that had signed the CFS and CFSO petitions; is that fair?

A. Correct.

203. Q. So, if the result had been that, as a result of your review the amount of signatures in the petition had been 20 percent of students plus one, and as a result of this exercise that you explained by which some students may have their name struck from the petition, is it true that it could very well have been that performing this additional procedure could have impacted the outcome of the 20 percent threshold validation?

A. Yes, that is accurate.

204. Q. Okay. So, I would just like to understand this a bit clearer. So, in this hypothetical, you were just canvassing 100 sample students. Say that, of those 100 sample students, ten of them indicate...or you have confirmed that ten of them did not sign the petition...

MR. BURKE: All right. We are not going

to get into hypothetical scenarios. I have let you go to the extent of understanding how this would have worked. These are not facts. They did not occur, so that is a refusal. /R

205. MR. DEL GOBBO: I didn't ask a question.

MR. BURKE: I realize that, but I can tell you it is going to be a refusal.

206. MR. DEL GOBBO: Well, I will ask another question and we will decide whether you refuse that, I suppose.

BY MR. DEL GOBBO:

207. Q. So, you stated earlier that this is a process by which...again, it didn't happen but some names might have been struck from the petition. This was a sample size of 100 students. Was it discussed with CFS and CFSO that the amount of names validated from that sample would be extrapolated to the number of signatures on the petitions?

MR. CARSTEN: I am not sure I understand the question.

BY MR. DEL GOBBO:

208. Q. So, you would agree with me that

approximately 3,000 entries were on the CFS and CFSO petitions? I believe it was actually a bit more than that, about 3,100, 3,200. We can pull up the reports to verify, but that is the approximate number; is that fair?

A. My recollection is that is fair in terms of the approximate number.

209. Q. So, this petition validation exercise required contacting...or rather, it considered contacting 100 students to determine whether they had signed the petition. Based on the number of those 100 that Deloitte had determined did not sign the petition, would that number then have been extrapolated into the 3,000 that did sign the petitions to determine how many did or not sign the petition, and would that have been figured into your ultimate report?

MR. BURKE: So, the question is, did you have discussions with CFS or CFSO around that issue?

210. MR. DEL GOBBO: Yes.

MR. BURKE: Is that your question?

211. MR. DEL GOBBO: Yes.

MR. BURKE: You can answer that question.

THE DEPONENT: My recollection is that we did not have that discussion with CFS or CFSO.

MR. CARSTEN: Sorry to interrupt, but might this be a good time to take a small break?

212. MR. DEL GOBBO: Sure.

--- A BRIEF RECESS

TERRENCE HATHERELL, resumed

CONTINUED CROSS-EXAMINATION BY MR. DEL GOBBO :

213. Q. Mr. Hatherell, I would like to take you to paragraph 30 of your affidavit now. So, here you describe that on March 6th, you advised CFS and CFSO of Deloitte's preliminary results, that based on your preliminary findings, the petitions did not meet the 20 percent threshold; is that right?

A. Yes.

214. Q. And then at paragraph 31 you state that Mr. Youssef continued his review of the petitions and he found approximately 70 entries where the names were correct but the student numbers were entered incorrectly; is that right?

A. Yes, that is accurate.

215. Q. Now, were these 70 names spread between the CFS and CFSO petitions, or were they 70 names on each petition?

A. My understanding is that most of those names would have been on each of the national and the Ontario petition, because there were a lot of similarities between the federal and the Ontario petitions.

216. Q. Okay. So, just for the purpose of my understanding, in your assessment of the CFS petition, there would have been approximately 70 names that fell into this category, and then on the CFSO petition there would also have been 70 names on that petition that fell in this category of having...

A. Yes.

217. Q. ...names correct but incorrect numbers?

A. Yes.

218. Q. Okay. Now, when you say the numbers were entered incorrectly, does this mean that the entries were blank, or there was a digit that was missing, or digits were transposed?

A. So, there were a variety of situations. In some cases, my understanding is

there were not student numbers input, in some cases it was one digit, in some cases it was two, transposition, truncated. There were a number of different situations concerning the student numbers.

219. Q. Okay. So, at this point, when this review was...when Mr. Youssef continued his review, you understood that the petitions, both the CFS and CFSO petitions, were quite close to the 20 percent threshold; is that fair?

A. Yes.

220. Q. Okay. And as I understand it from Exhibit N, Mr. Youssef sought guidance from the CFS and CFSO on how to treat these entries; is that fair?

A. Yes.

221. Q. And he wanted to provide CFS, if I am reading the last sentence of the e-mail at Exhibit N, which is the e-mail from Mr. Youssef, March 7th, 2014:

"...Given how close the results are, we wanted to provide [presumably CFS and CFSO] with as much information as possible to allow you to make informed decisions..."

That is correct?

A. That is correct.

222. Q. And are those informed decisions about whether these 70 names on each petition be ruled valid or invalid under the by-laws?

A. The informed decisions, ultimately it is CFS and CFSO that are the ones that are determining whether the petition is valid or not. Then...so, informed decisions in this case, we want to make sure that we are providing as much information as possible to those two organizations so that they can ultimately make a decision as to whether the petitions are valid.

223. Q. And specifically to make informed decisions about whether these 70 signatures on each petition would be ruled in compliance with the by-law requirements?

A. Yes. We were seeking interpretive guidance.

224. Q. Okay. And you state in paragraph 32 that:

"...Based on discussion, Deloitte was instructed to apply its judgment in these situations to determine validity..."

A. Yes.

225. Q. Did CFS and CFSO say what Deloitte's judgment should be based on?

A. No, they did not.

226. Q. So, what did you understand Deloitte's judgment to be based on?

A. So, our interpretation of that, we applied our professional judgment as to whether we believed the actual petitioner...whether that was valid. So, we looked at the line in its entirety, so we would look at the name and whether the name matched the university records that were provided to us by the University of Toronto.

We would look at the student number as to how close was that student number to the records per the university, and we also looked to see whether there was a signature. And so, we applied our professional judgment in looking at it as to whether we thought that that name, that individual, that petitioner was valid.

227. MR. DEL GOBBO: Okay. I would like you to pull up...do you have the affidavit of Mr. Hashemi handy? I will mark this as an exhibit. This is the affidavit of Ashkan Hashemi sworn in this proceeding on May 21st, 2014.

MR. BURKE: What tab is it in your application record?

MR. CARSTEN: It's in the responding application record. It is tab 1.

--- EXHIBIT NO. 2 : Affidavit of Ashkan Hashemi, sworn May 21, 2014

BY MR. DEL GOBBO:

228. Q. So, Mr. Hatherell, have you reviewed Mr. Hashemi's affidavit before this cross-examination?

A. I have not.

229. Q. Could you turn to Exhibit D of his affidavit, please, and page 4 of Exhibit D?

MR. BURKE: Page 4? So, page 21 in the top right-hand corner?

230. MR. DEL GOBBO: Sorry, my version isn't...I don't have that page number version, but, yes.

MR. BURKE: It begins with "Attached" at the top?

231. MR. DEL GOBBO: Just one moment, please.

BY MR. DEL GOBBO:

232. Q. So, if you look at the middle of this page 4, there appears to be a teleconference

invitation sent from Mr. Youssef to CFS and CFSO on March 7th, 2014 at 2:30.

A. Yes.

233. Q. And the description of the teleconference is:

"...To provide the team with an update on the status of the validation procedures..."

So, in your affidavit at paragraph 32 you discuss Mr. Youssef contacting CFS and CFSO on March 7th, the same date, to discuss instances where the student names on the petition were found within the membership records provided by the University of Toronto where the numbers did not agree. That is what we were just speaking about. During this call...did you participate in this call?

A. I don't believe that I did, no.

234. Q. So, do you know whether any issues, apart from these 70 signatures, were discussed during this call?

A. I don't recall. I am not aware.

235. Q. So, if you look at the e-mail immediately after this teleconference invitation, it is sent by...this is now at the very bottom of the third page of Exhibit D of Mr. Hashemi's affidavit. This is an e-mail from Mr. Youssef to CFS and CFSO,

cc'ing you on March 7th, 2014 at 4:28 p.m. Do you see that?

A. M'hmm.

236. Q. So, Mr. Youssef says:

"...Attached please find the results of our procedures to date for your reference and our discussion this afternoon..."

And then he says:

"...The attached includes a synopsis, as well as the detailed results of our validation procedures..."

Do you see that? So, if you turn two pages into the affidavit, you will see that there is a document there.

MR. BURKE: So, two pages further in the affidavit?

237. MR. DEL GOBBO: Two pages further into the affidavit, yes. Thank you.

BY MR. DEL GOBBO:

238. Q. You see at the top left how it reads "Synopsis of findings"?

A. Yes.

239. Q. So, is this the synopsis that Mr. Youssef attached to his e-mail that we were

just looking at of March 7th, 2014 at 4:28 p.m.?

A. I don't know.

240. Q. Have you ever seen this document before?

A. Yes, I believe I have.

241. Q. Okay. Before we discuss that document, could you give an undertaking to provide the attachments to Mr. Youssef's e-mail of March 7th, 2014 at 4:28 p.m.? If this synopsis that we are looking at now is in fact one of the attachments, to confirm that; otherwise, to provide the attachments?

MR. BURKE: Yes, we will give that undertaking. So, you want the attachments...

242. MR. DEL GOBBO: Yes. Just for the record...

MR. BURKE: ...to the March...what is the date, the 4th?

243. MR. DEL GOBBO: March 7th, 2014 at 4:28 p.m. The e-mail indicates that there are two attachments. "The first is a synopsis, the second are detailed results of our validation procedures."

MR. BURKE: Yes. U/T

BY MR. DEL GOBBO:

244. Q. So, is it fair to say that this synopsis document represents a summary of Deloitte's findings as of March 7th, 2014? Or I can use the words "synopsis of Deloitte's findings", if that is clearer.

A. It appears to be a draft synopsis of our findings at that point in time.

245. Q. Okay. And I see that this includes results with respect to the CFS petition and the CFSO petition; is that right?

A. Yes, that is what it appears to be.

246. Q. So, look at the heading "National petition", do you see that?

A. Yes.

247. Q. So, beneath that column are the CFS results; is that right?

A. Yes.

248. Q. And then beside that to the left "Ontario petition", those are the CFSO results?

A. Yes.

249. Q. So, beside that I see "Total petition records". Can you explain what that column means, what it signifies?

A. My understanding is that is the

total number of students...that is the total number of petitioners on the two petitions.

250. Q. So, the aggregate number of students who signed one of the petitions, in other words?

A. Correct. That is my understanding, yes.

MR. BURKE: When you say "one of the petitions"...

251. MR. DEL GOBBO: Either the CFS or the CFSO petitions.

MR. BURKE: Either one of the petitions.

252. MR. DEL GOBBO: Yes. Thank you for that.

BY MR. DEL GOBBO:

253. Q. If you look to the far right column comment, and there seem to be some comments in that column, whose comments are those?

A. They appear to be Deloitte comments.

254. Q. And who at Deloitte?

A. I am not certain whose comments those are from Deloitte.

255. Q. That is fair. So, if we look at the far left column under "Exceptions", do you see that?

A. Yes.

256. Q. That text seems to correspond with the bases...or that the criteria for determining an entry...a signature on the petition is in compliance with the by-laws; is that fair?

A. Yes, that is fair.

257. Q. So, the first entry:

"...Duplicate student names..."

Presumably that accounts for people who have signed one of either the CFS or CFSO petition more than once?

A. Yes, that is correct.

258. Q. So, presumably, you wouldn't count the duplicate entries?

A. Correct.

259. Q. Okay. And then if we look at the comment, that states that:

"...Approximately 40 duplicates were removed directly..."

A. Yes, at that point in time, recognizing this is a draft document, as stated at the top.

260. Q. Okay. If we look at the next:

"...Does not include a unique signature..."

The comment reads:

"...No signature noted..."

Do you see that?

A. Yes.

261. Q. So, does that signify that there is no marking on the signature line at all, or that there was a marking but that the signature was not unique?

A. My understanding is that that signifies situations where there was no signature.

262. Q. Okay. The next one:

"...Does not include a unique student number..."

And beside that it says:

"...One also had no signature..."

So, does that mean that, of the students that are identified as not having provided a unique student number, that one of them would also have been included in the row above; in effect, that entry would have been included twice?

A. That may be the case on the basis...that is what it appears to be in terms of what is listed there. Not having created this sheet, I can't say for certain as to whether that is the case.

263. Q. Okay. The next exception reads:

"...Not reasonably legible..."

And the comment reads:

"...Some judgment use here..."

So, I understand this to mean that Deloitte exercised some judgment to determine whether a name was legible or not?

A. That is correct.

264. Q. Okay. Next we see:

"...Proper full name not used..."

under the "Exceptions" column. Do you see that?

A. Yes.

265. Q. So, this is used to assess whether a signature or a person who had signed the signature used their proper full name, as the by-law requires?

A. That is correct.

266. Q. And the comment reads:

"...Canadian variations of foreign names and short forms..."

So, does this mean that you would consider a signature to be a proper full name if it was a Canadian variation of a foreign name?

A. Can you expand on that question so that I understand what it is you are asking?

267. Q. Sure. What do you interpret "Canadian variations of foreign names" to mean?

A. Yes. So, in the case of, you know,

"Ed" versus "Edward", we would consider that to be a valid petitioner.

268. Q. Okay. That would be the example of a short form?

A. That would be an example of a short form, and I believe I did include an example in the affidavit as to that type of situation.

269. Q. I do recall that.

A. Yes.

270. Q. But just to go back, I am sorry, Canadian variations of a foreign name. Edward is an English name, to my knowledge.

A. Yes.

271. Q. So, if there was a foreign name on the University of Toronto student list but a Canadian variation is provided on the petition...

A. Yes.

272. Q. ...can you explain what this comment means?

A. Sure. So, if there was a Chinese name, for example, and the name per the student records was the full Chinese name, but on the petition the surname was there but the given name was entirely different, we did not include that as a valid petitioner. We would have no way to determine

whether that was valid.

273. Q. Okay. So, if we go to the next row:

"...Invalid or incorrect student number..."

And then the comment reads:

"...Student number on petition does not match student records..."

Does this account for it being not identical, or does this account for errors, like, say, one number is missing or...

A. It could be errors, it could be not identical. Again, we applied judgment. So, in some of those cases, we consider them to be valid practitioners (sic); in other cases, we did not consider it to be a valid practitioner (sic) in the fullness of our professional judgment.

274. Q. Okay. And the next row:

"...Does not agree to student records..."

I assume that means that the signatory does not appear on the University of Toronto student records that you were provided?

A. That is correct. So, there would be student names, student numbers on the petition that we were not able to find in the university records provided to us by the U of T.

275. Q. Okay. And in this category...again,

this is the largest category, over 300 names that were invalid on this basis...if a student name is included in the petition and that name also appears in the records but the student number was incorrect, would that have been included in this 300 names?

MR. BURKE: Could you just repeat that for me, please?

276. MR. DEL GOBBO: Sure.

BY MR. DEL GOBBO:

277. Q. If a name on one of the petitions appears in the university student records but the student number beside that name does not correspond to the university student records, would it have formed part of the 300 names ruled invalid on the basis of this row or line item?

A. So, my recollection is we would have included that...that falls into the professional judgment, as to how far it is off and how different it is. We would not have double-counted it in this list. We would have included it in one of those rows. My recollection and my understanding is that it would likely be in the row "Invalid/incorrect student number", if the name was matched and the student number was, you know, off by, say, a digit.

278. Q. Okay. If you look at the top, do you see where it reads:

"...Total number of students..."

A. Is this page 23?

279. Q. This is looking again at the synopsis document.

A. Synopsis. Okay.

280. Q. "...Total number of students..." And then, moving along, it indicates the Ontario petition and the national petition.

A. Yes.

281. Q. So, if we take the national petition, you will see that it reads that there are 3,155 students...or rather, that Deloitte determined that, as of March 7th, when the synopsis was created, that 3,155 students had signed the national petition; is that fair?

A. There were 3,155 names on that petition.

282. Q. Sure. That is correct. Thank you for that.

A. Yes.

283. Q. So, could you turn to Exhibit O to your affidavit for a moment? And this is the report that was issued to CFS national in respect of this

petition validation exercise. Do you agree? And if you turn to the...it is page 2 at the bottom right. You will notice this is a summary table of your results.

A. Yes.

284. Q. Do you see where it reads:

"...Total number of names submitted..."

A. Yes.

285. Q. Do you see that the number there is 3,165?

A. Yes.

286. Q. Can you explain to me why the number is different from this synopsis to this report?

A. I am not sure exactly why there is a difference, but that is why I indicated that that is a draft version and this is the final version. So, there was numerous quality control procedures that were performed which could account for the difference.

287. Q. Were the petitions reviewed a second time between March 7th and March 11th, when these reports were delivered to CFS?

A. I don't recall the exact date of the review as to whether that review...the additional review was reviewed three times. But whether there

was a review that happened between that point in time in terms of the actual review of the petitioners and petitions, I don't recall.

288. Q. Okay. But you will agree then that, to account for this difference, you know, assuming that it is not a typo, that there would have been some sort of review...your position is that there would have been some sort of additional review or verification procedure that took place after March 7th when the synopsis was prepared?

A. That could be one of the reasons, that could be...

MR. BURKE: I think the question was, were there additional procedures carried out?

THE DEPONENT: With respect to that, I would need to confirm. I can't recall the exact timing of the work and the dates and so forth.

289. MR. DEL GOBBO: Could you give an undertaking to confirm whether any additional procedures were carried out after March 7th, 2014, before the dates that the reports were delivered to CFS and CFSO?

MR. BURKE: Between March 7th and March...

290. MR. DEL GOBBO: I believe it is March 11th.

MR. BURKE: Yes, we will undertake to do that. U/T

291. MR. DEL GOBBO: And just while we are here, if you look again at the synopsis, you will see that the total number of students under the Ontario petition is 3,323. If you turn to the CFSO report that you delivered...it is behind Exhibit P to your affidavit...you will notice that the total number of names, again on the summary results chart, is 3,325.

So, perhaps just to work into the undertaking that you already gave, just to determine whether that review encompassed a review of the petition of both CFS and CFSO?

MR. BURKE: Yes. U/T

292. MR. DEL GOBBO: Thank you.

BY MR. DEL GOBBO:

293. Q. So, if we turn back to Exhibit D to

Mr. Hashemi's affidavit, and page 2 at the bottom, I am looking at an e-mail that Mr. Youssef sent to CFS and CFSO on March 9th, 2014 at 10:42 a.m., and this is copying you. Now, Mr. Youssef is describing that he reviewed the exceptions. And by "exceptions", I take it that he means entries on the petitions that had some issue with them that required your review?

A. Yes.

294. Q. And that applying a less strict interpretation of the by-laws, Mr. Youssef or Deloitte was able to eliminate a large number of these exceptions. And then he says:

"...Please see attached..."

Can you given an undertaking to provide what was attached to this e-mail? I don't believe it has been included in any of the affidavit evidence.

MR. BURKE: I will take that under advisement. U/A

BY MR. DEL GOBBO:

295. Q. And then he states that, under his "Less-strict interpretation", any mark on the petition was a reasonable signature. That is fair?

A. Yes.

296. Q. And he updated the student numbers

that were entered incorrectly. Could you explain what that entailed?

A. So, that refers to where we applied our professional judgment, and if, in our view, in looking at the petitioner in its entirety and comparing it to the university student records, if we...if it was only out by one digit or there was a digit missing, that is the less strict interpretation, if you will, where we are applying our professional judgment. And so, in some of those cases, we would have viewed them to be valid petitioners, as opposed to invalid petitioners.

297. Q. Understood. And then lastly, under this "Less-strict interpretation":

"...Deloitte assumed all names were reasonably legible, as long as we can make something out and the student number was correct..."

So, in this case, if you could make something out, in that the name was reasonably legible but the student number was one off, that signature would have been invalidated?

A. Would have been validated?

298. Q. Would have been invalidated.

A. Meaning, it would not have been a

valid...

299. Q. Yes.

A. ...petitioner? I can't speak for every situation. Again, we would look at it in its entirety, so we would look at the name. Is the name reasonably legible? How close is the student number, and is there a signature there? And so, in its entirety, we would look at it and assess whether we believe in our professional view whether that is a valid petitioner.

300. Q. Okay. If we could just turn...we are still at Exhibit D to Mr. Hashemi's affidavit, and it's the e-mail at the bottom of the first page. It's the e-mail from Mr. Youssef on March 11th, 2014 at 2:08 p.m. Unfortunately, I can't tell from the printout that is attached here who it was sent to, but I take it from the context that it was sent to CFS and CFSO. Can you confirm that?

A. I can't confirm it 100 percent. That is what it appears to be, but I can't confirm 100 percent because I don't see the names that it was sent to as well.

301. Q. Sure. You will notice in the e-mail right above March 11th, 2014 at 3:21, Mr. Hashemi of CFSO is responding to Mr. Youssef's e-mail and

cc'ing the same people we have been seeing: Ms. Hunt, Mr. Salter of CFSO, and yourself. So, you would agree with me that is a fair assumption?

A. Yes, that is what it appears to be.

302. Q. Okay. So, this e-mail states that it is attaching a draft report for CFSO, for CFSO's review and comment. Do you see that? This is the e-mail at 2:08 p.m.

A. Okay. Yes.

303. Q. Now, if you turn to the seventh page of the exhibit...sorry, I don't have your page numbering, but you will see that there is what appears to be a report issued from Deloitte to CFSO, and at the bottom left of the first page you will see that it reads "Draft".

A. Yes.

304. Q. Is this the draft report that was attached to Mr. Youssef's e-mail at 2:08 p.m. that we were just looking at?

A. I would have no way of knowing for certain in looking at this as to whether it is. It would appear to be the case, but...

305. Q. Okay. But certainly we know that it was a draft report that was prepared in March around

this period, before the final reports were sent on March 11th; is that fair?

A. That is what it appears to be, yes.

306. Q. Okay. Now, if I could just turn your attention to...it's the third page of the report, number 2 in the bottom right. Do you see that...

A. Yes, I do.

307. Q. ...it is the summary result chart?

A. Yes.

308. Q. If you look under "Exceptions" to the first row:

"...Not members of the Graduate Students' Union based on information provided..."

You see the numbers that are included in the draft report as corresponding to that entry...

A. Yes, I do.

309. Q. ...330 to 340? Now, if you could turn to the final CFSO report that you issued on March 11th, 2014. That is at Exhibit P to your affidavit. Now, if you look at that same entry in the summary results chart, do you see that you have indicated 320 to 340 students...

A. I do.

310. Q. ...were invalidated on that basis,

that they weren't members of UTGSU? Do you know what accounts for the difference in the numbers?

A. I do not know.

311. Q. Okay. And similarly, if we go back to the draft report attached to Mr. Hashemi's affidavit, you will see the percentage of GSU members at the bottom. This is the final conclusion as to what percentage were ruled valid, and you will see that it is 18.5 percent and 19.2 percent...to 19.2 percent, rather; it's a range. And if you look at the final report that is attached to Exhibit P to your affidavit, you will see that that same number for the total percentage of Graduate Students' Union members is 18.5 to 19.3 percent.

A. Yes.

312. Q. So, I take it that you don't know what accounts for that difference either?

A. I don't. Likely quality control that is undertaken as part of the issuance in the final report, but I do not know why there is a difference there.

313. Q. You say quality control, but I believe that you mentioned earlier that...or rather, you couldn't recall that there was a re-review of the CFS and CFSO petitions between March 7th and

March 11th. Can I have an undertaking to that?

MR. BURKE: I think what he said was that there were quality assurance processes undertaken. He just couldn't remember specifically what dates, and then...

314. MR. DEL GOBBO: Yes.

MR. BURKE: ...we had undertaken to advise as between the 7th of March and the 11th of March as to what additional QA processes were undertaken. Is that fair, Mr. Hatherell?

THE DEPONENT: That is fair. We have a number of quality control procedures that we would undertake between the point in time when you issue a draft report and when you issue a final report, which includes looking for typos and things like that.

BY MR. DEL GOBBO:

315. Q. That is fair. Thank you. So, we have been looking at the final reports. You state at paragraph 33 of your affidavit that these reports were issued to CFS and CFSO on March 11th; is that correct?

A. Yes.

316. Q. If we turn to tab O of your affidavit, and this is the CFS national final report, and we flip back to that summary results page, I see that you provided what you call the strict and liberal interpretation of the by-laws with respect to each of the criteria, if I could call them that, for evaluating a name on the petition.

A. Yes.

317. Q. Did CFS and CFSO assist you in coming up with the strict and liberal interpretations of the by-law?

A. My recollection is no. We were advised to use our professional judgment. And so, this was ultimately our interpretation of the by-laws as they were provided to us.

318. Q. Okay. So, if we look at the first exception:

"...Not members of the Graduate Students' Union based on information provided..."

And again, the number is 320 to 340.

A. Yes.

319. Q. So, that requirement, the by-law requirement is speaking to whether the name on the petition was the name of a student who was currently

a member of the UTGSU; is that fair?

A. Yes.

320. Q. How do you interpret that by-law leniently?

A. So, it could be...my recollection would be it could be back to what I was mentioning earlier, whether there is any markings of that individual or a student number that is close in the student records, a name that is close in the student records, where we are trying to assess whether that name on the petition is actually somebody who is in the student records. So, we are applying our judgment and trying to give the benefit of the doubt in certain cases as to whether that is reasonably the same person.

321. Q. Sorry, I am confused. Earlier, I believe, when I asked you about whether a name was correct, say, but a number was one off, that would have been included under "Not having a valid student number".

A. Yes.

322. Q. So, are you saying, if there was some uncertainty based on the information provided, based on whether there was a student number or the name provided, that that entry could appear in more

than one of these rows?

A. No. It will appear in only one of the rows. In terms of the range of 320 to 340, I am not exactly sure what would account for that range. I would need to understand further...dig into further to understand why there would be a range of the 320 to 340 in that particular row.

323. Q. So, you would agree with me that... at least to me, and correct me if I am wrong, that it seems like a relatively straightforward exercise to determine whether a name does or does not appear on the university student lists.

A. It may, until you actually look at the...you are dealing with the two...the petition and the actual student records. My response to that...

324. Q. Specifically...

MR. BURKE: Sorry, let the witness finish...

325. MR. DEL GOBBO: I am sorry.

MR. BURKE: So, finish your answer.

THE DEPONENT: Yes. It may appear to be a simple exercise in terms of determining whether someone is on or isn't on. I would need to undertake to understand in this

particular row what is meant by "320 to 340" in terms of the range.

326. MR. DEL GOBBO: Could you give an undertaking to explain what is the liberal interpretation of that by-law requirement and the strict interpretation of that by-law requirement?

MR. BURKE: We will give an undertaking to explain the range and the reasons for the range. U/T

327. MR. DEL GOBBO: Well, that is helpful. I only say so because if you look at the summary results it states:

"...Our range of results provides for both a strict and liberal interpretation of the by-laws..."

MR. BURKE: Right. I am assuming that the undertaking that I have given will be responsive in that regard.

328. MR. DEL GOBBO: Okay. Could I ask for the broader undertaking to explain what accounts for the range for all of the criteria listed under "Exceptions" in the CFS and CFSO reports?

MR. BURKE: Yes, we will give you that

undertaking. U/T

329. MR. DEL GOBBO: Thank you.

BY MR. DEL GOBBO:

330. Q. If we could just turn to Exhibit Q of your affidavit for a moment. And we are almost finished, I promise, so you can make your afternoon meeting.

A. That is good.

331. Q. So, if you turn to the second page of this exhibit, at the bottom there appears to be an e-mail from Ms. Hunt of CFS to Mr. Youssef on April 2nd, 2014. And she states that:

"...It has been brought to CFS's attention that there is a discrepancy between the number of signatures that your office verified on the national petition and the number of signatures that was reviewed by the registrar's office, possibly due to human error during the photocopying process..."

Is that fair?

A. Yes, that is what it says.

332. Q. So, do I take it from this e-mail that you understood that certain signature pages

that should have been sent to Deloitte originally were not due to some error?

A. Yes. We did not have all of the pages. We did not include all of the pages that existed in the initial work as it relates to CFS.

333. Q. And subsequently, Ms. Hunt sent you...did she send you the entire petition, including the missing pages, or did she send you just the pages that had been missing from the first document that you received?

A. She sent us the entire petition, the original...the entire original petition.

334. Q. Okay. And I take it that Deloitte undertook a secondary review, as I had called it, of that original petition that was sent by Ms. Hunt after April 2nd, 2014?

A. Yes, we did.

335. Q. Did Deloitte review only the pages that CFS indicated had been missing, or did they review the entire petition over again?

A. We reviewed the entire petition.

336. Q. It must have been fun. Were there further communications between CFS and Deloitte between April 2nd, this e-mail that you have attached, and April 7th, which is the e-mail from

Mr. Youssef indicating that he conducted a secondary review?

A. I don't recall.

337. Q. I will just put it to you, if you look at the e-mail of April 7th, this is the first page of Exhibit Q. It's an e-mail from Mr. Youssef to Ms. Hunt, cc'ing you, of April 7th, 2014 at 11:30 a.m. If you look at the first paragraph, the last sentence states:

"...As discussed, this will result in an additional $2,000 in fees..."

Now, I am just...you can look back at the April 2nd e-mail, which is the other e-mail you have attached, but I don't see any reference to $2,000 in fees in that e-mail.

MR. BURKE: From Ms. Hunt?

338. MR. DEL GOBBO: From Ms. Hunt, yes.

MR. BURKE: I doubt if she would be volunteering to pay $2,000 in fees.

339. MR. DEL GOBBO: Of course. So, what I am getting at is that I assume there was communication regarding at least fees between April 2nd and April 7th.

MR. BURKE: Well, I think you are seeing it, are you not? They are saying, "We will

do this additional work, but it is going to cost you another $2,000."

340. MR. DEL GOBBO: So, I suppose I can get at it...just to give an undertaking to see if there is any correspondence between Deloitte and CFS between the two e-mails that you have attached at Exhibit Q to your affidavit.

MR. BURKE: Between April 2nd...

341. MR. DEL GOBBO: April 2nd and April 7th in respect of this secondary review of the CFS petition.

MR. BURKE: I am going to take that under advisement, because I am concerned how much effort that might be on the part of Deloitte to try to find those, but I will take it under advisement. U/A

342. MR. DEL GOBBO: Okay.

BY MR. DEL GOBBO:

343. Q. Did CFS execute a separate engagement letter for the secondary review?

A. No, they did not.

344. Q. So, if you look again at the e-mail of April 7th of Mr. Youssef, the first paragraph, he

states:

"...We did not use the CFSO petition as the basis for a validation procedure, as outlined in our original engagement letter..."

And I take it from your earlier response that, by this, because you weren't reviewing the CFSO petition again, there wasn't any exercise of comparing whether a signature was on the CFSO...or in the CFS petition...or just looking at the CFS petition; is that fair?

A. Specifically as it relates to here, we were looking at the new information and redoing based on the full petition that was provided. In terms of whether we did a cross-reference back to the other petition, I would need to check into that.

345. Q. Could you give an undertaking to do that?

MR. BURKE: Just restate your question.

346. MR. DEL GOBBO: To see whether, as part of this secondary review, there was... whether the CFSO petition was used in any way as the basis for the validation procedure.

MR. BURKE: Yes, we can advise. U/T

BY MR. DEL GOBBO:

347. Q. So then I see that Mr. Youssef attaches a table to this e-mail, and this is at the top of the second page of the exhibit. And I won't take you back to the original report, but the total number of names now in this chart is higher than as was in the original CFS report, and now it is 3,384.

A. Yes.

348. Q. So, that presumably accounts for the names that were missing during the first review. Now, these new numbers that I have seen here, do these represent a strict or a liberal interpretation of the CFS by-laws?

A. These represent our best professional judgment in terms of the individuals that we don't believe, based on our work, are valid petitioners.

349. Q. And you didn't use the same principles as you did with the final reports of a strict interpretation of the by-law and a lenient interpretation of the by-law; this is another standard that is your professional judgment as of this date?

A. Those...the information and the knowledge that we had in terms of what does

"liberal" mean, what does "strict" mean, I mean that would go into our professional judgment in determining, ultimately, what ones we believe are valid. So, that knowledge would be taken into consideration as we apply our professional judgment. So, I wouldn't say it's a separate set of standards, but it is our best effort, based on the information we were provided, to provide our view as to whether we believe they are valid petitioners or not.

350. Q. Okay. And you will agree with me that, as a result of this process, with respect to some of the categories, or the exceptions, rather, as you have put them, the number of signatures that you have deemed to be invalid has actually decreased from the CFS report?

A. Yes, that appears to be the case.

351. Q. And those would have decreased because, as you said, you conducted a review of the entire petition; you evaluated all of the names on the petition again and assessed whether they were in compliance with the by-law requirements as provided here?

A. We reviewed them once again and applied our best professional judgment as to whether we believed they were valid petitioners or not.

352. Q. So, in respect of some of the... perhaps I will take you to the specific example. If you look at the CFS national report, and this is behind Exhibit O to your affidavit...

A. Okay.

353. Q. ...and if you look at the summary chart, if you look under the heading...the fifth bullet:

"...Did not include a valid student identification number..."

And you provided a range of 25 to 55 names that were disqualified on that basis?

A. Yes.

354. Q. As a result of your re-review in April 2014 that we were just looking at behind Exhibit Q, you will note the number of signatures that were invalidated on that basis is ten, so the number decreased?

A. That is right.

355. Q. So, when you conducted your review of the petition a second time, did you discover that some of those names that had been disqualified the first time had been disqualified in error?

A. In our re-review, we believe that there were only ten, based on our best professional

judgment, that should be excluded as valid petitioners. I can't represent to you at this time in terms of why that is, but ten is the view that we had in terms of the ones that should be excluded.

356. Q. Okay. Since you conducted the secondary review in April, has Deloitte conducted any additional review of the CFS petition?

A. My recollection is I don't believe that we have performed any additional procedures.

357. Q. And that is in respect of the CFS petition or the CFSO petition?

A. That is correct.

358. Q. So, you conducted no checks to see whether the CFS petition could have been missing pages, the original version that you received?

A. I would need to check into that as to whether we did that as part of the process once we received the additional pages.

359. Q. Okay. So, I will ask for an undertaking but I will word it slightly differently. Your counsel...or CFS's counsel can provide this to you, but attached to Ms. Ingle's affidavit in this proceeding, there are copies of the original petitions that were delivered to CFS and CFSO in the fall term of 2013. Can you give an undertaking to

confirm that the petitions that formed the basis of what is now Deloitte's final review of the CFS and CFSO petitions are in fact the same petitions that are attached to Ms. Ingle's affidavit, and that no pages are missing?

MR. BURKE: Just let me turn it up. Where is in the application?

360. MR. DEL GOBBO: It's behind tab...it's Exhibit Q to Ms. Ingle's affidavit, is the CFSO petition, and Exhibit R to her affidavit is the CFS petition.

MR. BURKE: So, you want them to go through now...well, are you prepared to do it at your cost?

361. MR. DEL GOBBO: If that is the position that you are taking...I haven't instructions on that point, but the undertaking that I am asking for is that this review be conducted. I think it's appropriate, given that it is already on the record that some pages were missing during their initial review, and that there has been no subsequent review of the CFSO petition.

MR. BURKE: I will take it under

advisement presently, and you can get back to me as to whether or not your client is prepared to pay for it. U/A

362. MR. DEL GOBBO: Okay. And is your position that your client...won't be in a position to...

MR. BURKE: That is why I have taken it under advisement.

363. MR. DEL GOBBO: Sure.

BY MR. DEL GOBBO:

364. Q. Very nearly done. If you turn to paragraph 40 of your affidavit, Mr. Hatherell, here you state that Deloitte performed a manual review of the signatures, and in fact did so three times; is that correct?

A. Yes.

365. Q. Could you turn to Mr. Hashemi's affidavit for a moment, at paragraph 54, and specifically subparagraph (b)?

A. Okay.

366. Q. So, Mr. Youssef is describing... sorry, I should have...you could read the whole paragraph to make sure that you are clear as to what it says. But Mr. Hashemi...this paragraph is

describing that Mr. Youssef...Mr. Hashemi participated in a teleconference with Mr. Youssef on March 7th, 2014, with a representative from CFS present. And Mr. Youssef told him that Deloitte had triple-checked the petition. Do you see that?

A. Yes.

367. Q. I would just like to confirm that Deloitte triple-checked the signatures on the petition that did not match the membership list provided by the university; is that correct?

A. Deloitte triple-checked the entire petition.

368. Q. Okay. So, Mr. Hashemi's statement is not accurate?

MR. BURKE: In what way are you suggesting that Mr. Hashemi's statement is not accurate? I don't understand.

369. MR. DEL GOBBO: He states that: "...Deloitte had triple-checked the information..." Meaning that Mr. Youssef himself manually checked three times each of the signatures that did not match the membership list provided by the university.

MR. BURKE: I would take it that those

names would be inclusive as part of the entire list, but I will let the witness answer.
THE DEPONENT: Those names would be inclusive of the entire list. So, those names would have been triple-checked...the entire petition would have been triple-checked.

BY MR. DEL GOBBO:
370. Q. I am sorry, I am confused. Mr. Youssef is talking about signatures that did not match the membership list. Am I incorrect in thinking that he is referring to what you called exceptions, or names with which there was some issue, presumably because there was a digit missing in the student number or...
A. I am not sure exactly what Mr. Hashemi is referring to there.
MR. BURKE: You can ask Mr. Hashemi tomorrow.

BY MR. DEL GOBBO:
371. Q. But your statement is that you triple-checked all the signatures on each of the

petitions three times?
A. Correct.
372. MR. DEL GOBBO: Okay. I think that those are all my questions. I would just like to take a few minutes to check that I have asked everything.
MR. BURKE: Do you want to take a five-minute break?
373. MR. DEL GOBBO: Sure.

--- A BRIEF RECESS

TERRENCE HATHERELL, resumed
CONTINUED CROSS-EXAMINATION BY MR. DEL GOBBO :
374. MR. DEL GOBBO: Mr. Hatherell, that is all my questions. I would like to thank you for coming in today.
THE DEPONENT: Thank you.

CROSS-EXAMINATION BY MR. MONKHOUSE:
375. Q. Hello. So, my name is Andrew Monkhouse, representing Ashleigh Ingle. So, I have a couple of questions for you as well, and then hopefully we can wrap this up and let you get going.
A. That is good.

MR. BURKE: Mr. Monkhouse, just a question.
376. MR. MONKHOUSE: Sure.
MR. BURKE: I understand we have not yet amended the application formally, correct?
377. MR. MONKHOUSE: That is correct, as far as I know.
MR. BURKE: We are waiting for my position on that issue. So, I just wanted to, for the record, that that is the state of the proceeding as it presently stands, but we are going to permit you to ask your questions.
378. MR. MONKHOUSE: Thank you. I appreciate that.

BY MR. MONKHOUSE:
379. Q. Now, the list you compared, I believe you got what I would consider a data dump, but a list of information, students from the University of Toronto that was conveyed to you?
A. We did. We received a CD-ROM from the University of Toronto with the student records that we used as the source to compare to.
380. Q. Did you have any information or were

you informed as to what date that was collected as of?
A. No, I don't believe so. I would need to check to be certain.
381. Q. Can I get an undertaking to check for if there is any information about what date that information was valid on?
MR. BURKE: I will take that under advisement. U/A

BY MR. MONKHOUSE:
382. Q. Now, I want to talk a bit about the VLOOKUP procedure that you used to compare the different names.
MR. BURKE: Mr. Monkhouse, just let me ask a question of you, because there is nothing raised in the application record in relation to the list that was provided by the University of Toronto. Is there any issue from your perspective with respect to that matter?
383. MR. MONKHOUSE: From our perspective, we would like to know what date it is. Obviously people drop off, there is different registration numbers.

Effectively, it is going to be a snapshot of a particular day, or it is likely a snapshot of a particular day as to when people registered. Considering that the petition was circulated in September, and this data came in February, I think it's important to know...are the people in September being compared against the people in February. So, I think that is going to be an important issue.

MR. CARSTEN: How can it be an issue if it is not raised in your application record?

MR. BURKE: Right.

384. MR. MONKHOUSE: Well, we don't have an application record.

MR. CARSTEN: Well, the proposed amendment I don't believe raises it as an issue.

MR. BURKE: If you are telling me, Mr. Monkhouse, now that you are going to raise different issues that have been raised by Mr. Del Gobbo, we are going to stop this examination, because I am not going to permit an examination on an

application record that is not fully articulated.

MR. CARSTEN: And to be clear, if I can say one more thing, the proposal to add Ms. Ingle as a co-applicant includes some revisions to the actual application record itself, none of which have to do with what you are dealing with now. So, I have provided my consent to that proposed amendment but on that basis, not to just be able to add any issues in the application record. So, I would like some clarification on this as well.

385. MR. MONKHOUSE: Certainly. Would I be able to just ask for five minutes to speak with my co-counsel on that?

MR. CARSTEN: Thank you.

--- A BRIEF RECESS

TERRENCE HATHERELL, resumed

CONTINUED CROSS-EXAMINATION BY MR. MONKHOUSE :

386. MR. MONKHOUSE: So, with regard to that, I would say that it is our position that this is actually included in the record

already. Part of our arguments are...or two of our arguments are that the CFS didn't exercise their discretion reasonably, and we would say that if they chose to use a list of students from a different semester, that would be an unreasonable...that would be part of that.

Also, we argue that their by-laws are void as to uncertainty, and their by-laws and the application of the by-laws involved using an incorrect student list, that that would be part of it being uncertain. So, I mean, I think these are reasonable questions to ask, given the pleadings as amended include reasonable uncertainty.

MR. BURKE: No. I mean, the fact that the list has no...I mean, this is the list that was provided by the university. You are going to have to specifically plead that to allow questions on that and for us to respond to that. That is not included in anything in this application.

387. MR. MONKHOUSE: Again, as I said, it goes to the underlying reasonableness of

the analysis and the reasonableness of the CFS's decision to reject the petition, and that is the underlying question here. Even Deloitte said this is neither...certified or not...they advised CFS. CFS is the one that makes the decision. The question is, did they do so reasonably based on the information they had, and that...

MR. BURKE: This is the first time we have heard any issue about the list being provided to the university. Is that your position too, Mr. Del Gobbo?

MR. DEL GOBBO: My client's understanding, although I am not sure about this, we aren't positive as to whether the lists are contemporaneous with the time that the signatures were placed in the petitions, whether they represent the exact same pool of students. I think that it is an important question.

You know, I think that whether or not the...the records that were referred to by the university...by Deloitte in conducting their review were contemporaneous, but...the moment that the

petitions were actually created I think is relevant to that assessment.

MR. CARSTEN: Can I take you please...amendment...CFS and CFSO are responsible...referendum. On page 10...just go to page 10 of your application record. You talk in paragraph (ll): "...While CFSO and CFS have the sole authority to determine that the petitions are in order, that authority must be exercised in a reasonable manner. CFS and CFSO do not exercise authority reasonably, and in particular..." Not "and without limitation", just "in particular", then you listed four things.

MR. BURKE: Where does it say that the list was wrong?

388. MR. MONKHOUSE: I don't think that having a list of particulars...

MR. CARSTEN: Yes, it does.

389. MR. MONKHOUSE: It's the generality of (ll).

MR. CARSTEN: No, I don't think so, at least...I mean, again, sorry, not my client here at this point.

MR. BURKE: Well, I am going to refuse those questions, and if you are going to amend your...you know, amend it again, then that is your prerogative to try to get added, but, at the moment, it is not articulated. /R

390. MR. MONKHOUSE: So, just to confirm, you are refusing questions relating to the date of the student information provided?

MR. BURKE: And anything else that is not articulated in your Notice of Application. /R

BY MR. MONKHOUSE:

391. Q. Okay. So, with regard to the VLOOKUP system utilized, which I believe is an Excel function, we spoke about it earlier, would you agree with me that this results in a binary decision, either the names match or the names don't match?

A. It results in a binary match or non-match, and the VLOOKUP was performed on the basis of the student number.

392. Q. So, when you say "performed on the basis of the student number", that means that they took the student numbers and looked to find if there

was a matching name?

A. No. The student numbers that were input into our Excel file on the basis of the petitions, the student number there was compared against the student number per the university records to try to determine a match. We did the VLOOKUP on the basis of the student number, and not the name.

393. Q. Okay. So, you have a list of student numbers, you then look up and compare that, see if those people exist within the university system; that is correct?

A. Yes. I would need to check as to which way the VLOOKUP was going, whether it is going from the university records to the petition, or the petition to the...but it is cross-referencing the two, the student records with the petition.

394. Q. Okay. So, once you have that, effectively you could, I guess, have a list of student numbers, you then have a list of student names as per the university, and then you have a list of names as written? I am just looking...how is the comparison done between the names provided from the university and the names that were written down? Were they, like, compared side-by-side after

doing the VLOOKUP, or was it through some other method?

A. Yes. So, the comparison of the names was a very manual exercise in trying to determine whether the name was a match. The first search that was performed was the VLOOKUP using the student numbers.

395. Q. So if I get this right, so you have the VLOOKUP, which then presumably would generate the name beside it. Then you end up with student numbers with the university's entering of the person's name beside that in the system, which then could be compared to another name that was written?

A. I would need to check to...on the output, but the VLOOKUP...the results of the VLOOKUP would say either true or false, that there is a match on the basis of the student numbers. We would then proceed to do the manual procedures to investigate it further if there wasn't a match. If there was a match, then we would then move forward and compare the other attributes around name, and look for a signature, and so forth. If there wasn't, on the basis of the student number search, we would then proceed with our manual review.

396. Q. Okay. And so, because it is a

binary system, if a student number was mistyped, that would most likely result in a negative finding?

A. Prior to applying a professional judgment, and that is where we get into the professional judgment that I mentioned earlier, where we would...if there was just one digit that was missing or it was off by, you know, one, then we may have included that as a valid petitioner based on our further review.

397. Q. Okay. And with regard to the number of petitions, I doubt you will have this information in your report off the top of your head, but I was hoping that you would be able to undertake to provide us with the number of pages that there were in each of the petitions.

MR. BURKE: The number of pages?

398. MR. MONKHOUSE: The number of pages.

MR. BURKE: You say "in each of the petitions", you mean the CFS and the CFSO?

399. MR. MONKHOUSE: The CFS and CFSO petitions. And as a second part to that, I was hoping that you would be able to undertake to provide the number of blank pages. It is my understanding, having copied them, that there were a number of

pages that were blank often on the back side.

MR. BURKE: I will take that under advisement. U/A

BY MR. MONKHOUSE:

400. Q. Now, in a review of this nature, is it common to provide a margin of error to the numbers, the final numbers?

A. It would not be unusual to provide a range, as we did in the report, because of the application of professional judgment, and the fact that we needed to apply that judgment in our report.

401. Q. And so, in this report you provided it at one point as a range, but was there a particular percentage of margin of error that you came up with overall for the CFS and CFSO reports?

A. No, there was not a separate margin of error that was factored in. That margin of error relates to the professional judgment that we apply and is therefore included in the range, is inherent in the range, and that the margin of error relates to professional judgment.

402. Q. Now, have you been hired by the CFS or the CFSO to certify or to examine any other

petitions of this nature?

A. No, we have not.

403. Q. Specifically, were you hired to certify the petition of Capilano University Student Association?

MR. BURKE: He has told you they had not been hired. You just got your answer.

BY MR. MONKHOUSE:

404. Q. Now, I understand that the Canadian Federation of Students chose to have these petitions...some of the work done outside of Canada; is that correct?

MR. BURKE: Pardon?

BY MR. MONKHOUSE:

405. Q. That some of the work was done outside of Canada; is that correct?

MR. BURKE: Did you say that the CFS had chosen to do that?

BY MR. MONKHOUSE:

406. Q. Sorry, I believe some of the work was done outside of Canada; is that correct?

A. We provided options in terms of how

to resource the work. One of the options was to use resources that reside outside of Canada, and that was the approach that we took to undertake, and that was based on consultation with the Federation, because of the impact on fees.

407. Q. Who specifically did you consult with? And when you say "the Federation", can you be specific with regard to the Canadian Federation of Students and the Canadian Federation of Students - Ontario?

A. I would need to check specifically in terms of who was involved. I can't recall.

408. Q. Would I be able to get an undertaking to provide the specific persons that you consulted with about that matter?

MR. BURKE: How is that relevant, Mr. Monkhouse? I am just trying to understand the relevance of your questions.

409. MR. MONKHOUSE: One second. In terms of the relevance, I think it goes back to the reasonableness question in terms of the work that was performed. Obviously, there is a difference in terms of the work standards, pay and that sort of thing, and some further questions I am going to have

with regard to persons within or outside of Canada. I think it's a fair question with regard to the reasonableness of being able to take into account the margin of error for this report.

MR. BURKE: How is that relevant when the work was rechecked and manually redone in Canada?

410. MR. MONKHOUSE: Well, I think it obviously is relevant, because, in order for that to be the case that it isn't relevant, then all work that is done outside the country would have been irrelevant. So, just because it was double-checked in Canada doesn't remove the issues with margin of error and accuracy that might come from having workers outside of Canada taking part in...as part of the process.

MR. BURKE: It's a refusal on the question as to who instructed. That was your question? /R

411. MR. MONKHOUSE: That was my question.

BY MR. MONKHOUSE:

412. Q. What country was the work outsourced to?

A. India.

413. Q. Do they work directly for Deloitte, or was it for a subcontractor in India?

A. They work directly for Deloitte.

414. Q. Does Deloitte have a fair wage policy for workers that it employs overseas?

MR. BURKE: This is not...it's a refusal. I mean, this is an inquiry about this particular petition. This is not an inquiry about Deloitte and its internal organizational structure or pay mechanisms, so that is a refusal. /R

BY MR. MONKHOUSE:

415. Q. Do you have information on what the workers on this petition were paid?

MR. BURKE: It's irrelevant. Refusal. /R

416. MR. MONKHOUSE: Well, I think that it is relevant. We are...

MR. BURKE: You have my position, Mr. Monkhouse.

417. MR. MONKHOUSE: Those are all my questions, so thank you very much for that.

INDEX OF EXHIBITS

INDEX OF UNDERTAKINGS

INDEX OF UNDER ADVISEMENTS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	22	81
2	83	294
3	97	341
4	104	361
5	109	381
6	119	399

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Certified Correct:

Ksenja Thellimi
Verbatim Reporter

INDEX OF REFUSALS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	36	133
2	60	204
3	115	389
4	115	390
5	122	410
6	123	414
7	123	415