

Court File No. CV-14-500766

ONTARIO  
SUPERIOR COURT OF JUSTICE

MLS/aa

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 Continued Cross-Examination of TERRANCE  
HATHERELL on his affidavit resworn the 4th day of  
September, 2014, taken at the offices of VICTORY VERBATIM  
REPORTING SERVICES, Suite 900, Ernst & Young Tower, 222 Bay  
Street, Toronto, Ontario, on the 5th day of September,  
2014.

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APPEARANCES:

ALESSANDRA V. NOSKO  
TODD J. BURKE

-- for the Plaintiff  
-- for the Defendant,  
Canadian Federation  
of Students

TUDOR B. CARSTEN

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

ALSO PRESENT:

Ashkan Hashemi  
Lucy Watson  
Gwynndaf Garbutt

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1 TERRANCE HATHERELL, resumed  
2 CONTINUED CROSS-EXAMINATION BY MS. NOSKO :  
3 418. Q. Good morning, Mr. Hatherell.  
4 A. Good morning.  
5 419. Q. This is a continuation of your  
6 cross-examination that was held on May 26, 2014, and  
7 it is with respect to an affidavit that you  
8 originally swore September 2nd, and then reswore  
9 September 4, 2014, correct?  
10 A. Yes.  
11 420. Q. Okay, thank you. And I will just  
12 say, at the outset, I know you have done this  
13 before, but if you don't understand any of my  
14 questions, please ask me to clarify, and if you need  
15 a break at any time, by all means, please, let me  
16 know.  
17 A. Sure, and just to clarify the dates,  
18 I think you said that the cross-examine was May 26.  
19 It was actually June 11th, but I think the affidavit  
20 was May 26...  
21 421. Q. Oh, yes.  
22 A. ...but the actual cross-examining  
23 was June 11th.  
24 422. Q. You are entirely correct; thank you  
25 for that.

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1 A. No problem.  
2 423. Q. All right. So, you have a copy of  
3 your affidavit in front of you?  
4 A. I do.  
5 424. Q. Thank you. And let's just mark this  
6 affidavit as...I think it will be Exhibit 2, because  
7 this is a continuation.  
8 MR. BURKE: Exhibit 2 on the  
9 cross-examination of Mr. Hatherell.  
10 425. MS. NOSKO: Thank you.  
11  
12 --- EXHIBIT NO. 2: Affidavit of Terrance Hatherell  
13  
14 BY MS. NOSKO:  
15 426. Q. Now, Exhibit A to this affidavit is  
16 a reply factum of the applicant, dated July 21st,  
17 2014; correct?  
18 A. Yes.  
19 427. Q. And are you aware that this reply  
20 factum was, in fact, not filed with the court?  
21 A. I am not aware.  
22 428. Q. Okay. So, I will advise you that  
23 until it was attached to your affidavit, it was not  
24 part of the court record, and was not intended to  
25 be, in light of discussions that I had with your

1 counsel.

2 MR. BURKE: Well, I would assume  
3 that...I am not sure that this witness can  
4 respond to that, but I assume when I get a  
5 reply factum that has been filed with the  
6 court.

7 429. MS. NOSKO: Yes, and I just want to make  
8 it clear, for the record, we have  
9 correspondence on this that we don't need  
10 to introduce at this time, but for the  
11 record, when Mr. Burke received the reply  
12 factum, he contacted me and advised me that  
13 he had some concerns about it, and that led  
14 to the filing of the affidavit of...or  
15 rather the service, and it will be filed,  
16 the affidavit of Joelle Kabouchi, which you  
17 have also reviewed in preparing your  
18 affidavit. So, I just want the record to  
19 be clear that that reply factum was, in  
20 fact, never filed as a result of my  
21 communications with your counsel.

22 MR. BURKE: Okay.

23 430. MS. NOSKO: Thank you.

24  
25 BY MS. NOSKO:

1 what do you mean by a different order?

2 436. Q. So, if you look at, for example,  
3 reference number 21 in the final spreadsheet, has  
4 the name "Pritania Sewell"; do you see that?

5 A. Yes.

6 437. Q. And reference number 2 in the prior  
7 spreadsheet is Duncan Ildbode Suni; do you see  
8 that?

9 A. 21?

10 438. Q. Yes.

11 A. Yes.

12 MR. BURKE: You said 2.

13 THE DEPONENT: Yes.

14 MR. BURKE: You meant 21, Counsel?

15 439. MS. NOSKO: Yes.

16 MR. BURKE: Okay.

17  
18 BY MS. NOSKO:

19 440. Q. And, so, based on the difference  
20 between those two references, 21, I can give you  
21 examples if you need them, but I will start there,  
22 do you agree with me that the spreadsheets are not  
23 in the same order?

24 A. Correct.

25 441. Q. Okay. Do you know why that is?

1 431. Q. Now, you attached, as Exhibit B to  
2 your affidavit, a copy of the final Excel  
3 spreadsheet upon which the final CFSSO report was  
4 based, correct?

5 A. Correct.

6 432. Q. And my first question for you on  
7 this, Mr. Hatherell, is that if you compare your  
8 Exhibit B to the...and I may ask your counsel to  
9 turn this up, if you don't have it readily  
10 available, to Exhibit A to the affidavit of Joelle  
11 Kabouchi.

12 MR. BURKE: Do you have that in colour?

13 433. MS. NOSKO: I do.

14 MR. BURKE: Okay. Can you give that in  
15 colour. So, this is the earlier  
16 spreadsheet that you are referring to.  
17 Okay, we have it.

18 434. MS. NOSKO: Thank you.

19  
20 BY MS. NOSKO:

21 435. Q. And, so, my first question is that  
22 these two spreadsheets appear to be in a different  
23 order. Can you please look at those and confirm  
24 that that is, in fact, the case?

25 A. When you say "a different order",

1 A. I don't know specifically why,  
2 except I believe it is a result of the quality  
3 control procedures. So, as we talked about in the  
4 previous cross-examination, the initial exhibit that  
5 was included in the individual's affidavit was a  
6 draft spreadsheet.

7 442. Q. Yes?

8 A. It would have been subject to  
9 various quality control procedures before we issued  
10 our financial report. The Excel spreadsheet that I  
11 attached to my affidavit of September 2nd or 4th is  
12 the final Excel spreadsheet that we used to produce  
13 our final report.

14 443. Q. I understand that. What I am having  
15 trouble understanding is why the order of the names  
16 would have changed in between the two?

17 A. I am not sure why they would have  
18 changed. If there were reasons for that, I would  
19 need to investigate to understand why the  
20 difference, but it is as a result of our quality  
21 control.

22 444. MS. NOSKO: Okay. Could I get an  
23 undertaking for those investigations to be  
24 done, and that answer to be provided to me?  
25 MR. BURKE: Yes, we will advise as to

1 why it is different. U/T  
 2 445. MS. NOSKO: Thank you.  
 3  
 4 BY MS. NOSKO:  
 5 446. Q. And, Mr. Hatherell, the draft  
 6 spreadsheet is in the same order as the CFSO  
 7 petition. That is what Ms. Kabouchi deposed, and  
 8 that is my understanding, as well, and that petition  
 9 can be found at Exhibit Q to the affidavit of  
 10 Ashleigh Ingle, which is contained in volume 2...  
 11 MR. BURKE: I didn't bring those  
 12 materials with me.  
 13 447. MS. NOSKO: ...of the application  
 14 record. All right, that is fine. I don't  
 15 think that the witness needs to look at it,  
 16 but I just want to confirm with him.  
 17  
 18 BY MS. NOSKO:  
 19 448. Q. Is it your understanding that, at  
 20 least, the draft spreadsheet was in the order of the  
 21 CFSO petition?  
 22 A. I am not sure. I haven't reviewed  
 23 to see whether it actually is in the order. So, I  
 24 really can't comment on that. I would need to look  
 25 at it...

1 national petitions to ensure that we have all of the  
 2 names captured in the spreadsheet.  
 3 454. Q. All right. So, is the final  
 4 spreadsheet, then, in the order, as far as you know,  
 5 of the national petition?  
 6 A. I am not certain whether it is or  
 7 not.  
 8 455. Q. All right. Is that something that  
 9 you would be able to determine?  
 10 A. Yes.  
 11 456. Q. All right. Can I get an undertaking  
 12 as to whether the final spreadsheet is in the order  
 13 of the national petition, please?  
 14 MR. BURKE: What is the relevance of the  
 15 order, just to assist me, before I give an  
 16 undertaking as to relevance?  
 17 457. MS. NOSKO: Well, it is really to be  
 18 able to conduct further analysis, if such  
 19 further analysis is necessary, of the final  
 20 spreadsheet that we now have that we didn't  
 21 have before.  
 22 MR. BURKE: You have a copy of the CFS  
 23 petition?  
 24 458. MS. NOSKO: Yes, but it is not  
 25 searchable.

1 449. Q. Okay.  
 2 A. ...to see if it is.  
 3 450. Q. And...  
 4 MR. BURKE: Someone can make that  
 5 comparison, I think, without the necessity  
 6 of having an investigation carried out.  
 7 451. MS. NOSKO: No, that is fine, and Ms.  
 8 Kabouchi has deposed that it is in the same  
 9 order, and so, I don't think it is  
 10 particularly controversial.  
 11  
 12 BY MS. NOSKO:  
 13 452. Q. My question, though, is, in your  
 14 last cross-examination, your evidence was that the  
 15 CFSO petition was used as the basis of Joelle's  
 16 validation procedures; correct?  
 17 A. The initial validation procedures,  
 18 yes. That was our original plan, was to use the CFO  
 19 as the basis, yes.  
 20 453. Q. All right. And that changed  
 21 somewhere between the preparation of the draft  
 22 spreadsheet and the final spreadsheet?  
 23 A. It changed at some point. We  
 24 discussed that in the original cross-examination,  
 25 the reason for that in terms of why we use the

1 MR. BURKE: Well, you also have a copy  
 2 of this. So, you can make a determination,  
 3 if it is in the right order or not. I  
 4 don't need to get an undertaking in that  
 5 regard.  
 6 459. MS. NOSKO: All right.  
 7  
 8 BY MS. NOSKO:  
 9 460. Q. And, Mr. Hatherell, if you...flip to  
 10 the last page of both spreadsheets.  
 11 MR. BURKE: So, this is page 46 of  
 12 Exhibit B. And page 109; that is what you  
 13 are asking me?  
 14 461. MS. NOSKO: Yes.  
 15 MR. BURKE: Is this the Exhibit to the  
 16 draft?  
 17 462. MS. NOSKO: Yes. All right.  
 18  
 19 BY MS. NOSKO:  
 20 463. Q. And, Mr. Hatherell, I just want to  
 21 make sure that I have this right. So, the draft  
 22 spreadsheet had 30 through 75 rows; correct? And  
 23 the final spreadsheet has 30 through 25. Is that  
 24 accurate?  
 25 A. That is what it appears to suggest.

1 464. Q. Right.  
 2 A. Just looking at the numbers.  
 3 465. Q. That is fine. I just wanted you to  
 4 confirm that. Do you know why the difference?  
 5 A. I'm not certain specifically in  
 6 terms of why the difference but I can certainly find  
 7 out as to why, again, as part of the quality control  
 8 procedures in terms of trying to get it as accurate  
 9 as possible.  
 10 466. Q. And you said you couldn't be  
 11 specific. Do you have any idea sitting here today?  
 12 A. It may be because there were  
 13 duplicates that were removed as part of the final  
 14 quality control but that would only be speculation.  
 15 I need to understand why.  
 16 467. MS. NOSKO: So, can I get an undertaking  
 17 to advise as to why the numbers in between  
 18 the spreadsheets are different, please?  
 19 MR. BURKE: Yes. U/T  
 20  
 21 BY MS. NOSKO:  
 22 468. Q. And Mr. Hatherell, the final  
 23 spreadsheet that was attached to your September  
 24 affidavit...if you want to just flip back to the  
 25 first page a bit. Looking at the header rows, this

1 A. I don't know exactly what the date  
 2 is. If I know a date...if I were to speculate it  
 3 would likely be the date of the final report or the  
 4 date prior.  
 5 474. Q. All right. So, and...  
 6 MR. BURKE: Or the day prior?  
 7 THE DEPONENT: Or the day prior but I'm  
 8 not certain. I would need to check that.  
 9  
 10 BY MS. NOSKO:  
 11 475. Q. And no further review of the CFSO  
 12 petition was done after the final report for CFSO,  
 13 correct?  
 14 A. I don't believe any further review  
 15 was performed after we issued the final report.  
 16 MR. BURKE: I believe that was a  
 17 question in the prior cross-examination.  
 18 476. MS. NOSKO: Yes, I wanted to confirm  
 19 before I asked for an undertaking. So,  
 20 could I get an undertaking to advise of  
 21 the...on which this final spreadsheet for  
 22 CFSO was completed?  
 23 MR. BURKE: We'll use best efforts. U/T  
 24 477. MS. NOSKO: And similarly if there is,  
 25 in fact, a final spreadsheet for the

1 spreadsheet, the fifth column says, "CFS-ON" and  
 2 then in brackets below that, "yes/no". Do you see  
 3 that?  
 4 A. Yes.  
 5 469. Q. And there's no indication on this  
 6 spreadsheet as to whether these names appeared on  
 7 the CFS petition, correct?  
 8 A. That appears to be the case, yes.  
 9 470. Q. So, was there ultimately a separate  
 10 final spreadsheet for the national petition?  
 11 A. I believe there was, yes.  
 12 471. MS. NOSKO: Counsel, can I get an  
 13 undertaking to confirm that and if there  
 14 is, in fact, a separate final spreadsheet  
 15 for the national petition for that to be  
 16 produced, please?  
 17 MR. BURKE: Yes. U/T  
 18  
 19 BY MS. NOSKO:  
 20 472. Q. And just to clarify on this what is  
 21 the date of this final spreadsheet for CFSO? Do you  
 22 know?  
 23 A. What do you mean by the date?  
 24 473. Q. Like, the date that this spreadsheet  
 25 was finalized?

1 national petition if you could please make  
 2 best efforts to determine and advise of the  
 3 date on which that spreadsheet was  
 4 finalized.  
 5 MR. BURKE: Yes, we'll use best efforts. U/T  
 6 478. MS. NOSKO: Thank you.  
 7  
 8 BY MS. NOSKO:  
 9 479. Q. Mr. Hatherell, if you could turn  
 10 again, please, to the last page of the final  
 11 spreadsheet being page 46.  
 12 A. Okay.  
 13 480. Q. And you will see there the legend  
 14 which shows the colour of certain rows and then an  
 15 explanation as to what the colour means, and then a  
 16 number next to that explanation. Do you see that?  
 17 A. Yes.  
 18 481. Q. All right. And at the bottom of the  
 19 legend the colour blue indicates duplicate records  
 20 and this indicates there are 17 of those? You need  
 21 to say yes or no.  
 22 A. Yes.  
 23 482. MS. NOSKO: Thank you. And Counsel, do  
 24 you have a copy of the final CFSO report  
 25 here, by any chance?

1 MR. BURKE: I only got the materials  
2 which I thought would be relevant to Mr.  
3 Hatherell's examination, so I don't. If  
4 you want to show it to him...

5  
6 BY MS. NOSKO:

7 483. Q. Yes, I only have one copy so I  
8 apologize for that. But Mr. Hatherell, what I'm  
9 showing you now is Exhibit P to your earlier  
10 affidavit, sworn May 26th, 2014 which is the CFSSO  
11 final Deloitte report. And I'm going to show you  
12 page 2 of that report which contains your summary  
13 results. And, in particular, I would like you to  
14 look at the row for duplicate records on there  
15 which, I believe, says 15 to 20. Can you just  
16 confirm that?

17 A. Yes, correct.

18 484. Q. Thank you. And so, can you help me  
19 understand why the range 15 to 20 was provided when  
20 the final spreadsheet indicates 17?

21 A. Yes. So, as was mentioned in the  
22 original cross-examination, we needed to apply  
23 judgment as best we could. Professional judgment as  
24 to whether, in our view, the petitioner was a valid  
25 petitioner. So, in cases for duplicate records, as

1 student, [REDACTED].

2 MR. BURKE: Just give us a moment.

3 486. MS. NOSKO: Yes, take your time.

4 MR. BURKE: So, 180 and 1810?

5 487. MS. NOSKO: That's correct, yes.

6 MR. BURKE: And 1810 is found on page  
7 25.

8 THE DEPONENT: Yes.

9  
10 BY MS. NOSKO:

11 488. Q. All right. And, so there are two  
12 rows highlighted in blue for the same student, the  
13 name and student number in both of those rows appear  
14 to be identical, do you agree with that?

15 A. Yes.

16 489. Q. And so, was only one of those rows  
17 discounted or were both?

18 A. My understanding is just one. So,  
19 one would be considered to be a duplicate, the other  
20 would be considered to be valid.

21 490. Q. All right. And I would like to give  
22 you another example, which is row 299 which is on  
23 page 5.

24 A. Yes.

25 MR. CARSTEN: Sorry, you said 299 or

1 it relates to this particular entry, we saw  
2 duplicate names. The student numbers were not  
3 duplicates. The student numbers, in some cases,  
4 were valid and in other cases were not valid. So,  
5 we did a lookup and we compared it to the university  
6 records. The student numbers may have been off by  
7 one or may have been off by two.

8 In some cases we consider them to be a  
9 valid petitioner, petitioners under the liberal  
10 application of the by-laws. But one could also look  
11 at it and say that it's invalid because the student  
12 number didn't exactly match the university records.  
13 So, in the case of providing a range, we were trying  
14 to provide a range based on the fact that we were  
15 applying judgment and we didn't know if it was  
16 exactly 17. We were trying to provide a range based  
17 on the strict application and the liberal  
18 application which gets you to the range of 15 to 20.

19 485. Q. Thank you for that. And I have  
20 another question about the duplicate entries on this  
21 final spreadsheet. And I will just give you a  
22 couple of examples. So, if you could find...and I  
23 will give you the row numbers which should  
24 assist...first of all, rows 180 and 1810 appear to  
25 both be highlighted in blue and refer to the same

1 291?

2 491. MS. NOSKO: 299.

3 MR. CARSTEN: Thank you.

4 MR. BURKE: This is in the name of  
5 [REDACTED] ?

6 492. MS. NOSKO: Yes.

7 MR. BURKE: And the other corresponding  
8 note?

9  
10 BY MS. NOSKO:

11 493. Q. So, that's my question, is that I  
12 wasn't able to find a corresponding note for that.  
13 And so you're welcome to if you want to take the  
14 time to flip the rows and verify that. You're  
15 welcome to do that now if you like.

16 MR. BURKE: Do you need to do that Mr.  
17 Hatherell?

18 THE DEPONENT: No, I don't need to do  
19 that.

20 MR. BURKE: Wait for the question.

21  
22 BY MS. NOSKO:

23 494. Q. And so can you explain why, in the  
24 case of [REDACTED], there were two rows and why  
25 it is in the case of [REDACTED] there is only

1 one?

2 A. So, I would need to specifically  
3 speak with the team to understand why that it is the  
4 case. But I do know that for some duplicates a row  
5 would have been removed on entry and I think that  
6 was included in the draft spreadsheet that was  
7 attached. But I would need to confirm that with the  
8 team to understand why we don't see the duplicate on  
9 the final.

10 495. Q. All right. And, so in this case  
11 where there is no duplicate row, there just appears  
12 to be one row with this name and student number,  
13 would that one row have been counted? Assuming that  
14 everything...

15 A. I'm not sure what the question is.  
16 Can you repeat that?

17 496. Q. Well, in the case of the one where  
18 there were two rows...

19 MR. BURKE: Your question, would there  
20 be a valid petitioner...

21 497. MS. NOSKO: Yes, that's my question.

22 MR. BURKE: ...as included in your final  
23 number?

24 BY MS. NOSKO:  
25

1 petitioner in making a decision as to whether they  
2 believe it's valid. And so, the shading is  
3 important, without question, because it is intended  
4 to try to highlight our assessment as to whether we  
5 believe it's a valid petitioner or not. But at the  
6 end of the day, you know, the team would sit there  
7 and look at it and say, "If we have 17 that appear  
8 to be duplicates, let's look at the nature of those  
9 duplicates and apply judgment to come up with what  
10 we believe to be an acceptable range as to the  
11 liberal application of the by-laws and the more  
12 strict applications of the by-laws," which is how  
13 you get the duplicates to the 15 to the 20.

14 So, without question, it is important and  
15 is one of the inputs but we also need to look at,  
16 more specifically, the nature of why we shaded it a  
17 particular colour to determine what we believe to be  
18 an acceptable range.

19 502. Q. All right. And was there another  
20 document prepared, other than the spreadsheet, that  
21 was used in ultimately preparing the final report?

22 A. I'm not certain. I would need to  
23 check our work papers.

24 503. MS. NOSKO: Could I get an undertaking  
25 for that to be done, please? And if there

1 498. Q. Yes.

2 A. So, if there was only...if we deemed  
3 it not to be a duplicate then it would have been  
4 included in the final numbers of valid petitioners.  
5 I would need to investigate to determine why here it  
6 only appears once and if, in fact, it's simply a  
7 shading issue and appears elsewhere that isn't  
8 shaded blue or for some reason it's not included in  
9 the final spreadsheet, I would need to investigate  
10 that with the team.

11 499. Q. Okay. And so let me just ask one  
12 more question before I ask for an undertaking. The  
13 numbers, the ranges in the final CFSO report, were  
14 they determined on the basis of the shading in the  
15 final spreadsheet?

16 A. No, I don't believe that they were.

17 500. Q. So, how is the shading used in  
18 preparing the final report?

19 A. The shading would be one input into  
20 the ultimate decision process as to an appropriate  
21 range in the application of judgment.

22 501. Q. All right. Apart from the shading,  
23 what were the other inputs or data points?

24 A. It would be looking at everything in  
25 its entirety. So, the team looking at the actual

1 is, in fact, any other document besides  
2 this final spreadsheet for that document to  
3 be produced.

4 MR. BURKE: We will use best efforts. U/T

5 504. MS. NOSKO: Thank you. And I would like  
6 the same undertaking as well, please, for  
7 the national petition.

8 MR. BURKE: Yes. Same answer. U/T  
9

10 BY MS. NOSKO:

11 505. Q. And coming back to the duplicate  
12 records question, based on my review of the final  
13 spreadsheet, there appear to be three names or rows  
14 that don't have a second row that's also shaded blue  
15 for the same individual.

16 MR. BURKE: How many?

17 506. MS. NOSKO: Three. I will give you  
18 those...

19 MR. BURKE: Numbers?

20 507. MS. NOSKO: ...numbers, yes. So, the  
21 first is 299 which we have looked at.

22 MR. BURKE: Yes.

23 508. MS. NOSKO: The second is 435.

24 MR. BURKE: Yes.

25 509. MS. NOSKO: And the third is 2516.

1 MR. BURKE: So, those are situations  
 2 where there is...those lines are demarked  
 3 in blue and there is no equivalent other  
 4 entry.  
 5 510. MS. NOSKO: That's correct. And so if I  
 6 can get an undertaking to advise as to  
 7 whether those three individuals were  
 8 determined to be either valid or invalid  
 9 petitioners.  
 10 MR. BURKE: Yes, we can advise. U/T  
 11  
 12 BY MS. NOSKO:  
 13 511. Q. Thank you. Mr. Hatherell, can you  
 14 please turn up paragraph 21 of your affidavit?  
 15 A. Yes.  
 16 512. Q. Thank you. And in this paragraph  
 17 you are referring to the chart that was at Exhibit B  
 18 of Ms. Kabouchi's affidavit, which identified 136  
 19 petitioner records that appeared to have been the  
 20 subject of some inputting errors as between the  
 21 petition and the Excel spreadsheet that we had at  
 22 the time.  
 23 And in your affidavit, paragraph 21, you  
 24 indicate that for 91 of those records, even if Ms.  
 25 Kabouchi's interpretations were accepted, Deloitte

1 discount those names discussed with representatives  
 2 of CFS or CFSO?  
 3 A. I don't recall whether it was  
 4 discussed. I did not have a discussion. I don't  
 5 recall whether...or know whether any of my team  
 6 members had a discussion with anyone.  
 7 515. Q. Could you find out?  
 8 MR. BURKE: We can make best efforts to  
 9 see if Mr. Youssef may have had any  
 10 discussion but beyond that...  
 11 516. MS. NOSKO: That's fine. U/T  
 12 MR. BURKE: ...we will ask Mr. Youssef.  
 13  
 14 BY MS. NOSKO:  
 15 517. Q. Thank you. I appreciate that. And  
 16 if you could please look at row 582, which is on  
 17 page 8 of the final spreadsheet...  
 18 MR. BURKE: 582?  
 19 518. MS. NOSKO: Yes.  
 20 MR. BURKE: What page is that on?  
 21 519. MS. NOSKO: It's on page 8.  
 22 MR. BURKE: Thank you. This is the name  
 23 of [REDACTED].  
 24 520. MS. NOSKO: Yes.  
 25 THE DEPONENT: Yes.

1 would still deem each of those petitioners to be  
 2 invalid because either the student numbers  
 3 documented on the petition were not valid when  
 4 compared with the University of Toronto student  
 5 records or because the petitioner name documented on  
 6 the petition did not, in our view, constitute their  
 7 proper full name as required by the by-laws. And  
 8 with respect to that last portion, the proper full  
 9 name, I just wanted to clarify something. That  
 10 would include cases where the last name matched the  
 11 University of Toronto student records. So, the  
 12 first name was potentially an English version of a  
 13 foreign name?  
 14 MR. BURKE: I think Mr. Hatherell  
 15 addressed this in his last  
 16 cross-examination.  
 17 513. MS. NOSKO: He did and I just wanted to  
 18 confirm that.  
 19 MR. BURKE: I don't his evidence has  
 20 changed.  
 21  
 22 BY MS. NOSKO:  
 23 514. Q. I do have a follow-up question on  
 24 that which I don't believe was covered before. And  
 25 that is, was that judgment, that decision to

1 BY MS. NOSKO:  
 2 521. Q. And so this row does not have any  
 3 shading. So, I take it to mean that that was  
 4 accepted as a valid petitioner. Is that accurate?  
 5 A. Yes, that's my understanding.  
 6 That's what it appears to be.  
 7 522. Q. But if you look at row 2576,  
 8 please...  
 9 MR. BURKE: 2576?  
 10  
 11 BY MS. NOSKO:  
 12 523. Q. Yes, which is on page 35. The name  
 13 of [REDACTED]?  
 14 A. Yes.  
 15 524. Q. All right. Now, this row is shaded  
 16 in yellow, which according to your legend means did  
 17 not include proper full name or is not reasonably  
 18 legible, correct?  
 19 A. Correct.  
 20 525. Q. And is it fair to say that this  
 21 would not have been accepted as a valid petitioner  
 22 because it is just the first initial and therefore  
 23 not a proper full name?  
 24 A. I can't say for certain. I would  
 25 need to look at the actual petition to understand

1 why we got to the conclusion that we did. There may  
2 be other factors there, that could be one of the  
3 factors. But again, as part of evaluating whether  
4 we believed the petitioner was valid, we would look  
5 at the entire documentation on the petition.

6 526. MS. NOSKO: Okay. And so I would like,  
7 then, an undertaking to advise whether [REDACTED]

8 [REDACTED] was classified as an invalid  
9 petitioner on the basis that I suggested,  
10 that being that only the first initial was  
11 provided as opposed to the full first name.

12 MR. BURKE: Or some other reason?

13 527. MS. NOSKO: Yes. And if there is a  
14 different reason to advise what that is.

15 MR. BURKE: So, really you want to know  
16 why [REDACTED] was deemed invalid?

17 528. MS. NOSKO: Yes.

18 MR. BURKE: Plain and simple.

19 529. MS. NOSKO: Yes.

20 MR. BURKE: We will give you the  
21 undertaking. U/T

22 530. MS. NOSKO: Thank you. And if the  
23 reason is the first initial as opposed to  
24 the full first name, could you please also  
25 advise why that is not the case with

1 to ask the same question, I just need to clarify the  
2 evidence because I don't fully understand. So, if  
3 you can look again at page 46 of the final  
4 spreadsheet, the last page.

5 A. Yes.

6 534. Q. And the legend, the first three  
7 boxes of the legend. So, red on your legend  
8 indicates non-members of the Graduate Students Union  
9 based on information provided. And then the next  
10 box is dark yellow which says "did not include a  
11 valid student identification number" and the third  
12 box is yellow, it says, "did not include proper full  
13 name or is not reasonably legible." So, for the red  
14 shading, generally speaking, the information  
15 provided or the way that Deloitte determined that an  
16 individual is not a member of the GSU was based only  
17 on their name and student number, is that accurate?

18 A. Those were...as to whether they were  
19 members of the GSU...

20 535. Q. Yes.

21 A. ...we would have looked at student  
22 number, principally student number. Student name in  
23 accordance with by-laws is important as well. And  
24 we also looked in terms of unique signature.

25 536. Q. Okay. No, I understand that. But

1 respect to [REDACTED].

2 MR. BURKE: Why don't I do it this  
3 way...so, you want to know why [REDACTED]  
4 was accepted, in essence?

5 531. MS. NOSKO: I suppose. I mean, my  
6 question really is there appears to be an  
7 inconsistency. If my theory is correct,  
8 that is the first initial issue. There  
9 appears to be an inconsistency as between  
10 certain individuals who are deemed valid  
11 and certain individuals who are deemed  
12 invalid. So, I would like to know if the  
13 first initial suggestion is, in fact, a  
14 reason why an individual would have been  
15 deemed invalid.

16 MR. BURKE: Yes, I understand what  
17 you're trying to do and we'll give you the  
18 reasons to why one was invalid and why the  
19 other was valid. U/T

20 532. MS. NOSKO: Thank you.

21 BY MS. NOSKO:

22 533. Q. Again, I just have a clarification  
23 question. I know that this was covered to some  
24 extent at the last examination. I am not proposing

1 when you're determining whether someone is a member  
2 of the GSU...and when I say "you" I'm speaking of  
3 Deloitte.

4 A. Yes.

5 537. Q. The only information you could check  
6 against the U of T records was the name and student  
7 number, right?

8 A. I believe that's correct.

9 538. Q. Okay. So, I am going to leave aside  
10 unique signature for the purposes of this  
11 conversation, is that fair?

12 A. I believe that's accurate.

13 539. Q. All right. Thank you. And so I  
14 just want to understand then why these three  
15 different categories exist? Because the first red  
16 category seems to capture both student  
17 identification number, the second category, and  
18 proper full name which is the third category. Can  
19 you help me with that?

20 A. Sure, and I did explain it in  
21 response of the undertaking.

22 540. Q. Okay. Let me get that. Sorry, can  
23 I have the volume that has the drafts spreadsheet in  
24 it?

25 MR. BURKE: I suppose.

1 BY MS. NOSKO:

2 541. Q. And so you referred to your answers  
3 to undertakings to help me answer that question.

4 A. Question 7 and question 8.

5 542. Q. All right. So, I read those answers  
6 and I appreciate what you said but I am still...it's  
7 not entirely clear from these answers to  
8 undertakings as to the differences between the three  
9 categories that we just talked about and that's what  
10 I'm trying to understand. Can you provide any more  
11 information to help me understand that?

12 MR. BURKE: In my view, this is a  
13 question that should have been properly put  
14 to Mr. Hatherell on his first  
15 cross-examination. You had the report, you  
16 had the categories...not you, I'm speaking  
17 about your predecessor on the file. But I  
18 am going to permit him to try to re-explain  
19 it.

20 543. MS. NOSKO: Thank you. I appreciate  
21 that. It is just to clarify.

22 THE DEPONENT: You are going to permit  
23 me? Thank you. So, the red shading, which  
24 is the biggest category which is the 320 to  
25 340...

1 the student identification number didn't exist and  
2 wasn't documented on the petition. It could be that  
3 the student identification number only contained  
4 three or four digits and just looked like it was  
5 absolutely not a valid student number. And so we  
6 considered it, for the purposes of trying to provide  
7 as much information as we could to our client to  
8 ultimately allow them to make the decision as to  
9 whether the petition in its entirety was valid. We  
10 thought it would be important to provide additional  
11 information and that's why we categorized it  
12 separately from the other ones.

13 545. Q. All right. And in terms of the  
14 information that was provided to your client, being  
15 both CFS and CFSO...is that accurate?

16 A. Yes.

17 546. Q. We have seen and we went through it  
18 last time...the e-mails and the final reports. And  
19 we know that the draft spreadsheets were provided by  
20 Mr. Youssef because that e-mail was covered in your  
21 prior examination. Were the final spreadsheets also  
22 provided to your client?

23 A. I don't recall specifically if they  
24 were.

25 547. MS. NOSKO: Okay. Can I get an

1 BY MS. NOSKO:

2 544. Q. Yes.

3 A. ...those relate to situations where  
4 the student numbers...because we did our search  
5 first and foremost on the student numbers...where  
6 the student numbers did not match the university  
7 records. So, as part of that, we applied some  
8 judgment. So, if the student number was off by one  
9 digit and everything else in the petition looked to  
10 be in order then we deemed that to be valid. And  
11 that is what accounts for the range of the 320 to  
12 340 because we're applying a liberal application in  
13 saying it appears to be a valid petitioner or the  
14 person appears to be a student.

15 And so, therefore we are being liberal on  
16 that in the application when, in fact, the actual  
17 student number didn't match the university records.  
18 So, that is the red and that is the biggest  
19 category. When you look at the orange category, the  
20 orange category...and first let me say that none of  
21 these are double counted so it's not simply a subset  
22 of the 320 to 340, this is a different category  
23 entirely.

24 And so when we say it did not include a  
25 valid student identification number, it may be that

1 undertaking to find out and advise, please?  
2 MR. BURKE: Yes, we will use best  
3 efforts. U/T

4 548. MS. NOSKO: And I think this is probably  
5 captured by an earlier undertaking, but  
6 just to be totally complete, if there are  
7 any documents apart from spreadsheets and  
8 the final reports that were provided to  
9 your client. Could you please advise and  
10 produce those documents if they exist?

11 MR. BURKE: Say that again?

12 549. MS. NOSKO: Any other documents besides  
13 the spreadsheets and the final reports that  
14 were provided to the client to assist...

15 MR. BURKE: In association with the  
16 final report? Because we have produced  
17 everything else.

18 550. MS. NOSKO: Yes.

19 MR. BURKE: All right. U/T

20 BY MS. NOSKO:

21 551. Q. And can you look at question 9 of  
22 your answers to undertakings, please? You have read  
23 that?

24 A. Yes.  
25

1 552. Q. Thank you. And at the bottom of  
2 your answer, you say you subsequently made the  
3 required updates by performing a detailed review of  
4 the CFS petition. Can you provide some more detail  
5 as to what that means?

6 A. Sure. So, originally as contained  
7 in our original engagement letter, the plan was to  
8 assume that if someone signed one petition, that  
9 their name would be on both petitions. And as a  
10 result of that, we would only need to input  
11 information into the spreadsheet once. As we  
12 performed our procedure it became apparent that  
13 there were differences between the two petitions,  
14 which therefore, resulted in us having to perform  
15 the exact same work for the second petition, which  
16 is the federal, CFS petition as we did for the  
17 Ontario petition.

18 553. Q. And so when you say "exact same  
19 work" I just want to be clear. So, someone,  
20 somewhere actually took the CFS petition and then  
21 created a separate spreadsheet, is that accurate?

22 A. That is my understanding.

23 554. Q. All right. If you discover after  
24 this examination that your understanding is  
25 incorrect, can you please advise and...

1 --- A BRIEF RECESS

2  
3 TERRANCE HATHERELL, resumed  
4 CONTINUED CROSS-EXAMINATION BY MS. NOSKO :

5 558. Q. Mr. Hatherell, can you please look  
6 at paragraph 29 of your affidavit?

7 A. Yes.

8 559. Q. Thank you. And you referred in this  
9 paragraph to evidence in Kabouchi's affidavit with  
10 respect to incorrect or erroneous inputting from the  
11 petition onto the Excel spreadsheet. And then you  
12 go on to say that Ms. Kabouchi fails to provide any  
13 justification for that determination. Do you see  
14 that?

15 A. Yes.

16 560. Q. What kind of justification, in your  
17 opinion, could be provided?

18 A. In our view, just additional context  
19 and additional descriptions around how she got to  
20 her particular view of it beyond what she provided.

21 561. Q. Can you be any more specific than  
22 that? And we can turn up Ms. Kabouchi's affidavit  
23 or exhibits thereto if that would assist you.

24 A. Yes. I mean, not specifically. I  
25 am not thinking of anything specifically but more

1 MR. BURKE: We will advise you if we  
2 learn anything different. U/T

3 555. MS. NOSKO: Thank you. All right. And  
4 this is probably really a question for your  
5 counsel but question number 3 on the  
6 questions taken under advisement,  
7 "...To advise if correspondence exist  
8 between Deloitte and CFS between April 2nd  
9 and April 7th..."

10 The answer is, "Yes, correspondence does  
11 exist." And Mr. Burke, I know that we had  
12 asked for copies of the correspondence to  
13 be produced.

14 MR. BURKE: In the transcript or  
15 subsequently?

16 556. MS. NOSKO: Subsequently, once we  
17 received these. I don't think I have  
18 actually seen copies thereof. So, if there  
19 weren't produced, could I, please get  
20 copies?

21 MR. BURKE: I will take your question  
22 under advisement and I will take a look. U/A

23 557. MS. NOSKO: Thank you. Can we just go  
24 off the record for a moment?  
25

1 description as to how she arrived at her  
2 interpretation. I realize it's difficult to do just  
3 on a particular spreadsheet without actually looking  
4 at it together, for example. Looking at the  
5 petition to understand how she interpreted it, the  
6 way she interpreted it versus how we interpreted it.  
7 To whether it's a zero that could be an 8 or a 1  
8 that could be a 7. You know, without having the  
9 benefit of that information is very difficult for us  
10 to compare interpretations, if you will.

11 562. Q. Okay. But...

12 MR. BURKE: She says, "based on my  
13 review" but she doesn't say what that  
14 review was. So, that could be the issue at  
15 paragraph 9.

16 BY MS. NOSKO:

17 563. Q. All right. But you're aware that in  
18 Exhibit B to her affidavit, she provided a chart  
19 referencing the specific line of the petition, and  
20 on the specific line of the draft spreadsheet that  
21 was available to her, correct?

22 A. Yes, I did review that.

23 564. Q. All right. And so it would have  
24 been possible for you or someone else at Deloitte to  
25

1 compare the two?

2 A. Yes, we did review what she  
3 submitted.

4 565. Q. And just to wrap up, I know that you  
5 were working with a team at Deloitte to conduct this  
6 work for your client. Was there a particular  
7 individual who had final say over what was contained  
8 in the final reports?

9 MR. BURKE: I think Mr. Hatherell has  
10 indicated in his first affidavit as to what  
11 his role was in relation to this matter and  
12 he was cross-examined on this issue in the  
13 first instance. He said,  
14 "...I was the lead engagement party  
15 responsible for the assignment and  
16 participated in all aspects of the  
17 retainer. Mr. Youssef supported me in this  
18 retainer, which was responsible for the  
19 day-to-day planning and execution in  
20 paragraph 2..."

21  
22 BY MS. NOSKO:

23 566. Q. I understand that. My question,  
24 though, is was it you who had the final say in terms  
25 of what the ranges were going to be or was it Mr.

1 Youssef or was it a team effort even in getting to  
2 the final report?

3 A. Ultimately I am accountable for the  
4 report and what it said and contained in the report.  
5 And I need to be comfortable with the conclusions  
6 and the assertions that are made with respect to the  
7 ranges. So, that happened through my review, spot  
8 check of the petitions versus the conclusions that  
9 are made and my discussions with Yasser Youssef and  
10 the team with respect to the range. So, ultimately  
11 I am accountable for it and comfortable with it.

12 567. Q. All right. Before the final reports  
13 were completed and sent to your client, just to be  
14 clear, you obviously reviewed the work of your team  
15 and then you conducted a spot check of certain of  
16 their conclusions, is that accurate?

17 A. Yes, I would have, as part of my  
18 final review, review the report and be comfortable  
19 with the working paper files supporting the report.

20 568. MS. NOSKO: All right. Subject to  
21 answers to the undertakings and questions  
22 taken under advisement, those are my  
23 questions.

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I hereby certify the foregoing to be a true and accurate transcript of the above noted proceedings held before me on the 5th day of September 2014 and taken to the best of my skill, ability and understanding.

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Madison Schulmann

Verbatim Reporter