

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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SVETLANA DANILOVA and PAVEL DANILOV
Plaintiffs
(Defendants by Counterclaim)

- and -

10

ALLA NIKITYUK and VALENTIN NIKITYUK
Defendants
(Plaintiffs by Counterclaim)

- and -

15

YANA SKYBIN and YOUNG MENS CRHISTIAN ASSOCIATION operating as
YMCA SIMCOE/MUSKOKA
Defendants
(Plaintiffs by Counterclaim)

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P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE JUSTICE G. MULLIGAN
on May 16, 17, 18 and 19, 2016 at BARRIE, Ontario

VOLUME I

25

APPEARANCES:

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E. Bornmann, M. Phan and L. Loader	Counsel for the Defendants (Plaintiffs by Counterclaim)
A. Mae and W. Thomson	Counsel for the Defendants (Plaintiffs by Counterclaim)

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Legend
[sic] - indicates preceding word has been reproduced verbatim and is not a transcription error.
(ph) - indicates preceding word has been spelled phonetically.

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MONDAY, MAY 16, 2016

5 THE COURT: Good morning counsel. I'm Justice Mulligan. I'll be presiding over this trial. Perhaps counsel will just introduce themselves and we'll deal with some preliminary matters first.

10 MS. CHAPMAN: Good morning, Your Honour. For the record it is Chapman, initial A. I am counsel for the plaintiffs, Svetlana Danilova and Pavel Danilov.

THE COURT: Thank you.

15 MR. BORNMANN: Good morning, Your Honour. For the record it's Bornmann, B-O-R-N-M-A-N-N, initial E. I'm here for the defendants, Alla and Valentin Nikityuk, plaintiffs by counterclaim. And my colleague, Mary Phan is here with me and there are two Russian interpreters present, Your Honour.

20 THE COURT: All right.

MR. MAE: Good morning, Your Honour. For the record, name's Mae, M-A-E, initial A. I represent the YMCA and Yana Skybin. My colleague Mr. Thomson, T-O - T-H-O-M-S-O-N, initial W is also with me.

25 THE COURT: All right. So before we begin, are there any preliminary matters that we need to deal with as far as administration, scheduling, et cetera? I understand we have as mentioned a couple of Russian interpreters - some technology issues that we have in this courtroom as to where the interpreter would stand. Madame Reporter says that she may be able to get another free-

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standing mic that would be over here, otherwise she'll have difficulty on the recording system capturing that. So that's something she'll deal with at the break. But maybe we don't need to record the interpreters at least initially, is that your understanding?

MR. BORNMANN: Yes, Your Honour.

THE COURT: We won't need them for - for this morning or what's the plan?

MR. BORNMANN: The interpreters are present, Your Honour, to interpret the proceedings for the benefit of our clients. However, we do not anticipate that they will be testifying today or even tomorrow. So we...

THE COURT: Won't get to that.

MR. BORNMANN: ...won't - won't get to that for a while.

THE COURT: All right.

MS. CHAPMAN: No I've - in all likelihood, they probably won't testify until sometime next week.

THE COURT: The parties you mean?

MS. CHAPMAN: With the parties - Nikityuks - yes.

THE COURT: All right.

MS. CHAPMAN: Yeah. The only other preliminary matters I would suggest there are is that we would request a standard order for the exclusion of any witnesses that are not parties to this matter.

THE COURT: All right. No objection to that I'm sure.

MR. BORNMANN: No.

MR. MAE: None, Your Honour.

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THE COURT: All right. So it'll be an order excluding witnesses that are non-parties.

MS. CHAPMAN: Yes. And an order that the courtroom be sealed at the end of the day.

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THE COURT: Yes. We can do that so you can leave your materials here.

MS. CHAPMAN: Thank you.

THE COURT: Madame Registrar will look into that.

10

MS. CHAPMAN: Aside from that, I have preliminary matter with regards to the decision of Justice Corkery; you may recall this matter did go before Justice Corkery on a motion for summary judgment.

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THE COURT: I've taken a look at the Trial Record, but intentionally have not read his decision because I don't know if there are findings there that I should or should not...

MS. CHAPMAN: Okay.

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THE COURT: ...deal with, so I have not read that just so counsel both know that - but to the extent that may have eliminated some of the issues or resolved some of the issues, then that's maybe what you want to speak to me about.

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MS. CHAPMAN: It is. Maybe I'll give my friends an opportunity to address any other more preliminary or scheduling type matters before I address that with you though, Your Honour.

THE COURT: All right. Mr. Mae, do you have anything?

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MR. MAE: Your Honour, I'm intrigued about the surprise commentary on the decision of Justice Corkery. I had no advance warning of this, so depending on what the issue is, we may need some

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time to provide a response. But....

THE COURT: You mean you're not aware of the decision?

MR. MAE: Oh I'm aware of the decision. I'm not aware of what my friend wishes to address in respect of the decision.

THE COURT: All right. I don't know what it is either, but guess I told you I haven't read the decision.

MR. MAE: And....

THE COURT: But I presume - or I'm assuming perhaps it may have eliminated some claims, I don't know.

MR. MAE: It did indeed. Also have some other answers, documents to hand up. I see you haven't come laden with documents yet, so...

THE COURT: No.

MR. MAE: ...we - we can address that sometime before we deal with the other things.

THE COURT: I think Madame Registrar has material that counsel have filed, but we haven't got to that yet. Should we swear or affirm the report - the translators at this point since they're here and before we forget that? I guess they may have a chance - they may be speaking to the parties along the way.

MR. MAE: That would be appropriate, Your Honour.

THE COURT: So we can call one - one at a time.

CLERK REGISTRAR: Certainly. Could I have an interpreter please?

DOV HACHAM: INTERPRETER AFFIRMED - Russian/English

THE COURT: Counsel have any questions in terms of the certificates of the - no. All right.

Thank you, you can step down sir.

INTERPRETER: Thank you.

IRENE FRIDMAN: INTERPRETER SWORN - Russian/English

THE COURT: Thank you. Ms. Chapman, did you want to deal with some preliminary issues?

MS. CHAPMAN: Yes, I can address my concerns with regards to the motion for summary judgment.

Really the - the issue is that the plaintiffs asked to use affidavits of Anastasia Danilova and Niklas Caspers, the exact affidavits that were filed on the motion for summary judgment and the defence counsel for the YMCA has advised that they would not accept those affidavits as evidence as they would want to cross-examine those witnesses. The reason that I raise the issue with regards to the decision of Justice Corkery is that my understanding of the new Rule, Rule 20.5 on a motion for summary judgment, is that the - the matters address the affidavits used on that motion should be used or save time for the court in the trial of the action if the matter is not fully disposed at the motion for summary judgment. As an aside, counsel for the YMCA and Yana Skybin has asked to rely on the affidavits filed by the plaintiffs on that motion for summary judgment. So I would suggest any of the affidavits filed on that motion should be

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5 admitted and used in this trial. The parties had opportunities to cross-examine on those affidavits. On some affidavits, there were cross-examinations or examinations for discovery. On other affidavits, they chose not to cross-examine those parties. My only reference would be to the *Combined Air Mechanical Services* case, which I believe my friends are familiar with from that motion for summary judgement, and I have 10 copies to provide. Where at paragraph 64, the Ontario Court of Appeal sets out how a trial should be managed under Rule 20.05 if and when a summary judgment motion does not dismiss the entire claim. And it sets out that the summary 15 judgment court having carefully reviewed the evidentiary record and heard argument, would be typically well position to specify what issues of material fact are not in dispute and then define the issues to be tried. I realize Your Honour has not had the opportunity to read Justice 20 Corkery's decision, but I think it would prove useful. He does set out a number of facts in terms of his findings on that motion and I believe that would save us some time.

25 THE COURT: All right. And how many affidavits were you proposing from the plaintiffs' side...

MS. CHAPMAN: A....

THE COURT: ...to - to be filed. Is that what you're asking?

30 MS. CHAPMAN: Yes. I - I'm proposing the affidavits of Anastasia Danilova and of Niklas Caspers, which would be in the motion for summary

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judgment materials. I can refer you to tabs and my friends would already have seen.

THE COURT: All right. And you're....

5 MS. CHAPMAN: And we - we're happy to also rely on the plaintiffs' affidavits from that motion for summary judgment.

THE COURT: The plaintiffs?

10 MS. CHAPMAN: Yes, Mr. - Mr. Mae's requested that they rely on those and we secede [sic] that yes those should be relied on.

THE COURT: You mean the plaintiffs by counterclaim or do you mean the plaintiffs?

MS. CHAPMAN: I apologize. The counsel for YMCA - the defendants...

15 THE COURT: All right.

MS. CHAPMAN: ...YMCA and Yana Skybin have requested that they be relied upon.

THE COURT: All right. So why don't we hear from the other side about that issue?

20 MS. CHAPMAN: Yes, thank you.

THE COURT: So counsel, the affidavits are filed, isn't there still an opportunity for cross-examination? Doesn't it save trial time in terms of not having to go through material that's laid out in the affidavits all by the plaintiffs?

25 MR. MAE: Your Honour, there are a few - few issues arising from my friend's submissions. The....

30 THE COURT: Before - before you say that, I guess I'm drawing the obvious conclusion, Justice Corkery didn't give any direction on that issue although the rule does...

MR. MAE: Absolutely.

THE COURT: ...provide an opportunity for the judge to set limits and even be seized of the matter if the judge so chooses.

5 MR. MAE: Absolutely, Your Honour and Justice Corkery did not. There are a few issues.

10 Firstly, Your Honour, the request was made only for the affidavit of Anastasia Caspers, there was no mention in the request of the affidavit for Niklas Caspers. So to that extent, one questions why the plaintiffs wish to put in one of the affidavits and not both.

THE COURT: Those are - now I don't know all the parties, but those are not parties, right?

15 MR. MAE: They - they are not parties.

THE COURT: They're wit - I think they're witnesses of some sort.

20 MR. MAE: Absolutely. And the - the purpose of putting the affidavits in, as I understand it, is so that the witnesses cannot be called or they're unable to be called to give evidence which obviously for your purposes today, regardless of the summary judgment motion, regardless of the previous ability to cross-examine them....

25 THE COURT: They would still be called for cross-examination, wouldn't they? Isn't that what's being suggested by Ms. Chapman?

30 MR. MAE: My understanding is that they're not in country, so they're not going to be giving evidence in this trial. So....

THE COURT: Is that true, Ms. Chapman?

MS. CHAPMAN: That is true. So they will be

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called if - if it's decided that they must be cross-examined and make their way here. But - no, our position is that the affidavits should be relied upon and that counsel has already had the opportunity to cross-examine these two witnesses and chose not to.

THE COURT: Okay so they were not cross-examined.

MS. CHAPMAN: They were not cross-examined.

THE COURT: All right. Carry on.

10
MR. MAE: So - so generally, Your Honour, as - as you're aware, at the trial when an affidavit is put into evidence, the Court has to attribute whatever weight it sees fit in the absence of the ability to cross-examine the witness. My - my
15 friend Mr. Born - Bornmann has had this file since day one, I only came into this file some five months ago in - in all that gusto, has something more fundamental to put to Your Honour with respect to the affidavits.

20
THE COURT: All right. Mr. Bornmann.

MR. BORNMANN: Your Honour, if I could direct the Court's attention to Tab 9 of the Trial Record. We have a pre-trial report from Justice DiTomaso and you - you'll note that the first four pages
25 of the pre-trial report are missing. This is in the trial brief prepared by my friend, counsel for the plaintiffs. My friend's predecessor wrote counsel for the Nikityuks, myself and counsel for YMCA on this issue in 2014 and at the
30 time we indicated that we were unprepared to proceed to trial with these - with this evidence being submitted by way of affidavit and that if

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counsel insisted on proceeding in that manner, he was to bring a motion right away. He did not, Your Honour and when we were before Justice DiTomaso, this issue was raised and on the pages that have been omitted from the Trial Record, Your Honour, Justice DiTomaso writes, "Motion to be brought by the plaintiffs re: admissibility of affidavits two witnesses not at commencement of trial" - not's underlined, Your Honour, but what I believe is either soon or now - and perhaps we need to get copies of this. I - I only have the - the one copy here, Your Honour, but - this was a matter that was raised before Justice DiTomaso and in his pre-trial conference report I don't think he could have been any clearer.

THE COURT: I have the original being passed up to me by the registrar. Page two appears to read, "Not at the commencement of trial, but prior", I believe is the word...

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MR. BORNMANN: Thank you. Yes, Your Honour.

THE COURT: ...if I'm - if I understand what he says.

MS. CHAPMAN: But just a moment, Your Honour.

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That endorsement's made before the defendants bring their motion for summary judgment, right. And those affidavits are used on that motion. So when that motion for summary judgment's brought and the affidavits are filed in support of the plaintiffs' position, the defendants should have cross-examined those affiants at that time. So I - I - I don't agree that the comments made by His Honour, Justice DiTomaso, in that July 2014

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endorsement is really applicable in this situation.

5 THE COURT: All right. I understand your point on that. So just to go back to first principles, Ms. Chapman, I think you were going to rely on two affidavits; one was for the plaintiff herself - is that what you said?

10 MS. CHAPMAN: The defendants' counsel for the YMCA has asked if they can rely on the affidavits of the plaintiffs from the motion for summary judgment.

THE COURT: All right.

15 MS. CHAPMAN: I think under the rule, that's reasonable and we concede to that. But I suggest that any of the affidavits filed on that motion for summary judgment, whether the parties chose to cross-examine or not, should also be relied upon.

20 THE COURT: All right. But in the case of the complainant, course she is available for cross-examination?

MS. CHAPMAN: Yes, she is.

THE COURT: Whereas the other individual is not.

25 MR. MAE: So - no. Forgive me for rising, but I - I think I can make the decision easier here.

30 If my friend wants to put the affidavits in, she can put them in. However, the submission that will be made during the trial and at conclusion is that the weight that you attach to those affidavits should be, at best slim, given the fact there has been no cross-examination.

Whether there was any choice made to cross-

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examine witnesses at the summary judgment stage or not, with - with all due respect, is completely irrelevant. To cross-examine a witness in front of a court reporter is considerably different then cross-examining them in front of the arbiter of fact, you can gage their reactions. When you have a transcript, as Your Honour is well aware, an answer may say something but it's the inflection, the tone, the body language that accompanies that answer which is important. Therefore, if my friend wishes to put the affidavits in, I'll withdraw my objection, but I will be raising the point with respect to the weight of those affidavits.

THE COURT: All right. Do you understand that Ms. Chapman?

MS. CHAPMAN: Yes, I do.

THE COURT: All right. So let's proceed on that basis then and get out of the witness we're talking about is not one of the parties and has evidence to give about the issues - but is not one of the parties and the parties are available to either testify or to be cross-examined as at least may be. All right.

MR. MAE: That's correct. And they're in fact two witnesses.

THE COURT: Right. There's a - is it a Mr. and Mrs.?

MS. CHAPMAN: Yes, it is.

THE COURT: But there's one affidavit?

MS. CHAPMAN: Two affidavits. They each prepared an affidavit.

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5 THE COURT: All right. And I haven't read them of course at this point. That can be dealt with at the appropriate time. And I go back to again when I said about Justice Corkery's decision, so you'll probably tell me what issues are not - no longer live issues in terms of the decision made.

MR. MAE: I'll be addressing those in my opening, Your Honour.

10 THE COURT: All right. So are we at the point now where we could deal with opening addresses to counsel? Anything else that we need to deal with?

15 MR. MAE: Sorry, Your Honour, as part of the housekeeping, I wish to hand up a - which will be going into the Trial Record, an Evidence Act Notice which was served on plaintiffs' counsel and attached to it is her acknowledgment of receipt of that. The second is a request to admit the authenticity of documents which was served on plaintiffs' counsel on April the 1st and has not been resp - responded to. So therefore everything in that request would make us deemed admitted under the rules.

20 THE COURT: All right. You can pass those up. All right. They'll be considered part of the Trial Record.

25 MR. MAE: Thank you, Your Honour. I'm obliged.

30 MR. BORNMANN: Your Honour, three housekeeping pieces. The first, the defendants, Nikityuks, have additional - an additional tab to our document brief to hand up with your permission. These have been...

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5 THE COURT: So each side have their own documents brief, there's no complaint. That's - each side have their own....

MR. BORNMANN: That's correct, Your Honour.

MS. CHAPMAN: Correct.

10 THE COURT: So perhaps, Madame Registrar, you can just put that with the defendants' document brief. It's got tab numbers, so hopefully you can find the right place for that.

MR. MAE: To assist Madame Registrar, Your Honour, there are three documents briefs. The YMCA documents brief has green binders.

THE COURT: All right.

15 MR. MAE: I believe that the Nikityuks' binders are red and the plaintiffs went with...

MS. CHAPMAN: White.

MR. MAE: ...went with white.

20 THE COURT: All right. So you're looking for a red binder.

MR. MAE: So you're looking for red. And Your Honour, forgive me for rising again. I have some additional documents, but I didn't bring a tab. I would suggest it's probably easier for me to deal with each when they come to cross. I've -
25 I've given my friend a set.

THE COURT: All right. We'll - we'll come to that.

MR. MAE: Thank you.

30 MR. BORNMANN: Your Honour, with the Court's permission, we have a memorandum of law with accompanying book of authorities and a written opening trial statement to submit.

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5 MR. MAE: I - I too have a factum, Your Honour. I'm not going to be handing it up until some point during the proceedings. I'll provide my friend with a copy in advance, but trust that I will get hers as well...

MS. CHAPMAN: Yes.

MR. MAE: ...at some point.

10 THE COURT: And before we get rolling too far out, maybe I'll just get Ms. Chapman to outline her idea of - of scheduling in terms of our first week and beyond that if necessary. Then I'll hear from the defence so that we - we have a schedule in mind. Ms. Chapman...

MS. CHAPMAN: Yes.

15 THE COURT: ...do you have an outline of what we want to be doing this week?

20 MS. CHAPMAN: I have not prepared an outline, but I believe that we will likely get through opening statements today and then tomorrow, start with the plaintiff Pavel Danilov, which will likely take most of tomorrow. And we may start his cross-examination tomorrow afternoon depending how time permits. Then follow with the plaintiff, Svetlana Danilova on Wednesday.

25 THE COURT: All right. And it is - do you still anticipate, by all counsel, this is about approximately a three week matter?

MS. CHAPMAN: I believe it is, yes.

30 MR. MAE: I believe that would be a safe assumption, Your Honour.

THE COURT: All right. And as you know, after today we'll - we'll start at nine-thirty, break

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5 at one o'clock and return around two-fifteen and go to about four-thirty depending on the schedule for the day with appropriate breaks in between so we can be as efficient as we can with respect to the court time to try to get this trial done within the time limits that counsel now estimate. So Ms. Chapman, are you ready now with your opening statements?

10 MS. CHAPMAN: I just have one other preliminary matter. Tab 68 in the plaintiffs' documents brief is missing a page, so I have a new copy. So 68 can be pulled from that brief and...

THE COURT: That's the white...

MS. CHAPMAN: ...inserted.

15 THE COURT: ...the white binder?

MS. CHAPMAN: The white binder, volume one.

20 THE COURT: Are these - these are not exhibits at this point. They'll probably be lettered exhibits subject to whether they get accepted or not. So we'll make *[indiscernible]*.

MS. CHAPMAN: Would we like to address that now?

25 MR. MAE: Yes, Your Honour. I was - I was gonna wait to inquire whether Your Honour is one of the judges that has happened to make the document briefs individual exhibits or whether you would require documents taken out of the brief and marked as individual exhibits. If that's the case, I have a second set of my documents for - for that purpose if - if you require.

30 THE COURT: Well I could make them each a numbered exhibit, but if anything has to be removed it's not made in evidence, then it can be

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removed at the appropriate time. Does that make sense?

MS. CHAPMAN: Yes.

MR. MAE: That - that would make sense, Your Honour.

THE COURT: So that at the end of the day I'm only looking at those documents that have been made exhibits - or at least made as part of the master exhibit.

MR. MAE: Yes, Your Honour. And certainly if you just require to pull documents out, I have a - an extra set of mine for that purpose.

THE COURT: All right. And as far as looking through this material and marking it up, is there a judge's copy or am I looking at the originals that you've filed?

MR. MAE: You - you have - I believe you have copies from everybody.

THE COURT: All right.

MR. MAE: I - I - I have my original files with me, but I - I believe that in respect of my request, would admit the authenticity is not an issue so....

THE COURT: All right. So should we make the plaintiffs' books Exhibit 1?

MS. CHAPMAN: Yes.

THE COURT: There are two volumes, so volume 1(A) and (B), is that correct?

MS. CHAPMAN: That's correct.

EXHIBIT NUMBER 1(A): Plaintiffs' Danilova and Danilov white binder volume 1 - Produced and Marked.

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EXHIBIT NUMBER 1(B): Plaintiffs' Danilova and Danilov white binder volume 2 - Produced and Marked.

THE COURT: All right. And the defendant, YMCA....

MR. MAE: I'm the third defendant, so maybe - maybe you have Nikityuk should be second, Your Honour.

THE COURT: Yes, the second defendant - Exhibit 2. How many volumes, sir?

MR. BORNMANN: Two, Your Honour.

THE COURT: And that's the green volumes, correct?

MR. BORNMANN: Red, Your Honour.

THE COURT: Red. The red volumes, Exhibit 2(A) and (B). And then Mr. Mae, your - your....

EXHIBIT NUMBER 2(A): Defendants' Nikityuk red binder volume 1 - Produced and Marked.

EXHIBIT NUMBER 2(B): Defendants' Nikityuk red binder volume 2 - Produced and Marked.

MR. MAE: I have two as well and mine are green.

THE COURT: All right. So Exhibit 3 - 3(A) and 3(B) - subject to the insertions that we've already dealt with - or removals that we've already dealt with this morning. And just to go back to where we started earlier in terms of Justice Corkery's decision, counsel don't have any objection to me reading that I guess at some point.

EXHIBIT NUMBER 3(A): Defendants' Skybin and YMCA green binder volume 1 - Produced and Marked.

EXHIBIT NUMBER 3(B): Defendants' Skybin and YMCA

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green binder volume 2 - Produced and Marked.

MR. MAE: It's in the Trial Record, Your Honour.

THE COURT: All right.

MS. CHAPMAN: Yes, I think it would be beneficial to read it.

THE COURT: All right. Because that will - if I read it, it'll be in advance of most of the witnesses. All right. So Ms. Chapman, are you ready with your opening statement?

...OPENING REMARKS BY MS. CHAPMAN

...OPENING REMARKS BY MR. BORNMANN

...OPENING REMARKS BY MR. MAE

THE COURT: So it's about 12:30. Ms. Chapman, what are your next steps as far as the complainants' concern? Do you propose to call witnesses today? I don't mean right now, I'm just wondering what your - I can - I - I wouldn't mind finishing for the morning now because I will take time to read Justice Corkery's decision.

But do you have a plan for the rest of the day?

MS. CHAPMAN: Sure. I mean - yes we could start with Pavel Danilov this afternoon.

THE COURT: All right.

MS. CHAPMAN: Yes.

THE COURT: So I think that this is a good time to break for the morning. I will read the decision of Justice Corkery because it sounds like it's an important backdrop to what we're going to be dealing with in this case. And I would ask that the parties, counsel return at two - two o'clock to continue.

MS. CHAPMAN: Thank you.

MR. MAE: Thank you, Your Honour.

R E C E S S

5 U P O N R E S U M I N G :

THE COURT: Good afternoon.

MS. CHAPMAN: Good afternoon, Your Honour.

THE COURT: Ms. Chapman, are you read with calling your first witness?

10 MS. CHAPMAN: We are, Your Honour. We call Pavel Danilov please.

PAVEL DANILOV: AFFIRMED

15 THE COURT: Have a seat if you wish. Ms. Chapman, should I have your book of - or I mean your book of documents up here for reference points at this point?

20 MS. CHAPMAN: Yes, I would - we could start with volume 1. I'm not sure that we'll get into the second volume today.

THE COURT: All right. Thank you.

MS. CHAPMAN: Thank you.

25 THE COURT: Yes.

EXAMINATION IN-CHIEF BY MS. CHAPMAN:

Q. Thank you. Good afternoon, Pavel. Would you please state your full name for the record?

A. Pavel Danilov.

30 Q. And your date of birth please?

A. February 29, 1964.

Q. And could you tell me about your education

please?

A. I have Master Degree in Physics. I got my education in Saint Petersburg State University. I did my post graduate work there. Basically since '90s I deal with
5 information technologies and I work for companies which do software, internet, information technologies, databases - this kind of stuff.

Q. And what do you do for a living today?

A. Today I work as senior database developer for
10 [indiscernible] a research incorporated to which has head office in Waterloo, Ontario.

Q. And how did you come to immigrate to Canada?

A. Well it was actually a second immigration. We left Russia in almost 1996 'cause I got job offer - a very
15 good job offer in Latvia - Latvia - well at some point it was part of the Soviet Union then. Soviet Union was broken up into pieces and Latvia became independent and well I got this position in the Riga, which is the capital of Latvia, as head of information technologies department in Transport and

20 Telecommunication Institute. I worked for that Institute - former name was Riga Aviation University, for several years over there. So did my wife. We worked in the same team. She was a team lead over there. But the problem of living in Latvia was that after the Soviet Union was broken up, there were no
25 legislation for - for notarization. There were no [sic] any legal way to obtain permanent residence in Latvia. So every year we have to renew our status over there and there were a lot of fees involved, a lot of payments for obtaining some documents, all kinds of stuff and basically at some point we
30 counted how much is it - it was like six Lats a day per person and we - there were three of us over there and Latvian Lat back then was two Canadian dollars. So we kept thinking how to -

actually we could figure out some permanent status outside of Russia because we left Russia by many reasons back then. And at some point I would in my email - most important email letter in my life, it was actually this stamp message, but the subject was how to immigrate to Canada. And basically it was step by step instruction how to immigrate to Canada. And there was something of software attached to that message which can - how to leave your place, like what are your chances if you want to emigrate. So I tried the software and it turned out that I have way more than enough points to immigrate to Canada as a professional immigrant. So we started the process as it was by that email and our advantage was that we were living in Latvia back then. And if we did that through Moscow - Moscow office, it would take say maybe four years. But when we lived in Latvia we had to do all immigration papers through London office and it took only two years. So in 2003 we actually landed in Canada as professional immigrants with our daughter. And in a couple of months I found my first job here. I used my network and that network was pretty much one person I knew here in Toronto. That person found me a job. So after a couple months in 2003, I got a job. And well, since - since then - well almost always I have been employed, but that first job, it was - well small Ukrainian company Etobicoke with six people and my annual salary was \$45,000. And I had daughter, students [sic] of University of Toronto. So there were three people over here and I had to provide for them and [indiscernible].

Q. Okay. Mr. Danilov, could you please turn to Tab 11 which is Exhibit 1(A).

A. Yes, ma'am.

Q. Page 35. What document is this?

A. This is my immigration declaration. It's immigration form basically. It's pretty much your standard form

they gave - give you when you crossed the border for permanent residence in Canada. And well it's confirmation of permanent residence. Using that paper then I can get the permanent residence card and what's important here is that I had money in my possession. It's paragraph [indiscernible] 246, my new position, it says \$41,000 Canadian and that's - was my cash we had in our possession when we crossed the border. That money comes from selling my apartment in Riga 'cause in Riga I had a two bedroom apartment as my property.

Q. And did you have a job waiting for you when you came to Canada?

A. No, I found a job in two months after landing. To be exact, we landed in June and I worked as a volunteer for that company for a month. They started to pay me in September.

Q. Could you now turn to Tab 23 of the same Exhibit 1(A), please?

A. Yes. Yeah that's a T4 from that company.

Q. And what year would that T4 be for?

A. It's my - well in - in box 22....

THE COURT: Counsel, I don't think the other - the defendants would mind you leading on some of these matters...

MS. CHAPMAN: Okay.

THE COURT: ...non-routine matters...

MS. CHAPMAN: That would be great.

THE COURT: ...on these routine matters I should say 'cause I see the form says 2003.

MS. CHAPMAN: Yes, it does. Q. And the next page, Mr. Danilov, who did you work for in 2004?

A. It was still the same company, Compass.

Q. And page 141, in 2005 you're still working

for Compass Incorporated?

A. Yes, it was still Compass Incorporated, but at some point they started to increase my salary in significant way.

5 Q. Right.

A. And in 2007, I worked job from - from Rogers Incorporated, the different T4 on page 143. So in 2007 I started to work for Rogers. One forty-three, I believe it's still Compass, but the next page, one forty-four, it's Rogers.
10 So I started to work for Rogers in April, I believe.

Q. And did your income increase yearly?

A. Yes, there were some increases yearly, but in Rogers it was much better salary, that's why I accepted the offer. It wasn't \$45,000 Canadian, it was \$86,000. So after I
15 worked that job offer and accepted and started to work for Rogers Communications, we started to think about buying a house actually 'cause at that point we could afford it.

Q. Okay. Tab 24, if you would please.

A. Yes.

20 Q. This is the sponsorship agreement between yourselves and Alla Nikityuk.

A. Yes.

Q. And when was this sponsorship agreement signed?

25 A. This sponsorship agreement was signed October 2004 and there is story behind that 'cause - see in 2004 I still was working for Compass Incorporated and they paid me \$45,000 a year. So our having my daughter as dependent who was U of T student and wife, well working from time to time, well we
30 couldn't afford immigration of my wife's parents obviously because - well I cannot have two more adults to - to - to support with \$45,000. It's simply financially impossible. So

after a year of our immigration, we were actually able to invite someone who we could sponsor like my wife's parents for instance. I couldn't sponsor my parents because they were dead when I was a student - both of them and well I couldn't do anything nice for them at that point because I was just a student and well couldn't help them out. So in 2004, when my wife approached me after a year of immigration of her parents, I was like common - where we gonna get money for that and it was simply impossible at that point. But they - I mean, my wife Svetlana and her mother, they were communicating before almost every day. And they were talking about all this stuff and I know that Alla wanted to immigrate because when we left Saint Petersburg to Riga before we actually were going to Canada we visited them in Saint Petersburg. Picked up some stuff and left Power of Attorney and left things. They are - well at - at the rail station, Alla was not very sad and - well they knew that we couldn't bring them to Latvia to - to pull them out from Russia. We couldn't bring them to Latvia because we couldn't materialize enough to help ourselves. But Canada is completely different story and when we are leaving actually, they were standing by the train before our departure and Alla said something like, "You - you won't abandon us here would you because we are gonna die here you know." And I - I know that for sure they were wanting to immigrate and now it wasn't the decision, but it was like their dream of what their life is. So when - in 2004, my wife approached me, my only concern was financial actually and at some point Svetlana told me that she expressed that concern to Alla on the phone and Alla told that "Don't worry guys, we'll sell everything in Russia and we'll transfer all money to you." And how much money it was at that point, we didn't know, but I could imagine because I just sold my apartment in Riga for \$45,000. So apartment in Saint Petersburg was well kind of

close by size and well by location and - well I could imagine it might be something like 50,000 maybe. Well with significant amount of money - and I thought that yeah okay, maybe I couldn't do anything nice for my parents, maybe I can do something for my wife's. And finally I signed that - I - I - I co-signed that sponsorship agreement and I - I would never do that if Alla didn't promise my wife back then that they will sell everything in Russia and transfer all proceedings to - to my wife. And then - then in 2005, well it was actually very - very bad year. Alla was in bad shape, she was diagnosed - diagnosed with returning cancer and in February my wife flew to Russia and supported her surgery over there. And well - but surgery was successful and then there were some - some things with chemo. My wife can tell more about that because, well, she was dealing with that in Russia and then later here. And well, after the first shot of chemotherapy, Alla almost died. So we - we said no - no - no - not anymore and Svetlana communicated that to Alla's doctor and we replaced that chemotherapy - well we found a way to replace that chemotherapy with immunotherapy. It was experimental treatment. We personally knew doctor who was experimenting with that drug in Riga in Latvia. And that drug wasn't that expensive - ridiculously expensive back then because it was experimental treatment. So we enrolled Alla into that experimental treatment and like after three shots, she - she - she was okay. And well, in - in the fall of 2005, she was weak but she was able to come to visit us actually. And she came here to Canada. And of course we paid for tickets and we paid for medical insurance. We paid for everything because again, our promise to - to pay all this stuff back when they sell everything in Russia. And well - before that, in 2005, between Alla's surgery and Alla's visit, we were supporting them by regular sending them money. Svetlana actually left when she

visited in February her parents. She left them our Citi MasterCard. It was secondary card to my account. So she left them Citi MasterCard and they were able to withdraw money every month about \$600 from that Citi - Citi - using that Citi MasterCard. But we didn't like that approach because every time when you withdraw money internationally - so credit card, you have to pay \$5 fee because it's cash advance and when Alla came here for a visit in 2005, we opened a bank account in her name here. Well, they wouldn't open her bank account, but we put Svetlana on that account too as a joint applicant. So Svetlana was a resident already, so they opened together this joint bank account - Svetlana with Alla. And Alla was provided with access card, which is pretty much just debit card. And after that, after her visit today we're withdrawing money from that account every month using that debit card. But they have that account since 2005 and Svetlana and Alla who open - opened it together at the branch, Alla was visiting back then. So at that point we were support - we were sending them through that account about \$400, \$450 per month. Little bit less because before that a lot of money were going to drugs and after autumn 2005 and later, it wasn't that bad anymore. They didn't have to buy so much drugs and basically it was like to the very last moment we were sending them about \$400 per month through that bank account and the very last moment, that's when they were permitted actually to immigrate in 2007. So what was the originally question about because it looks like....

Q. Sure. Tab number 24, the sponsorship agreement.

A. Yeah, the sponsorship agreement. Yes. So my point is that I would never sign that sponsorship agreement if Alla didn't promise to sell all family - and by family, I mean Alla, Valentin and Svetlana and Anastasia, our daughter -

because, well, I never was close to that apartment in - in Saint Petersburg, it was their family property. So Alla promised me to sell their family's property and transfer everything to Svetlana. If she didn't do that, I would never co-sign that sponsorship agreement. She personally confirmed that when she visited in 2005. She told me personally that, yes we will sell everything. Whatever amount will be we'll transfer everything to Svetlana. And when they visited again, both in 2007, they both confirmed that to me personally. But at that point, sponsorship agreement was already signed. Well, the only thing we didn't know at that point, would they be permitted to immigrate or not because - well you apply, you wait, then you have a decision. If - if you have a decision, you are permitted to immigrate, you get Visa in passport you can go. And that Visa is valid for a year or so. So basically when they visited in 2007, we still didn't know would they be permitted to immigrate or not and there were a lot of different concerns back then because they both are cancer survivors actually and when you apply for immigration, you at some point have to go through medical exam. And that medical exam was pretty expensive. And I think that they were extremely lucky that they were able to pass that medical exam at some point and actually were permitted to emigrate. But that finally happened, I believe, at the end of 2007 after their visit - I think. So that's the story of the sponsorship agreement.

Q. And did you understand the terms of the agreement?

A. Oh yes. That's - that's the whole point of this story because the main point of the sponsorship agreement is my 10 years commitment. And when I signed that, I knew that I am committed to support them here for 10 years. That's why - I would never sign the sponsorship agreement if they didn't

promise me to transfer all proceedings to my wife.

Q. And those proceedings, you said Nikityuks sold assets in Russia.

A. Yes.

5 Q. What assets are you aware of?

A. It's apartment. It's a - the thing they call cottage house. Pretty much it's just a small cabin without water, without utilities, without toilet - all the electricities [sic] there. So we can use electricity from time to time, not -
10 not all time. Sometimes you - you have sit - to sit there without electricity like the entire weekend or a week or something like that. So it's not like cottage house, it's just a small cabin. But it's - it's a piece of property, some land with [indiscernible] coming with it and - well my father
15 actually built half of that cabin, but Valentin never paid for that work, so....And another was - another thing they sold was garage. I believe it cost about \$10,000 or something like that. I'm not sure at this point and there was a car, but - well - car, it's not - it's like....

20 Q. And who owns the apartment in Saint Petersburg?

A. Well my understanding is that half of that apartment belonged to Nikityuks and another half belonged to my wife and our daughter Anastasia. If you look at the history of
25 that apartment - well, every - everybody can see why because that apartment one, was consolidated from two different apartments - well - see in [indiscernible] there - there were no way you can sell real estate. The only thing you can do in real estate is exchange it to another piece of real estate. That was
30 like institution of exchange real estate. So basically at some point, Alla with Svetlana, who was minor of them, at that point they were living in one apartment. Valentin was living in

another apartment. So then Alla and Valentin got married, they decided to live together, they exchange those two apartments into that final apartment at that - that Muskoskie (ph) prospect they sold. So - but - well, Svetlana always had the right to live in that apartment because she was minor, but at some point when that apartments were consolidated and then Anastasia born after we married - Anastasia born in the same apartment and she also had the right to live in that apartment. So finally there were like four shares of that apartment: Alla's, Valentin's, Svetlana's and Anastasia's - and all 25 percent. And when we left Russia back in 2000 - back in 1996, Svetlana left her mother Power of Attorney, so if something needs to be done with that apartment, then her mother, who she trusted completely, could do whatever it takes like to do paperwork and stuff. And basically - well - we - we know that they were going to privatize that apartment because in - I believe in 1994 the government allowed to make - to - allowed to people who were registered in - in the real estate of houses or apartments to privatize them which means that you pay some small fee, you do some paperwork and you could become an owner. And everybody who is registered - who was registered in that apartment could get certificate of property and became - become an apartment owner. So the - the purpose of that Power of Attorney Svetlana left to her mother was that if at some point they decide to privatize the apartment, the - the mother will like protect her daughter's interest and will make share call or whatever, that's what the Power of Attorney was for. And we were sure that it was done because Nikityuks told us that apartment is privatized. At some point we - like - we - we didn't care because when they decided to immigrate and when the sponsorship agreement has been signed and when they promised to sell everything, who cares? That apartment was supposed to be converted in cash and - what -

whatever. So basically - it - it - it turns out that Nikityuks have some kind of Russian property certificate where only they are the owners of that apartment which was a surprise for us. We never saw that document before this - I believe 2012 when
5 they started to produce documents for this litigation. And yeah, we were like oh my god, how - how this could happen. But it could happen very easily because Alla had Power of Attorney and they could do whatever they wanted to with that apartment. But it doesn't mean that Svetlana actually lost that share in
10 that apartment because basically everybody who is - who was registered in that apartment could become an owner. And Nikityuks just realized that right of the property. And Svetlana and Anastasia didn't, but they could do that at any point and get the same certificate of property Nikityuks have,
15 but in their names. It would just be a share in the apartment. They just didn't do that because it didn't make any sense. They trusted - well mother and grandmother, that she did that already using Power of Attorney and - well we knew that they would be selling that apartment so, who cares who are the owners. But if
20 you see - if - if you look at the agency agreement, it - it clearly states that Nikityuks can get only 50 percent of the cash after selling that apartment and another 50 percent comes only after un-registration of Svetlana and Anastasia.

Q. Right. And that email correspondence is at
25 Tab 38 of Exhibit 1(A).

A. Yes.

Q. And who is Svetlana Danilova emailing with in this correspondence?

A. Oh I believe it's the real estate agent the
30 family was dealing with. I think that Svetlana should testify about that because I wasn't a part of this correspondence. I didn't care.

Pavel Danilov - in-Ch

Q. Right. But it addresses the de-registration of Svetlana from the apartment, correct?

A. Well, I think - I think so. I - I can read it, but - I - I think Svetlana should testify about that.

5 Q. If we could now look at volume 1 of the defendant, Nikityuks' documents brief, I believe that is Exhibit 2(A), Tab number 6.

THE COURT: Yes. Page 36, sir.

10 MS. CHAPMAN: Page 36, yes. Q. So could you tell us about this document, Mr. Danilov?

A. Yes, those - the documents we were requesting from Mr. Bornmann since 2013 'cause we knew that those documents existed. We saw them - we didn't read them, but we saw them like on the table. They always were in possession of Nikityuks because we saw them here in Canada, but we didn't read them
15 carefully when we saw them. But I just know that those documents supposed to exist. So those bank drafts - they are in Russian actually, but they are translated by - by bank - someone. And what's important here is that those are four
20 transfers of those \$260,000 after selling property in Russia and for every transfer, you can see the same things like on page 36 for instance - and it's - it was originally in Russian, so at the very bottom, it says, "I Nikityuk, Alla [*indiscernible*] concern that this foreign current separation is not done with
25 business or investment purposes and not for acquisition of real estate guide." And then on the next page - I believe it's on the next - yes, on the next page, page 37, it's paragraph line 70 - like 70, it says purpose of transfer "present". And it's all translated from Russian. So she understood completely what
30 she was doing back then. And frankly, see we didn't know 'till - 'till recently that it was a present. That's why probably 70 percent of the documents in this file came into this litigation

because now they - when we have this document, they will become litigant. We didn't know that it was a present. But what we knew, that it was money transfer to Svetlana which is not supposed to be paid back ever, that's what we discussed back in 5 2004. Svetlana discussed that with Alla on the phone then what Alla confirmed in 2005, personally when she visited us in Canada and then what both Nikityuks confirmed in 2007 personally when they both visited us in Canada. So it was a present. And we couldn't get a handle on - on - on those documents since 2013 10 and I - I would like - like explicitly express that because we were requesting those from Mr. Bornmann before his motion for appeal. He - he concealed that. Then we requested that on another separate motion, specifically these documents and five or six others, still didn't produce that. Then there were like 15 20, maybe 30 reminders by emails when there was appeal. We were self-represented; I personally wrote those emails to Mr. Bornmann that we need those documents. Then there was a period where our previous counsel represented us, Mr. Timokhov (ph). He wrote about those documents to me, Mr. Bornmann dozen of 20 times. And well finally we got them, I believe, in February of this year, something like that. They didn't produce it in - even in undertakings and - even after those documents were mentioned in their affidavit of documents, I believe like number 68 - 86 and 87 or other way around, 70 and 78, something like 25 that - we requested those documents from their affidavit of documents. I - and instead of those, we got a substitution. Instead of these original wire transfers from Russia, they took our - my bank receipts from here, from TD Bank at the site where - where we received those money and tried to put those - my 30 productions actually in - in - in the documents. So - well that's how it happened. But now finally we - we see them. I go look at that, it's present.

Q. And you said there were four transfers from Russia...

A. Yes.

Q. ...to Svetlana.

A. Yes.

Q. Where did those funds end up once they came to Canada?

A. Immediately been transferred to our brokerage account and then [indiscernible] brokers to invest in stocks options and other good stuff.

Q. And could you turn to Tab 20 in the white binder, Exhibit 1(A)?

A. One second please. Oh yes, those are statements of Interact Brokers. [Indiscernible], I believe I can find somewhere those transfers here - those were produced. I need some time to find actually the line where it says that - when it came to Interact Brokers. But it's there. There are some statements for - for some period of time. And we were transferring money there.

Q. Please explain how the statement works in terms of the deposit or withdrawals.

A. Well for - for instance we can look at page 62 and there is cash report that page for the period from April 1st to April 13 and every one of those three statements they have this cash report page. So if you go down to the USD section, it says deposits/withdrawals and it's \$14,090 total - It's deposit. If it's with sign minus, it's withdrawal. But here you can see that in April it was \$14,090 deposited to that account. So it was the first transfer, actually, about \$14,000 after garage sell, I believe.

Q. Okay.

A. So we can go to the next one. And let me

find the same section. Yes, cash report - again it's page 90. It's statement from May 1st to May 30th, 2008. And the same section USD and deposit/withdrawals line says \$123,740. I believe it was the 50 percent of the apartment sold. And I think that in the third statement you can see [indiscernible]. So the third statement - the third statement is page 120, deposit/withdrawals, it's \$107,783.

MR. BORNMANN: What's the page?

A. One hundred-twenty. Almost all money has been transferred to Interact Brokers except a small amount we reserved for Nikityuks' settlement expenses because well we had to buy a lot of furniture, appliances - all this kind of stuff and I actually produced all those cheques by request of Mr. Bornmann as undertaking.

Q. When was the sponsorship application approved?

A. I believe it was on or about November or December 27 - 2007. Approved, you mean Nikityuks were permitted to immigrate - actually yes, it was end of 2007.

Q. And had they come to visit you before that time?

A. Yes, they - they came to visit us in October I believe - October, November....

Q. Can you tell us about - tell us about that visit - Nikityuks' visit in October.

A. Yes like came both and we - we had to entertain them a lot, but mostly what we did back then we brought them to different places like where we could rent apartment for them if they got permitted to immigrate, you know, finally. But we took advantage of the situation that they are both here together. So we showed them some buildings we knew with nice apartments and stuff, but they looked at three, maybe

four different options. Like we - we - were trying to get an idea what they would like and what they would want, like what kind of apartment, where, like what floor, what side, what size, everything. But we couldn't find anything better than apartment
5 we were living in in Etobicoke. And well I kind of okay with that because it - it was a nice building to get to the unit to wait in a waiting list for a while and apartment was very nice we were renting. But when Nikityuks were visiting in 2007, there were no available apartments in - in our building. So
10 well they saw different. At least we got an idea what they would like actually, so that purpose was reached. But then we kind of made a surprise for them. We took them to Innisfil where we purchased a house back in July 2007 because I just got a new job; I got new big salary, \$86,000 per year so we - we
15 could afford to buy a house. So in July we actually bought a house from Pratt Homes. It was at that point just a field of sand with some cables coming out of the ground, but Pratt promised to build the house in a year or two so closing date was actually August 8th, 2008 when we purchased the house. And we
20 paid 5,000 deposit and Pratt is amazing in terms of they have this low deposit structure. They pay - you pay only \$5,000 and they get the house built for you and after the house is ready you pay the rest of the down payment and you get the house. It was like very - very convenient for us because well 5,000 it's -
25 it's quite a small investment for that thing. So what happened in - in October 2007 when Nikityuks were visiting, we took them to that field of sand, we showed them the lot where the house was supposed to be built and well they didn't understand what's going on at that point, but then we - we took them to the model
30 house which was the exact replica of the house we were buying. Then we took them to the Innisfil Beach Park and have nice barbeque with them and there were told them that we bought a

house. And well - they - I cannot say that - did they like it or they - they did not actually because it was just, you know, field - field of sand, but the model replica they liked very much - the model house they liked very much. And well other
5 stuff they did when they visited in 2007, I - I don't have any specific recollection, but they liked here in Canada. They were - were excited and well, they were - they were ready for immigration. They - they were waiting for that Visa like any - any day now.

10 Q. But at the time that you purchased the home, were Nikityuks approved to come to Canada?

A. No - no, they were approved in December or November 2007. When we purchased the house, nobody knew were they permitted to immigrate or not and actually we had this big
15 concern about their health because well it was 50/50 they could pass that medical exam. And well - we - we never counted on - on that money they referring to because we were pre-approved by TD Bank and I had full-time salary and I had a lot of investments and stocks in different bank accounts. And well
20 finally we decided to go with 25 percent of down payment, but - but we could easily could go with 15 or 10 or 5 or whatever. We were pre-approved by TD Bank and Pratt Homes, they work with TD Bank.

25 Q. Okay. So let's have a look at those documents, Mr. Danilov at Tab number 1 of Exhibit 1(A).

A. Yes. It's a Purchase and Sale Agreement with Pratt Homes and you can see in part of 2(A) that it's signed on July 24th, 2007.

30 Q. Actually, can you turn to page 2?

A. Two. Yes.

Q. Is that your signature on page 2?

A. Yes - yes it was.

Q. And - and so when did you sign this document?

A. June - oh June - right, June 24th, 2007. So the first payment was July 24th - right. I'm starting to forget things.

5 Q. Thank you. And Tab number 10.

A. Tab number 10.

Q. This is the pre-approval for TD Canada Trust.

A. Yes. It's pre-approval form TD Canada Trust, yes.

10 Q. And Tab number 2.

A. Tab number 2. Yeah, it's - it's mortgage rated document because finally when the house was ready - and it happened in August 2008 which was a surprise as Pratt promised because usually it's like half a year delay or something like that his closing line - closing date. But - well in February 15 2008, I believe - yes, in February 2008, actually Pratt guys, they called us on the phone and they told us that the house will be ready on time. Big surprise. So be ready to move in in August 2008. And you know what? They actually did that. In 20 August - it wasn't August 8th, it was August 15th so they delayed only for one week, but they made it in August. And this is a mortgage, I believe Cost of Borrowing Disclosure Statement - yes. We finally decided to go with Scotiabank because in 2008, despite of we were pre - pre-approved with TD Bank, but - but TD 25 Bank it's like - well [indiscernible] for Pratt, Scotiabank offered us better deal. So we decided to go with mortgage from Scotiabank. And payments amount borrowed was \$217,520. Nothing to do with cash Nikityuks transferred to us. The - the - the - pretty much the entire cost for the house was borrowed from 30 Scotiabank.

Q. And who were named on the mortgage for the house?

Pavel Danilov - in-Ch

5 A. Us two, me and Svetlana of course. And where you seen Nikityuks' name, never was in the title of this house. Nobody ever told him that he's in the title. It's ridiculous and I don't know how - how man could come up with this stupid idea. I'm not an idiot. Why for God sakes I would - I would put the house in his name, it's just nonsense.

Q. Could you turn to Tab 7, please?

A. Tab 7.

10 Q. I understand this is a balance of the down payment for the home purchase?

A. Yes, it's the down payment transfer cheque and - well it was Svetlana's share in Saint Petersburg apartment, about \$50,000 'cause apartment price was about \$200,000 when they sold it. So \$50,000 was Svetlana's share in Saint Petersburg apartment, so we decided to use it to buy property here 'cause - and Nikityuks were completely on board with that. If they told me at the - at the point they were already in Canada and they told - told me at that point that they are not on board with that, they disagree or they object or whatever, I simply would sell my stocks and pay - pay the same amount of money. If it wasn't enough, I could go with plan B and pay not 25 percent down payment, but 10 percent or - if let's say that was not enough, I could go with 5 percent down payment. There are some additional costs associated to that, but - well it didn't come to that, so we didn't but - but today the easiest and simplest thing of the time was simply to use that Svetlana's \$50,000 and - well now we know that the entire amount was a gift, so who cares.

30 Q. And at Tab number 8, you have the Land Registry document for the transfer of the property.

A. Yes. It's some kind of....

Q. And who?

A. I believe Chris Dawn (ph) Construction, it's - it's like nickname for Pratt Homes and when we paid down payment they transferred property in our name. And it happened in 2008 - August 15th - close - closing date.

5 Q. Okay. So what was the plan for the property in Innisfil? When you purchased the property, what was the plan?

A. Oh yeah, it's - it's - it's another story. See we actually - well when - when Nikityuks were visiting us in
10 2007 and later we discussed a lot, where they are going to live and - and like on what money and whatever and it - it has been decided and they agreed that we'll be renting for them. And we rented actually apartment for them in the same building. It happened - I'm - I'm not sure exactly, but I believe it was in
15 about February 2008. At that point they were permitted to immigrate. They had Visas already. We knew that they are coming and all of a sudden this nice apartment on the eighth floor below us became available. So we took advantage of the situation. We knew that there is a long waiting list for those
20 apartments and we rented it right away. And we knew that Nikityuks like our apartment and that apartment - or one floor below us was the same quality - it was not two bedroom, but one bedroom - but the same quality and pretty much exactly the same, just smaller. Ivan (ph) was - would be below to - to give them
25 free WI-FI because it was like apartment just below us, but a little bit close to - to - to the side, but almost below us. Well - we rented that for them and I believe we have all documents about that and we even sent them the floorplan of that apartment exactly the same as we rented but from different
30 building but the floorplan was exactly the same; same kind of apartment. And they approved that, they liked it - because they saw this kind of apartments before when they visited. So then

what happened, when Pratt called us and told us that the house would be ready on time and they believed it happened in February - maybe March - I don't remember actually, but it happened approximately at the same time. So Pratt - Pratt called us, 5 told that apartment will be ready in August. We communicated that of course to - to Nikityuks on the phone because Svetlana was talking to her mother like on every day basis. And they were talking about that a lot and she told her mom that, yeah the house will be ready in August and - well we were going 10 actually to sell it because during that year the house was being built, it gained in price \$30,000. Just like while being built. So it looks like you invest \$5,000 and in one year it's 500 percent gain. So we were going to sell it, but - well Alla begged us not to do so because they saw the place - they saw 15 Innisfil Beach Park and they begged us not to sell the house. She was like you know what? We would like to live by the lake on the fresh air and we don't want to live in the city. So we don't want to live in the apartment. So we have to cancel that apartment and we lost deposit of course because it was too late 20 actually. But - yeah, we - we gave some good thoughts about the wish to live in the house separately. But the problem was that we were going to sell it. So we thought about that and we decided not to sell it - and allowed them to live in the house basically.

25 Q. When Nikityuks - when did Nikityuks first arrive in Canada?

A. They - they landed in June 2008 and at that point it was already known that the house will be ready in August. We already cancelled the apartment at that point - well 30 we tried to do that as fast as possible hoping that we won't lose the deposit, but we lost deposit. So apartment was already cancelled and then container with Nikityuks' stuff arrived and

we had to unload it into the apartment too. There were a lot of boxes. So Nikityuks - yes they were living together with us in the apartment, but not in the living room as they say because our daughter was out of the country most of the time of summer
5 2008. She was playing for Team Canada beach volleyball and she was travelling all over the world and the entire summer, her room was empty. Maybe she was there like couple of days or so and then the room was empty. So Alla was actually sleeping in our daughter's room and we bought bed for Valentin and put in
10 the living room that bed and he was sleeping in the living room, but simply because Alla doesn't like him snoring and that - that was the reason.

Q. When Nikityuks arrived or landed in Canada, did they understand they would be living at the home in
15 Innisfil?

A. There were a lot of discussions about that because he aware we were going to sell the house and I believe we have actually email correspondence with the agent in the file somewhere that we were indeed going to sell it. So yeah, we
20 permitted them to live in the house, but it was - the house was purchased as our primary residence in the first place. So we told them that unfortunately we cannot move with them to the house exactly at the same time as them because - well we were arranging in Etobicoke with our daughter and daughter was still
25 living with us and - well she couldn't - we couldn't abandon our daughter in - in - in apartment in Etobicoke, so we kept paying for that apartment and - for a while, I believe it was about a year, Nikityuks were living in the - this house alone without us. And well - there were nothing like entertaining about that.
30 They - they put it like it was a recreational property or something like that. It wasn't recreational property, it was our primary residence from the very beginning, it just during

the working week I had to be in Etobicoke to go for work because work was in Brampton and - Rogers is in Brampton. And daughter was living with us. So when daughter found her own place, we moved to - to this apartment like right away. Next month, we immediately put the notice and next month we moved together with Nikityuks. But that year they were living in the apartment all alone. It was a nightmare. It wasn't - it wasn't anything entertaining, recreational about that. It's - it's new neighbourhood, it's a new house and every day some people keep coming to fix the fixture - fixtures or walls or something in garage or like - some people are coming, offering stupid stuff like water filters and Nikityuks they don't speak English, they have no idea what the heck is happening. And every time when some - someone's at the door they called my wife on the phone and she has to explain them and that this and that no we don't need that or please go there and do that and that and - well it - it - it's one thing, when [indiscernible] and all those inspections when you have to fill up all those floors and stuff, Nikityuks couldn't do that. So we - we had to come again and again and again. And we had to do all grocery shoppings [sic] for them because they go to the grocery store, they - they have no idea what they're buying. They probably can figure out vegetables and potatoes and stuff, but if there is something in a box, they have no idea what's in that box. And so we had to load the fridge and it was a big fridge for the entire week for them and - with - with all - not just groceries, household supplies and there were nice appliances in the house - washer, dryer and for each - and big microwave and other stuff too. Then it was garage opener and all - all - all that stuff needs to set up and configured and - to make it working and - and - and I did that all myself on those weekends when we're coming and on my own time. And Svetlana was doing all grocery shopping

and there were like sometimes three or four doctor appointment - appointments per week for Nikityuks and Svetlana was going to all doctors with them. All kinds of doctors, mostly emergency, because they didn't have OHIP at that point. You have to wait
5 for three months after you immigrate and they didn't have OHIP, but we purchased medical insurance for them so that medical insurance was used all the time. And sometimes we had to go like at 1:00 a.m. in the rush to Innisfil from Etobicoke because something bad happens to Valentin. He cannot pee again and we -
10 we - we - we must bring him to emergency room to - to - to do his usual procedures and stuff. It was a nightmare here. So nothing entertaining about that.

THE COURT: Ms. Chapman, maybe this is a good time to take our afternoon break?

15 MS. CHAPMAN: Sure.

THE COURT: We can continue in 15 minutes.

R E C E S S

20 U P O N R E S U M I N G :

CLERK REGISTRAR: Just to remind you, you are still under our oath.

A. Yes.

MS. CHAPMAN: Q. Mr. Danilov, can you turn to
25 Tab 9 please, in Exhibit 1(A)?

A. Yes.

Q. What is this document?

A. This is email chain of communications between my wife, Svetlana and a real estate agent in February 2008 which
30 much proves that we were going to sell the house - there were real negotiations about that *[indiscernible]*.

Q. Okay. Now if we could turn to Tab number 27,

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I'd like to talk more about the funds that Nikityuks transferred to Svetlana.

A. Yes.

Q. What is this document?

5 A. Well they transferred money as we agreed before and - well present is not taxable as far as I understand - but my main concern at that point when they actually arrived to Canada was splitting income between the family members because I was the only member of the family working - provider
10 in the family, basically. And okay they transferred money to Svetlana, but the purpose of that was to put that money somehow in work so that we could generate some extra income to support Nikityuks. Salary \$86,000; while it's a good salary, but for four adults, it's not - not that much. So one thing we were
15 concerned about at that point was income and income tax. And we called CRA hotline - Svetlana called actually CRA hotline, I believe, two or three times and after some....

...OBJECTION BY MR. MAE

20 R U L I N G

MULLIGAN, J. (Orally):

25 All right. He is right. There is a couple of times that his wife would be better able to testify about some issues. So sir, you just - you are just being reminded to testify about what is within your knowledge and if this information is better to come from the person directly involved, such as your wife, that will come at
30 another time. Ms. Chapman...

A. Sure.

THE COURT: ...is that....

Pavel Danilov - in-Ch

MS. CHAPMAN: Yes, that's fine.

A. But the specific point I think it - it's important just to make a note that what CRA people on the phone suggested was to make this transfer like a loan agreement. Because in this case, all the amounts I paid to Nikityuks are -
5 can be called investment interest if that loan put into somewhere for investment purpose. And if it's investment interest, I pay to gain something. Then for me, it's tax deductible. That was the whole point of this loan agreement, to
10 make support payments. I pay to Nikityuks tax deductible. And it - it actually saves a lot of money. It's about 5,000 per year. So it's a simple and legal scheme of splitting income between family members which was approved and even suggested by CRA. And when we did that the first time in our - no Nikityuks
15 actually [*sic*] tax return and that tax return in 2009, we were audited by CRA and this loan agreement has been approved. So basically, the terms of this loan agreement verbally were discussed with both Nikityuks next day after their arrival. But we figured that CRA suggestion right in 2009 before the
20 preparation of the tax return. So when Nikityuks arrived, we were talking about something generic like we need to figure out a way how to not to pay taxes on those income we are going to provide for you. And it has been told that we'll come up with some type of agreement when time comes and you'll have to sign
25 it. And of course they agreed. And then when we were preparing our tax returns for year 2008, there was this CRA conversation and - well, my wife was talking on the phone but they - she explained everything to me and I understand completely how supposed to be working so it - it wasn't an issue
30 of misunderstanding or anything like that. So basically in 2009, before preparations of tax returns, we asked Nikityuks to sign this loan agreement and we - but dated it with, I believe,

next day - not the same day when they arrive - maybe it's next day, I don't remember. It's June 14, 2008. But again, all - all terms of this agreement, maybe accept the title of it, were discussed before and Nikityuks were agreed with that and
5 [indiscernible] the entire agreement has been translated to them in writing. Svetlana translated it to them and they had Russian copies Svetlana's writing, but - well maybe they lost it, maybe they're concealing it - I don't know. But they had complete Russian translation of this agreement. I - I - I saw Svetlana
10 translating it to them in - into paper.

Q. And you mentioned the CRA was involved...

A. Yes.

Q. ...with this....

A. It was CRA's suggestion, actually, how to do
15 this income splitting between four family members.

Q. So could you turn to Tabs 31 and 32?

A. Thirty-one. Yes, it's our CRA request for audit at 31. And there is one part of here, the bottom of the page 181, for interest paid in loan used for investment purpose,
20 provide a statement from the lender which includes all the formal details. The date of the loan was granted which - well, formerly it was June 14, 2008 because it's the day when Nikityuks showed up in Canada. And the total amount of the loan - the total amount of the loan, we put it in paper as 260,000
25 that it was by transfer because it was easier actually 'cause there were wire transfer, they're all documented so the entire amount was 260,000. But then - well, top 32 is actually the result of audit and second paragraph from the bottom says, "We have allowed the claims for interest in carrying charges as well
30 as the [indiscernible] you are [indiscernible] based on limited review of information we received." There was actually big file - there's all those documents - we still have it somewhere at

home and - well they requested it, we sent it, they - well - we're - we're working on it for a couple months, I believe, because it's May 20th, right? So finally they allowed all those claims for interest and well - so that loan agreement was approved basically. And we - in - in those documents, we provided that loan agreement, of course. And there - I believe there is somewhere - a first statement of that loan agreement because Nikityuks must sign the statement every year on the remaining principal. I believe it's somewhere - well - well - a minute - what tab was that - I'm sorry?

Q. Tab 27.

A. Tab 27. I think - believe - tab - yeah. Tab 28 is the statement of - for year 2008 of the principal of the loan agreement and you can see there was withdrawal from the principal, \$51,640 as was discussed before with Nikityuks. It was withdrawal for the down payment for the house. And that's why the entire loan agreement right up to that moment became around 200,000 because 50,000 US was withdrawn from the principal amount.

Q. So Mr. Danilov, if you could go back to Tab 31, page 2...

A. Page 2. Thirty-one, page two.

Q. ...and there were a couple additional points that CRA raised with regards to a loan for investment purposes. Could you address those please?

A. Which one?

Q. They're the very first three lines on page 2.

A. Yeah, the total amount of interest you pay during the year, the principal amount of the loan is outstanding from January 1st and December 31st of the year. Yes. Basically it's all information which supposed to go in the statements. We are supposed to provide for Nikityuks' signature every year.

And the first statement they signed themselves. Me and Svetlana had Power of Attorney so we didn't have to give them to sign those statements anymore. Not much changed in those statements because they always - remaining principal always was around
5 200,000 and everything was available electronic. Nikityuks were able to see that, so we - we didn't bother them to sign any of those anymore because Svetlana could sign them on their behalf
[indiscernible].

10 Q. Tab 29, please. I understand this is a translation in English from a Russian email.

A. Yes.

Q. The Russian email is at pages 177 and 178 and also contained - just for Your Honour, at Tab 30. The English version is pages 175, 176. Mr. Danilov, what is this email
15 about and could you explain the contents?

A. I need to make a statement here - actually, the actual email is on Tab 30.

Q. Yes, that's right. Your email....

20 A. This is the correct email because it has all required for email fields like from, to, when it's sent and the most important thing is subject. And the subject says, "Canada Calculation" - "Canada Calculation" - and it's in English. And then goes the same Russian text as the text on Tab 29. But the text on Tab 29 is produced by Mr. Bornmann and Nikityuks and it
25 doesn't have all the headers which supposed to be in the email fields: from, to, subject - whatever.

Q. You've...

A. Yes.

30 Q. ...you've reviewed the contents of the email....

A. But - but the contents of the email is the same in translation is correct.

Q. Okay.

A. But there are no headers which is important because they put it as it's some kind of offer. It's not an offer. It's calculation which clearly states in real email provided at Tab 30. It's not an offer. It never was an offer. I never offered anything to Nikityuks like Nikityuks Incorporated or whatever - it - it wasn't an offer. It was simply email where I explained to them how much life costs in Canada. And you can see here that they took into account they brought - well I put it capital because we considered it capital. Was it a gift or not a gift, whatever - and that capital is \$200,000, not 260 or 250. It's \$200,000 simply because everybody knew at the very beginning that 50,000 of that amount belongs to Svetlana and it's apartment share - share Svetlana in Saint Petersburg apartment. So they brought capital, we can see that - and [indiscernible] about \$200,000 and Nikityuk was knew that. And it's them who brought this in email actually. I forgot about. And that email clearly states as I already told that these are the calculations that look realistic as of today. And today was, as Mr. Bornmann clearly stated, was January 27, 2008. That's where - yeah. It's in my actual email in Tab 30. It's January 28, 2008.

Q. Thank you....

A. No - January 27, 2008. So basically what it says here that it's a simple calculation that we don't have to think about onetime expenses as buying furniture or something like that. What's important is every month expenses - monthly expenses. And well I showed Nikityuks how much approximately it would cost one bedroom apartment to rent, which we provided for them, it's about \$900. It was ready at that point. Food and small things \$500, car is \$300, car insurance \$250 because Valentin has no Canadian experience and car insurance for him

would be really costly expensive - gasoline, phone, T.V., internet - all this kind of stuff. Another thing which is important here, it's pension which goes into the family budget according to this offer - whatever it is. And pension says here 5 \$200, that's what Nikityuk told me at that point that they have only \$200. And well if he come here - left from Russia, Russian rubles to - to Canadian dollars, they - they - they said that they - they have pension \$200. So when they came in June 2008, I thought like okay \$200, that's - I don't care much about \$200 10 and \$200 can be easily their pocket money. So I told them, okay you can keep your pension for your entertainment. Like you do whatever you want with that pension because - well it's just \$200, you - you got to have something nice here like you can go, I don't know, to - to Niagara Falls - to - to sightseeing to - 15 hell, you do whatever you want with it. It turns out that when the first pension of Nikityuks actually came to Canada to their account we all together - not all together, Alla and Svetlana together opened 2005 when first pension came to Canada, it turns out that it was \$600 per month. But I didn't tell them anything 20 like okay your rate would be 600, but they kept spending that 600 for their entertainment exclusively. It didn't go into budget. So while I was support two hundred, then it was like much - much more, finally interest from capital - basically the calculation says here that to cover all that budget like 25 operation factors have translated [*indiscernible*] - to cover all the budget, we need to - twenty hundred thousand [*sic*] dollars per year. That's what this calculation says. And that means that we need to generate somehow at least 10 percent of that broad capital which is \$200,000 which is on top. So it was 30 calculation in Excel table. So I put together all expenses. I estimated it at the - at - how it looked realistic at January 27th, 2008. I calculated some of them up. I took into account

Nikityuks' pension which supposed to - which was supposed to go into the budget; it's obvious from this calculation eh. So I see that well probably we have to add maybe \$200 of our own to that so they - they are okay. And it - it comes to \$20,000 a year which is, if we are capable of calculating simple things - you don't have to be mathematician for that, which comes to 10 percent. It's 10 percent of \$200,000. So that was it basically. It wasn't an offer, it was a calculation as it states in the subject. There were some comments over there, but I'm pretty sure that I will have a lot of questions from Mr. Bornmann and Mr. Mae - the cross-examine all that. So well - I - I won't address that later then.

Q. And so in terms of preparing the calculation, what was your plan to earn 10 percent interest on this capital?

A. Yes, we had to put that money in work somehow and that was the most difficult part - like how to do that and we were - we were to come up with some kind of business here. We are not close to any kind of manufacturing or - we - we definitely cannot come up with some kind - kind of restaurant idea [indiscernible]. Well what could we do? The best is information technologies, mathematics and data analytics. So basically the idea - finally the idea of business was to invest in someone else's business and that means buying stocks. But buying stocks - well we - we did that since 2007, we tried that and that - and it didn't work too well. But generically buying stocks cannot generate 10 percent income. If - it - it should be 10 percent like guaranteed because Nikityuks gotta live on that money. And if you just buy a stock, probably one way - one year you can get thirty percent, another year you can get minus thirty percent. In average it's a well-known fact - fact that an average stock market produces about 10 percent annually. But it's an average if you average 20 or 30 years. So simple

investment wouldn't work to reach that kind of target. So we started to think about trading and not just trading, the idea of the business was actually to come up with some kind of automated software which create stocks automatically, produce, buy and sell signals and we would have a website and if we have proven record of those signals being profitable, we could publish those buy and sig - signal buy and sell signals for subscribers and charge subscribers fee which can be, I don't know, like \$30 per month per person, \$50 per month per person - or something like that. And if you had like thousand subscribers, you'll get your income. So that was the ideal business. So we started to develop that software in 2007 actually and we - we gave it really good try. And in 2008 when Nikityuks actually transferred all money to Svetlana, as it was discussed before - as it was agreed upon, we actually had the working prototype and that working prototype wasn't just buying and selling stocks, it was much more complex sort of like [indiscernible] half. There are a lot of big companies who will develop this kind of software and they - they invest millions into that. And what have - what our software did, it was scanning the market and there are like 10,000 stocks in US market and about 2,000 in Canadian. It was scanning the - the market - scanning the current prices on the daily basis; scanning basically the closing price. Oh this stock - and it was selecting the stock which is several stocks actual limited number which seems to be convenient or which - which have a buy situation at this point. And that software was working well since our approximately March 'till - or well middle - mid - mid-summer 2008 and once Nikityuk transferred money here, we were sure that we have good working prototype and we put that software into production. Pretty much we transferred almost all money into that automatic trading software and that was account we already looked at Interact

Brokers and they have very nice API which is Application Program Interface. A very convenient, very well documented. So we have that software working for a while. But what happened in August 2008 - well - well that software wasn't ready for. In August 5 2008, all 10,000 stocks in US market and 2 - 2,000 stocks in Canadian market just drop. And software, it was - it was pretty sophisticated piece of software actually, it tried to protect the investment with buying options and protecting broke stock with current options and it - it was doing very extensive 10 trading during August. And the thing is it - it made several bad decisions on their own and we lost almost the entire capital in - in a few days. And the reason why it happened because I was in training at that point and Svetlana was in doctor appointments with Nikityuks all the time. So nobody actually 15 was watching that software carefully and it happened so fast we couldn't do anything by that. But we actually don't consider that a loss because it was a lesson. Yes, it was a very expensive lesson, but we didn't give up - and by the way Nikityuks didn't even notice that something changed their lives 20 and we kept supporting them and I count all those losses from my salary and from tax returns because loss is all into business statements and tax - tax return. We kept receiving big tax returns for - for a few years. So we didn't give up and at some point we decided that maybe trading stocks not such a good idea. 25 And the reason why we decided about that 'cause well the margin account you - you have to pay 20 - usually you have to pay 25 percent margin requirement, the rest is paid by your broker margin account. But - well with options, leverage is a little bit better, but - well with options, we - we did a lot of 30 trading with options. It's - it's very complex and very complicated - and a lot of mathematics we have behind that. But at some point we decided that we need to take a look at

currencies because when you trade currencies, the leverage is much better. If you trade stocks it's 1:4 because you pay 25 percent. But if you trade currency, it's cash. It's - it's may be other countries cash, but it's cash. And brokers leverage for those usually 1:100, 1:200. So if you want, let's say, to control position of \$1,000,000, all you need is \$10,000 account. The rest is paid by your broker. So we began to shift focus of our software into trading currencies and it - it worked pretty well. So basically, when you trade currencies, first of all it's better leverage. Second of all, it's not such big volatility because currency represents the economic [sic] of the entire country, not just some small company who can, you know, go to zero all of a sudden. And you'll - when you trade currencies you don't care where the market goes, up or down, because if US dollar goes up against Europe, it means that Europe goes down against US dollar and you don't care where it goes actually. So the working prototype of our currency trading software was ready in September 2013 and it was profitable and I believe we have strategy testing reports on where in our brief is that - I....

Q. That's at Tab 111...

A. One-eleven. It's - it's...

Q. ...which is...

A. ...[indiscernible].

Q. ...Exhibit 1, volume B - volume 2 - Exhibit 1(B), if you want to turn to that now.

A. Yep. Yes, it's strategy testing report of our working prototype. It - it's worked for a while on the so called dimmer account. Interactive Brokers, they didn't have dimmer accounts. What's dimmer account? This - it's like the real account with real prices, a real operations going on the account but with fake money. But it's exactly the same. It

behave - behaves exactly the same as the account with real money. The same prices, the same operations if someone just bought million dollars for this price - for - for the same price you can create your own transaction and it goes exactly as the -

5 the real software would go. And this is actually the strategy testing report of our working prototype, but then it works on 15 minute bars and it works with currency per year or against US dollar. And this model, it relates every tick which means every operations - so buy and sell, which is the most precise method

10 of simulating, trades on the dimmer account. And you can see that in the period from August 15th, 2013, 1 month to September 13, 2013, if that robot - that software was working a real account it would generate a total net profit \$10,320 on the initial deposit, \$5,000 which means 200 percent profit in 1

15 month. And that was working prototype. But - well we learned our expensive lesson which happened in 2008 back then and we didn't rush that working prototype into production just yet at that point. We decided that we'll let it go for another year on a dimmer account and we'll see what happens and we got another

20 year. Because if something like in August 2008, we may lose the remainder of our money, whatever it's there - 5,000, 10,000 - it - it's very dangerous. So basically that software, we kept working on it and well in the meantime in a few months, we changed the timeframe, we switched from 50 minutes to 1 hour

25 because it's better volatility. We tried another currency place and ended up with a few; still Euro against our US dollar. Then we tried Canadian dollar against Australian dollar. Then we did a lot of research with British Pound - British Pound against our Japanese Yen and the most interesting was US dollar against

30 Swiss Franc. So all those currency pairs I just listed, they were profitable and we - we did some minor changes. We switched indicator we were working with. We switched from Greenridge

(ph) to Ichimoco (ph) indicator something. There is this Japanese guy who developed his indicator for 20 years. It was very good. And well we tried a lot and basically after discovery in May 2014, we had a very good prototype working with several currency pairs and we were ready to put it in production, but at that point we didn't have any money because I spent all my money on lawyers at that point. So basically the only thing which left and which bought it as a lot was this trading thing and all this business was why US dollar against Swiss Franc isn't working 'cause that was very - theoretical it was a very good currency pair with much better leverage generically than Euro against US dollar. But somehow all 2013, this fake trading on US dollar against Swiss Franc, by some reason was losing; it wasn't profitable and we couldn't understand why. And we kept researching that, keep tweaking parameters, but nothing worked. Until - until on January 15th, 2015, the National Swiss Bank - Swiss - National Swiss Bank right - [indiscernible] removed what they called their floor which is the maximum rate they were allowing for Euro against Swiss Franc which is 1.2. And when it happened, the US dollar against Swiss Franc became just an ideal - ideal currency pair and we focused all our efforts on testing that. And if - if back at 2015, let's say in January 1st, 2015 I had the real account with 100 - \$100,000 in it, today I would have 5,000,000 and I have proof of that in my damages brief. Same strategy tester report with real prices for that currency pair and that robot was ready - way ready in January 2015 and the only thing why we didn't put it in production is because at that point I spent all my resources including credit lines, including TFSAs, including - well most of RRSPs on this [sic] legal costs. So we simply didn't have that money January 2015 because they - it - it was all spent. And that's how the business was supposed to

work and that's now is the story.

Q. You're gonna come back to your damages later. Mr. Danilov, you gave evidence that the Nikityuks lived at the home in Innisfil for a period of about 10 months, I believe, on
5 their own.

A. From August 2008 to June 1st, 2009 when we moved together after our daughter moved out and found her own place.

10 Q. And who paid the mortgage on the home during that time?

A. All home expenses, including mortgage, were considered shared expenses and we paid that in shares. So basically, when - well there were several periods so - when we all lived together in Etobicoke there were no paying mortgage,
15 but there were other shared expenses. When it was clear the Nikityuks were living alone in the house but we came every weekend and basically spent two days a week there - so all shared expenses were calculated 7:2 - no 5 - no Nikityuks 7 days there, we 2 days there, so 7:2 in this proportion. Then after
20 June 1st, 2009, we started to live all together except our daughter who had her own place back then, so it - all shared expenses were divided in half including mortgage - interest and payment.

25 Q. And specifically what are shared expenses, what are you referring to?

A. I believe I have some kind of table over there with all of those shared expenses, but - well it's - it's obvious: cars, food, Nikityuks' internet, T.V., mortgage interest - whatever is there. All household expenses.

30 Q. Could you turn to Tab 47 in Exhibit 1(A)?

A. One second please. I'm sorry, what tab?

Q. Forty-seven.

Pavel Danilov - in-Ch

A. Yes. This is the itemized shared expenses - like every bottle of beer is there.

Q. Why would you keep records...

A. I like keeping records.

5 Q. ...like this?

A. And the - actually, see it - it was easy because we - we had our own account in CIBC. We, I mean, I and my wife, and Nikityuks have their separate account opened in 2005. My wife wasn't it because someone gotta control -
10 Nikityuks couldn't control. So you have to make payments, you have to make, you know, pay bills, all this kind of stuff. So I always kept shared expenses more or less divided in the proper proportions. So some shared expenses were paid from our account, some from Nikityuks'. And interest on that loan
15 agreement - interest on that loan I paid to that account Nikityuks opened in 2005. But those are just all shared expenses in this - in this stuff itemized and I believe there are others for a period of time. So at Tab 47, is the period from June 1st to August 14th, 2008 which is a period when we all
20 lived in apartment in Etobicoke. The next tab is for - and - and those are divided in proportion 2:3 because technically there were 2 Nikityuks and 3 Danilovs including our daughter. Then it was itemized categories from August 15th to May 31st, 2009 which is a period when Nikityuks were living alone in
25 Innisfil house and those overall shared expenses - but there is somewhere table where you can see that - that total amount is divided in proportion 7:2. And Tab 49 is actually the final report from June 1st, 2009 when we moved to the house to October 17th, 2011 when Nikityuks left the house and that's how all
30 shared expenses stopped. So this is the entire report what was purchased as shared for the entire family during that period. Even amortization of household is included and to calculate

appropriate -' I even produced on top sheet 50 - well CRA
classified us how you supposed to account if your couch is getting,
you know, older.

5 Q. With regards to Nikityuks' expenses, could
you turn to Tab 60 please?

A. Yes. This is the - well there is a bunch of
statements here. It's statements of how we called green Visa.
So Nikityuks had in their possession three credit cards. Red
10 Visa, which is CIBC Visa they - well were supposed to buy things
for the entire family from that Visa just from this accounting
[sic]. Like if they want to buy something for everybody in the
house, they were supposed to use that red Visa. Green Visa,
they were supposed to use when they want to buy something nice
for themselves and for entertainment and for whatever purpose
15 and there was an agreement that everything they buy from that
green Visa will be paid from their pension. That was the
agreement. And there was another credit card that was our Citi
MasterCard before CIBC acquired Citi MasterCard business.
Business then became CIBC MasterCard with Petro-Points and that
20 card, we all used to buy gas because it's - it's very good to
buy gas. You get 10 cents discount on every litre of gas right
away and you also get Petro-Points which convert into simple
cash very easy. So it - it - it's very nice card and we
instructed Nikityuks to - to use it when they went to fill up
25 the tank.

Q. And Nikityuks did use those?

A. Yes - yes they - they used all of those and
pretty much those statements here, they are show up as separated
and before there were - there were statements which were not
30 separated. They were on their account hold their name, but I
think we have a letter from TD somewhere where they say when
they were able to separate actually the card holders. So we can

see here that Mr. Valentin Nikityuk at his home green TD Visa card and what they bought there - see [indiscernible] of Canada, [indiscernible] of Canada. Then the next statement, well - there - there - there is some stuff they - they - they - they're buying - the next statement, page 359 is African Lion Safari - okay. Next statement, Valentin Nikityuk, 361. See in accounts museums, so - pretty much - yeah, Mist Niagara Falls - entertainment. It - it's all entertainment. They - they use it for themselves. And actually, those statements they often appeared when - when Valentin's daughter was visiting. So that's why there is a lot of like [indiscernible] and Lion Safari stuff over there because they - they were like showing Lale (ph) and [indiscernible] and well....

Q. Mr. Danilov...

A. Yes.

Q. ...could you hold the exhibit binder closer to you, just because you're hitting the mic as you're turning the page. Thank you.

A. Okay.

Q. And in addition to the credit cards, did Nikityuks have access to their bank account?

A. Yes, sure they - they had it still - 2005. We added Valentin at some point I believe in 2008 or 2009. So originally it was account opened by Svetlana and Alla when Alla was visiting in - in 2005 and they - we kept that account for years and they had all access to that and Valentin including - we added Valentin as joint holder to that account at some point and they both had - had their own debit cards to access it.

Q. Did they know how to use those debit cards?

A. Sure.

Q. Did they use the debit cards?

A. I don't know.

Q. Would you say that most of the purchases were on the credit cards?

A. Yes.

THE COURT: Ms. Chapman, I'm not sure what period you're talking about. Are you [indiscernible] being back to when they were in Russia or when they were in Ontario?

MS. CHAPMAN: I apologize. Q. When they were in Ontario.

A. When they were in Ontario, I - I - I don't know. We instructed them to use credit cards because it's very convenient. I have personal software which can automatically download all credit card transactions from banks and well credit cards. For me it's convenient, so we suggested them using them.

Debit cards, we - we told them, I believe that, every transaction on debit card if you use it will cost \$1.25 or something like that because it's - it's debit card on CIBC account and you have to pay for every transaction if you use debit card. So I think they - they - they might be using them eventually like sometimes, but even we didn't use them so why Nikityuks? But in Russia, yes. They - they used that credit - that debit card to withdrawal money from Russian ATM. And they - they had the same access card here in Ontario. It was the same card.

THE COURT: Ms. Chapman, it's about 4:30. Do you want to continue to finish this area or right into - or can we resume tomorrow? I don't know where you're at exactly?

MS. CHAPMAN: No, I'm happy to resume tomorrow. I was watching the clock as well and trying to stick to the time.

THE COURT: All right. So why don't we adjourn

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'till tomorrow and continue the - so you can step down, sir. Are there any administrative issues or scheduling issues we need to talk about for tomorrow?

MS. CHAPMAN: I don't think so. I had thought that maybe we wouldn't start with Mr. Danilov until tomorrow. So it appears we're probably move next to Svetlana Danilova sometime tomorrow if we finish with cross-examinations.

THE COURT: All right. So we have a full - full day for a few days.

MS. CHAPMAN: Thank you.

...

M A T T E R A D J O U R N E D

64.
Certification

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

5

I, Lauren Burch, certify that this document is a true and accurate transcript of the recording of Danilova v. Nikityuk et al. in the Superior Court of Justice held at Barrie, Ontario taken from Recording No.

10

3811_02_20160516_094129__10_MULLIGG.dcr, which has been certified in Form 1.

15

(Date)

L. Burch

(Signature of authorized person)

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*This does not apply to the Ruling which has been judicially edited.

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May 17th, 2016

PAVEL DANILOV: (reminded of affirmation)

5 THE COURT: I think yesterday when we finished
off, we were talking about Exhibit 16 and then
some access to bank accounts and debit cards as
I recall.

MS. CHAPMAN: That's correct.

10 CONT'D EXAMINATION IN-CHIEF BY MS. CHAPMAN:

Q. Mr. Danilov, could you turn to Tab 1, page
11, please? Oh, Exhibit 1A.

A. Tab 1, page 11.

15 Q. Yes.

A. Yes.

Q. So if you recall from yesterday you spoke
about living with Nikityuks at the home in Innisfil
Ontario.

20 A. Yes.

Q. And is this a floor plan of that home?

A. Yes, it is.

Q. Can you tell me a little bit about the
layout and where the Nikityuks' rooms were?

25 A. They're like two floors. It was main floor
with what they call great room which is actually living
room and kitchen and there was a TV set in the far left
corner, a laundry room on the same floor and bedrooms
mostly on the second floor. So what's on the plan at
30 bedroom two and bedroom three. Bedroom two was ours and
bedroom three was Valentin's and master bedroom and the
suite was ours. And there is also a loft where I

5 initially had an office to work. It's also on the second floor. And our basement was unfinished first and then at some point I believe it was 2010 summer while Alla told me that she's uncomfortable using bathroom which is right across the hall opposite to the loft when I was working there so we decided to finish basement and move - move office down there. So we did that in 2010 summer. And what else about this? We had nice appliances, the kitchen and laundry, all new because it's a new house and an automatic garage opener for both doors and pretty much that's it. We had a nice - we still have a nice house which is empty now.

Q. And why is it empty now?

15 A. Because I had to move to Waterloo to my job and when we offered Nikityuks to live in the house they rejected.

Q. How many televisions were in the home - are in the home?

20 A. Four actually I believe somewhere in the document brief we have email from Valentin to his friends in Russia that we have TV set for everyone in the house. And the reason for that was basically because they like to watch Russian TV, and we had six channels so Russian TV from Rogers, but they always - were compete about the programming because Alla liked to watch some TV show. It's called Doctor Malecek it's pretty much - it's like about family conflicts when people yell at each other and it's kind of fun watching that thing for her. And
25
30 Valentin was he liked to watch Russian TV series like TV shows and sometimes those happened at the same time so we had to buy second TV for them so they can watch whatever

5 they want. And we had our own TV in our bedroom and there was another TV in the library in the basement when we finished it. So the fourth one was when we finished basement.

Q. And did the Nikityuks have access to the entire home?

A. Yes, sure. There were no window locks, nothing.

10 Q. Could we turn to Tab 96, we're staying with Exhibit 1A?

A. Tab 96.

Q. I apologized, it's actually in Exhibit 1B. Your Honour in your copy it would be in Exhibit 1A. Page 652.

15 A. Yes. Those are pictures, right?

Q. Yes, the photographs. And what are they photographs of?

20 A. Those are pictures of community mailbox. So basically Nikityuk allege that we somehow limited their access to the mail. I don't know what they were expecting there. They didn't see exact some bills in English they didn't understand. The thing is since 2008 August when they used to live in the house, their well, kind of duty was to pick up mail and of course they
25 always access to that mail and it was community mailbox and I do - like you know Valentin to explain me how I limited his access to this community mailbox. So it's page 652, 653 and 654 those are pictures of that
30 community mailbox. They always had key to, access to and when we all lived together it was like their only duty to still pick up that mail because they were passing by that

community mailbox two times a day because they were attending YMCA English classes and were driving back and forth every day.

Q. And now if you could turn to Tab 97.

A. Yes.

Q. These are photographs from your home in Innisfil.

A. Yes. These are pictures of finished basement and again Nikityuks allege that we somehow limited or well, restricted their access to accounting to bills to whatever they meant by that, but what's in these pictures - well, picture one is just picture of basement. Then picture two, on page 656 is our office in basement. And picture three well, at the background you can see the file shelves actually and there is the door to the office, it is page 657. And on page 658 you actually can see file shelves and the door. And you see that, well, pretty much all my records in order and filed and easily accessible. And page 659 is the door to the office. You can see that there is no lock there. And page 660 it's another picture of files and shelves with everything and you can see that everything is in order and is accessible. And 661 it's another picture of that and 652 is the door down to the basement itself. And the next picture 663 it's the door down to the basement which shows that there is no lock there. And picture 10 on 664 is the staircase to the basement where no other doors over there. And page 665 is the utility room where you can see the local network set up there so we have access to the network all over the house and Valentin had his own computer which was connected to the network and he

5 could actually access all the records electronically also if he wanted to. Another thing is that he never wanted to and they actually were never interested in all those records or anything which was related to accounting, to the bank system or to finances or to anything else and they admitted that.

10 Q. So all financial records were available on the computer -

A. Yes, all the time-

15 Q. - network?

A. All the time. And well, there were - if they were shy to look at them let's say or something like that, there were plenty of times where we were not at home, they could go to the basement and look at anything they wanted, if they wanted to you.

20 Q. You said Valentin had his own computer, where was that?

A. It was in his bedroom.

25 Q. And did the Nikityuks have access to email?

A. Yes, sure.

30 Q. How about a telephone; did the Nikityuks have a telephone to use?

A. Yes, we had home phone and the handset in every room. And also they had cell phones both of them. At some point I believe it was June 2011 I figured that they never actually used their cell phones so we decided and they're always together so we decided that it's enough for them to have one cell phone so we decided to get rid one of them. But one cell phone in Valentin's name they had till October 2011 when they left he threw that phone on the floor to my legs.

5 Q. Could we now turn to Tab 88 in Exhibit 1A, please? More specifically it's page 484.

A. 88, you said?

Q. Yes.

10 A. Yes. Page 484. Yes, it's the first picture in the set of pictures I have collected from my thousands of them from our family picture for different years, different times. So it starts with 2007. It's October we all at Niagara Falls when Nikityuks visited us together in 2007. So you want me to go further with those?

15 Q. Yes. We'll go through them. So that's the visit that Nikityuks had in the fall of 2007 on page 484?

A. Yes.

Q. And the picture on 485.

20 A. It's after their arrival, I believe it's the first day when they came to Canada because the picture says June 13th, 2008. It's the day when they came to Canada and they and Svetlana are sitting in high park in the - well, they have this hanging garden over there.

Q. And on page 486.

25 A. 486 it's 2008 June, it's Anastasia's graduation from U of T and they visited Anastasia's graduation. There's our friends there, a lot of our friends over here actually.

Q. You're referring to picture number three?

A. Yes.

Q. And page 488.

30 A. We skipped 487, right?

Q. Yes.

A. 488 those are our friends Brimenka (Ph) they visiting us in Innisfil in October 2008. Well, you can see share a meal. Everybody is happy.

Q. And on page 489.

5 A. First picture is from the same date, this is Brimenkas and then it's 2008 New Year Eve. There's gifts and another page it's still New Year Eve with gifts and it's New Year Eve 2008. Then 2009 on page 491 it's our new home, new house in Innisfil and it's taken - yeah it's 2009 when we were going - we were still leaving in Etobicoke with our daughter but we were visiting every weekend just to take care Nikityuks. And well, visiting our primary residence actually. Next picture on the same page 491 it's at Barrie Honda reception, it's a new car we lease for Nikityuks and it's June the 1st, 2009 and basically I think it's the day when we moved in, in 2009 finally. We moved out Etobicoke actually and moved in with Nikityuks permanently. Then in 2009 Brimenkas visiting Innisfil again. Those are good friends, you know. In 2009 August there was another barbecue with Goshenka (ph). It's our friends. Well, I acquainted them working Rogers. Constantin Goshenka (ph) was my Rogers colleague. And they came yeah, next picture, you can see on page 493, they came with their friends and basically Nikityuks are friends now with those friends of Goshenka. And Goshenka don't speak with me anymore because Nikityuks bad mouthed me all over the place. So I was friends and I was to this contacting Rogers. And 10 15 20 25 30 Constantin Goshenka is actually in picture 18, it's the person who is standing close. And you can see Valentin and Svetlana over there, both happy. Page 494 it's still

5 the same visit of friends Goshenka. Then picture 20 on
page 494 it's my and Svetlana 25 years wedding
anniversary and we are celebrating that all together in
Mandarin. And I believe some pictures from the same set
they go into the next tab because - so it we go to the
next tab it's Tab 89. And page 495 it's still that
Mandarin 25 years wedding anniversary. Then 496 it's the
year 2010 now. It's weekend at home and well, it's like a
10 routine stuff, usual stuff. We always shared meals. We
always had dinner together. Everyone was happy. Then
2010 it's Alla in YMCA complex and I'm not sure but yes,
exactly. That's exactly what the capture says picture 26
it's Svetlana and Yana Skybin in YMCA complex because
they were friends back then. They were visiting YMCA
15 complex on a regular basis almost, like every week in
2010 and before in 2009 actually. Then 498 picture 27
it's Christmas with Brimenkas they visited with us on
Christmas. It's December 25th. So again, we all shared
meal everybody were happy and it's 2010. And page 499
it's still that Christmas and you can see turkey at the
table and good bottle of vodka and all this good stuff
and we all shared that. Then well, in January 2011 it's
20 January the 7th. It's Orthodox Christmas with my daughter
and her fiancé. But it's Nicholas Casper, you can see
them on the left on picture 31 and again there are
Valentin, Alla and Svetlana over there and you can see
the second picture, picture 32. It's the same Orthodox
Christmas everybody at the table and I'm taking the
25 picture so I'm not there. But you see everybody is happy
so January 2011 still everybody is happy. And then more
pictures of that Orthodox Christmas and look at the
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5 picture 35. It's 502 page, 502. It's Valentin with Svetlana actually. Who can tell, both are happy, right. And again Svetlana with her mother and Alla was Valentin on that Orthodox Christmas in 2011. And more pictures of Orthodox Christmas and more pictures of Orthodox Christmas and then more. And then there is New Year's decorations, we actually had New Year decorations till February usually because it's nice. So yeah, basically more of those. And then well, the next set of pictures it's Alana Swenkaic (ph). Alana is Valentin's daughter. He has two twin daughters in some pictures in Russia. And one of them, well, they wanted them to visit but well, one of them decided to go, Alana and I believe in the beginning of 2011 Valentin submitted with the help of Svetlana of course because he doesn't understand English. So he submitted the application her visa for visiting visa. And for that application he actually had to submit the proof of his income and that proof it can be let's say T-4 but he wasn't working, he's retired. It may be like paycheque but by the same reason he wasn't working, he was retired. But one of the possible proof immigration requires his CRA assessments. So had to submit his CRA assessment to be allowed to invite a visitor. So that CRA assessment was actually attached to the invitation and finally in July Alana came and she was visiting us in our house in Innisfil for few weeks, I believe. She left in the beginning August, like August 4th or something like that. And well, we had a lot of pictures of Alana's visit with Nikityuk and with us and those are - they start at page 508. So this is Valentin and Alla with Alana and then Valentin with Alana. So at

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5 that point why we are not here because at that point we
had vacation. We actually left to New Brunswick for a
few days to give them space, you know. It's like family
reunion. So we missed like most of the fun because they
were entertaining Alana all over the place. They were
visiting all kinds of sites like Niagara Falls and
African Lion Safari and Marine land. I've never been to
Marine land, to African Lions Safari. They've been there
10 twice or three times. Yeah, those are pictures of that
visit and you can see them at Niagara Falls page 5, 11,
and then again Niagara Falls and Alana to the entrance to
our house, and again, Alana at page 513 with Valentin and
more page 514 and 515 and 516. Those are Midland cruise.
I forgot about that. They had that Midland cruise. And
15 I want to see one picture here. I want to show one
picture here. What tells here on page 519 it's African
Lion Safari. They were visiting with Alana. And then
when we actually returned back from vacation we had a lot
of - well, conversations and talking - talking to Alana.
20 She's a nice person. She walks in some pictures in
university currently the same age as Svetlana and we
actually had a good time. We had some drinks in the
backyard, a lot of talks. And in August - August the 5th
25 we went to Royal Botanical Garden. It's in Hamilton I
believe, somewhere there. And you can see it's me with
Svetlana, Alana. On picture 71, it's 520 and then 521
it's Valentin with Alana and Svetlana and he's happy.
You can tell, right. And it's the August the 5th 2011.
30 And more pictures of that botanical garden. And at page
521 it's Collingwood. Well, Nikityuks took Alana to
Collingwood I believe some caves or whatever. I've never

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been there. Blueberry farm, it's August 8th where you can, you know, eat whatever you can and then pay for what you can carry yourself when you leave. They liked that concept very much and we're visiting all kinds of berry farms around. And more pictures of that. And what's interesting here 2011 September 17, picture 79 Barrie downtown. And while what Alana told us actually on the phone when she -

MR. MAE: Your Honour, this is now getting into hearsay.

THE COURT: Mr. Danilov, don't tell us what somebody else told you. We want to hear direct evidence as opposed to what somebody else told you someone else say. That would be hearsay. We'd prefer to hear that from the witness themselves if that's what they're going to tell us.

A. She is not going to be a witness.

THE COURT: That's not an issue for me to deal with, that's your issue.

A. Anyway there are some pictures of Barrie downtown why they are there actually because all in September 2011 Nikityuk knew that they are going to live in Barrie downtown. That's pretty much the point of it. Then October the 2nd 2011 it's Kilbear. They went there with some friends and pretty much that's the end of this set of pictures because Alla's pictures are here for different topic starting from 527 it's a little bit different topic.

MS. CHAPMAN: Q. You mentioned that Valentin's daughter came to visit.

A. Yes.

Q. Could you look at Tab 98 in Exhibit 1A, please?

A. Can I have volume II? I'm sorry what tab?

Q. 98, page 666.

A. Yes, this is the invitation actually but it's unfortunately without attachments it's how it was submitted to the Immigration Canada. Basically Svetlana helped to fill out this form, Valentin signed it and then they obtained the CRA assessment for year 2010 and that assessment was attached to this invitation and submitted to immigration. So this is a copy of the invitation and we had it scanned before.

Q. The invitation refers to documents enclosed at the bottom of the page, are those the documents you're referring to?

A. Oh yes, there are supposed to be attachments to this invitation and we requested that invitation during discovery, but we didn't get them. Nikityuks didn't produce this invitation these attachments so the only thing we had is the scanned copy on our hard drive in our computer because Svetlana prepared this invitation. So attachments, one of those attachments supposed to be a copy of most recent official proof of financial resources. Revenue Canada assessment is number two attachment. The point is that Valentin was well aware of his income despite what he says so. Otherwise he wouldn't be allowed to invite visitor.

Q. You also stated that you had a number of discussions with Alana, the daughter, when she came. Can you tell us about those discussions?

5 A. Well, you know generic discussions about life and how it is now to live in Russia and well her family history and work at the university because we all from the same university. So nothing special she's just a nice person.

Q. Any talk about Nikityuks living in Canada?

10 A. Yes, sure. We explained here pretty much everything that they transferred money from selling family property in Russia and that money has been invested in family business and what that business is. She was very interested in that and yes, a lot of detailed conversations about how is it here to live in Canada, how Nikityuks make it here and what this source of the income everything. We had plenty of time to talk about everything.

15 Q. At Tab 88, page 491, we don't have to go back, but there was a photograph of a blue Honda Civic.

A. Uh huh.

20 Q. Whose car was that?

A. Formally it was mine and Svetlana's because Nikityuks were not eligible for lease. We don't buy cars we only lease them. The reasons for that we always drive a new car, change it like once in three years. It's very convenience nice concept and we like it, we use it all the time. We don't buy cars; we only lease them. So we leased this Honda Civic for Nikityuks almost for exclusive use by them but it was in our name and insurance was mine too because it's our car, mine and Svetlana.

30 Q. So you could turn to Tab 104 which is in Exhibit 1B?

A. Yes.

Q. And what is this document, Mr. Danilov?

A. Give me a second.

Q. Sure.

5 A. I believe it's lease agreement for that car. Yes. See, it's actually really difficult to see what's written here, but it looks like it's lease agreement and the titles.

10 Q. Would you agree that it would be a lease takeover? I appreciate the date is very faint. There's an administration fee of \$700.00.

15 A. Oh yes, yes, I understand now, yes. It's lease takeover and basically what happened when Nikityuks left the house on October 17th, they tried to take my car and I insisted that Valentin gave me back the key from the car because they said that they're leaving and they will be living in some different place. They don't want to live in the house any more. But the thing is that my insurance permitted Valentin to drive this car only
20 because he was living at the same address. It was - he was the third driver of this car. Well, they use it almost exclusively, but formerly he was the third driver and my insurance he was additional driver and all three
25 drivers by the lease agreement, by insurance agreement they were supposed to live at the same address. So before that, I recall conversation with him a few days before because there were a lot of conversations about social housing and one of the arguments I told Valentin
30 back then why they - it's a bad idea of the social housing. One of the reasons is that he supposed to have his own insurance and it will be expensive. My insurance

5 was for two cars, well, and all this experience in Canada
and driving experience it was very - very good insurance
premium. But if he wanted his own insurance and he
should have his own insurance if he was going to live at
another address, he was supposed to take care of it. And
I couldn't give him the car because he didn't have
insurance so I insisted on returning the key. And well,
our talk okay, return the keys and they left without the
10 car. And then that car stayed in garage for a few months
because we were going to get rid of that lease. It's
commitment well, it's not easy and finally when we found
some person who was ready to take over that lease, yes,
we got rid of it and it happened after a few months.

15 Q. So who drove the vehicle after Nikityuks
left the house in October 2011?

A. Well, Svetlana drove it like occasionally,
maybe a few times just like 500 metres to No Frills for
grocery shopping because if I'm at work and - well, the
20 car is staying in garage was used a little bit but almost
nothing.

Q. But while the Nikityuks were living with
you, did they use this car on a daily basis?

25 A. Yes. They used it almost exclusively and
again, Svetlana used it occasionally for grocery
shopping, same thing. Nikityuks the usual day for
Nikityuks was like get up at 7:00 am have breakfast then
you to YMCA. Classes start at nine o'clock, they last
30 till I believe two or something like that then they come
home and have dinner which is already ready because
Svetlana prepared it and then Valentin watches his
Russian TVs series and stuff and while, the car was in

5 their possession all that time 'cause YMCA classes they
were 24 kilometres from home one way. So it's every day
they drove about 48 kilometres back and forth for those
classes and they paid for gas. And on top of that,
almost weekend there was some of event in Ontario, in
Ontario there are local events and they visited all over
them many times. So they carpooled with Yana, with her
mother, with her children, sometimes with her friends.
10 And they were visiting sites and events all over the
place again, using that car. So I would say that car was
almost in their exclusive use all the time, almost.

Q. Mr. Danilov, could you turn to Tab 121
which is also contained in Exhibit 1A?

15 A. Yes. It's another agreement of purchase
and sale. So I believe it's - just give me a second.

Q. Did you purchase a condo in May of 2009?

20 A. Yeah. That's what I'm looking for. I
believe there is supposed to be a date over here. It's
May you're saying. It should be something spring or
something.

Q. If you could turn to page 738.

25 A. Yeah. So yes, it's end of May 2009, well,
after we decided to move in with Nikityuks and well, they
expressed their desire. Well, they liked to live alone
in the house. They lived like in the house alone since
August 2008 and they like the concept. Like they live in
the house, we come on weekend. We, well, Svetlana cleans
the house, does grocery shopping, does well, snow removal
30 if it's winter or grass cutting if it's summer or like
everything. And then we go back to Etobicoke. They like
that concept very much so when we moved in, well, there

were a couple of conversations that they want to actually
to live separately and we purchased a condo for them.
And we dealt with Pratt Homes before and it's the same
the same structure concept so we paid that five thousand
5 deposit and the condo was supposed to be ready, I believe
in two years or so and it was a very nice space here, two
floor condo, two bus stops from the hospital and it was
very important for Nikityuks because they still were
10 having a lot of health issues and a lot of doctor
appointments so they spent a lot of time in that hospital
even emergency. So we purchased a condo for them, and
yeah, this is the agreement basically. But then I'm not
sure I think it was July, Svetlana knows better, it was
15 end of summer 2009 when we - when Svetlana enrolled them
in the YMCA English classes and they started to attend
YMCA on every day basis. And they still were having a
lot of health issues and doctor appointments that
Svetlana was accompanying them to those doctor
20 appointments and they didn't understand anything of the
classes. They were so overwhelmed with this and new
stuff and they couldn't understand a word of English. So
even their teacher had to dance in front of them so they
understand what actually she wants of them. They were
25 overwhelmed very much. And Alla told that, you know what
guys we cannot live separately so who will take care of
us. So we were lucky actually that in this agreement
schedule B is missing. We didn't notice that when we
signed it. So we found a lawyer - well, actually found
30 that technicality and was able to cancel this agreement
just for fifty bucks. So we got our deposit back and it
happened in - it was cancelled, it might be there, I'm

not sure. Yeah, I think it was cancelled in October when Nikityuks realized that they cannot live separately.

Q. And you're looking at page 766 and 767?

A. Yes, I think so, yes.

Q. And that's the termination of the agreement?

A. Yes.

Q. So the purchase of this condo was intended for Nikityuks?

A. Yes, sure.

Q. It wasn't intended for Anastasia?

A. Anastasia was University of Toronto student and she had her own place in downtown Toronto why the heck she needs that condo in Barrie.

Q. And who picked the location of the condo?

A. We all did, the Nikityuks - first we found the location, me and Svetlana then we took Nikityuks there, they saw the condo. Probably we have pictures of them looking at the condo somewhere. I'm not sure they're produced but we have them somewhere at home. So they saw the condo. They liked the location and everything.

Q. And layout of condo, that is at page - there's a floorplan of the condo at page 758. And it was a two-bedroom condo?

A. Yes. It's the floorplan. It was a two level condo and yes it was two-bedroom so one floor was dining room, living room and kitchen and other level bedrooms.

Q. And why would the Nikityuks need two bedrooms?

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A. Oh, as I mentioned before they sleep in the same bedroom because Valentin snores and Alla cannot sleep.

Q. Now, at some point the topic of social housing came up, can you tell me about that?

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A. Yes. Everything - well, we actually didn't know that Nikityuks had some issues with living together especially after they rejected that condo in 2009. And what happened - but I didn't that, but Alla testified at the examination that they met some friends in Toronto who they were acquainted through YMCA and those friends they - their parents might be friends themselves were living in social housing and it took four years waiting for them to get that social housing and it was very -

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MR. BORNMANN: Your Honour, we're well into my client's testimony at this point.

A. But I need to put some logic into the story.

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MR. BORNMANN: He's testifying to my client's testimony on the examination for discovery which my friend will have the opportunity to put to my client at the appropriate time. These are not contemporaneous recollections of the witness from the time in question, Your Honour.

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THE COURT: All right. So he's informing himself from the testimony versus what he recalled at the time. Is that what your suggesting?

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MR. BORNMANN: Yes, Your Honour.

THE COURT: Ms. Chapman.

MS. CHAPMAN: I'll ask him another question.

We can move on.

Q. Who brought the topic of social housing up in the family?

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A. Alla, and it happened first time the topic itself was raised I believe sometime in May 2011 it was first time they started to talk about social housing. And well, there were a lot of conversations about that with Svetlana and some with me, only some with me because I didn't participate in those conversations. But yeah, Svetlana will testify about that, but when I participated I was like come on, what is social housing. You have 40 thousand annual income, you are not eligible for social housing, forget about it. And next day it's again social housing we're going to try, but it's mostly with Svetlana. And at some point again, like once and awhile I - well, involve myself in those conversations trying to explain why they not eligible, print it out some reports from my financial system, showing them their income like we were living altogether in the house with household about 80 thousand per year. And everything in that house was divided in half between us and Nikityuks. So we shared everything equally. So everything supposed to be divided by factor two, like if it's 80 thousand per year, household expense then they have to cover 40 thousand and that 40 thousand supposed to come from somewhere and that's somewhere was investment income. I paid for that loan agreement. So that's why it's 40 thousand annual income of Nikityuks and that was explained to them many times. But I don't know they seem to be understanding that and but so next day it's all happening again, like

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yesterday conversation never happened. Social housing, we going to try and well, at some point I believe it was in June 2011 Alla told me that you guys live here in Canada so many years and you do so many mistakes. You have to listen to smart people and you have to listen to specialists like Yana Skybin. That's what she told to me. And she will explain what you are doing wrong. And I told her back then that I don't believe that Yana Skybin can tell me anything I don't know and I take care of my mistakes myself. And that was conversation I believe it was in June 2011. And then in July they actually started to insist on Svetlana helping them with application but that's as far as I'm assisting on that.

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Q. Aside from advising Nikityuks that they had too much income to qualify -

A. Yes.

Q. - did you give them any other advice about applying for social housing?

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A. Yes. It was - they were saying that, well, that - one of the reasons why we - we were talking about that again and again, it was - it's a long waiting list. It's like four years waiting list for social housing. Even you guys were eligible for that, you have to wait four years and they knew that because those friends in Toronto told them they waited four years. So it's four years approximately four years waiting list in Barrie too. And but at some point Alla was like, ahh, forget about waiting list, we - well, I know people who know how to avoid that waiting list. Waiting list is not your problem. All you have to do is just to go with us and fill out that application, help us fill application

5 because we don't understand English and blah, blah, all
this stuff. And I was so disgusted with that because see
- I told them, folks you have good income and social
housing is for poor people and if - if somehow you are
going to avoid that waiting list, it's the same as
stealing from homeless and we are not going to be any
close to that. It's disgusting. And we don't want to be
part of this scam because there is no legal way you can
10 obtain social housing without four years waiting list and
even with four years waiting lists because you have 40
thousand annual income.

Q. Is there such a thing as social housing in
Russia?

15 A. Approximately mid-90's all housing in
Russia was social and I believe it was 1994 when the
government allowed people to privatized their houses so
after that you can sell and buy and before that you could
only exchange and pretty much all real estate in Russia,
20 in Soviet Union belonged to the government or to
municipalities or to some organizations like that and
sometimes two big companies maybe, but not two people and
you can tell that it's a social housing because you live
there as a tenant always. Your apartment or house
25 doesn't belong to you, you live there. If you're
registered there, you have the right to live in it.

Q. Could you turn to Tab 37 in Exhibit 1A,
please. And at page 208 there appears to be a translated
version of a document in Russian which is at page 211.

30 A. Yes. It's -

MR. BORNMANN: Your Honour, this issue that I'm
about to speak has been an issue in this

litigation for years. As the court knows there are certain rules about introducing foreign law as evidence in a proceeding before the court and this has been raised with certain my friend's predecessors and what we're about to embark upon here is a review of Russian property law that has been obtained from the internet and I just want to throw down a marker on this because the understanding of what the law was may well be open to dispute and we do not have our Danilovs who have made this a part of their case for some time have elected not to call an expert on this matter and are leaving us in the situation that we are now. So having raised - brought that to the court's attention I'll perhaps let my friend proceed.

THE COURT: What this is apparently is a legal explanation of Russian law, is that what this is? Ms. Chapman?

MS. CHAPMAN: It's a piece of legislation that changed the privatization of housing in Russia to allow people to then become private owners of their apartment. I'm not going to ask Mr. Danilov any questions about the law or what he understands. It's only to give context to the period of time when the housing changed in Russia.

THE COURT: And was that after he left or before?

MS. CHAPMAN: Before.

THE COURT: And he's already spoken about the process of people being able to buy their own apartments.

MS. CHAPMAN: Yes.

THE COURT: Isn't that sufficient for our purposes?

MS. CHAPMAN: Likely.

THE COURT: Obviously people that were able to do so did and perhaps there were some people that couldn't afford to, I don't know, and they may have fallen through the cracks. I don't know. But he's already told us about the opportunity to purchase and he's already told us I think about the defendant's selling their unit as part of the proceeds to Canada. So what more do we need to know. Is that sufficient?

MS. CHAPMAN: That's sufficient, yes.

Q. Mr. Danilov, did you and Svetlana have any discussions about Nikityuks - about the issue of social housing?

MR. MAE: Your Honour, discussions between the two plaintiffs now are five years after the events, I think are highly irrelevant.

THE COURT: Isn't she talking about discussions with the defendants.

MR. MAE: No. She said, Svetlana that's his wife.

MS. CHAPMAN: Yes, his wife.

MR. MAE: The co-plaintiff. We're in hearsay here and -

A. I can simply say yes.

THE COURT: Just a minute, sir. Basically it's a conversation between the two plaintiffs. I guess the issue is, was it then or now?

MR. MAE: And was it witnessed by anybody at the time? I don't see how this is probative of any part of the case what they were talking about between themselves or what they say they were talking about between themselves way back when.

THE COURT: So doesn't that go to weight because obviously they're both available for cross-examination. It may be an issue of relevance or weight.

MR. MAE: That's one issue of course, Your Honour, and the co-plaintiff is in court and she can hear everything that is said and one assumes that we're going to get parrot evidence.

THE COURT: I think we'll hear argument for the submission as to the probative value but more importantly the court ought to give no weight to it or little weight.

MR. MAE: Certainly, Your Honour.

THE COURT: I don't think that constitutes an inability to hear the evidence for whatever weight the plaintiffs may wish to put to it.

MR. MAE: Thank you, Your Honour.

MS. CHAPMAN: Q. So at the time that Nikityuks are asking you and Svetlana to assist with applying for

social housing, did you and Svetlana have any discussions about that issue?

5 A. We did, but we didn't have to because well, we were living as you know, one family and everything what Nikityuk were saying to Svetlana or Svetlana was saying to Nikityuks I heard that most of the time except the times when I was at work. But those are the times when Nikityuks were out of the house too. So the time when we all overlapped it was most of the time. So I heard all the conversations, Svetlana heard all the conversations, Nikityuks heard all the conversations. Of course we discussed all that stuff, of course we did.

10 Q. What do you recall about the weekend of August 19th, 2011?

15 A. Weekend, it's actually August 20th it's Saturday.

Q. Tell me about that weekend. What do you recall from that time, not based -

20 A. It was a very memorable weekend actually because we just purchased the gazebo kit from Costco and it was in the garage very nice thing. You have to assemble it and then you get all this nice red cedar gazebo and well, basically that was weekend where we were setting it up. And my daughter Anastasia and her fiancé at that time Nicholas they came together and it was one of their regular visits because they visited us like once in a month so something around that. We were working altogether in the backyard mostly me and Nicholas and Anastasia was helping as she was sanding Muskoka chairs and I have this sander thing, electric tool, vibration one so it makes things smooth and nice. So basically we

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5 three were working there. Svetlana and Alla and Valentin they were in the house and they were cooking and we were going to do the barbecue at some point and well, Svetlana was discussing some stuff in the kitchen, but I didn't hear that. That's Svetlana's testimony. What I remember from that that in the evening, late in the evening around 5:00 pm or 6:00 pm Nikityuks actually left to Yana's birthday and they returned back very late and pretty much that's it.

10 Q. Did Anastasia stay for that entire weekend?

A. Yes. They stayed for Sunday and they left Sunday afternoon, I believe.

15 Q. And was there any discussion in the family about social housing during that visit?

A. Yeah. It turns out that yes, but I didn't participate in that.

20 Q. Was there any confrontation that you saw between Svetlana and Alla?

A. Not that I'm aware of, no.

25 Q. Did you hear anything unusual in the house?

A. I didn't pay attention, nothing unusual. And you see, when you doing like noisy stuff in the backyard you actually don't hear what's happening in the kitchen inside the house, no. So no, I didn't hear.

30 Q. Were you involved in any kind of confrontation with Alla or Valentin that weekend?

A. No.

Q. And what do you say with regards to the allegation that you threw dishes at the wall?

A. It's all made up, never happened.

Q. Have you ever thrown dishes at the wall?

A. No.

Q. And Valentin will give evidence that you threw a glass at his feet, is that true?

A. No.

Q. Have you ever thrown dishes or glasses at Valentin?

A. No.

Q. Did you ever have any kind of confrontations with Nikityuks while you lived together in Innisfil?

A. No.

Q. Disagreements?

A. Social housing that it all started in spring 2011 before that, they were extremely happy. If you look at those emails they sent to their friends and family in Russia, you can tell. Maybe we can refer the court to those.

Q. And did they complain to you about the Russia television programming?

A. I'm not sure what you mean because what he could complain about. I'm not - I've not anything to do with Russian TV program. Yes, I paid for that, yes. They had Russian TV program and was Russian TV programming the story basically - see, I - I worked for Rogers and they have 50 percent employee discount and overall all those Rogers services including cable and including Russian six channels they were more or less affordable. I would say about overall, about with 50 percent discount it's about \$60.00 per month or so, might be 80 I'm not sure at this point. It's different at different times. We added some channels. We removed some

5 channels so it was. It was discounted, it was about
\$80.00 per month. And what happened in September 2009 IBM
acquired the entire Rogers IT department and we all 650
or so people we became IBM'ers so nobody asked us. That's
10 what happened. But Rogers kept that discount for another
two years for all employees who were acquired by IBM and
that discount expired in September 2011. And after it
expired, it turns out that I have to pay \$80.00 only for
six Russian channels and the things is that we were not
interested in Russian channels, when I say we, me and
Svetlana. We almost never watch them. And those Russian
channels they were exclusively for Nikityuks and as per
our agreement that they spent their pension on their
entertainment I offered to them to pay for those Russian
15 channels at least partially because well, the price
became ridiculous and well, they rejected so I got rid of
those channels. And Nikityuks started to watch those
channels through internet, but again internet is not free
and they explained watching that every hour he watches
20 his serials through internet. It's about \$5.00 in extra
fee because you have to pay for extra subscribe, video
traffic takes a lot of extra gigabytes when you download
those movies and stuff and if you watch the TV stream out
there, it's big traffic and it's expensive. He thought
25 it might be free but it wasn't. I just explained that to
him.

30 Q. Did Nikityuks complain about anything else,
the food that you served?

A. No.

Q. The cleanliness of the home?

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A. No. They could buy whatever they wanted. Most of the grocery shopping was done by Svetlana. The fridge was always full of whatever we had and we always shared meals and we always had together. We always had dinners together and no, they never complained and well, sometimes, well, Alla baked and I like her cabbage pie very much. I liked her borscht very much and always appreciated that. Sometimes they bought some stuff just for themselves extra fruits and things, but they never complained. Overall, groceries budget for period when we lived together 2009 to 2011, it was about 15 hundred per month for four people. I'm sorry, I believe there is a mail from Valentin to some friend in Russia that they were going to some Russia food store where they could buy some Russian specific stuff you cannot buy let's say in No Frills or something else.

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Q. And so by September 2011, had anything changed in the home as far as you're aware?

A. No, literally nothing happened.

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Q. And were there still discussions about social housing?

A. Every day.

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Q. And had Nikityuks advised you that they had made an application for social housing?

A. No.

Q. What's your recollection of October 17th, 2011?

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A. I think I need to - I need to find one document over here if you don't mind. I believe it's on the same tab. Can you refer me to the tab where there are annuity quotes?

Q. Yes. The annuity rates?

A. Yes.

Q. Yes, Tab 33 in Exhibit 1A and Tab 34.

5 A. See there is one page over here, it's page
190. It's not actually annuity quotes, it's estimate of
medical insurance quotes. The thing is that well, in
October, September/October 2011 both Nikityuks were in
good shape like health, I mean. And my idea was that we
10 need to take an advantage of this situation and buy life
insurance for them because well, you have to be in good
health when you do that because you have to pass some
kind of medical tests, medical exam and it was a good -
good timing for that because they were both in good
15 shape. And well, I started to actually call around
shopping for that life insurance and here on page 190 you
can see that there is a quote for - quote for, yeah, it's
October 12th and so the cheapest premium here is \$268.00
per month for both of them. And well, it seems to be
20 expensive a little bit and I kept shopping and what
happened that around 16th or 17th I actually found a very
good insurance company with premium about 170. And in
the morning of October 17th, 2011 I approached both Alla
and Valentin they were in the kitchen and told them that
25 guys, it would be nice if you had life insurance covering
final expenses and all this stuff, you know, because
you're not getting any younger. And you both are in good
shape now and all you have to do is pass through short
telephone interview and Svetlana will assist you with
30 interpreting and then you have to go to the medical exam
and pass that medical exam and then we'll pay about
\$170.00 per month and you will have life insurance

5 covering final expenses. And while then pretty much
nothing happened except that of some point in the
evening, I heard noise downstairs. I was in our bedroom,
master bedroom on the second floor. I heard a noise
10 downstairs some kind of argument over there and I came
out and I saw Nikityuks with bags standing at the front
door and Svetlana coming from the outside and they were
speaking about leaving the house. And I don't recall the
exact conversation but it was clear that they were
15 leaving the house because they have towels in their bags.
Those were like huge bags, there was a lot of stuff. And
Valentin was handling the car key in his right hand and I
said to him that if you are leaving you cannot take the
car so give me the key back. And he tried to argue with
20 that, that while - I didn't try again to explain him that
he has to have his own insurance and stuff and he cannot
take my car without his own insurance. So I just
insisted on returning the key and we had this garage
opener button actual clicked to the bookshelf right by
25 the front door. So I took that button off so he couldn't
open the garage. And then he pulled out some kind of
phone from his pocket, I never saw before and said that
he will call 911 right now and police will be right here
and I said okay, call 911. I don't have a problem with
30 that. He pretended that he is pressing some buttons, but
he didn't press any buttons so he didn't call 911. And
it well, it seems to be that that phone didn't work so I
offered him to call 911 from his cell phone. He still
had his cell phone. And he took his cell phone and
thrown it on the floor to me feet. And you know actually
home phone right there so he could use even home phone if

5 he did want to call 911, but he didn't call 911. He wasn't going to. And so then Alla said, return the freaking key, it's their car, let's go and he threw that car key on the floor and they left. And it was 9 pm. It was already getting dark and they didn't return next day and they didn't return day after that so at some point I believe in a couple of days later I believe it was 19th we filed the missing person report.

10 Q. And after you filed the missing person's report, first of all, who did you file that report with?

A. South Simcoe Police department.

15 Q. And did they undertake some sort of investigation to locate Nikityuks?

20 A. Yes. Svetlana was calling everybody like every number she could find in channel 975. It's Rogers special channel when you have home phone with Rogers and cable, they can show all call log incoming and out coming numbers on channel 975 so Svetlana was calling pretty much every number in that list, trying to figure out does anybody know anybody - anybody know about Nikityuks, but Svetlana will tell that better because I didn't call anybody, Svetlana did.

25 Q. What did South Simcoe Police do? What did they report to you?

30 A. Again Svetlana will tell better because she was communicating with police on the phone, but what I know to the best of my knowledge that police officer, I'm not sure about his name, but he had report somewhere, police officer advised her to provide him at least some contact information he could start an investigation with, and she provided him some numbers. But before that she

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called those people to make sure that they're comfortable to speak English with to the police. Some of them were not comfortable, some of them were and those who were finally they told police something and as far as I know like a day or two later police said they will call and said they are safe so we stopped calling and stopped looking for them.

10 Q. Did Nikityuks return to the home in Innisfil?

15 A. Yes, a week - a week later on October 24th with police escort, I wasn't at home, Svetlana was at home and I think she will testify about that because I wasn't at home. All I know that she called me several times on the phone asking can they take that, can they take that, and they told her that they can take whatever they want 'cause they can take any furniture in the house, anything in the house because next day we could afford to buy it. It wasn't a problem. They could take whatever they wanted. But I was participating that the event only by a couple of telephone conversations with Svetlana.

20 Q. And when Nikityuks - that's the only time the Nikityuks returned to the home?

25 A. Yes.

Q. They've never returned to the home to live?

A. No.

THE COURT: Ms. Chapman, is this a good time to take the morning break?

30 MS. CHAPMAN: Sure.

THE COURT: So we'll take a 15-minute break.

MS. CHAPMAN: Thank you.

RECESS TAKEN

UPON RESUMING

THE COURT: Yes, Ms. Chapman, are you ready to continue?

5 MS. CHAPMAN: Yes. Q. When the Nikityuks left the home in October 2011, were you concerned about the status of the sponsorship agreement?

10 A. I wasn't concerned about the status of the sponsorship agreement. I knew that their sponsorship agreement and I have an undertaking to support them for ten years, and that undertaking expires in 2015, no I wasn't concerned. But what I was concerned about is how I am going to provide them with support because we didn't have an idea where did they go and where to send them
15 money and how and what is their address and they were as they called it, under YMCA witness protection program, so nobody told us where they are, what is their address and how to contact them.

20 Q. So could you turn to Tab 68 in Exhibit 1A, please?

A. 68?

Q. Yes.

A. Yes, 68.

25 Q. Is that a copy of a letter you sent to Susanne Green at the YMCA?

A. No, it's not. Something different here.

Q. Are you in -

A. What page?

30 Q. Tab number 68 was replaced yesterday as there was a page missing.

A. Oh, I'm sorry, 68.

Q. 6-8.

A. Yes, I'm sorry.

Q. There should be three documents at that
tab.

A. Yes, there is a letter, yes.

THE COURT: I only have two pages. I think at
the break I have the witness copy and the
witness has the original in front of him. So
this copy - this version may not have the third
page put into it. What I have is 441 and 442.

A. So the second page was missing.

MS. CHAPMAN: Sorry, Your Honour, only two
pages at your Tab 68? I had handed up a copy
yesterday to replace that tab and if that went
into the exhibit binder. Okay. I believe - do
you have the cheque copy in your 68?

THE COURT: It's just been passed up to me so
I'll put it in.

MS. CHAPMAN: Okay.

THE COURT: So I'll put this in. So should we
call this 441A? There's no number on it.

MS. CHAPMAN: Sure.

THE COURT: Does that make sense?

MS. CHAPMAN: That would be fine.

Q. Mr. Danilov, can you confirm that you do
have three pages at Tab 68?

A. Yes. I have the letter itself. The second
page is supposed to be the Canada Revenue Agency website
printout and the third page supposed to be the cheque.

Q. Good.

THE COURT: I do have a cheque here and you handed up another copy so I have the letter and the cheque but I don't have the other page about the CRA.

MS. CHAPMAN: Yes.

THE COURT: Perhaps that page should be 441A.

MS. CHAPMAN: Q. So the first page at Tab 68, that's a letter you sent to Susan Green.

A. Yes, that's the letter, yes.

Q. And just to confirm this second and third pages are the documents -

A. Those are attachments to the letter which were altogether when I sent them.

Q. Okay, very good. So tell me about this letter and why you wrote to Susan Green?

A. Yes. We discovered as it says in the letter that YMCA settlement services were involved with my wife's parents and the reason for that is the second page. It's Canada Revenue Agency printout. And it says that Yana Skybin is their representative and we figure that out very easy because Svetlana was always Nikityuk's representative with CRA, and we were trying to figure out the address, anything we could send support to. And one of the places we looked was of course CRA because you must change your address with CRA you should change your address. So basically we opened that website and we saw that Yana Skybin has been Nikityuks' representative from CRA, at least since April 28th, 2011. This is the date at the bottom, date modified. It's the date when the page was modified last time. And at least after that time Yana Skybin was already representative for Nikityuks. So

5 we figured that well, Yana Skybin she's from Muskoka
Newcomers Services which wasn't in use for us so we
contacted the director of Newcomer Services, Susan Green.
And as we knew that they were involved, we asked them to
give the cheque which I sent together with this letter to
10 Nikityuks. It was the first support cheque after they
left the house. It was - it's on the third page here. It
was in the amount of \$1741.94 and we didn't have any
other way to give that cheque to Nikityuks except through
YMCA because we didn't know their address and well
basically what happened later.

Q. We'll turn to Tab 69.

15 A. Yes, Tab 69. This is the Scotiabank
statement of - what is it? I don't think it's wrong
looking here. My Scotiabank statement.

Q. Yes. But the third entry on December 5th.

A. Oh yeah, right.

Q. Line of credit check.

20 A. Yes, right. So line number three, my
Scotiabank statement stays that Nikityuks tried to cash
that cheque on December the 5th, more than one month later
than it was sent and it confirmed in telephone
conversation with Susan Green. I called her myself that
25 she gave that cheque to Nikityuks like maybe on November
the 2nd on or about that. So more - a month before and
well, I couldn't understand why they're not cashing that
cheque for more than a month. And well, in the beginning
of November we had contact from Ontario Works. We had
30 conversation with Ontario Works people and they advised
us that Nikityuks applied for social assistance so we
cancelled that cheque on November the 10th. That's why

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it's reversed here, but we cancelled that on November the 10th once we figured out that they actually received the social assistance and I believe there are some emails circulating around they're produced somewhere in this file that they were like should we cash that cheque or not and we are not in the position of cashing that cheque from our sponsor. Pretty much they're applied for social assistance and they were waiting for a decision. So we didn't want to show that cheque that sponsor keeps supporting. But what happened on November 10th, actually November the 9th, mutual friend of Nikityuks and us called Svetlana, but Svetlana can testify about that and she told Svetlana that -

Q. I don't think that -

A. Okay.

Q. Thank you. Could you turn to Tab 70, please? And is this the stop payment order on that cheque?

A. Yes, it is. We cancelled that on November the 10th because at that point we knew that Nikityuks applied for social assistance and they didn't want to pay the same twice because as their sponsor I'm entitled to support them and if they go and apply for social assistance every amount they get from the government will be eventually charged back to me. So if they get that amount from Ontario Works then I cancel my cheque because they get it from Ontario Works and they have to pay it back to Ontario Works.

Q. Could you then turn to Tab 63 in Exhibit 1A, please?

A. Yes.

Q. So despite the Ontario Works application, did you continue to support Nikityuks?

5 A. Yes. Little bit later, a few days after that first support cheque, we sent I believe another letter to YMCA to Susan Green with the void cheque of that account which was opened for Alla in 2005. And they always had access to that account. They always had access cards to that account and before that they closed all other accounts in their names opened for them. It was like the only one left and they were aware of that account since 2005. So we figured that it would be convenient to transfer support in future to that account. So we notified Susan Green and asked her to talk to Nikityuks and explain them that they are not supposed to close that last account because support for them will be coming to that account every month on the 1st day of every month.

10 Q. Okay. So let's also have a look at your letter to Ms. Green. It is at Tab 71.

15 A. Yes, this is the letter, yes.

20 Q. And page 2 of that letter -

A. Page 2 of that letter is the void cheque with that joint account of Svetlana, Alla and Valentin which was opened back in 2005 and Nikityuks were using even in Russia withdrawing funds from that accounts so they were aware of that account for years, been using them.

25 Q. And it appears from the bank statements which are at Tab 63 that there were internet transfers into that account.

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A. Yes. I started to regularly transfer support funds for them I believe starting from November, let me see. In November there was some kind of mess because there were some pension leftovers we were supposed to transfer them. There were some transfers. We were trying to figure out the support amount because it wasn't - I would spend that scheme. We came up with a way using for years didn't work anymore because they moved out. So we had to figure out the amount of support, first of all, which should be enough to cover their basic expenses. Second of all, which would be more than Ontario Works support, they can apply for and third of all, well, would be - we could afford and would be enough for them. So basically we figured that the amount it was a little bit more than a thousand dollars a month. And we started to transfer that amount to that joint account on every month basis. Internet transfer, yes. The first regular transfer was on December 7th. You can see that on page 373. It's \$1,022.00 and that created memo December 6th, I believe it's Alla's or maybe Valentin's pension. I'm not sure. So they withdraw that on December 20th. And then if we go further, page 375, in January there were two amounts because well, there were reasons why I couldn't transfer the entire one thousand in one day, but there were two amounts for 130 and five hundred ninety-two. And then there was - somehow the next statement is from December 2012 but it's the last basically, yes, statement. It's just in the wrong place. So we go to page 379 there is another internet transfer \$1,022.00 and starting from March Nikityuks began to make mess on the account. I think they did that on purpose

5 but I'm not sure. They started to systematically over
draft it so the account had \$2,000.00 overdraft
protection. So they knew that we are transferring
\$1,022.00 for them every month but they tried to withdraw
more than that. So they put account in over-draw status
once. So I covered it on March the 2nd immediately
because I have to pay like 30 percent interest on
overdraft. And then the same thing happens in - well, it
10 was March - first time it happened was February actually
'cause all those statements there just going in the wrong
order. So in February I transferred \$1,022.00. It's
page 381 they withdraw 25 hundred, put the account in
deep overdraft status. Then I covered that in March as I
said before on 379 page. Then they did that again and
15 finally we removed overdraft protection from the account
and they started to withdraw only what's there. And it
was going to the end of the year and the last statement
for year 2012, I believe it was before. It's on page 377.
20 So it was \$1033.00 at that point and you can that they
can withdraw only \$1,033.00 because we removed the
overdraft protection so they cannot make that mess on the
account any more.

25 Q. So what happened to this joint account?

A. They closed it at some point in 2013 by
some reason. I don't know why.

Q. And did you continue to pay support after
that?

30 A. Yes, we didn't have any other choice like
to send them cheques after that. So we kept sending them
cheques and then at that point we already knew the
address so it wasn't a problem.

Q. Okay. And let's have a look at those cheques. They're at Tab 177 in Exhibit 1B.

5 A. Yes. And yeah, support cheques we started to send them cheques for \$150.00 simply because they put CPL on the house and they cut me from the income source. I was going to use to support them and to provide investment interest for them. That income source was just equity on the house. We have credit line on that equity against the house so I used that money to invest and that investment interest was supposed to go as 10 Nikityuks' support. And once they claim their interest in the house, then well, my position is that if there is their share in the house they must pay expenses such as property taxes, mortgage interest, utilities, their share in the expenses. So I started to deduct that thing. 15 It's about \$800.00 per month from their support and the remainder is \$150.00, just to make a point that their CPL was baseless. And basically - see, it's actually the same position as Valentin Nikityuk's has because when we 20 were sending them support to Russia, she said at the examination that those was to cover utilities expenses. So if Svetlana had to cover utilities expenses not leaving Russia for that apartment then he has to cover 25 the same utilities expenses in the house when he lives in Canada by the same reason.

Q. Mr. Danilov, if you could turn to page 1134 same Tab 177.

30 A. 11-

Q. 3-4, 1134.

A. Uh huh, yes.

Q. And at this point the amount changes.

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A. Yes, at that point the amount changes because Mr. Bornmann at the oral examination personally assured me that Nikityuks don't conceal their income anymore and everything including Valentin Nikityuk's DVD on some pictures book and all our payments are disclosed now to CRA and to Ontario Works and other support organizations. It turned out that he was lying in my face and later when we figured that out, we changed amount back to 150 and we have that on transcript by the way. So we kept paying them \$550.00 like all - all 2014 and the last \$550.00 cheque is dated by May 2015 which is on page 1146 and then while see the thing is that again, we - we trusted that Nikityuks disclosed their income and they supposed to show all those cheques, supporting cheques they're receiving from me to ODSP applied to that point they supposed to include them at their income into their tax return, but at that point in May 2015, I'm not sure how I believe there was some kind of document or whatever. We figured that, it wasn't true, and they keep concealing their income. So again, I'm not intending to pay the same twice so everything they get from social assistance eventually will be charged back to me. And I and my wife we have our own agreement with social assistance ODSP institution and overpaying recovery unit, we already paying Nikityuk's debt there, and again, I'm not intending to pay the same twice. So if they're not disclosing their income they receiving from sponsor, they get more from the social assistance system, and everything they get from the social assistance will be charged back to me. So that's why those cheques they going back to 150. I understand it's not enough but I

5 know that they are applying for ODSP. They receiving the regular some amounts from ODSP. They're not supposed to because of sponsorship agreement. I do what I can do. That's the maximum I can afford at this point.

Q. Do you continue to provide Nikityuks with financial support today?

A. Yes, yes. Every month they receive a cheque. Currently it's \$150.00 because they receive money from ODSP.

10 Q. And the ODSP debt who is repaying that?

A. We do, I and my wife. We have agreement with ODSP. We are repaying that already. We don't know - well, now we do because they produce some kind of statement right before the trial. But well, number in that statement is different from statements we get from overpayment recovery unit and well, overall it just doesn't make any sense. What I know that overpayment recovery unit charge pre-authorized payment from my bank account every month in the amount of \$70.00, 35 for me and 35 for my wife and that's going to last forever until we repay the entire Nikityuks' debt and we have that agreement and we are already repaying it.

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25 Q. Could you turn to Tab 85 in Exhibit 1A, please?

A. 1A?

Q. 1A.

A. Tab 85?

Q. Yes.

A. Yes.

30 Q. So this a letter to yourself and your wife.

A. Yes.

Q. From Ms. Yachtman with the County of Simcoe.

A. Yes.

5 Q. And it sets out that there is an amount owing to Ontario Works for funds paid to Nikityuks, correct?

A. Yes.

10 Q. And page 2 is that a cheque that you sent to the County of Simcoe to reimburse -

A. Yes.

Q. - that debt?

15 A. That's the amount they got initially from Ontario Works and that's the amount why we cancelled our first support cheque which, by the way, was for the high amount. But we cancelled it. Once we figured that they applied for social assistance, we cancelled our first support cheque and these 1644 they got from Ontario Works. There was like investigation about that. Did they obtain that legally or illegal or whatever so finally we repaid that to Ontario Works County of Simcoe just to close the matter because it was very annoying.

20 Q. Have there been issues with Immigration Canada as a result of Nikityuks moving into social housing?

25 A. Yes. They sent some letter to Immigration Canada claiming that sponsorship agreement is broken which was not. By the way, we always kept supporting them. They in that letter they accused us of abuse and actually that letter was prepared by Yana Skybin. Now, as a result of that, now we are not banned from sponsoring anybody else because - well, those are the

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rules if you break the sponsorship agreement, you cannot sponsor anybody else. And we actually were thinking about sponsoring my sister who is still in Russia. He's (sic) 14 years older than me still working, struggling over there and she's very interested in coming to Canada but I cannot support her, right now, cannot sponsor her. And Svetlana still has her biological father who she communicating with regularly. And he's a nice guy and well, he's interested too, but we cannot sponsor him either.

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Q. Could we turn to Tab 86 which I understand is the letter Immigration Canada sent to you with regards to your ineligibility of sponsoring other family members.

A. Yes. It's states at the bottom of the page, paragraph one, and I believe it's a letter to me and it's supposed to be the same for Svetlana.

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Q. Yes. There's a copy to Svetlana at Tab 87.

A. It's not a copy it's different letter because we are sponsor and co-sponsor.

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Q. Yes. I'm only concerned with your letter, Tab 86.

A. Yes. So basically it clearly states that we are not eligible to sponsor anybody else.

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Q. And was the sponsorship agreement broken?

A. No. I don't consider it broken. They - Nikityuks I mean and Skybin they claim it's broken. They did everything to break it, but it's not broken. I kept supporting them, we kept supporting them all the time.

Q. And do you have an obligation to continue to support Nikityuks?

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A. Yes. Sponsorship agreement cannot be actually broken. It states clearly in the sponsorship agreement itself. If I stop supporting them or if they apply for social assistance, as a sponsor, I must repay that to the government until the sponsorship undertaking expires, and it expires in June 2018. The problem is actually that we support them, but they don't show that support anywhere. They conceal it. No - no cheque has been disclosed to CRA or to ODSP or to Ontario Works ever. So every cheque I sent to them they conceal it, and they keep getting social assistance will be charged to me back eventually, and those cheques they think that it's like, I don't know, black cash or whatever it is.

Q. We'll get there. Could you tell us about the impact all of this has had on your life?

A. Oh, it's a disaster.

Q. Could you explain?

A. Yes, sure. They involve me in all this harassment campaign which started Fernandes Paralegal call in 2011.

MR. MAE: Your Honour, he's talking about harassment. Harassment was one of the claims was dismissed at summary judgment.

A. I can call it other way. It's not a problem.

THE COURT: Just hang on. Ms. Chapman.

MS. CHAPMAN: Q. Maybe you can use another word, Mr. Danilov.

A. Yes, sure. I won't use any word. It's just the fact that in October of - yeah, in October I believe 2011 on behalf of Nikityuks Fernandes Paralegal,

Christina Fernandes called both me and my wife separately. And I was at work and Svetlana was at home on that date. And she threatened us that if we don't return Nikityuks their amount of money they transferred to Svetlana in 2008 next day CRA, Ontario Works, and immigration, everybody will be at our door with some kind of assessments and whatever it is there. And basically she said that I explained here, I don't know what Svetlana told. But when I returned home, Svetlana was really scared. But I know what I told when I was at work so I responded to that Christina Fernandes person that Nikityuks - what Nikityuks transferred to Svetlana back in 2008 is invested into family business. And there is loan agreement which doesn't specify any pay back and then going to pay that money back because basically that business has, you know, specific things. I cannot just cash out money which were invested, let's say, into actual property. And yeah, well, she said that we will meet in court and we figured at that point that okay, we need a lawyer. So we hired lawyers and at that point we already knew that Nikityuks were defaming us everywhere and it started actually while first time we figured that was November 10th. Again, when friend, mutual friend of family called Svetlana, and I'm not going to testify on that. So it was November the 10th when we figured out that Nikityuks had been defaming us all over the place. And later when all those discovery processes started, we figured that actually it's orchestrated by Yana Skybin. And basically why it's disaster, the initial question, I'm back to the initial question. Because at that point - at this point all money I had on credit lines and on

5 TFSA accounts, on RSP accounts everywhere they were going into legal costs. And they could be invested, they could be provided income for Nikityuks so if there wasn't this campaign whatever it is harassment, or not whatever it is, if there were no such a campaign we would be living now, I don't know like in Paris. And Nikityuks were living separately in another - whatever, I don't know.

Q. And where is that you work today?

10 A. I work for insurance company. It's called Validus Research Incorporated. They have head office in Bermuda. They have another office here; development is in Waterloo Ontario. My salary is 100 thousand. And I'm happy with this job, actually, but it took a while. All my network was broken actually and well, in February 2015
15 because of restructuring in IBM thousands of people were fired, well, not fired. I got package, okay, but see, I was between jobs for eight months, and I couldn't find a job close to Barrie or close to Newmarket or Aurora or even Toronto because most of recruiters I dealt with
20 before like Alex Siven (ph) for instance. They didn't want to talk to me. And well, there was this one telephone call from Alex Siven where he offered me a job. And I was interested and he said, I'll send you the job description in three minutes by mail. I think it
25 happened in May 2015. I'll send you job description by mail in three he said. So where do you live? And I said I live Innisfil. You are Pavel Danilov? Yes. And he put the phone down and never called me back, never sent me an email and never returned any call since then. And this a
30 recruiter I deal with since 2006. This is the guy who actually found me a job in Rogers. And he has his own

network, you know, and that network is big and of course, people communicate, people talk to each other. So well, I would say that all my Rogers related network was broken, all my IBM network was broken because most of people I knew in IBM they were coming from Rogers because in 2009 IBM acquired the entire our department in Rogers. So it was a big network actually of people, Russian speaking people including Constantin Goush (ph) for instance and Alex Barsky and other people I worked with Rogers before. So those people are not talking to me anymore and I cannot ask them for favour like do you have job openings or something like that, or do you have a good recruiter to talk to and that. So I wasn't able to find any job in my normal area where I would look for, for eight months. And well, I started to build new network and I started that with LinkedIn and it's actually easy. And you invite recruiters to link to your profile and at some point there is like a critical must when you have like three or four hundred connections. Then one of them might have something for you and that's what happened. I had more than 500 connections in October and recruiter from - from some Waterloo company contacted me and offered me this job. So Waterloo is like 170 kilometres from our house. So we had to move there because for a month I was going back and forth, back and forth every day and it was two hours and a half to work, it's two hour and a half drive one way. So for a month I was driving back and forth every day just to keep up with my job, new job, and then we rented apartment over there. We are renting apartment over there now and the house is staying empty. And I have to pay all utilities and

5 little bit of electricity and little bit of gas because
you have to keep it warm otherwise all pipes were you
know, break. There are still big expenses on the house.
And we offered Nikityuks to live in that house, they
rejected. I don't know why.

Q. So at this point, you're not residing at
the home in Innisfil.

A. No.

10 Q. But who is paying the mortgage, property
taxes?

A. I do.

Q. I'm sorry?

A. I do.

15 Q. The recruiter you spoke about Alex?

A. Alex Siven.

Q. Siven. Is he a Russian speaking?

A. Yes.

20 Q. And you said he hung up on you during that
conversation?

A. Yes, yes. Right after he figure out who
actually I am because he knew that there was - they knew
I'm living in Innisfil and he knew that from Nikityuks
actually because -

25 MR. MAE: Your Honour, we're -

THE COURT: Yes. We're getting into hearsay
again what this other person knew. I presume
he's not a proposed witness.

MS. CHAPMAN: No, he's not.

30 Q. You never heard from Alex Siven again.

A. No.

Q. And what about personal relationships with friends and family; have those been impacted?

5 A. Yes, of course. See they're our true friends who know us forever and some of them will testify here. They know that nothing like Nikityuks imply here could happen in our family. They will testify that. They know us very well. They know us from day one in Canada because we lived together in the same building. We - well, visiting each other. We have - we have kids 10 who communicate with each other. So some people who know that it's all not true and it could ever happen. But there are other people and those people we barely knew like, you say a person several times and well, not actually friend, but some friends too. Half of them, I 15 would say think that we did all this on purpose, all this you know, abuse and social housing scam just to get Nikityuks the social housing, that we are part of this fraud. But another half, they think there was really 20 some abuse and well, it's either one or another.

MR. MAE: Your Honour -

THE COURT: He's obviously telling us what other people think.

MR. MAE: Exactly, Your Honour.

25 THE COURT: But I think what the import of this is that there were some reactions of some people was positive and some was negative but you're right I don't want to hear what other people were thinking.

30 MR. MAE: Exactly, Your Honour.

THE COURT: But I think he's telling us that some friends left him and some stayed with him, is that gist of this?

MS. CHAPMAN: Yes. That's the gist.

MR. MAE: And if he can keep to that.

THE COURT: Yes.

A. I can tell who left.

THE COURT: It doesn't matter. I think I've got the general impression of what you're trying to elicit from the witness. He often goes a little further than the questions allow. But counsel will object if they feel it's going into areas that stray too far.

MS. CHAPMAN: Thank you.

Q. How about in the Russian - the local Russian community, could you speak about that?

A. We are not part of it because we are not allowed to. Nobody from local Russian community speaks to us.

Q. And did they speak to you before Nikityuks left the home in Innisfil?

A. Yes, sure. We met people at No Frills. We met people at the Innisfil Beach park in YMCA complex like everywhere. Those people don't speak to us anymore. After that, you know, police performance when Nikityuks moved out even neighbours don't speak to us because it's new neighbourhood people really concerned about. There are kids around and stuff and imagine that the police car was all flashing and stuff, stands by your house the entire day while Nikityuks loading all that stuff -

5 MR. MAE: Your Honour, Mr. Danilov said he wasn't there when the police (sic) moved out. He doesn't know whether there was flashing lights.

MS. CHAPMAN: Q. The point is your neighbours do not speak to you.

A. Yeah.

Q. Today?

10 THE COURT: I think he told us he doesn't live there either. I'm not sure if I recall exactly when he moved out, but he's not living in Innisfil at this point.

MS. CHAPMAN: Sure.

15 THE COURT: You did move.

A. We did live there for a while. I found job in Waterloo in - well, I started to work in Waterloo in December 2015. Before that we lived in Innisfil. When I was between jobs, we lived in Innisfil and before that.

20 MS. CHAPMAN: Q. We're getting close to the end of my questions. If we could turn to - I believe it's Exhibit 5. It's the supplementary damages brief, Tab 10.

A. Yes.

25 Q. Could you tell the court about this document?

30 A. Yes. This is the printout from my personal financial system as of May the 7th, 2016 with all damages accumulated at that point and well, I have to adjust that damages keep accumulating like an hourly basis, and that's why there were two versions of this document, like a week ago and as of May the 7th. So this document

5 consists of several sections I would say. Damages one, it's bank interest paid because of all of this. Then, damages two on page 120, it's before Canada debt, that's what Nikityuks owe me overall and promised to pay me back and well, it's supposed to be accounted somehow because I don't know like actual paid them what's they gifted to Svetlana or not at this point. So if I should then at least that amount supposed to be deducted from that.

10 Damages three, it's CPL lost investment income which means that investment I lost because of the CPL, CPL on house. And damages four, it's - well, three it was investment income and CPL direct damages caused by CPL such as driving to Waterloo on every day basis and gas because I would sell the house right away if - if there wasn't CPL on the house. Once I found the job in

15 Waterloo I would sell the house right away, but I must keep the house because there is CPL on it. And damages five it's defamation and well, why the amount is there - well, there is a case very similar to ours with this amount so I just took amount from that case. Damages six destroyed business it's all about that trading software, yesterday I was saying about so well, I have proof in damages brief and the supplementary damages brief for all

20 four numbers. Damages seven Honda Civic insurance, it's of payments I had to keep up with when Nikityuks left and didn't return for the car with insurance. So the car was just standing in garage and nobody needed it simply because Valentin Nikityuk didn't buy insurance. Damages

25 eight Honda Civic lease those are payments for Honda Civic lease obviously. And there is listed admin fee here and maybe some take out agent subscription. It's

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5 all related to lease. Then once before actually we gave
up the car, we had to replace the tires because nobody
wanted to take it with those, well, those tires because
of extensive usage. Well, Nikityuks were all one tire,
so it's not a surprise so we had to replace those tires.
And damages ten, it's second accommodation. Well, I have
to account it somehow. That's the amount to the best of
my knowledge Nikityuks pay for the social housing and if
10 they lived in the house, I wouldn't have to pay those.
And now they pay those amounts and the actual amounts
here, known to me only from Nikityuks provided at
different points they may be different, but it's to the
best of my knowledge. And the point here is that either
their share in the house or this, it's my damage because
15 if they kept living in the house I wouldn't have to pay
that. And they paid that from - well, finally from ODSP
they don't have like other sources of income except their
pension and dividends and stuff so they pay that from
ODSP and ODSP I eventually have to pay back. So it's
20 damage. And tax return not received on page 126 it's
damages on tax return not received. If our scheme which
was approved by CRA in 2008 was working and well,
Nikityuks kept living, not necessarily they kept living
25 in the house, but if I paid them the same interest or
close to that and they showed that in tax returns - in
their tax returns that would be tax deductible for me
because investment interest I paid on the loan agreement
for me is tax deductible because it's investment
30 interest. So those numbers here which are normally about
five thousand per year close to that, well, five thousand
per year. It's just difference between the real tax

return we filed and the tax return we would file if Nikityuks kept living together with us. So that is the difference in tax returns. And it's a damage actually. Damages 12 TSFA lost income. Well, as I mentioned before I had to pull out all money from TSFA and if I didn't do that, if I wasn't involved in this litigation, then well, limit on TSFA accounts today would be like about 50 thousand per person which multiplied by four for me, for Svetlana for Valentin and for Alla it would allow me to take about - well to keep a portfolio about \$200,000.00 which is not taxable. And well, we actually had this stock - we did have it for four years and it's a real estate trust and they pay very good dividends so we would keep that stock, or other stock paying good dividends so this is an estimation of the lost dividends because our TSFAs are empty. And Nikityuks' TSFAs are empty because they closed them for reason in 2008. Yana Skybin suggested that. So damages 13 is the same for our RRSPs because I have to withdraw stuff from RSP and I'm doing it right now, like on every day basis and every time when I withdrew amount from RSP I pay tax right away and I pay admin fee so this is the damage. And RSP lost income is damages 14 and well, we did sell those stocks mentioned in those Alliance WT IPEAL (ph) three stocks actually and ZWB we did sell them at those specific dates and all dividends which we would acquire after those dates, those are our damages. And we sold those stocks simply to pay legal costs. Overall, it's seven million, 900 thousand, zero, five thousand, 188 dollars, 21 cents as of May 7th, 2016 and keep accumulating.

Q. Would you agree that you have not claimed seven million 900 thousand in this action?

5 A. Well, we claimed things in this action, like inclusion in contract and all - it's all why we are here. That is the root cause of those losses, and those claims are in our claim and well, it's like one step further. We are in this action because all of those and well, I lost my income. I lost my dividends. I lost everything pretty much because of this legal action and I have proof of that. I have all costs recorded. And costs is different issue.

10 Q. I'll only touch on a couple of issues in terms of damages. You spoke about the TFSA, the stocks that you held.

15 A. Yeah.

Q. There are some statements contained in Exhibit 4.

A. It's a big one, right?

20 Q. Yes. Those are at Tab 84 and 85.

A. Yes.

Q. At Tab 84 this is the annual statement for 2015.

A. Yes.

25 Q. And at the end of 2014, it appears that you had approximately 50 thousand in this account.

A. Yes.

Q. And the closing balance on January 31st 2015 is \$29. -

30 A. It's actually RSPs not TFSA.

Q. Oh, I'm sorry.

5 A. We closed all of our TFSAs in 2015 including Nikityuks which I funded from my salary actually because I had to pay them support and I was - we withdraw that money from Nikityuks accounts because those was mine actually.

Q. The same is true for the RSP that you -

10 A. No RSP, well, we still have one RSP. Most of them are closed and everything withdrawn from them, but we still have one RSP and I keep withdrawing funds from that RSP to pay for this legal costs. And we started to do that a while ago in 2014.

Q. Correct me if I'm wrong, did the RRSP at Tab 84 not hold the CUFUN stock?

15 A. Yes. Cominar real estate, yes.

Q. That's what I was referring to in terms -

20 A. I think it's on page 603 is the next page you can actually see that there is a position of CUFUN of \$32,150.00 and quantities is 1,688 shares. And that - that's it, that's what the statement says. So I think this statement is here to prove that we did have CUFUN stock in our possession at some point and we liked the stock actually and we would buy much more if we had money.

25 MS. CHAPMAN: So subject to any questions I may have on re-examination, those are my questions for Mr. Danilov. Thank you.

30 THE COURT: Counsel, we're getting close to the lunch perhaps we'll begin cross-examination after lunch. Mr. Bornmann, are you going to go first?

MR. BORNMAN: Yes, Your Honour.

RECESS TAKEN

UPON RESUMING

CROSS-EXAMINATION BY MR. BORNMANN:

5 Q. Mr. Danilov, I'd like to talk about Svetlana's visit to St. Petersburg in 2005. Now yesterday you indicated that at that time Alla was in bad shape and she had to have surgery, that's correct?

A. Yes.

10 Q. And in your book of damages and I apologize, and in fact, I'm going to a different book first. This is I believe Exhibit 4, Tab 12.

A. Yes.

15 Q. There's an invoice there dated February 28th, 2005. It's at page 154 and it's an invoice of the damages and this is if I understand it you're claiming the plane ticket for Svetlana's trip travel company invoice for Toronto to Leningrad for March 1st, 2005 to April 4th, 2005 Lufthansa valued at \$1,100.05, is that correct?

20 A. Yes.

Q. Were there any other costs related to this trip that you're claiming?

25 A. There were other costs but I'm not claiming them because there is no document for that and basically the reason why this invoice is here is simple; in 2004 Nikityuks specifically Alla promised us to pay back as all expenses related to immigration and to everything related to this support in Russia.

30 Q. But this is the only expense that you're claiming from that trip, correct?

5 A. Yes, yes. It's the only expenses. There were other expenses if you're interested, I can tell about, but better if Svetlana tell about it.

Q. Do you know what the other expenses are?

A. Yes.

Q. What were the other expenses?

A. Five thousand US dollars to the doctor, cash and five thousand US dollars to the anaesthesiologist cash.

10 Q. Were there any other expenses on that trip?

A. Probably I'm not aware of that, those were which were significant.

15 Q. Did you have to pay for travel insurance, say?

A. Health valid for Svetlana.

Q. Sorry?

A. Health valid for Svetlana even if she travels to Russia.

20 Q. Svetlana went to Russia to be with Alla, correct?

A. Yes. To support Alla through the surgery and before.

25 Q. And if I understand it correctly, you and Svetlana lived with Alla and Valentin when you were first married and after Anastasia was born, you all lived together in St. Petersburg?

A. Yes, for a while, yes.

30 Q. And do I have it right that you, Svetlana and Anastasia moved out in 1988 or '89 to your apartment in St. Petersburg, is that right?

A. Yes, my apartment, yes.

5 Q. And when you moved to your new apartment in St. Petersburg, I understand Alla would come over and help Svetlana, help take care of Anastasia, is that correct?

A. Once and awhile, sure.

Q. If I suggested to you that it was a little more than once and awhile, a regular occurrence, does that sound right?

10 A. No, it was once and awhile.

Q. And you and Anastasia, just before I got on, Alla, we're going to hear from Alla Nikityuk that she in fact helped out as often as she could with taking care of Anastasia and helping Svetlana.

15 A. Yes, she did, sure.

Q. And you and Svetlana and Anastasia moved to Latvia in 1996, you said?

A. Yes, August 11, 1996, have good job offer from Riga Transport and Telecommunications.

20 Q. And while you were away from St. Petersburg, you and Svetlana stayed in touch with Alla by telephone -

A. Yes.

Q. - is that correct?

25 A. Sure.

Q. And in 2003, you and Svetlana sent Anastasia to live with Alla and Valentin in St. Petersburg to go to school, right?

30 A. Repeat your question, please, I didn't get it.

5 Q. In 2003 you and Svetlana, you sent Anastasia your daughter to go live with Alla and Valentin in St. Petersburg.

A. Yes. Anastasia was living with Nikityuks in the same apartment for about a year while Anastasia was in the first grade in St. Petersburg University physics faculty.

10 Q. These were all instances of family helping family, right?

A. Yes.

Q. These were all very positive interactions.

A. Of course.

15 Q. So you and Svetlana must have been very concerned when you found out that Alla was ill, is that right?

A. Yes, of course.

20 Q. And in the circumstances you would agree that it would be natural for you and Svetlana to want to be with Alla at that time.

25 A. Not necessarily because Alla was with Valentin and he was supposed to help her and while we had our problems here, our own problems in Canada because we just immigrated and it was like small company I was working for, very decent income, just 45 thousand and I was supporting my daughter, and Svetlana was working occasionally to support her parents and we were sending money them regularly just to make that regular sending possible, we did a lot of things here. And Svetlana was
30 actually very busy here making that money and I was very busy and it well, of course it was natural to be there, but first of all it wasn't necessary because Valentin was

there. He's Alla's husband and like number one to help. But they couldn't do anything without Svetlana even talking to her doctor, but that Svetlana will testify to.

Q. Well, we'll get to that in a second.

5 You've agreed that it was natural for Svetlana to want to be with Alla during this time?

A. Yes, of course, sure.

Q. Okay, thank you. And the Nikityuks will testify that they never asked Svetlana to come. It is - it's not that they didn't want to see Svetlana, but rather they did not want to put Svetlana to that.

A. My understanding is that Nikityuks are going to testify a lot of things which are not true.

Q. But in this particular instance, would you agree with the Nikityuks that they never asked Svetlana to come?

A. No.

Q. It's not that they didn't want to see Svetlana, but -

A. Alla begged Svetlana to come. Svetlana will testify to that.

Q. Okay.

A. It's hearsay.

Q. So the Nikityuks are also going to testify that it was helpful to have Svetlana there, but they're certain they could have managed without her.

A. No, they couldn't simply because they even have no idea that we had to pay for Alla's surgery. They still don't have that idea. That amount I just mentioned five thousand to the doctor, five thousand to an anaesthesiologist, they don't know that. That was cash

and that cash pretty much came from my sold apartment in Riga.

Q. But they didn't know that.

5 A. They didn't know that, yes. They think that five thousand rubles they put in doctor's pocket after the surgery. That was the price for the surgery but no, it wasn't.

10 Q. Okay. So the Nikityuks will also say that they're more than capable - at that time, they were more than capable of navigating the Russian medical system and caring for Alla in her recovery. This was 11 years ago. They were 67 and 69 at the time. Do you agree with that?

15 A. They might be able to do something like that partially, yes, of course, they knew the medical system, they knew the doctors. They have family physicians over there, they knew them personally. But sometimes like in this specific case of Alla's surgery you need network actually, but again, Svetlana will testify about that.

20 Q. Okay.

25 A. You cannot get to the doctor if you don't have money. To get to the doctor appointment first you have to pay \$100.00 to the receptionist then you get an appointment to the doctor. Then doctor starts to talk to you if you give him \$5,000.00. And then if you discuss everything and if you need this surgery then another \$5,000.00 comes when you start to talk to the anaesthesiologist. So it's a system there, and especially for the oncology. It's a very expensive system, and you cannot get to the institute which
30 specializing in oncology. They are very rare and very

expensive. You cannot get into there, if you don't have a contact and Svetlana had that contact, Nikityuks didn't.

5 Q. And this is important here, Mr. Danilov, the Nikityuks will say that neither you nor Svetlana ever told Alla that you expected her to pay for Svetlana's trip. Is that correct?

10 A. Specifically, for Svetlana's trip probably no, but it was all negotiated in general back in 2004 that every expense I paid for Nikityuks will repay me back after they sell all family Nikityuks and Svetlana's family property in Russia.

15 Q. I suggest to you, Mr. Danilov there was no agreement for reimbursement.

A. It's not true.

20 Q. The Nikityuks will say that Alla thought Svetlana came to Petersburg because of her love for Alla - for concern about Alla's health. Is that that the truth, Mr. Danilov?

A. I think yes, sure.

25 Q. The Nikityuks will also say that Alla thought you and Svetlana were doing fine in Canada, that you had a good job, that this what they've been told by Svetlana, and it never occurred to them that you could not afford to have Svetlana come.

30 A. We could afford that, we just, well, I didn't see any reason for that because there as an agreement and it actually doesn't matter because the main agreement was like everything they sell in Russia before they're coming to Canada will be transferred to Svetlana and you can see that from the actual document you were

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10
concealing for years and it doesn't matter reimbursement for that specific surgery or for anything else, nobody cared. Nobody cared about shares in apartment. Nobody cared about any interest in cottage house which I claim now, by the way, anything like that, nobody cared, because every penny which they were supposed to get us proceeding from sole family property was supposed to go to Svetlana and that was the only and the number one condition of me signing the sponsorship agreement.

15
20
Q. Okay. Mr. Danilov, isn't it right though that you've made no demand, you made no demand for reimbursement for these costs until years later and only in the context of this litigation, isn't that correct?

25
30
A. Yes, it's correct and I make that demand for reimbursement because at this point I don't know how the matter will be solved. Before this litigation, I was under the impression that the problem solved years ago because all money has been transferred to Svetlana according to their agreement and well, I didn't have any idea that there is a problem with that because Nikityuks kept living together with for three years and nobody mentioned anything like there is a problem with that agreement. That money was a gift so who cares what's reimbursed, what's not reimbursed what we discussed anything else, it was a gift.

Q. Which money are you referring to?

A. Which one what?

30
Q. Which money are you referring to; the money for the Svetlana's trip?

A. The proceedings from the sold property in Russia. And if Nikityuks didn't demand those proceeding

5
back, I would never ask for reimbursement of that money. See, there is only like probably 25 percent of deals and invoices and other stuff I kept by accident. I was never going to keep all those stupid invoices, you know. It's just look at those. It's 2008. Who keeps all invoices for 2008? Of course I lost half of them. They promised me that - well, everything I spent on them will be paid back.

10
Q. I want to take you to - just to pick up on that Mr. Danilov, it's correct though that there was no guarantee that Alla would be able to immigrate in 2005 -

A. Yes.

Q. - is that right?

15
A. Of course, there was no guarantee. There was 50/50 percent probably. Our concern was that they won't be able to pass medical exam because they were in really bad shape both of them and it - we were all lucky that they were able to pass that.

20
Q. In fact, I think you said - yesterday you said they were extremely lucky.

A. Yes.

Q. To pass the medical exam.

A. Yes.

25
Q. In 2007.

A. Yes.

Q. So there was no guarantee and that Alla or Valentin would sell any of their Russian property.

A. There's no guarantee.

30
Q. But in any case, Alla will say that she never said she would pay you back.

5
10
A. By paying back, I mean that Alla promised me to transfer all proceedings from family property to Svetlana which they did and at this point who cares what they promised, they did it, and everybody were happy till recently with that arrangement. So I wasn't going to deduct anything or to claim that money paid back or anything like that because that money was already Svetlana's money changed hands. Days before they came to Canada that was the agreement that money became Svetlana's before Nikityuks actually came to Canada and at that point I didn't care are they going to pay me back or not. Money became Svetlana's. That was the agreement.

15
Q. But you agree that if the Nikityuks don't immigrate, you weren't going to get anything, correct?

A. Yes, sure, and we would also lose all that immigration expenses, all those government fees everything, yeah, we understood that, sure.

20
Q. And there was no agreement by the Nikityuks, a specific agreement to reimburse you for all these travel fees, correct?

25
A. Specific no. As I told you, transfer all of that money to Svetlana was the price for my signature under the sponsorship agreement if it's not clear yet.

30
Q. And you just confirmed a moment ago that you didn't demand reimbursement from the Nikityuks for this before Canada expense until this litigation started, correct?

A. Yes, exactly, yes.

Q. And even when you started this litigation, it had been more than five years since the 2007 trip

5 which was the second trip which we haven't even talked about and seven years from the trip that Svetlana made to see Alla in St. Petersburg you would agree?

A. Yes. I didn't know that there is a problem with that.

Q. I'm going to turn to Tab 15 of your damages brief.

A. In the damages brief.

Q. Sorry, this Exhibit 4.

A. Tab, what tab, I'm sorry?

Q. Tab 15. And I'm going to refer to maybe Tab 15 and 16 at the same time.

A. Okay.

Q. Tab 15 which is at page 161 to 163. This appears to be an American Express statement for October 17th, 2007 and its significance is there's a \$2,300.58 charge for Lufthansa. It's two charges for \$1,125.00 with an expedia delivery fee of \$48.82. Is this the trip for Valentin and Alla to Canada, is this -

A. It's when they both to Canada to visit us in 2007, yes.

Q. Okay.

A. And there is also charge for Manulife travel insurance on the next page 162.

Q. And you did buy insurance for this trip, correct?

A. Yes.

Q. And that's at Tab 16.

A. The amount is \$266.00.

A. Yes.

5 Q. And yesterday you said on this trip in 2007 you still didn't know whether Alla and Valentin would be granted immigration, correct?

A. Yes, we didn't.

10 Q. Okay. And that's because Alla and Valentin hadn't yet passed their medical exams, correct?

A. No. It's because they didn't have visa yet, and didn't pass medical exam because once you have visa and permitted to immigrate you go to the medical exam, next step.

15 Q. No visa, no medical exam.

A. Yes.

20 Q. So again, there was no guarantee they would immigrate.

A. Yes, there's no guarantee.

25 Q. And no guarantee you'd be reimbursed from any property sale in Russia.

A. No guarantee.

30 Q. And both Alla and Valentin will say that you never asked them to - you never asked them to reimburse you at the time, is that correct?

A. You - you keep asking me the same question again, again, I already answered that.

THE COURT: Just answer the question as best you can. If there's an objection your counsel can raise it. He's asked you a question.

A. Repeat the question, please.

MR. BORNMAN: Q. We were talking about the 2005 trip. Now, we're talking about the 2007 trip.

A. Yes.

5 Q. I'm asking you whether you agree with the testimony that will be given by Alla and Valentin and that testimony being that they you never asked them to reimburse you for this money.

10 A. For this specific trip, no, for any other specific thing and all those stuff in the damages brief, no specifics. There was a general agreement that everything I paid for them will be paid me back eventually because if they were permitted to immigrate eventually then they - I can deduct anything I want from that money they transferred to me from the proceedings from the Russian property. I can deduct, I can do whatever I want but it was supposed to be Svetlana's money so it's up to me and Svetlana what to do with it.

15 Q. So the Nikityuks will also say that they were quite happy to visit you and Svetlana in Canada, does that sound right?

20 A. Oh yeah, sure.

Q. And they will say that they understood you were doing quite well in Canada, does that sound true?

25 A. It was 2007 I just got new job with Rogers with almost doubled my salary which I had before. I started to work for Rogers in April. We even were able to afford to buy a house in somewhere 2007 which we did, and yes, we were doing pretty well. It was a very good year.

30 Q. And Alla and Valentin will also testify that the costs of the trips they thought it was a gift from you to them, helping them to come and spend time with you.

5 A. It would be a gift if they were not permitted to immigrate to Canada, yes, it would be a gift.

Q. They are going to say they were unaware of any conditions with this gift, is that correct?

10 A. It wasn't a condition about this specific gift about this specific trip. Again, it's more general agreement back in 2004 where Alla personally assured Svetlana then confirmed the same in 2005 that everything I spent on them from my money will be paid me back by transfer all the money to Svetlana if they permitted to immigrate, and that's why I put my signature on the sponsorship agreement.

15 Q. My clients, Mr. Danilov, Alla and Valentin will testify that there was no agreement to reimburse you for these items period. And I suggest to you that's in fact the case.

A. I believe I already answered that question.

20 Q. So the question Mr. Danilov just to be clear, do you agree with the testimony my clients will give which is that there was no agreement between the Danilovs and the Nikityuks whereby the Nikityuks would reimburse you for the cost of these items, these travel expenses?

25 A. I already did told you several times what was the actual agreement. You keep asking me about things which didn't exist. So I am not sure how to answer your question. You keep asking me the same question again and again, probably you're hoping to hear a different answer but the answer will be exactly the same. There was only one agreement back in 2004 where
30

5 Nikityuks specifically Alla Nikityuk personally assured Svetlana and me that everything we spent on them starting from that moment will be returned to us in the form of proceedings after sold property in Russia.

10 Q. Okay. Just to be fair to you, Mr. Danilov it will be no surprise that my clients, Alla and Valentin will testify that there was no such agreement in 2004. So at some point a determination will be made on that fact. So I'll put the question to you this way. If there was - putting aside the general agreement there was no other agreement with respect to the travel expenses that were occurred -

15 A. No, there were no other agreement.

Q. And you would agree it's been nine years since the most recent of these expenses, right?

A. If you say so.

20 Q. And you did not demand again, reimbursement from the Nikityuks until after this litigation started, correct?

A. Yes, I didn't demand because they didn't demand to return that gift. So if they demand to return that gift, I demand to paying it back.

25 Q. Even when you started this litigation it's been more than five years since the 2007 trip, isn't that right?

A. Even what?

Q. Even when you started this litigation -

A. Yes.

30 Q. It had been more than five years since the 2007 trip to Canada, correct?

5
A. Well, we can subtract actual numbers, yeah, sure. Litigation started in 2012. Actually the root cause, cause of the action happened in 2011 when they started to demand that money back. So it's actually by I'll say December 2011 or something like that. We can look in the correspondence with Christina Fernandes to be sure about the date when it - when it happened. So if - well, 2011 minus five or what.

10
Q. So the trip took place in 2007.

A. So it's four years.

15
Q. Okay, four years. Before this litigation commenced, the Nikityuks will testify there was no discussion whatsoever about you reimbursing yourself for these trips out of the money they were transferring you, is that correct?

A. I don't know how to answer that.

THE COURT: Sorry, Ms. Chapman rises.

20
MS. CHAPMAN: Yes. I think we're going in circles in terms of this line of questioning and essentially the same question is being asked over and over again by Mr. Bornmann.

25
THE COURT: Mr. Bornmann, are we just coming around the same question through various routes?

30
MR. BORNMANN: No, Your Honour, these are different heads of pre-Canada damage that have been claimed and in the absence of this overreaching agreement, we are putting to Mr. Danilov what exactly the understanding was with respect to this indebtedness that is now being

claimed against our clients but I think we've circled this one off.

5 THE COURT: All right. I think you've made your point and his answer is that there was an agreement in 2004 and you put to him that there may be different testimony to follow from your clients.

MR. BORNMANN: Yes, Your Honour.

10 Q. Mr. Danilov, I'd like to direct your attention to Tab 3 of Exhibit 2. Sorry, that's 2A. Do you have the document in front of you, Mr. Danilov?

A. Yes, I see the document and I already testified that it's not the complete document. So if we have an understanding about that.

15 THE COURT: Let's just take a minute and identify. So we're looking at the Scotiabank document, is that right?

MR. BORNMANN: No, Your Honour, it's an email dated January 28th, 2008. It's in the red book, Your Honour.

THE COURT: All right.

MR. BORNMANN: Tab 3.

THE COURT: All right. I've got that now.

25 MR. BORNMANN: Q. You would agree that this is the body of an email you sent to the Nikityuks on January 28th, 2008?

A. Yes. I would if - if you would agree that the subject that the mail was Canada calculation and not...

30 Q. The original which is on page 7 of the same tab -

5
A. No, it's not original it's the same thing but in Russian was missing headers and missing subject. The original we have in our brief actually.

Q. Correct. And what you've indicated is that it's missing a subject line in English saying Canadian calculation.

10
A. Yes, that's very important because your clients they are trying to put this mail, call it as some kind of offer.

Q. And that header was in English, was it not?

A. Yes, that header was in English and it literally said Canada calculation.

Q. And you sent this document, correct?

15
A. Yes.

Q. You sent it to Valentin Nikityuk, correct?

A. Yes, but with subject and headers.

20
Q. Yes. So I want to go to this and we heard your testimony yesterday about this, or at least the first part. I want to direct your attention to brought capital.

A. Yes.

25
Q. Yesterday you testified about a Canada calculation involving brought capital of \$200,000.00 with you described it as - you say that this calculation looks realistic as of today. This would be back in 2008, right?

A. Yes, and as of today, was January 27th, 2008. That was today.

30
Q. You testified that you stated, brought capital of 200 thousand because you had reduced the

5 anticipated transfer from the Nikityuks by 50 thousand to account for Svetlana's share, is that correct?

A. Yes.

Q. And -

A. It was always well-known fact in the family that 25 percent of that apartment in St. Petersburg belonged to Svetlana.

10 Q. Well, I was going to come to that Mr. Danilov. But you also said yesterday that Anastasia had a 25 percent share in the apartment, correct?

A. Yes, she doesn't care.

Q. So it really doesn't make sense that it would be 200 thousand, does it, Mr. Danilov?

A. Makes sense, what exactly?

15 Q. You said yesterday there were four shares in the apartment.

A. Yes.

20 Q. Anastasia had 25 percent, and Svetlana had 25 percent.

A. Yes, but she didn't claim that share till like now so as I said, she doesn't care and about Svetlana's share, the understanding was completely different and everybody knew that it's Svetlana's share and at some point in near future, we might use it so it cannot actually go to capital. It will be used otherwise. And Anastasia's share it may be claimed like after both Nikityuks die or something like that. I don't know.

30 Q. I suggest to you that you used 200 thousand because it was an easy number to model, isn't that the truth, Mr. Danilov?

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10
A. No. It was the anticipated amount of money which we're expecting at that point from the sold property in Russia overall. That money wasn't known to me back in 2004. Back in 2004, expecting more like something like 50 thousand overall or something like that, but during all those years since 2004, the real estate prices in St. Petersburg, they hiked ridiculously so it was actually the realistic price if you sum together pretty much everything they were going to sell.

15
20
Q. But Mr. Danilov, yesterday you said that you brought - you put 200 thousand because you reduced it by 50 thousand to account for Svetlana's share.

25
30
A. Yes, exactly. I didn't consider that 50 thousand even really bit more because it was like plus, plus minus 10 thousand that's what I knew of the amount. But yes, I reduced the total amount transferred to Svetlana by Svetlana's share in the apartment because we knew that we will need that money for down payment.

35
Q. But you didn't include Anastasia's share.

40
A. No. Because Anastasia's money they might claimed at any point in future maybe never.

45
Q. Okay. And you didn't actually know what the proceeds would be at that time, correct?

50
A. At what time?

55
Q. When you sent this email. You didn't know what the proceeds from the sale.

60
65
A. With the accuracy approximately \$10,000.00 I knew. It depends pretty much on the currency rate. I knew the exact number in Russian rubles, but the currency rates are always fluctuating and I couldn't actually estimate exactly when and how fast Nikityuks are going to

5
sell everything and so plus/minus ten thousand I knew. It should be something around like between 240 and 260 and it was 260.

Q. And you'd agree that this says the Nikityuks could expect 10 percent growth on an investment of 200 thousand, isn't that right?

10
A. No. It's - it's actually the other way around as I explained yesterday. I knew the amount of capital they are going to bring into the family and I calculated those anticipated expenses for them, like how much the life costs in Canada and it turns out that it's approximately \$24,920.00 is total income they need to cover that expenses.

15
Q. But you'd agree -

A. If we substitute their pension and other things it comes to ten percent approximately.

20
Q. But you'd agree that you don't explain that in this email, do you? You don't explain your methodology, do you?

25
A. It was mail in Russian and well there, that's if they're adult, if they didn't understand something they could easily ask. I explained to the best of my ability.

30
Q. Would you not agree that it appears that this email suggests with a ten percent return on \$200,000.00 that the Nikityuks could expect to live in Canada in a situation as you have laid out in the top part of the email?

A. Yes. And they got actually much more than that. Might be you could point me to the line here which

I didn't be like, but what exactly they missed here, what I didn't give to them from that list.

5 Q. Okay. We will carry on here. When I'm reading this email Mr. Danilov, and you'd agree it says the Nikityuks could have a one-bedroom apartment with this - in this scenario, right?

A. Yes. And we actually rented one for them in the same building that we were lived.

10 Q. And it talks about other things, a car.

A. Yes.

Q. Car insurance, gasoline, phone, TV, internet.

A. Yes.

15 Q. Food, small things.

A. Yes.

Q. There were a number of comments below the scenario.

A. Yes.

20 Q. And I just want to look at the first one here, and the first one says a lot of retired people sell off. Actually Mr. Danilov, do you mind reading to the court what you wrote here?

25 A. A lot of retired people sell their paid houses, invest their money and live on the interest of the capital. It's completely normal here and it fully matches your situation. You will live here just like 85 percent of retired Canadians.

30 Q. So you would obviously agree that you wrote that this fully matched their situation, correct?

A. Fully what?

5 Q. You wrote in this email that this fully matched their situation?

A. I am sorry, I don't understand your question.

Q. You've indicated that retired people sell off their houses, invest their money, live on the interest.

A. Yes.

10 Q. And that this was a match with the Nikityuks' situation, correct?

A. Yes.

Q. And that in fact this is something most retired - 85 percent of retired Canadians do, correct?

A. Yes.

15 Q. Okay. If we go down to the comment number 2. Can you read that comment, please?

A. Investment set at 10 percent annual interest rate is a risk free option. You can invest your money with 10/15 percent interest rate through financial advisor at any bank. And in this case the financial advisor also gets a good profit. It's up to you whether to feed the financial advisor or not. That's your money. In this regard you also have learned something this year.

25 Q. So you'd agree that you're describing investments at ten percent as a risk free option, correct?

A. You already asked me that question at the oral examination if you will recall and I answered that.

30 THE COURT: Sir, I just have to tell you that I'm not at those examinations. I don't -

A. I'm going to repeat my answer yeah.

5 So at that point when I wrote that ten percent
annual interest risk free option, when I was talking
about banks I meant actually annuity. And I believe
there are a couple of printouts in the brief with annuity
rates but they are referring to 2011 and 2012 I believe.
10 And the thing is that when we actually were doing
research before Nikityuks arrived, we had appointment
maybe even couple of appointments with different banks,
one of them was with TD and they gave us an offer, like
with \$200,000.00 brought capital, they gave us an offer
when you invest with TD, and buy annuity with them, we'll
15 get about 9.5 percent interest close to ten, maybe 9.7, I
don't recall exactly now. But at that point, we didn't
realize one simple thing that when you buy an annuity,
that you actually can request any percent, ten percent,
even 15 percent. It pretty much depends on how much you
- how long you want to get that annuity. But the thing
20 is that it turns out that it's not all interest, the
interest is pretty small over there and there is we
didn't - well realize that the moment because we were new
with this thing and well, we actually figured that there
are like two columns when they give you quote there are
25 two columns. One is taxable another is not. And we
started to think why one it taxable and another is not
and it turns out that taxable, it's the actual interest.
But what is not taxable it's actually coming from the
principal. So their idea is that if you buy annuity part
30 of your monthly payment comes from your principal,
another pay of your payment comes from the actual
interest. That's - that we didn't know at the moment,
and that why, that ten percent risk free option comes

into the play. And yeah, well, you still can invest with financial advisor who can buy stocks for you or sell stocks for you whatever.

5 Q. You'd agree Mr. Danilov that's a lot of information that's not in comment two, correct? That information is not there at comment two in this email, is that correct?

10 A. Yeah, but when I wrote that email, I didn't know that information myself.

Q. And you advised previously that the risk free that you were covering the risk.

15 A. It's another option. If you read carefully through paragraph two, there is one thing here, investments at ten percent annual interest is a risk free option. You can invest your money with ten percent interest rate through financial advisor will pay you back, and you can actually, but financial advisor will also get good profit and blah, blah, blah.

20 Q. Okay.

A. Then another part of this is in this regard we also have learned something this year and what we have learned this year was actually all that business I was talking about.

25 Q. The trading software.

30 A. Trading software and for Nikityuks of course it was risk free option because I was covering all the risks from my salary and from other income sources. So if they decided to invest that money before they come to Canada, if they decided to invest that money with my family business which I designed specifically for them, it would be risk free option for them.

Q. Okay. And you'd agree that the ten percent appears there at comment two, and it also appears at the top next to brought capital, correct?

5 A. Yes. Because we need to invest at ten percent. That's what the total number says. We need to generate that money somehow. If you bring 200 thousand, and you need two thousand - 20 thousand per year to live, it means ten percent you don't have to be mathematic for that, right. So yes, ten percent and then well, we are trying to figure out where to get that ten percent from. There are different options. You can buy annuity, but then it turns out that if you buy annuity you will never see that money again because it will dissolve with time passing that's what we didn't figure out at the moment
10 when I wrote that letter. And then another option is yeah, you can invest in your own business, in your family business.

Q. That didn't matter to the Nikityuks because
20 you were covering the risk.

A. Yes, it didn't matter to them. But that's important here is that again, it wasn't an offer they were to accept. It was just an explanation. They were not in position to accept or deny any offer. They were waiting for immigration just to solve their medical
25 issues.

Q. You would agree that a reasonable interpretation of what you've sent - what we're looking at Mr. Danilov is that with a ten percent risk free
30 option, you get this scenario at the top, right?

A. Yes.

5
10
Q. And I just want to move a further along and comment two and you write, 'It is up to you whether to feed the financial advisor or not. That is your money.'

A. Yes, it was their money before they came to Canada, of course. They were about to make the final decision go or not go. They got their visas. They didn't those visas at that point. See at the bottom it says when you get your visa and your passport in hand, I think the decision will be obvious. And that decision was pretty much to go or not to go. Even having their visas they are not obligated to go, but if they decide to go, they were - well, obligated or whatever you put it to transfer that money to Svetlana and at that point that money not theirs any more.

15
Q. If we - if we jump down to comment six Mr. Danilov -

A. We have to jump down to comment five because comment six reference to five.

20
Q. Okay.

A. Do you want me to read it?

Q. I'm going to ask you a question Mr. Danilov and if there's some other -

A. So you're not asking -

25
Q. - if there's some other -

A. - me about five.

30
Q. - information - if there's some other information that you think it's important for answering the question, then you can include it. So looking at comment six, it says in case when you get more than ten percent, you will have money for something pleasant like a trip to the seaside for example, or you can reinvest

the difference and therefore increase the capital and accordingly your gain on it. Again, it's up -

A. I'm sorry -

Q. - to you, as the -

A. I'm -

Q. - money is yours.

A. Can you give me a second because I need to refer to the Russian letter? I think the translation is incorrect.

Q. Mr. Danilov, you would agree that you're not the certified translator of the Russian -

A. We have -

Q. - language into English.

A. - certified translator right here so I just want to take a look and if it's correct, it's correct, if it's not, then it's not. There's one important thing here I would like to match. No, I'm good, it's correct.

Q. So you would agree and I'm looking at the last two - I'm looking at that comment six here. You would agree that you're speaking about a scenario where the return is more than ten percent, isn't that right?

A. Yes.

Q. And you're indicating, are you not that in there's going to be some discretion on the part of the Nikityuks as to what they do with that, isn't that right?

A. Yes, sure. Because if we somehow generate more than ten percent for their annual income and we covered all basic expenses and there is some left over, of course we can spend it for something nice. Yes, that's what I meant, yes.

Q. But again, as you write, this is up to you as the money is yours, correct?

5 A. Yes, but again, it's if they decide to go and if they decide to go then the decision is supposed to be made at that point, and at that point money already transferred to Svetlana and yeah, okay, we can decide what to do with the more than ten percent but it's not their money.

10 Q. Sorry, Mr. Danilov, and maybe this is just me being a little thick here. I'm reading that in case you get more than ten percent, so do you not have - would they not have had to transfer you the money already? Are we not talking about a situation after they've given you the money or were you offering ten percent? I mean ten
15 percent of zero is zero. So they had to have given you some money in order for this provision to be correct, right? Am I reading this wrong, Mr. Danilov?

20 A. You understanding it wrong. You still considering this email as some kind of offer. Nikityuks are supposed to accept or deny. I'm just explaining them in this email regular email between family members, not between me and Nikityuks Incorporated. What is supposed to happen in this case or in this case, if we are able to
25 generate ten percent or not able to generate ten percent, at this point nobody cares whose money this is. It's family money and they were supposed to at that point already been transferred to Svetlana.

30 Q. Okay. But looking just at the meaning of the document, Mr. Danilov, does this not say that should the investment earn more than ten percent, the Nikityuks

will decide what to do with the additional revenue. Is that not correct?

5 A. We all can decide like family meeting, like what to do with that. It's not - we were not separated then then. It's Yana Skybin who separated us. We were one big happy family.

Q. That's not what this says though, this - does it Mr. Danilov?

10 A. It does. I don't understand what you mean, what doesn't say?

Q. It doesn't say that there's going to be a family meeting, Mr. Danilov, it says again it is up to you as the money is yours, correct?

15 A. They have to decide at that point do they go or not. If they go they supposed to transfer that money to Svetlana and it's again, this is up to you as the money is yours. This is up to you means that they finally supposed to get to that decision. Do they go or not? If they go, they transfer money.

20 Q. I'm just going to move onto comment seven. Could you read that comment to the court, please?

25 A. 'In this option you are financially independent which means that you and we have different money bags and kitchens. We are there for you and if necessary two hundred to three hundred dollars a month is not a problem.'

30 Q. You would agree that you've written, 'you are financially independent' into this, correct?

A. Yes.

THE COURT: Mr. Bornmann, if you're going to move to another area, maybe we should take our afternoon break now.

5 A. I actually would like to make a comment because I feel like Mr. Bormann is trying to set aside a very important thing in this email.

10 THE COURT: This is not the time for you to make a comment. Your lawyer can make comments in submissions, but this is his opportunity to ask you questions and you are required to answer the questions as best you can. So we'll return in about 15 minutes.

RECESS TAKEN

15 UPON RESUMING

THE COURT: Mr. Danilov, if you'd return to the witness box, please.

20 MR. BORNMANN: Q. Mr. Danilov, I have one last question to ask you I think about this document, the January 27th, 2008 email. At the bottom the signature, there's two sentences above your name, can you read those to the court, please?

25 A. Think it over, make up your mind. When you get your visa and your passport in hand, I think the decision will be obvious.

Q. And you would agree that you've signed off acknowledging that the Nikityuks have a decision to make, correct?

A. Yes. The decision to go or not to go.

30 Q. Right. And you'd agree that the Nikityuk had not yet made up their minds about immigrating to Canada at this point, correct?

5 A. No. About immigration they made up. They didn't make up their mind about going or not go. See, when you get visa you have like one year to decide and you are permitted and you can decide, do you go or not.

Q. The Nikityuks are going to testify that they had not made up their mind to immigrate to Canada at this time.

A. They made up their mind in 2003.

10 Q. Okay. And after you sent this email, I suggest they - that's when they agreed that they would come to Canada, isn't that what happened?

15 A. They agreed to come to Canada in 2003. If they didn't agree and they told me back in 2003 or '04 or something like that, they are not going to Canada, they don't agree to come to Canada then I wouldn't expect all this expensive immigration process because it's a lot of money, you know.

20 Q. The Nikityuks will testify that they made up their mind to come to Canada after you sent this email.

25 A. See, if you look carefully at this email, let's say the last paragraph which is supposed to be nine, but it's like second paragraph eight, it says in three or four years, we might be able to afford the house especially if the current economic situation in Canada improves and this investments will produce more revenue. Then we may think what kind of house it could be for
30 example, a bungalow with two entrances, etcetera, but we need to hold off with this matter now. So when Nikityuks begged us to keep the house which we bought in 2007 and

not to sell it, all this email became a moot point so I'm not actually sure what referring to here.

5 Q. Okay. Let's just go back to that last point. You wrote in that paragraph eight, a bungalow with two entrances. And you indicated that because the Nikityuks had told you they wanted to live separately, correct?

A. Yes, of course. At that point, yes.

10 Q. Okay. And I want to be entirely fair to you, Mr. Danilov, and give you the opportunity to hear my clients' testimony and comment on this. The Nikityuks will say that this email was an offer, that it was a proposed life in Canada whereby they would live off their savings.

15 A. I must say that this is ridiculous.

Q. Okay. And -

THE COURT: Sorry, I didn't hear what did he say? What did you say?

20 A. I must say that this is ridiculous.

THE COURT: Ridiculous, thank you.

MR. BORNMANN: Q. The Nikityuks will testify that after receiving this email, they communicated acceptance of this offer to Svetlana by telephone.

25 A. Again, Nikityuks in 2008 were not in position to accept or reject any offer. First of all, it wasn't an offer. Second of all, they were in so bad medical shape that Canada and immigration to Canada was their only option to - for survival. It was a matter of life and death for them. So if at that point, let's say Valentin tells me, you know what I have a condition for
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you. I would say, okay, you know what stay home, you stay in Russia.

5 Q. But you would agree that they passed this medical exam at this point, correct?

A. Not at this point, no.

Q. But they did pass the medical exam.

A. They did, yes, and we were concerned that they might not be able to.

10 Q. But they did, correct?

A. Yes, they did.

Q. And here we are what, eight years later and both of them are still alive and healthy, correct?

A. Yes.

15 Q. So the Nikityuks will testify that in response to this email Alla Nikityuk spoke with Svetlana on the telephone and said we accept this offer. We like the risk free ten percent option. Isn't that what happened?

20 A. I don't even know how to say that in Russian to be honest because they didn't know English at that point; they still don't. And accepting offer I would actually would like to hear that, what - how that pronounce that in Russian because it may be translated differently or something like that. No, it wasn't like that. Absolutely not.

25 Q. And I suggest to you that after they conveyed their agreement with this risk free 10 percent scenario that that's when they transferred the money to you. Isn't that what happened?

30 A. No. They decided to go. They transferred the money and at that point it was up to me what to do

5 with that money because it was our - well, agreement with Svetlana actually that she will give that money to me as investment in family business and that's what happened. And that family business, yes, it was ten percent free risk option for Nikityuks but all they understood back then it was ten percent and well, pretty much that's it and well, I'm not a bank, you know.

10 Q. And you never returned their money after you received it, that's correct?

A. No, it wasn't an intention, no.

15 Q. Okay. Nikityuks will say that they made this - they communicated this agreement to Svetlana in 2008 after receiving this email and that sometime between receipt of this email and when they transferred the money, that's in fact when they were accepted to immigrate to Canada. Does that sound right?

20 A. I'm not sure what specifically what they're referring to. The only important event, what happened in that period of time was a call from Pratt Homes with information that the house will be ready in August. And at that point Nikityuks begged us not to sell the house. So after careful consideration of this well, request or whatever was it, we decided, yeah, okay, the house is a good investment we'll keep it. But as you can see from 25 this email, it's - the last option which supposed - which was supposed to go in three or four years after the Nikityuks' immigration. And as we decided to go for this option right away, then all options about it, became the 30 moot point and there is no reason to talk about. Things change and well, especially inside the family.

5 Q. Let's move on here. Yesterday you described the Nikityuks' Russian property as family assets, isn't that right?

A. Yes. Not my family; Svetlana and Nikityuks basically and well, Anastasia too because she's our daughter, but I wasn't any close to that ever.

10 Q. So the court will hear from Valentin and he will say that he and Alla had savings that were not shared with the rest of the family.

A. They didn't have any savings because we had to send them from 400 to 600 dollars per month and if that their savings then okay, then they saved that money, but it was my money actually.

15 Q. Valentin will testify that he received a payment of 90 thousand rubles when he retired which were his savings. Does that sound right?

A. Yes. He explained that in detail at the oral examination, I believe, yeah.

20 Q. And you would agree that Alla and Valentin also had a car in St. Petersburg which they sold when they were coming to Canada?

25 A. Yes. I have no idea how much that car costed though, I believe like maybe \$2,000.00, I don't know. It was Russian car, and well, they don't sell this stuff anymore here.

30 Q. And Alla and Valentin will say that they brought over some \$15,000.00 that they gave you when he arrived, is that right?

A. No, it's lie. He didn't give me any cash. Why would he?

5 Q. Valentin will say that he thought it was for you to put in the bank for him.

A. Again, he didn't give me any cash. It's a lie.

Q. Okay.

10 A. He testified that he brought and declared \$19,000.00. It was a big surprise for me actually because I was always wondering since then where he spent that money, but I have no idea where that money went, no.

Q. Okay. Mr. Danilov, I would like to turn your attention to Tab 5 of Exhibit 2, page 25.

A. Yes. I'm sorry, again, what Tab, what page? It's a red book.

15 Q. Yes, Tab 5, page 25.

A. 25, okay, I'm on it.

20 Q. Thank you. This is the English translation of a Russian document and you would agree that it's an agreement of purchase and sale for the, what we've been calling the garage, is that right?

A. I would suggest you - well, let Svetlana testify on that because it's first time I see this document in my life.

25 Q. Okay. So I'll put to you that Alla Nikityuk is listed as the owner of this garage on this document.

A. Yeah, sure.

30 Q. It's at the top her name appears at the top left of the document. And if you read the -

A. If you're trying to establish their shares in that garage, well, to the best of my knowledge Alla Nikityuk was the only owner.

Q. Okay. And this was a brick garage, is that right?

A. It was what, I'm sorry?

Q. A brick garage.

A. I don't actually recall because well, we left Russia in 1996, maybe.

Q. And you would agree that the - the sale price of the garage 23,710 rubles?

A. Can you point me to specific line because again, I see this document first time? Yeah, it's paragraph 3, right?

Q. And you would agree that neither Svetlana, Anastasia or yourself is named on this agreement?

A. No.

Q. Thank you. If I can turn your attention to Tab 2 of Exhibit 1. This is of the - sorry, Exhibit 2, my apologies, Exhibit 2, Tab 2, Exhibit 2A. Page 2.

THE COURT: I think it helps if you give the title of the document which I think is the sponsorship agreement, is that what you're at?

MR. BORNMAN: No, Your Honour. This is the certificate.

THE COURT: All right. Just not name the Exhibit number but what it is, that will help us. All right. So it's the certificate. Thank you.

MR. BORNMAN: Q. Mr. Danilov, you said that Svetlana had an ownership interest in the apartment and on that basis, you're claiming an interest in the proceeds of the sale of the apartment, is that correct?

5 A. At this point we are not claiming any interest because all money was gift and at this point again, shares in the apartment and everything there. It's the same moot point as everything else. All money was gifted out.

10 Q. I just want to be clear and allow your lawyer to comment because this will save a lot of court time. You are not claiming any interest in the Nikityuks' apartment in the proceeds of sale from the Nikityuks' apartment?

15 A. If you keep insisting that there were no shares in that apartment, then I would say that yes, there were shares, but at some point the apartment was converted into cash and that point when it was converted into cash and that cash was transferred to Svetlana then there is no - any sense to claim shares and stuff because all money became a gift, but at the time when apartment existed and Svetlana and Anastasia were registered to it, yes, there were shares.

20 Q. And you would agree that this document is an English translation of a certificate showing title to the apartment in St. Petersburg that Alla and Valentin -

25 A. Yes. It appears to be so, but again, it doesn't mean that there are no other owners. That's what I believe because again, you don't want to - to discuss that and you think that we need some kind of expert for that, but the situation is very simple actually. Everybody who was registered in the apartment at some point had the right to live in that apartment. And when we left Russia, Svetlana left her mom with power of

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attorney and what they were expecting Svetlana will better testify on that.

5 Q. But you would agree that this is a certificate issued by government authority in St. Petersburg purporting to show registration of title in that apartment and that document shows Alla and Valentin Nikityuk as the two owners?

10 A. There is no any word here about such thing as title. It's just some kind of certificate.

Q. Okay.

A. About rights registered.

Q. And you would agree - sorry.

15 A. And well, if you mean - if you think that the title what it means for real estate in Canada means the same in Russia. I honestly don't know, and there may be even such word or term in Russia as title because yes, this document says that both Nikityuks are the owners of this apartment. But it doesn't say anything about the fact that there may be other owners.

20 Q. But you would agree that it does not list Svetlana or Anastasia as owners, correct?

A. No. This specific document doesn't.

25 Q. And you would agree that the basis of ownership is listed as agreement 9430 dated February 4th, 1993 about the free transfer of the apartment to the joint ownership by the citizens included with the administration of - I don't know how to pronounce that, Moskovsky District in St. Petersburg.

30 A. Moskovsky.

Q. But you would agree that's what it says, correct?

A. Yes. That's what it says.

Q. My understanding, Mr. Danilov, is that there was a privatization process that unfolded starting in 1992, correct?

A. I'm not sure about exact year was thinking about 1994, but yeah, it may be 1992, I'm not sure. It was far ago.

Q. But according to this document, ownership was transferred to the Nikityuks on February 4th, 1993, correct?

A. I see the registration date December 17th, 2004. That's what I see. Where do you see 1993?

Q. There's a section called the ownership basis. And ownership basis, it says agreement 9430 dated February 4th, 1993 about the free transfer of the apartment to the joint ownership by the citizens concluded with the administration of Moskovsky District in St. Petersburg. So you would agree that the certificate indicates that on February the 4th, 1993 the Nikityuks acquired ownership of this apartment, correct?

A. Yes, it appears to be so.

Q. Okay. So at least by then privatization was taking place, correct?

A. For them, yes, but what's important here that Svetlana and Anastasia kept being registered in that apartment and had like lifetime right to live in it and that we - to prove that we have their copies of passports in the file so they were unregistered I believe Anastasia the end of 2007 and Svetlana in 2008 right before the apartment has been sold. The registration in the apartment means that they have the lifetime right to live

5 in it without ownership. So there were two owners in the apartment and two people who had the right to live in it. And those two people who had the right to live in it could go for another certificate of ownership because they were registered in the apartment and they would have the same certificate as Nikityuks did but different paper and different number and different contract and whatever.

10 Q. The Nikityuks will testify their recollection is only people who lived on the property could become owners, isn't that right?

15 A. No, that's where probably comes to the expert in the Russian privatization process or whatever it is. But you have somewhere the agency agreement in the files.

Q. We'll get to that Mr. Danilova.

A. Okay.

20 Q. So but you would agree that only Alla and Valentin were actually living in the apartment when it was privatization, correct?

25 A. Yes, only they were living and Anastasia at some point was living there for a while but both of them had the right. But say again, I would suggest you ask Svetlana about all of that because I'm not even close to that property.

30 Q. Nikityuks will testify that in order to privatize, they had to fill out an application form, an official from the agency came to visit the apartment and took measurements. Does that fit with your recollection of what the process was, Mr. Danilov?

A. I have no idea what the process was.

5 Q. Okay. So the Nikityuks will testify that they had to prove they were registered in the apartment. They had to go to a government agency that kept records of who was registered and they had to get a copy of that. Does that sound right?

10 A. I have to tell you, I don't want to, but I have to tell you. Again, before we left Russia, like forever, Svetlana left power of attorney for her mother and actually when all of that process was finished and I believe it was 2000-and-something. I'm not sure about the exact year, but maybe it was 2004, something like that and what we expected in that certificate, you're referring to, we expected to see all four names on it.

15 Q. Okay.

A. We don't know actually why there are only two names on it.

Q. Okay.

A. We expected to see all four.

20 Q. So the Nikityuks will testify that they took this registration record to the privatization agency and the agency gave them a form showing the property was henceforth owned by Alla and Valentin Nikityuk.

25 A. I have no idea. I don't know what the process is. I never privatized any apartment and I had my own, but when I purchased it, it was already privatized.

30 Q. And the Nikityuks will testify that a payment was made in order to achieve this transfer. Does that sound correct? Is that that correct?

A. Did they say what?

Q. That they had to make a payment to facilitate the transfer of ownership.

A. If they say so, I have no idea.

5 Q. Okay. So let's turn to that real estate agency agreement, Mr. Danilov, it's at Tab 4 of Exhibit 2A. I put to you that this is an agreement between the Nikityuks and a real estate agency to sell the apartment in St. Petersburg.

10 A. Yes, I saw this document before, yes. It appears to be so.

Q. And you would agree that -

15 A. I am sorry, one important thing is missing here, or maybe not. Let me check. There are supposed to be two appendixes to this document. I see appendix two, but I don't see appendix one neither Russian or English translation. I don't know what's in the appendix one, but I see appendix two, which I think the only important thing here but I don't know what's in appendix one. I never saw it before.

20 Q. Okay.

A. But we can talk about appendix two if you want.

25 Q. Okay. So Mr. Danilov, you would agree - I'll just direct your attention to the first paragraph. And I won't read the entire paragraph. I'll pick up, 'citizens list of all persons having the ownership title including minor children and legal and by power of attorney representatives and then it names two people
30 Alla and Valentin Nikityuk, isn't that right?

A. Yes. And it doesn't name two people who have the right to live in that apartment and were

registered in that apartment. It's Svetlana and Anastasia.

5 Q. Okay. This is the sale agreement for the apartment.

A. Yes.

Q. And the sellers are listed as the two owners, Alla and Valentin Nikityuk.

10 A. Yes, because they're owners, yes. Owners always sell, yes.

Q. And in paragraph 1.3 it describes a two-bedroom apartment, an address that I cannot pronounce, just called the property.

A. Yes, that's their apartment.

15 Q. And at paragraph 1.4 it indicates that the sellers' ownership title for the mentioned property is confirmed by the following documents and it mentions a form 4 technical registration certificate ownership agreement.

20 A. Yes. But it doesn't say that the - the ownership or other people who have their right to live in that apartment is confirmed.

25 Q. Okay. If I can just turn you to the next page. At paragraph 1.10. It reads, 'in the property which belongs to the seller on the basis of the ownership title the following persons not being ownership are registered, Danilova Svetlana, is that right?

30 A. Yes, yes. And Anastasia by that time, I believe already unregistered herself. So she unregistered from this apartment in 2007 because well, it was convenient because she was going for a long world

trip and at some point she decided to go for it because we were preparing this apartment for selling.

Q. Okay.

A. So that's why only Svetlana left there.

Q. Okay. But you would agree that Svetlana was not an owner of the property?

A. Yes, sure, because well, she didn't privatize here her share at that point but she had the right to live in the apartment, and eventually to privatize.

Q. And you would agree the Nikityuks will testify that there was a process available to them to deregister people who did not want to be deregistered, non-owners, isn't that right?

A. No, only through the court.

Q. You would agree that that is a process still, correct?

A. Yes, that's the process, but in this specific case, that process doesn't apply because we had an understanding - they had an understanding. It wasn't even close to that, and basically understanding was that before selling their apartment, Svetlana was also unregistered and they sell and that's what happened actually.

Q. So to be clear, Alla and Valentin did not require Svetlana's consent to sell because she was not an owner but -

A. They -

Q. - they -

A. - did, I'm sorry, they did and it's right in the appendix 2 if you go -

Q. Let me finish the question Mr. Danilov.
But Svetlana had to deregister.

5 A. Yes. Otherwise Nikityuks couldn't get the
entire amount of money for their apartment, only 50
percent.

Q. And there is a process in Russia through
the courts to deregister someone who does not consent,
correct?

10 A. I suppose so. You can do all stuff through
the court and it depends on what the court decides.

Q. But that doesn't matter because Anastasia
and Svetlana consented and deregistered, right?

A. Before selling the apartment, yes, sure.

15 Q. And Valentin Nikityuk sold the apartment,
correct?

A. I believe that was both of them.

Q. Alla and Valentin.

A. Yes.

20 Q. So let's - you've emphasized the importance
of this registration process.

A. Yes.

25 Q. So my understanding is that so you married
Svetlana in 1983 and then you moved in with Valentin and
Alla, right?

A. Maybe for three months, maybe four.

Q. They remember you being there a little
longer.

30 A. I don't remember maybe it was a little bit
longer. I don't recall actually.

Q. Okay. But at that time, Alla, Valentin,
Svetlana were all registered at that apartment, correct?

5 A. I believe so, to the best of my knowledge, yes.

Q. But you were not registered on that apartment, right?

A. No. I had property in different city, three hours from St. Petersburg.

Q. And my understanding is in 1985 when Anastasia was born, she was registered at this apartment.

10 A. Yes. And that's how she acquired the right to live in it.

Q. And this is well before privatization, right?

A. Yes.

Q. It's 1985.

15 A. Yes.

Q. So my understanding at that time is you couldn't be registered in two places at once, isn't that right?

20 A. You can be registered in the second place only temporary if you are let's say visiting someone and you have the right to live in that someone's apartment let's say for three months or so. There was a process for temporary registration and you can keep the permanent registration if you want.

Q. But you could only be permanently registered in one place, right?

A. Only at one, at one place, yes.

30 Q. And my understanding is that after Anastasia was born you, Svetlana and Anastasia moved out and Anastasia and Svetlana deregistered from Alla and Valentin's apartment.

5
A. No. I moved out and I've been registered in my own property and Svetlana and Anastasia they kept registration in that apartment.

Q. Okay. So the Nikityuks will testify that Svetlana and Anastasia were registered on your apartment in 1988 or '89 whenever it was that you moved out.

10
A. They kept actually their registration to the very last moment. Anastasia was unregistered in 2007. Svetlana was unregistered right before selling the apartment in 2008. We actually have stamps on the passports and it's produced in the file.

15
Q. Okay. Well, we'll get to that in a second. So the Nikityuks will testify that in 19 - somewhere in 1988 to '89 Svetlana and Anastasia were registered at your apartment.

A. Not to my recollection, no.

Q. And that's why in 1993 -

A. That would mean actually that they -

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Q. That's why in 1993 when they privatized the apartment Svetlana and Anastasia were not registered because they were registered on your apartment.

25
A. If they did that, that would mean that they both Anastasia by the way it was minor at that point and all decisions for her were made by Svetlana and me. So that would mean that they simply gave up their right in that apartment which would be stupid, and they didn't do that.

30
Q. But help me understand this. You're living as a family: husband, wife, daughter in your apartment.

A. Yes.

Q. But your wife and child are registered at your parent's place?

A. Yeah, why not?

Q. So I put to you -

A. Registration means the right to live in the apartment, like lifetime right, and they had that right, lifetime right, and they never gave it up.

Q. And my understanding is that 1995 you moved to Latvia and you wanted to sell your apartment and so at that time, which is after privatization you then registered at your aunt's place and you registered Anastasia and Svetlana at Alla and Valentin's place so that you had a place -

A. No, it wasn't -

Q. - in Russia while - you were registered somewhere in St. Petersburg while you sold your aunt's apartment. Is that what happened?

A. I had - I had my own apartment in St. Petersburg. When I got offer from Latvia I sold that apartment of my own and Svetlana and Anastasia they kept registration in the parent's apartment. There were no reason to give up that registration and they only thing what happened before that in 20 - in 1996 they got new passports because we were leaving the country and we took care of - we got fresh passports. So you can see from the passports that they were issued right before the registration stamp says. So basically when you give - when you receive a new passport you receive a new registration. But it's pretty much the same registration which was transferred from the previous passport and

Anastasia's passport was brand new because she was minor before that.

5 Q. On this - just help the court understand, registration can vary - confirms more benefits than simply the right to live at a place, isn't that right? There are other reasons people would want to be registered at an address in St. Petersburg if they lived in Latvia, isn't that right?

10 A. Latvia is different country. There are no stupid rules for registration over there. They - they gave up all those rules when they split from the Soviet Union.

15 Q. Isn't it right that if you're registered at a place in St. Petersburg, it's easier to come and go from Russia than if you're not registered at a residence in Russia? Isn't that true?

20 A. No, it's not true, because to live in Russia, you have to have two passports, well, actually you have internal passport where you have this registration and all this information about you, like are you married or not, and where do you live, and well, pretty much your blood type and everything. It's internal passport. And there is external passport which you use if you go abroad. They are completely separate and there is nothing to do one which with the other. So basically when we went - when we left Russia to Latvia we used our foreign passports which also were new because we refreshed all of them before leaving country forever.
25 And well, nobody ever outside Russia since 1996 ever cared about our internal Russian passports. They are
30

expired like years ago and we didn't refresh them because we don't need them here.

5 Q. But registration is a legal requirement for people living in Russia, right?

A. Yes. Everybody must be registered somewhere. If you are not registered, you are homeless.

Q. Right. And there are other benefits like free medication and education?

10 A. Yes. You must be registered somewhere and if you are registered somewhere then you have free medicine.

Q. And Anastasia didn't have to pay for university in St. Petersburg because she was registered -

A. She did.

15 Q. - at Alla's and Svetlana's apartment, right?

A. We - we paid for her university.

20 Q. Okay. And the reason you didn't buy health insurance for Svetlana when she went to visit Alla in 2005 was because she was still registered at the apartment and could avail herself of the Russian health care system, isn't that right?

25 A. There is no such thing as health insurance as you understand it here in Canada in Russia. Health insurance in Russia simply doesn't work. It's just a name on something which physically doesn't exist. We never bought any health insurance in Russia because it simply doesn't make sense. You pay your premium but you never get any money from insurance if something happens. And that's - that's one of the reasons, of many reasons
30 why we left that country many years ago. We didn't have

5 to buy insurance for Svetlana when she was visiting
Russia because foreign trips are covered by OHIP and when
we were living in Latvia we didn't have any health
insurance. We paid for doctor appointments from our
pocket.

MR. BORNMANN: Your Honour, this might be a
break point.

10 THE COURT: It's probably a good time to break
for the day. We'll return tomorrow.

15
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25
30
WHEREUPON COURT ADJOURNS

5

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

10

I, Cathy Knelsen, certify that this document is a true and accurate transcript of the recording of *Danilov v. Nikityuk* in the Superior Court of Justice, held at 75 Mulcaster Street, Ontario, taken from Recording No. 3811-02-20160517-090432 which has been certified in Form 1.

15

, 2017

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Danilova v. Nikityuk et al.
Pavel Danilov - Cr-ex (cont'd)

WEDNESDAY, MAY 18, 2016

THE COURT: Good morning counsel.

MS. CHAPMAN: Good morning, Your Honour.

THE COURT: I presume we're ready to continue
with the cross-examination?

MR. BORNMANN: Yes, Your Honour.

THE COURT: Mr. Danilov, you may return to the
box.

PAVEL DANILOV: RECALLED

PAVEL DANILOV: Okay thanks.

CROSS-EXAMINATION BY MR. BORNMANN (CONTINUED):

Q. Mr. Danilov, when we broke yesterday, we were
discussing what you had termed family assets in your testimony
the day before.

A. Yes.

Q. I want to continue on that topic. I'd like
to turn your attention to Exhibit 2(A), Tab 5 and specifically
page 27. So that's Exhibit 2(A), Tab 5, page 27.

A. Yes.

THE COURT: Is that in volume 2?

MR. BORNMANN: Yes, Your Honour...

THE COURT: I just need a....

MR. BORNMANN: ...2(A).

THE COURT: I'll just need a moment to get volume
2 here.

MR. BORNMANN: Exhibit 2(A), volume 1. It's at
Tab 5, Your Honour.

THE COURT: Oh it's in - it's in volume 2 in
mine. What number is it again, 20 - 27?

Pavel Danilov - Cr-ex (cont'd)

MR. BORNMANN: Page 27.

THE COURT: Which exhibit number - which tab number, sorry.

MR. BORNMANN: It's Tab 5.

THE COURT: Okay.

MR. BORNMANN: It should be Agreement of Purchase and Sale of an apartment.

THE COURT: All right. I've got it, thanks.

MR. BORNMANN: Q. And Mr. Danilov, I put to you that this is a certified English translation of the Agreement of Purchase and Sale for the apartment. It was owned by Alla and Valentin Nikityuk.

A. Yes.

Q. And you would agree that it's dated April 28th, 2008?

A. Can you point me to the place where the date is please?

Q. Certainly. It's just below the - it's underneath the title, the second and third line under Saint Petersburg at the top left. It's spelled out, so....You would agree that this document's dated April 28th, 2008?

THE COURT: Well Mr. Bornmann, part on my copy it says March 4th, 2008 on the top left on page 23.

MR. BORNMANN: Sorry, Your Honour, it's page 27.

THE COURT: All right.

A. I'm sorry, I'm still having trouble to locate that date.

MR. BORNMANN: Q. So the - at the top of the document on page 27, it says "Agreement".

A. Oh yeah - it's - okay, it's not numbers certainly - yes, it is.

Q. Okay. Thank you. And you would agree that

lists the sellers as Alla and Valentin Nikityuk?

A. Yes.

Q. And if I can direct your attention to paragraph 3....

5 A. Yes.

Q. You would agree that it states that the apartment is owned by the sellers based on the 1993 agreement?

A. Yes.

10 Q. And you would agree with me, Mr. Danilov, that at paragraph 5 on the next page, that it indicates that the apartment's being sold for 5,300,000 rubles?

A. Yes.

Q. And you would agree that Svetlana is not referenced at any point in this document?

15 A. In this document, no.

Q. And you would agree that Anastasia is not referenced in this document, correct?

A. Yes. It - it - it's not referenced, yes. Not in this document.

20 Q. And neither Svetlana or Anastasia has signed this document?

A. No.

25 Q. And you would agree that the - the proceeds from this agreement, the 5,000,300 [sic] rubles were part of - part of the money that was wire transferred to your wife in 2008, correct?

A. Yes, sure.

30 Q. Okay. Thank you. Mr. Danilov, if I can turn your attention to the document that's at the - excuse me, just give me a moment. So you would agree that the Nikityuks owned a cottage or summer home, correct - in Russia?

A. Can't - believe it was one of them. I'm not

Pavel Danilov - Cr-ex (cont'd)

sure which one of them.

Q. Okay. But they - they owned a summer - they owned a summer home in Russia in 2008?

A. Yes - yes, but the thing is that half of that
5 summer cottage was built by my father...

Q. Okay.

A. ...who is deceased at that - at the moment
and...

Q. Okay.

A. ...Valentin actually never paid my father for
10 that job, so I think that there is some interest in that summer
cottage of mine.

Q. Okay. Mr. Danilov, well we'll - we'll turn
to that in a second. Just to familiarize the court with what
15 we're speaking of, you would agree that this was a cottage or
summer home somewhere outside Saint Petersburg?

A. Yes, it's a small cabin with some piece of
land with it.

Q. Okay. And you and your family in fact spent
20 time there when you lived in Russia, correct?

A. Yes a lot of - sure.

Q. But you knew that Alla - or sorry, you knew
that Valentin owned this property, Alla did not, correct?

A. I'm not sure who owned. Maybe it was Alla,
25 maybe it was Valentin? I never paid attention.

Q. Okay. May I direct your attention to the
document at page 23, Mr. Danilov?

A. Page 23 - okay.

Q. And you would agree with me, Mr. Danilov,
30 that this is a certified English translation of Agreement of
Purchase and Sale for a piece of land and a garden college [sic]
- or garden cottage with an attic room?

Pavel Danilov - Cr-ex (cont'd)

A. Yes, it appears to be so - yes.

Q. And you would agree that this is in fact the property that we've been talking about, the cottage?

A. Yes.

5 Q. And if I can direct your attention to the - the top, left hand side of the document, you would agree that it's dated again in words March 4th, 2008, correct?

A. Yes.

10 Q. And if you look at the header, you would agree that Valentin Nikityuk is listed as the seller?

A. Yes.

Q. Thank you. And if I could direct your attention to paragraph 5 at the bottom, you would agree that this states that the seller has sold this garden cottage with
15 attic room for 800,000 rubles?

A. Yes, that's what the document says - yes.

Q. Okay. And you would agree that your name does not appear anywhere on this document.

A. No, it's not.

20 Q. Okay. And Anastasia's name is not on this document either?

A. No, it's not.

Q. And neither is Svetlana's?

A. No.

25 Q. And Alla's name isn't on there either, right?

A. Yes, it's - it's - it's not.

Q. Okay. Thank you. And now, as you're beginning to explain, yesterday you testified that your father built half of the cottage and he didn't get paid.

30 A. Yes.

Q. That correct? And prior to - prior to this trial convening, your lawyer sent us a document called a

Pavel Danilov - Cr-ex (cont'd)

Response to Request to Admit, was dated April 26th and in that we were advised that - I'm just gonna read it, "Pavel had a 50 percent interest in the summer cottage because his father, deceased, built half of it. Nikityuks never paid for that work, but promised Pavel's father that in exchange for the unpaid work, Pavel would inherit the cottage after Valentin's death." Is that correct?

A. Yes, that's what Valentin told at some point to my father and to me, I was in receipt.

Q. Okay. Do you - do you remember testifying under oath in 2014, the examinations of discovery?

A. Yes, sure.

Q. Okay. And - and at that time, you testified to something different. You - you had indicated that you had an interest in the cottage because you in fact helped build it.

A. Yes, I did. But Valentin said that I - I didn't, so - but he admitted that my father did. Actually, we both were working on that cottage, me and my father, and it was about two week's job or something like that. We actually increased the size of that cottage by factor two and - well, yes I worked on that and my father worked on that, but Valentin didn't admit at his examination that I did, but he admitted that my father did so that's why I don't insist on my work on that, but I insist on my father's because it's admitted by Valentin.

Q. Okay. So you've changed your - your understanding of what happened based on Valentin's testimony.

A. Well no I did not. I just said that my father worked on that cottage. I didn't say that I didn't.

Q. Well Valentin's - will testify that you didn't - that you did not work on the cottage at all.

A. I couldn't care less what Valentin testifies.

Q. And Valentin will testify that he did not

give you any interest in the cottage.

A. Okay.

Q. And that the cottage was his alone.

A. Sure.

5 Q. And - and it's - surely you produced no document between you and Valentin which gives you any interest in the cottage, correct?

A. Yes.

10 Q. And when it came time to sell the cottage, only Valentin - it was only Valentin who had to enter into this Purchase and Sale Agreement as the registered owner, correct?

A. Yes.

Q. The evidence from our clients will be that your father worked on it for an afternoon.

15 A. Again, I couldn't care less.

Q. And that what he did is he helped Valentin enlarge the sunroom.

A. Okay.

20 Q. And our clients' evidence is that he neither told your father that in exchange for his afternoons work, you would get 50 percent of the cottage or that you would inherit it.

25 A. My understanding is that your clients are going to testify a lot of things which are not true. So I'm not surprised.

Q. Okay. But you've produced no document showing that you have a 50 percent interest in....

A. No, of course not. How - how could I?

30 Q. And our clients' evidence will be that your father did not in fact try to exchange his work for any type of interest.

A. That, I don't know.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. You don't know. And you produced no document between you and your father on this issue either, correct?

A. No.

5 Q. Okay. And to the inheritance piece, Valentin's not dead, we can agree on that - yes?

A. Inheritance - I'm sorry, what inheritance?

10 Q. You - you'd indicated in your Response to Request to Admit that in exchange for your father's work, you would inherit the cottage after Valentin died.

A. Yes, that's what Valentin told me and to my father.

15 Q. Okay. But Valentin's still with us, isn't he?

A. Yes.

20 Q. Okay. So Mr. Danilov, I'd like to turn your attention to the next tab in Exhibit 2(A) which is the chart - English translations of the wire transfers by which the proceeds of - proceeds of sale of the properties we've been talking about got transferred to Canada.

A. What - what tab is this, I'm sorry?

Q. This is Tab 6, page 36.

A. Yes.

25 Q. Do you have that in front of you? And I believe we covered this in your testimony on Monday, however to be clear, you would agree that these documents are certified English translations of the 4 wire transfers by which the Nikityuks sent you some 260,000 plus US dollars in 2008, correct?

30 A. Yes.

Q. All right. And the first one....

A. Not to me, to - to my wife actually.

Pavel Danilov - Cr-ex (cont'd)

Q. Thank you, to Svetlana Danilova. And on page 36, we have the first transfer in the amount of 14,117 US dollars. Is that correct?

A. Yes, it's obviously correct.

5 Q. And then on page 37 we have a second wire transfer on May 15th....

A. Yeah, they all are correct.

10 Q. Okay. Well just bear with me, we'll just quickly get through this, Mr. Danilov. On - we have a second wire transfer for an amount of - sorry this is on page 38, for \$31,000, again US.

A. Yes.

15 Q. Then on page 40, we have the third wire transfer of May 27th, 2008 for an amount of 107,841 US dollars. Is that correct?

A. Yes.

20 Q. And then on page 42, we have the fourth and final wire transfer June 9th, 2008 for an amount of 107,884 US dollars.

A. Yes.

Q. Okay. And you would agree that all these wire transfers are from Alla Nikityuk to Svetlana?

A. Yes.

25 Q. And they have been sent to the TD Bank branch at Wincott Drive in Etobicoke?

A. I don't remember the exact name of the branch, but I think - yes it should be correct.

30 Q. If I could direct your attention, Mr. Danilov, to - well we'll just work off the first wire transfer on page 36 under ben - it says beneficiaries bank and....

A. Yes - that's - yes.

Q. Okay.

Pavel Danilov - Cr-ex (cont'd)

A. 250 Wincott Drive - yes.

Q. Okay. And the account number is listed under, if you look where it says transfer beneficiary, then there's Svetlana's name, the address of your appointment in Etobicoke and then at the bottom of that particular cell there's an account number. I believe that's Svetlana's account?

A. Yes, it's actually our joint account this account.

Q. And there's - thank you. It's a joint account with you. Is it joint with Anastasia?

A. No.

Q. Is it joint with Alla?

A. No.

Q. Is it joint with Valentin?

A. No. It's joint with Svetlana. My account is with her.

Q. Okay. Direct your - actually - and this was - this was transferred by you or Svetlana to your Investment Brokers account, correct?

A. Yes. Again to our joint account in Interact Brokers.

Q. Yeah. And that account was only in your name, correct?

A. Mine and Svetlana's.

Q. Yours and Svetlana's, okay. So when you testified on Monday - and perhaps just before I - I - I go there, direct your attention - so underneath, if you look at the first wire transfer, underneath where it says in the - in the left column of the table there's purpose of transfer, it's the second row from the bottom.

A. Yes.

Q. And - and it says present, correct?

Pavel Danilov - Cr-ex (cont'd)

A. Yeah.

Q. Okay. But on Monday you said you didn't even know that the word present was there until recently, correct?

A. I knew that those documents existed and I
5 knew they're supposed to be something there which says that money not supposed to be paid back. I wasn't sure about the exact word. You can put any word in it and that word supposed to mean that money are not transferrable back - not supposed to be paid back. The best word for it is present. That's, I
10 suppose, what Alla figured out when she sent the money from Saint Petersburg.

Q. All right. Mr. Danilov, can I turn your attention to page 44 and - and this is the first wire transfer. This is - I put to you, this is the first wire transfer, but the
15 original Russian version.

A. Yes.

Q. And so we know that the - the purported purpose of the wire transfer is in the second row from the bottom.

A. Yes.

Q. And you'll agree with me that present's written in English, correct?

A. Yes, but there is Russian word present which means exactly the same. You can consider this transferred - I
25 don't know why Alla decided to write that in English, that I don't know.

Q. So you'd agree that that word's not a Russian word?

A. It's a Russian word written in English. You
30 can ask our respectful translators - 35 translators - they confirm to you that there is Russian word present which means exactly the same as in English.

Q. But it's spelled differently in Russian, is it not?

A. No, it's not.

Q. It's spelled....

5 A. It's just in [indiscernible]...

Q. Okay. Thank you.

A. ...it will be incurred, but...

Q. It's....

A. ...it - it - it will sound exactly the same.

10 Q. But if you had asked Alla - you would agree with me that if you had asked Alla in 2008 to write the word present, she wouldn't have written it like this, correct?

A. I have no idea what she would written [sic] if I ask her. I don't know.

15 Q. But you would agree that writing the purpose of the transfer in English is consistent with the idea that the Nikityuks were trying to avoid tax problems in Canada and that was the - that was the reason they wrote present, correct?

A. I cannot speak about their reasoning.

20 Q. But you'd agree that if the purpose of the notation was to let you know that it was a gift, they would have written it in Russian, correct?

25 A. Again, I cannot speak what they would have or wouldn't have done. They - they are adults, they do what they think is proper at the moment I'm assuming. They're very capable, right - so whatever.

30 Q. But you would agree that this is a significant transaction. These wire transfers represented all that the Nikityuks had worked for during their lives the proceeds of sale, their house, their garage, the cottage, plus some savings.

A. I would attract your attention to the simple

fact that this is transaction between Svetlana's mother and Svetlana. And all I know about it, it's just circumstantial facts I overheard. And behind that fact there is a simple fact that there was an agreement back in 2004 where our promise to transfer all proceedings from sold Russian property to Svetlana. And everything in this document is in line with that agreement.

Q. Well the Nikityuks don't agree with that. The Nikityuks say that this money was being transferred to Svetlana so it could be put in a risk-free investment with a 10 percent annual interest. Isn't that actually what was happening here, Mr. Danilov?

A. They just transferred that money and they - it was completely up to us what to do with it. That money was transferred in exchange of lifetime support of Nikityuks in Canada. And basically, it - it - this money secured my 10 years commitment.

Q. But you had provided your 10 years commitment back in 2004, Mr. Danilov, correct?

A. I'm not sure what you're talking about. I am talking about sponsorship agreement which started in - when Nikityuks arrived to Canada and that was June 13, 2008 and it last until June 13, 2018. That's the commitment I'm talking about.

Q. But the undertaking that you're referring to, you had signed almost four years before this wire transfer was sent, correct?

A. Yes, it was October 2004 and I did that after we reached the verbal agreement with Alla that she will transfer - well Nikityuks will transfer all money to Svetlana when they are at - before they arrived to Canada.

Q. The Nikityuks are going to state you and Svetlana both knew this was not a gift.

Pavel Danilov - Cr-ex (cont'd)

A. No, I am stating right now that both Nikityuks knew that it was a gift.

Q. The Nikityuks are gonna say that this was their money and they were trusting it with you to invest, to generate income for them to live off in Canada. Isn't that
5 actually what happened?

A. We have a - in writing if you'll look at the original documents here in Russian, there is a statement in writing of Alla Nikityuk that she understand that - that money
10 is not for - yes, not purpose and not for buying any real estate property. There is her declaration.

Q. Mr. Danilov, I want to turn your attention to a document in your book, Exhibit 1(A), Tab 27.

A. Eight - eighty-seven, you said?

Q. Tab 27.

A. Twenty-seven.

Q. It's titled "Loan Activity Agreement between Family Members".

A. Yes.

Q. And you prepared this document, correct?

A. Yes.

Q. Okay. So....

A. I pretty much I downloaded the template from internet and adjusted it for our purpose.

Q. And - and this - this document you prepared, in your view is legally binding, correct? You believe that this is a legally binding document, this loan agreement?

A. Yes, sort of. See the purpose of this document was pretty much to demonstrate to CRA that we have some kind of arrangements in the family where I can legally split
30 income between family members. And their suggestion was to come up with some kind of formal agreement because it's the easiest

way to do that.

Q. Okay. So is this a fake agreement to fool Revenue Canada? Or is this a real agreement?

A. I consider it real.

5 Q. Okay. Thank you. So now that the gift is a loan, correct - in your view?

A. Yes, but the gift was to Svetlana and then Nikityuks and Svetlana decided that it's - it's better be a loan.

10 Q. Okay.

A. Then if - see if you think about it, a loan which is not supposed to be paid back, it's actually gift.

Q. Okay. So it was a gift, then it became a loan, is that how it worked?

15 A. I'm sorry, I'm not sure I understand your question.

Q. Well the Nikityuks will testify as I've stated previously that they entrusted this money with you to invest on their behalf to generate income...

20 A. Yes.

Q. ...but it was their money.

A. Yes. And....

Q. However, just a moment ago you advised that you considered this money a gift when the wire transfers came in notwithstanding the fact you hadn't seen the wire transfers.

25 A. Yeah - we - we should remember the fact here that the documents you were referring [sic] before were concealed by you - your clients' for years and first time I saw them, actually - and read them actually was February this year.

30 I knew that there's supposed to be something that - but I didn't actually read those documents before. Now I know that it was a gift. When I prepared this loan agreement, I didn't know. Well

I knew back then that it - it's supposed to be a - some money which are not supposed to be paid back and that exactly what the loan says.

5 Q. Well let's pretend for a moment that the - our clients agree that this loan agreement is in fact agreement, which they deny. But - but if in fact this was a loan agreement and you said it's a real agreement, at least by the time this document was prepared, whatever that money was, there's now an agreement that it's a loan, correct?

10 A. Correct what?

Q. This is a loan - when you prepared this document, you're of the view that this money was a loan, correct?

A. Yes.

15 Q. Okay. Thank you. And you'll agree with me that even though the loan agreement says June 14th, 2008 it was actually signed sometime in January 2009, correct?

A. Yes, before we submitted our 2008 tax return. But all verbal terms so this agreement were discussed with
20 Nikityuks right after their arrival to Canada - they were on board. They knew that they are going to do something like some paperwork for Tax Revenue Agency and - well in principal, well they didn't care because, you know, they testified at - at their examination that they never were interested in any financial
25 affairs.

Q. Okay. But you'd agree with me of course that this document's in English.

A. Yes.

30 Q. And you'd agree with me that non-English speaker might only recognize a few points of information on this English document, correct?

A. I don't know. There are numbers, so were the

numbers are correct - it's not the point. The agreement was translated to them in writing by Svetlana and they just didn't give you the translation.

Q. Okay. Well the Nikityuks will testify that they were never provided with a translation of this document.

A. Of course they will.

Q. And the Nikityuks will testify they don't even in fact remember signing this document.

A. Yes. And I - I would like to attract your attention to another fact that they also will testify that they didn't - that they - they signed the Wills and Power of Attorneys in - that when they signed the Wills and Power of Attorneys, those actually were not translated to them and we easily can prove that's not true - we're saying it's not true and disagree.

Q. Can you prove that you translated this document to them?

A. Well, I don't know. If you obtain a search warrant and search their apartment, maybe a - someone can find that Russian translation - I know that will be proof.

Q. But you - you've not brought a motion before the court for an order to search for such a document, have you?

A. No, they deny signing this agreement. I don't care. It's agreement and they're [indiscernible] and they - Valentin deny that he signed it [indiscernible] whatever...

Q. Okay.

A. ...if he didn't sign it.

Q. But just to pick up on a point you made, they would be able to understand the numbers, right?

A. Yes, sure.

Q. And you would agree with me that the number written in this loan agreement is 260,802 US dollars, correct?

Pavel Danilov - Cr-ex (cont'd)

A. Yes. And couple lines below that, there is another amount in Canadian dollars.

Q. So this is under heading one where it says "Loan"...

5 A. Yes.

Q. ...on page 171 and it clearly states 260,802 US dollars and then two lines below it says 263,586 Canadian dollars.

A. Yes.

10 Q. And they would be able to understand those number, correct?

A. Oh yes, sure.

Q. So can you help me understand how the Nikityuks are loaning you that amount on the one hand, but on
15 the other hand they were simply passing through to you significant sum of money that was Svetlana's and Anastasia's? So did they give it....

A. I - I already...

Q. Sorry.

20 A. ...I already explained to you that the money was a gift, but when Nikityuks arrived to Canada, my concern was basically tax implications of that. And they were - all I was trying to do I was trying to legally split my income between four family members and we got consultation with CRA how to do
25 that legally. So they suggested to call that not a gift because if it was a gift then everything I pay to - to Nikityuks would be gone after my tax - would be taxable. But if it's a loan and if I invest money to get interest for the investment interest for Nikityuks, then I would simply get like 5,000 more per year
30 because that money would be not taxable. And that - that was CRA suggestion and that's what we went for.

Q. And you were income splitting legally you

said.

A. Yes, sure.

Q. Okay. And you would agree that it would not be legal to make a false statement to CRA, correct?

5 A. What statement?

Q. If you made a false statement to the Canada Revenue Agency in order to split your income, you would not be splitting your income legally, correct?

10 A. Yes, sure. But I never made false statement to CRA. Nikityuks do that all the time. I don't.

Q. All right. Okay. So when you told the CRA that you borrowed \$260,802 from the Nikityuks, you were being truthful, correct?

15 A. Yes, sure. But this money is designated for lifetime support which means that there is no payback because lifetime means that. Payback comes when Nikityuks both die. And for that purpose, we actually asked them to sign Wills in favour of Svetlana because after they both die, they - Svetlana inherit the - the principal amount of the....

20 Q. Okay.

A. It was a combination of two documents and they both were well aware of the purpose and everything was translated to them to Russia - Russian and they were on both.

Q. And....

25 A. They understood that the less taxes we pay, the more money they get.

30 Q. Okay. So we're going to get to lifetime support in just a moment. But my understanding of this agreement is that you have unfettered discretion with respect to how the principal - how the loan is invested, is that correct?

A. Yes, that's what the agreement says - yes.

Q. And so if we look at....

Pavel Danilov - Cr-ex (cont'd)

5 A. And just to finish this thought, I've - I have decided to invest this money in my own family business specifically designed to support Nikityuks back in 2007.

Q. This is the software that does trades?

5 A. Yes, it's - they're automatically trading software - yes.

10 Q. So - but if I can direct your attention to the purpose, the first - the first paragraph talks about how the borrower shall invest his - invest the principal at their discretion and then then second paragraph indicates that the borrower shall provide interest income on the outstanding balance of the loan every year and - to make the lenders total taxable income minimal, but enough to cover all mandatory expenses such as, but not limited to, household expenses, 15 automobile expenses insurance premiums.

20 A. Yes and the amount I kept in mind at that time was around \$20,000 per year per person which wasn't taxable. But for me, if I did that for my income, two times by 20,000 it immediately puts me in the lowest tax bracket. So I save 5,000 per year in taxes and Nikityuks can use that money to buy fruits and vegetables and all, you know, natural stuff.

25 Q. And I understand that the amount of interest that's paid under this agreement is again determined by you and your sole discretion, correct?

A. Yes, but it should be enough to call all Nikityuks basic expenses and definition of basic expenses is given in the sponsorship agreement.

30 Q. And I understand that despite the fact the agreement says that "investment income shall be paid on a schedule that's verbally agreed between the lenders and borrowers in the form of direct deposit to the lenders' personal bank account specified below", that - that in practice, you made

the decision as to what interest was paid, correct?

A. No. The companies who send me bills because basic expenses means that I have to pay some bills. And when I get let's say a bill from hydro, I have to pay and that's where
5 the amount - the interest actually comes from because Nikityuks, they were supposed to pay half of their expenses.

Q. But you decided what bills get paid, what expenses are incurred, correct?

A. No. I have to pay all bills.

10 Q. Okay. Just before we dig a little deeper on that, you'll remember when you testified under oath back in 2014 that you agreed that there was no explanation contained in this document as to how a determination was actually made around interest payments. You speak about interest being paid as bills
15 come in...

A. Yes.

Q. ...but that's - in nowhere - you agree that that's not set out in this agreement in any place.

A. Give me one moment, I probably can point you
20 to the right sentence here.

Q. So your position's changed on this?

A. No, it's not changed. They're the same position - one second - yes, it's last sentence on the first page of the agreement - this page 171. It says exactly what
25 you're asking about, the schedule. Must provide cash flow necessary to cover ahead of time all mandatory monthly living expenses which means exactly what I said if you think about it a little bit at [indiscernible].

Q. But we have to think about it a little bit.

A. Yeah, you - you do, yes.

30 Q. Now at the oral examination, I asked you whether this document was translated into Russian and you'd

indicated that it had been by Svetlana in handwriting. Do you remember that?

A. Yes. Yes, I - I saw the - the entire process from start to - to the end it.

5 Q. Now....

A. They were sitting at the table in the great room in our house and Svetlana was writing every sentence in Russian on a piece of paper and both Nikityuks were sitting and very carefully watching and listening because she was writing and pronouncing every sentence at the same time. Then she gave that piece of paper to Nikityuks and well I - I don't know what happened to it after that.

10 Q. Okay. And the Nikityuks dispute that. They say they never received a Russian translation.

15 A. Of course they do.

Q. But if we just go with your recollection, under oath you advised that that handwritten translation was provided at the time they signed the loan agreement, correct?

A. Yes.

20 Q. Okay. Which would have been in...

A. Before....

Q. ...January 2009.

A. Yes. Before they signed it, actually.

25 Q. So now you're saying it was - but in January 2009, correct?

A. Yes, but before they signed - before they signed it, the agreement was translated to them in writing.

Q. Okay. Thank you.

30 A. I'm not sure if they signed the translation, I think no because - well, we didn't have to do that. The entire agreement was designed to show to the - to the CRA actually.

Pavel Danilov - Cr-ex (cont'd)

Q. And if I can draw your attention to - on page 172, to the bottom of the page, you specified the lenders bank account at CIBC in the name of Alla and Valentin Nikityuk, but it's true that Svetlana was named on that account as well,
5 correct?

A. Yes, sure because it was account which open - was opened for Alla back in 2005. They were aware of that account, they have access cards, they use those access cards and later when Valentin actually arrived to Canada, we added
10 Valentin to that account - they added him, nothing to do with me. And the - the issue with that account was that someone is supposed to pay the bills and actually to control the money flow and Nikityuks were not able to do that, so that's why Svetlana always was on the account. But they - they - the first reason
15 why Svetlana was on the account at the very beginning because when Alla came to Canada back in 2005, she wasn't able to open bank accounts simply because she wasn't Canadian resident. So Svetlana actually opened that bank account because she was a Canadian resident and we had Alla - she had Alla as secondary
20 account holder at that time and Alla needed to be got access card and this stuff and later in, I believe in 2008, we added Nikityuk - Valentin to that account. So they became both joint owners of that account and it was always was their account, but - see I use online banking and we always use online banking.
25 And when you don't know language, you actually cannot use online banking. You cannot control money flow. But that's how it works in Canada.

Q. And you tried to help the Nikityuks learn online banking?

A. Yes, Svetlana did a lot of times. But see it - it - it - it's my problem too. When I've been to Germany, for instance, I've purchased - my sim card was German

[indiscernible] and I'm still having trouble to pay for that because I don't understand German. And when I look at that website or that company I purchased that sim card from, I don't understand a thing. I have no idea where to click and how to pay. And when I pay money I must be sure that I'm doing everything right. So she - imagine like Valentin and Alla doing this stuff with money here in Canada, it's simply impossible.

Q. Yeah.

A. So that's why Svetlana always was on account.

Q. They don't speak English, so they can't....

A. Yes. By the way....

Q. Sorry....

A. Okay.

Q. And you testified to that point back in 2014 as well that the real problem was they couldn't speak English, so they couldn't do the online banking themselves.

A. Yes.

Q. And that's why Svetlana controlled the account.

A. Yes.

Q. Okay.

A. And she make best effort of her, but you can ask her herself about that to teach them - it - it - it's really difficult because we - we understand that it's - in their age it's difficult to - to learn new things. We understand that.

Q. Okay.

A. We always supported that.

Q. Just one more - one more point, Mr. Danilov, just a small one. Under household expenses...

A. What type....

Q. ...under purpose, you - so this is still on the same document, page 171, the purpose of the loan.

Pavel Danilov - Cr-ex (cont'd)

A. Yes.

Q. But you were gonna - and not to cover all mandatory living expenses such as household expenses and back in 2014 when you testified under oath, you indicated that Russian television was paid as part of those mandatory household expenses, isn't that right?

A. Yes, for - for the time being, yes.

Q. Okay.

A. It wasn't a big expense while I still had my discount with Rogers. I paid for Rogers cable anyway and with 50 percent discount, small addition with Russian channels, I didn't care about it.

Q. And you have advised that your interpretation of this document is that the money never gets paid back.

A. Yes, that's what this says.

Q. And can you direct the court to where the loan agreement says that please?

A. It's page 172. It says, "The payment of the principal amount of the said loan has not been specified in this agreement as to the purpose of the above said loan for the lenders used to generate a lifetime support income."

Q. Thank you. But isn't it true, Mr. Danilov, that you have not in fact, provided lifetime support even up to this particular point in time, correct?

A. Oh I did. I always - I did, to this agreement and sponsorship agreement and everything despite of Nikityuks best efforts to break it.

Q. But it's correct that you believe lifetime support to actually mean the lifetime support arrangement that is most convenient for you, correct?

A. I'm not sure I understand. Just try to say the question in - in pieces.

Pavel Danilov - Cr-ex (cont'd)

Q. Sure. The term lifetime support is fairly broad, Mr. Danilov, wouldn't you agree?

A. Yes, sure.

5 Q. And so what exactly gets counted into lifetime support and what gets counted out, that's a decision you make, correct?

A. No. The definition of basic expenses I must cover under sponsorship agreement, they are all listed in the sponsorship agreement and there is another list of those
10 expenses right in this whole agreement. It's on page 171 which says pretty much, enough to cover all mandatory living expenses such as but not limited to household expenses, automobile expenses, insurance payments, et cetera. But - but the exact definition is giving in the sponsorship agreement which I was
15 referring to.

Q. But you haven't in fact covered all these expenses have you?

A. I did and I did much more of that and you know that.

20 Q. But you are not doing that at this time are you?

A. I do. I cannot get off that agreement because Nikityuks applied for ODSP, they received a lot of money from ODSP and that money eventually will be charged back to me.

25 Q. Right.

A. And I cannot get off that. And the reason why at this point I pay only \$150 to Nikityuks is that I discovered that they conceal everything I pay to them. They never disclosed any cheque I pay to them, not to CRA, not to
30 ODSP, not to anything. And I can easily prove that with the CRA assessment.

Q. Mr. Danilov, just so I understand this

Pavel Danilov - Cr-ex (cont'd)

entirely, you are providing lifetime support to the Nikityuks by giving them \$150 a month and then paying \$70 back to ODSP?

A. Not \$70, I have to pay everything they receive from ODSP. Seventy dollars is just my pay plan.

5 Q. Okay.

A. It's - it's not \$70 per month, it's maybe \$70 per month 'till - 'till the rest of my life or whatever, I don't know. But - see if I knew that - if I knew for sure that Nikityuks disclose all sources of their income to ODSP, I would
10 pay them enough so they - they have not to apply for it, but I don't tend to pay twice.

Q. Okay.

A. And that - that would be so stupid of me, you know.

15 Q. You gotta admit, Mr. Danilov, it looks like a pretty good deal. You get \$260,000 and then you end up making payments of 150 to the Nikityuks and \$70 to ODSP. That's not bad.

A. I never - I never wanted to find myself in
20 this position. And you know that, while Nikityuks were living with us in the house, all together, they were extremely happy. We'll prove that despite of what they're going to testify. And they got at that time much more than those 10 percent or whatever percent they were - we were happy, they had everything.
25 They have much more than I had. They were able even to attend all kinds of Ontario festivals and may even went several times and Lion Safari several times - I never been there by the way. But when they left the house and started to illegally apply for Social Housing, yeah okay I have to protect my family assets and
30 of course I - I - I pay them what I can afford at this point. And that's what Nikityuks did to themselves.

Q. That's it, \$150 a month plus 70 to ODSP.

Pavel Danilov - Cr-ex (cont'd)

5 A. Hundred and fifty dollars per month plus the [indiscernible] most what they receiving from ODSP. First time I saw the statement from ODSP it's that - the language was produced by your office about - well, two weeks ago.

10 Q. Okay. But you would agree with me, Mr. Danilov, at this point in time, the Nikityuks, to use your terms, mandatory living expenses, are primary paid by ODSP, the Canadian tax payer and the Rus - Russian pension. That's - that's who's paying for the Nikityuks mandatory living expenses.

15 A. No. Everything they receive from ODSP all will be paid back by me. It's sponsorship agreement.

20 Q. At - at \$70 a month - and my understanding is there's no interest on that, correct?

25 A. It's - it's none of Nikityuks business how much I pay to the Overpayment Unit. It's my agreement with Overpayment Unit. I pay to them what we agreed upon this Overpayment Unit - Unit. It - it doesn't know that it's \$70 per month. It - it's actually much more, it's just payment plan and it's nothing to do with Nikityuks.

30 Q. But you would agree that you don't pay interest on the outstanding amount do you, Mr. Danilov?

35 A. I don't know. Nikityuks broke the sponsorship agreement, not me and you know it.

40 Q. All right. Mr. Danilov, I'd like to move onto the house. You own a house that's located at 1490 Rankin - Rankin Way in Innisfil, correct?

45 A. Yes.

50 Q. And when purchased that house had three bedrooms, two bathrooms.

55 A. Three bedrooms - actually three and a half bathrooms.

60 Q. Okay. And after renovating the basement, the

house now has four bedrooms and three bathrooms, correct?

A. No. After three and a half bathrooms and five bedrooms.

Q. Five bedrooms, okay. And we heard that you entered into an Agreement of Purchases of Sale on the house with the builder for a vacant lot in Innisfil in 2007, correct?

A. Yes, it was June 2007.

Q. And at that time, you had found employment as a network management analyst at Rogers Communications, correct?

A. Yes. The salary, \$86,000 per year.

Q. Okay. And you were running your own business on the side as well, correct?

A. I wouldn't say I was running any business, we were trying to establish some business to provide extra income for Nikityuks.

Q. Right.

A. And we started to do that in 2007.

Q. And you first started out with a Russian dating site, I believe. Is that correct?

A. Oh yeah. That was my wife's business. It's not - it's another story.

Q. Okay. And then at some point that moved into automatic trading, is that fair?

A. No, we just stopped doing that business because yes it was Russian dating site and the domain name was something like russianbride.com or something like that, but it turned out that - like 99 percent of Russian brides are just full of them scammers and well we couldn't deal with that, we just stopped doing that thing.

Q. So in October 2007, this is before the Nikityuks arrived but during their visit, you took them to Innisfil to see the lot where the house was going to be built to

show them the model home, right?

A. Yes.

Q. Okay.

5 A. It was field of sand with some pipes coming
out of ground.

Q. Okay. And on Monday, you said around that
time you'd been pre-approved by TD Canada Trust for a mortgage,
correct?

10 A. No, not around that time. We've been pre-
approved by TD Canada Trust when we signed the Sales and
Purchase Agreement with Pratt Homes. You cannot sign that
agreement if you're not pre-approved with TD Canada Trust
mortgage.

Q. So - but that was sometime in 2007, correct?

15 A. It was June - I believe, 2007.

Q. Okay. But - but you never got that TD
mortgage, right?

A. No, we didn't. We found better deal with
Scotia when the time came.

20 Q. Right. So I'd actually like to talk about
that mortgage you got with Scotia. If I could direct you to
Exhibit 1 - I believe it's 1(A), Tab 3, this is the personal
credit agreement between you and Scotiabank.

A. Yes.

25 Q. And there were some conditions on this
mortgage, weren't there Mr. Danilov?

A. There always conditions on the mortgage.

Q. Okay. Including this one, yes?

A. This one - which one?

30 Q. The mortgage that you got with Scotiabank.

A. Yes.

Q. Okay. So you would agree with me that

Pavel Danilov - Cr-ex (cont'd)

paragraph 4 it states, "We require reduction"....

A. I'm sorry, what - what - what tab - what page because I don't see any paragraphs here.

5 Q. If I could - my apologies, if I could turn you to page 17, so it's the second page...

A. Okay.

Q. ...3.

10 A. Frankly, I never read - read that agreement, so if you are going to ask me about details I - I have to read it first time in my life.

Q. Okay. We have the agreement here so...

A. Okay.

15 Q. ...you can - at - if you look at paragraph 4, there's a heading that says "Debt Reduction". Would you agree? It says debt deduction.

A. I'm sorry I'm having trouble reading it, it's so - so small font. One second. Debt reduction, yes. We require reduction or payout of your debt - okay, so what's the question?

20 Q. Okay. So you'd agree it says, "We require reduction or payout of your debts as specified below. Total debt reduction of \$24,000, monthly payment reduction of \$753", correct?

A. Yes.

25 Q. Okay. And it's true that you had to pay off some debt and reduce your monthly debt payment before you....

A. Yeah, it was credit line in PC, so we paid off that credit line in PC.

Q. Okay.

30 A. And then we bought this mortgage, yes.

Q. So if I can direct your attention to paragraph 5 below - and you would agree with me that it reads,

"To avoid funding delays, please ensure all conditions you are responsible for fulling have been met as soon as possible, but no less than two weeks prior to the scheduled closing date".

You would agree that that's what in fact the mortgage says?

5 A. Yes.

Q. Okay. Thank you. And if I can turn your attention to the next page, page 18. At - at paragraph 13, there's a section called "Down Payment".

10 A. Yes.

Q. And it says, "We require verification satisfactory to us about \$54,380 for the down payment is available from your resources".

A. Yes.

15 Q. And if I can turn your attention to Tab 7 of Exhibit 1(A).

A. Yes.

Q. That's the - I believe that's a bank draft of 51,633...

A. Yes.

20 Q. ...paid for the down payment. And you got this Scotia mortgage - and - and this - this down payment was paid on August 7th, 2008, correct?

A. Yes. A few days before the closing date, yes.

25 Q. Okay. But this is after you got the - after you got the Nikityuks' money, correct?

A. Yes.

Q. Okay.

30 A. I already admitted that we actually with - withdraw about 50,000 US from that principal of the loan or whatever and it's actually the 2009 statement. And that was Svetlana's share in the Saint Petersburg apartment.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay.

A. And as I explained many times before, Nikityuks were completely on board with that transaction. It was like seemed logical at the moment to do...

5 Q. Okay.

A. ...thing - thing to do. Because everybody knew in the family that it's in fact Svetlana's share in the apartment. But if they were not on board, it wasn't a problem at all for me. We decided to go this way by the simple reason
10 it's only one transaction. I'd have to close some positions in Interactive Brokers to make only one transfer to cover this down payment requirement. But if it was a problem for Nikityuks by some reason I cannot imagine what the - I could easily close my own stocks and options positions in other banks I've had and I
15 have more than enough to cover that.

Q. Okay. So - but Mr. Danilov, by my count you needed over \$78,000 in order to secure that mortgage, correct?

A. Yes, sounds about right. Yeah.

Q. Pay down the line of credit.

20 A. It - it was far ago, but when I looked at all those statements, I - I think that was the number - or close to that.

Q. And based on the documents you provided us, as of December 31st, 2007, so six months prior, you only had...

25 A. 2007....

Q. ...or 8.

A. I'm sorry, 2007 documents provided with different purpose to prove that TD actually had the reasons to pre-approve my mortgage in 2007. In 2008, there are other
30 documents and there are the statements for 2008. And those are referring to June 30th, I believe.

Q. Isn't it true that you did not have \$78,000

Pavel Danilov - Cr-ex (cont'd)

without the Nikityuks money, is that correct?

A. I did. And even if I didn't, it wasn't a problem see because I - I could go for 10 percent mortgage or 5 - for 5 percent down payment mortgage. It wasn't a problem at all. We decided to go for 25 percent mortgage simply because we
5 could easily get that money. If it was a problem, I could go for 10 percent mortgage - 10 percent down payment or 5 percent down payment. It - it wasn't an issue at all.

Q. I - I - I suggest - suggest to you, Mr.
10 Danilov, in the volumes of banking records you've provided on the course of this litigation, we could not find \$78,000 in your possession unless you count Valentin Nikityuk's money.

A. What's your point?

Q. You needed the Nikityuks' money.

A. It wasn't the Nikityuks' money. You keep referring to those money. It was Nikityuks' money, it wasn't.
15

Q. The Nikityuks will testify that Svet - Svetlana told - told them that Valentin was the owner of the house.
20

A. I'm not going to comment on this ridiculous stuff. It's - it's just - I don't know, maybe Valentin had some dream about it or - I - I don't know where that thing came out. It's - it's - it just ridiculous. And any reasonably [sic] person understands that this ridiculous. Why for God's sake I
25 would put Valentin Nikityuk's name in the title of the house? What I'm an idiot or do - do I look like an idiot or what?

Q. Well I think if I - I think Nikityuks thought or - the - the Nikityuks just transferred you \$260,000 US. Wouldn't it be reasonable - wouldn't - wouldn't a reasonable
30 outcome be...

A. The house was...

Q. ...that you used it to purchase a house, Mr.

Danilov?

A. ...purchased in 2007 where Nikityuks were not even close to Canada and nobody in the world knew that will they permitted to immigrate to Canada. Oh no, we didn't know that
5 'till December 2007.

Q. Mr. Danilov, your \$5,000 deposit to Pratt Homes didn't buy the house, did it?

A. It was agreement which was signed in 2007. That's when we decided to buy that house and we were going to
10 sell it by the way remember.

Q. But you didn't have the financing necessary to buy the house until after the Nikityuks sent you their money?

A. I just ex - I just explained to you that I did. You are going to go that route again and again because it
15 looks to me that you - you're trying to ask the same question several times hoping that you'll get the answer you want. You won't get the answer you want. You'll get the truth.

THE COURT: Mr. Danilov, just answer the questions posed to you. If there's some
20 objection, your counsel could make it. But if - if you object to the questions, that doesn't assist me. You have to answer the questions as best you can.

A. I understand. Okay. Just a little bit
25 annoying.

MR. BORNMANN: Q. The Nikityuks will testify that they believed you used their money - part of their money to buy this house.

A. Is this a question?

Q. Yes. Isn't that what happened?
30

A. That Nikityuks will testify.

Q. That the Nikityuks will - the Nikityuks will

Pavel Danilov - Cr-ex (cont'd)

testify that you - that they believe that they were told by you or your wife that their money - part of their money had been used to buy the house. Is that correct?

5 A. First of all, it wasn't their money. Second of all it's - it's not correct.

Q. Okay. And the Nikit - and the Nikityuks will testify that they believed in fact they owned the house.

10 A. People believe in different things, but what I cannot say about that. Maybe they did, maybe they didn't. Maybe they are lying, maybe not. But what they believe what they can comment about.

Q. Well did you - do you agree that they believed they owned the house?

A. No, I don't.

15 Q. Okay.

A. They always knew that the house was ours. It's all made up and this - it's - it's all actually the part of all this harassment campaign.

20 Q. Okay. And the Nikityuks did in fact move into the house in August 2008, correct?

A. Yes.

Q. And they lived alone in that house during the week, correct?

25 A. Yes and we - we came there every weekend - yes.

Q. And the Nikityuks will testify that they treated the house like their own doing the household chores, arranging the house's layout, is that correct?

30 A. Yes and we didn't object. It was the house for the entire family. We purchased it as a house for the entire family. We were going to live all together as a big happy family and we did for a few years until Yana Skybin got in

the picture, so....

Q. And - and you visited on the weekends during that time, correct?

A. Yes.

5 Q. And it was a - it was a happy time, the Nikityuks enjoyed your company, right?

A. Extremely happy, yes.

Q. Yeah. And you moved in in June 2009...

A. June 1st, 2009.

10 Q. ...correct? All right. But you didn't have a conversation about the move in beforehand with the Nikityuks did you?

A. They always knew that eventually we are going to move in. The only reason why we didn't move in with them in 15 August 2008 was because we were living with our daughter in apartment in Etobicoke. We couldn't abandon our student daughter alone in that apartment. So we kept living there supporting her until she found her own place.

20 Q. But you didn't consult the Nikityuks before moving in did you?

A. Consult about what?

Q. Whether or not they were okay with you moving in. You didn't ask for their permission to move in?

25 A. Why I should ask their permission to move in if it's my house and I was always going to - to live in it. Why I would ask their permission? They supposed to ask my permission to live at my house and actually they - they did and we allowed them to live in our house. We were going to sell it remember.

30 Q. The Nikityuks will testify that they did not agree to you moving in.

A. Couldn't care less.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. And the Nikityuks will testify that the agreement had always been that you would live separately, isn't that correct?

A. No, there were all kinds of agreements about
5 living together and living separately and - well I can get you through all of those. So basically the first agreement was to live almost together in the same building but different apartments and we rented apartment for Nikityuks back in 2008. There they begged us to live in the house because they figured
10 well the house is ready and it's possible, so they begged us to live in the house. We permitted them to live in the house. They moved in the house. Then in 2009, we purchased a condo for them because they wanted to live separately again. But then a few months later - like couple - three months later they figured
15 that they cannot live separately because they were too overwhelmed with all this YMCA new English classes and with all those doctor appointments several per week and again, Alla says okay you know what, we - we cannot live separately in 2009. So we cancelled that condo. Then in 2011 when they good shape and
20 they met Yana Skybin and they're - while good and those YMCA English classes, they - they started to think about living separately again because now they think that they can do that. And see every time when they change their mind I end up with 25 years commitment or 10 years commitment or 8 years commitment
25 every time and when it happened in 2009 - like in 2011, they probably were shy just to tell me about that. So they came up with this idiotic Social Housing idea finally and that's what happened.

Q. Well Mr. Danilov, the Nikityuks have a very
30 different recollection about the discussion of this condo in 2000 - about this condominium, but we're gonna talk about that later. So let's - let's leave that for now. Yesterday, today

and I think the day before, you indicated that Alla and Van - Alla and Valentin were on board, I think was your word, for - for using some of the money they transferred to you as a down payment, correct?

5 A. Yes. And this reflected in the first annual statement we supposed to sign every year on the principal of the loan agreement, it's the next top of the - the loan agreement - you can look at that.

Q. Yeah.

10 A. And there is transaction over there and it's initialled by Nikityuk. And after that we didn't ask them to - to sign those statements anymore because in 2009, Svetlana would [indiscernible] and it wasn't necessary.

15 Q. All right. Well let's - let's - let's look at that document, Mr. Danilov very quickly. It - it's Exhibit 1(A), Tab 28, page 173.

A. Yes.

Q. That's Exhibit 1(A), Tab 28...

A. Yes.

20 Q. ...and it's page 173. And my understanding is, Mr. Danilov, is this is the statement referred to in the loan agreement...

A. Yes, it's...

Q. ...and...

25 A. ...appendix to the loan agreement.

Q. ...and pursuant to the loan agreement, one of these needs to be produced every year and signed, correct?

A. Yes.

30 Q. And I also understand that this was only done by the Nikityuks once for 2008, correct?

A. Yes, both those documents are all in agreement which is 27 and this statement, they were prepared at

the same time and signed - we initial at the same time. I actually help.

Q. And your testimony on Monday was that all subsequent statements, were signed by...

A. They were signed by...

Q. ...Svetlana...

A. ...Svetlana.

Q. ...using her Power of Attorney...

A. Yeah.

Q. ...correct?

A. Yes, because of 2009 she got Power of Attorney and Nikityuks never paid attention to any financial affairs and never....

Q. Okay.

A. And it wasn't actually necessary to sign them because signature is required only for CRA. If CRA asked me to provide those statements and they're required by CRA, rules for loan agreements between family members. So it's like the only reason why it's there [indiscernible]. So CRA asked me to provide those statements for any year. I could easily produce them by asking Nikityuks to sign them because they were living all together or by simply asking Svetlana to sign that. But they all exist electronically. I can produce statement for any year at any time.

Q. And you're just moneywise that if the Nikityuks had really wanted to see what was going on in their - with their money that they could have logged onto their - their computer and work their way through your local area network to where you kept these...

A. All this...

Q. ...files in your computer, correct?

A. ...all documents were in one of their - right

to all financial documents were in a well-known direct area or P-drive and we knew about that. There were pictures that drive, all documents were there, it's - it was like the only network share. They could easily access it - yes.

5 Q. Yeah.

A. And they could actually get easy access to all hard copies in the basement.

Q. Okay. Well let's just go back to the issue of the down payment for a moment.

10 A. Mm-hmm.

Q. So you - you testified yes, Alla and Valentin were on board with some of their - some of the money they sent you being used for a down payment and you indicated that in the document in front of the court, there's a notation that is meant to - it refers to this down payment. Could you draw the court's attention to that entry please?

A. I did - well what I believe it's in the statement - one, two, three, four, five, six, seven, eighth line with the date August 7th, 2008.

20 Q. And it's the one that says August 8th - so August 7th, 2008...

A. Yes.

Q. ...INV.loanf...

A. Yes.

25 Q. ...and then loan principal payoff...

A. Yes.

Q. ...memo - mo chequing pns r 51,640.

A. Yes.

30 Q. And was this how - was this the only - so - and your testimony is that this notation was noticed to the Nikityuks that that amount of money had been spent on the house?

A. Yes, sure but she - there was that email you

keep referring to. So they - they knew that - that loan will actually be about \$200,000 because \$50,000 of that loan [indiscernible] we simply took 260 in the loan agreement to simplify the paperwork because I have bank transactions, they were transfers and overall it's about 260 suggest. Easy to explain to CRA what happened here.

Q. And you explained when you are under oath in 2007 - 2014 that the email explained the loan agreement, correct?

A. Email explained the loan email.

Q. That the loan agreement and the email were more or less the same thing. Do I have that right?

A. I'm not sure what you're....

Q. Okay. Well let's come back to that in a second. I beg your pardon, Your Honour. So Mr. Danilov, when you testified under oath in 2014 - and I'll paraphrase it first and you tell me if it's incorrect and then we can read in if we need to recall your exact testimony. I was asking you about your defence to the counterclaim, page - 'cause on page 65 of your defence to counterclaim, you describe the events leading up to the signing of the loan agreement and you mention the - the translation of the loan agreement. And it started at the bottom of 65 and I read to you from your defence to counterclaim for the Nikityuks, the Russian translation of the loan agreement on paper was provided it should still be around somewhere at their disposal. But even if they want to hide it and pretend they don't understand what they were signing back then, it's irrelevant because the Nikityuks were well aware of the terms and conditions of the agreement since 2004. And they admit they accepted the email offer in Russian, which basically states the same. And then Ms. Danilov [sic] says, "as it was I was going to actually tell before, but it's basically the same". Mr.

5 Danilov, "Yeah, it's basically the same". Ms. Danilov [sic],
"Yeah". And then I ask you, "Mr. Danilov" - I don't say Mr.
Danilov, but I say, "Your position is it's basically the same"
and then Svetlana says, "Exact same as the January 27th" and you
then indicate, "They understood all the terms. They gave us all
the money. That money never go back to them and I pay interest
for lifetime support. It's basically the basic terms." And
so I asked, my question 622 which is page 153 of your
examination transcript....

10 MS. CHAPMAN: Your Honour, could we maybe have an
opportunity to locate the transcripts and see
what's being read in?

15 THE COURT: Yes, he can have that in front of him
if he wishes to see what you're reading, offer
you assistance.

MS. CHAPMAN: I have copies.

MR. BORNMANN: Do you have a copy?

MS. CHAPMAN: I do.

MR. BORNMANN: Excellent.

20 THE COURT: We can take an adjournment if it
takes a few minutes. Are there certain portions
you wish to have him read in advance or you just
want to take him through it as you go?

25 MR. BORNMANN: I think we're - we're more or less
there, Your Honour. But if - if you think it's a
good time to - if - with your permission, it
might be more convenient just to wrap up this
particular question, Your Honour.

30 THE COURT: Okay. I'll just give counsel a
moment to look for the transcript.

MS. CHAPMAN: Sorry, my concern is I don't have
additional bound copy of Mr. Danilov's.

Pavel Danilov - Cr-ex (cont'd)

MR. MAE: Your Honour I can assist in that regard. I do have a third copy - an additional photocopy if that's of assistance.

THE COURT: Yes, that would help.

MR. BORNMANN: Or I can bring my....

THE COURT: So if you just open it up counsel, if you don't mind to page 153.

MR. BORNMANN: Is there - do you have the court copy here?

THE COURT: So we're on page 153. And maybe just for the record, the date of that discovery then counsel.

MR. BORNMANN: Q. Mr. Danilov, you remember testifying under oath on April 9th, 2014?

A. Sure.

Q. And at that time, you were asked a series of questions by myself.

A. Yes.

Q. And you agree the document in front of you is an accurate transcription?

A. I think so, sure.

Q. So on page 153...

A. Mm-hmm.

Q. ...line 15, "So the Nikityuks could rely on your January 27th, 2008 email to understand the terms of the agreement?" And Ms. Danilov [*sic*] in respect and then you say Mr. Danilov, "If they want to, if they want to call it an offer I don't care."

A. Yes. Where is - where is that about I don't care? I'm sorry, what legal question is this?

Q. This is question 622.

A. Six hundred and twenty-two.

Pavel Danilov - Cr-ex (cont'd)

Q. Line 15.

A. Line 15.

Q. Again, this is your testimony under oath.

A. Yes. So what is the question?

5 Q. Do you believe your answer at this time was true?

A. Yes, sure.

10 Q. Okay thank you. And do you believe that answer is still true?

A. Sure, it always was true. It says, "If they want to call that an offer."

Q. And if I can maybe just refresh your memory on what I read in a moment ago. It starts at question 620.

A. Mm-hmm.

15 Q. And I won't read it all, you can read all if you like. I'm referring to your defence to the counterclaim filed by the Nikityuks and at the bottom of paragraph 65 in that pleading - and this is your pleading, you indicate - you talk about the translation, but you say whether or not - you know
20 what, in parcel I'll just read it again. "For the Nikityuks, the Russian translation of the loan agreement on paper was provided. Should still be somewhere at their disposal, but even if they want to hide it and pretend they didn't understand what they were signing back then it's irrelevant because the
25 Nikityuks were well aware of the terms and conditions of the agreement since 2004. And they admit they accepted the email offer in Russian which basically states the same."

A. But see what doesn't go in the transcript -
[indiscernible] don't go. So that email offer supposed to go
30 with [indiscernible].

Q. Okay. So then I - so then - but then Svetlana testified and said, "As it was I was going to actually

Pavel Danilov - Cr-ex (cont'd)

tell before that it's basically the same."

A. Yes, it's basically the same. Money is not supposed to be paid back and we providing in exchange of that life and support. That's the only two important things in all those correspondence agreements and documents or whatever you call it. That - only two important things. They send Svetlana money, we provide lifetime support.

Q. So then I ask at 622, "So the Nikityuks could rely on your January 27th, 2008 email to understand the terms of the loan agreement?" And then Ms. Danilov [sic] says, "In respect". And then you say, "If they want to - if they want to call it an offer I don't care."

A. Yes, I don't care by simple reason because after - after they started - and they decided to live in the house, they actually accepted, as they put it, the option which wasn't in that email at all. Actually there was the option in that email you - or Nikityuks call offer which completely denies the option they accepted. It was paragraph 8 - the second paragraph 8 in email which says specifically that we cannot afford the house for you right now. We probably might afford the house for you in three or four years. But they insisted on this house right now. So once they accepted that option which wasn't listed in that email, that email immediately became a moot point.

Q. But Mr. Danilov, you agree that there was an agreement between you and the Nikityuks on the money?

A. Yes, they transfer money. We provide lifetime support. That's the agreement.

Q. But that's your recollection of the agreement, correct?

A. No, that's the agreement.

Q. But you would agree there is no document that

Pavel Danilov - Cr-ex (cont'd)

states that, Mr. Danilov?

A. There are plenty of documents.

Q. There are no documents that you have produced that set out the agreement that you insist was in place, Mr. Danilov. That's correct.

A. There are several documents which prove this true.

Q. Mr. Danilov, the only document before the court in Russian that was produced before the money was given to you is the January 27th, 2008 email, correct?

A. No, I don't think so.

Q. What other....

A. There is also sponsorship agreement, there is loan agreement, there are wire transfer transactions which were supposed to be produced by you in 2015 before the motion for CPO and - well there are actually plenty of emails and data stuff and - well that email is - it's nothing specific about that email. There were hundreds of others. And that - that specific email you keep calling it an offer and actually it's not an offer and it clearly states in the subject it - it says Canada calculation. And if you are trying to imply here that Nikit - that Valentin Nikityuk or Alla didn't understand English at that point - and they thought that is some kind of offer and it's because subject line is in English. I can tell you that Valentin Nikityuks is actually indeed a professional engineer and he studied English in Russia at school. Then he studied English at Russia in military college and he studied English in Russia in the electrical mechanical institute or something by that I'm not sure about exact name. He understands English - Basic English. He understands, believe me. He might pretend that he doesn't, but two words, Canada and calculation, he understands.

Pavel Danilov - Cr-ex (cont'd)

Q. Mr. Nikityuk will testify that he does not read or understand English. And that's in fact the truth isn't it, Mr. Danilov? That's in fact the truth. Mr. Nikityuk does not understand or read English.

5 A. Well but two words in subject he understands.

THE COURT: He's answered the question.

Obviously there's a difference and you can bring your argument.

10 MR. BORNMANN: Yes, Your Honour. Q. Is it true - isn't it true that, to the extent the Nikityuks were on board with their money being used to pay for part of the house that they were on board because they thought the house had been bought in Valentin's name?

15 A. No. Valentin's never was bought in it - house never was bought in Valentin's name. Valentin never was told that the house was bought in his name and nobody ever intended to tell him that and it's - it's all made up and it's - it's just ridiculous, I've already mentioned several times.

20 MR. BORNMANN: Okay. Your Honour, I'm moving on to a new topic.

THE COURT: I believe this is a good time to take our morning break. So we'll come back in 15 minutes.

25 R E C E S S

U P O N R E S U M I N G :

MR. BORNMANN: Your Honour, may I?

30 THE COURT: Yes. So Mr. Bornmann, I just made a photocopy of the questions you asked which I think - have a seat sir, 621, 622 - sorry 622 and 620, those the two questions you referenced?

Pavel Danilov - Cr-ex (cont'd)

MR. BORNMANN: Yes, Your Honour. I believe that is correct. It starts at 620, Your Honour, on page 152.

THE COURT: All right. I'll - I need page 152, but I'll get that at the next break. Thank you.

MR. BORNMANN: It's page 152 and 153, Your Honour.

THE COURT: Yes. Are you ready to continue now?

MR. BORNMANN: Yes, Your Honour. Thank you. Q.

Mr. Danilov, I'd like to turn to the topic of the financial arrangement with the Nikityuks after they arrive in Canada. Now, my understanding is that the Nikityuks received their Russian pension from 2008 to sometime in 2011. This was deposited into a CIBC Bank account, the number 6314937, is that correct?

A. Number I don't remember, but it was that joint account with Svetlana, Alla and Valentin - yes.

Q. Okay. Perhaps, if it's of assistance I can turn your attention to Exhibit A and I'm not certain which volume it's in 'cause our - it's 1 - Exhibit 1(B) and it's Tabs 178 to 181.

A. One seventy-eight?

Q. One seventy-eight and one seventy-nine, one eighty and one eighty-one. To my understanding, is that the CIBC Bank account statements that are at those Tabs 178 - Tab 178 to Tab 181, that these are statements for the account to which their pension was deposited.

A. I'm sorry, I'm still trying to locate it.

Q. It's page - starts at page 1158.

A. Yes, it appears to be so - yes.

Q. And this account was in the name of Svetlana Danilova, Alla Nikityuk and Valentin Nikityuk?

Pavel Danilov - Cr-ex (cont'd)

A. Yes, it was the account opened in 2005 - yes.

Q. And - but I understand Svetlana was the primary account holder, correct?

A. No, they eventually became all three equal joint owners. She was primary account holder until Nikityuks arrived to Canada because they were not residents and you have to be a resident to be an account holder or you are a secondary account holder if you are not resident of Canada. But after they arrived to Canada and became permanent residents, they all became current owners.

Q. Is it true the Nikityuks asked to have the entirely separate bank account for their pensions?

A. No, they never asked for that. They never cared about any financial affairs.

Q. Okay. And isn't it true that you told the Nikityuks that because of their immigration status, they could not have their own bank accounts?

A. No, we didn't - neither I nor my wife, I believe, ever told them that because they already had that account. Account for Alla Nikityuk was opened back in 2005. They were completely aware of that account and they already had account not being Canadian residents or citizens or whatever. We never told them stupid stuff.

Q. Okay. Now after the Nikityuks pension was deposited every quarter, you would transfer this money to a high interest savings account at PC Financial, correct?

A. Yes, it was my account actually and it was by mutual agreement because they were not going to withdraw that pension right away or use it right away for any purpose. So I already had empty high interest saving account in President Financial - PC - PC - PC - what is it for - President Choice - yeah, President Choice Financial, so I offered them so let's no

- not go to the bank and use this account just while your pension sits there you can earn some interest.

Q. Okay. And - and the Nikityuks say that no there was no agreement about this transfer of money.

5 A. There was agreement.

Q. Okay.

A. It - it - it was verbal agreement.

Q. And as I understand it, the PC Financial account was in your name only, correct?

10 A. Yes.

Q. And the Nikityuks were given credit cards for their everyday purchases, right?

A. Yes, there were three credit cards given to them.

15 Q. And these credit cards were paid from their pension accounts, correct?

A. No. One credit card, it was CIBC Visa, was designed specifically if Nikityuks want to buy something for the entire family. And that was paid mostly from our CIBC account, me and Svetlana. Sometimes some pieces maybe were paid from different accounts 'cause we had many accounts for different purposes. Another Visa, it was green TD Visa or as we all called it and that Visa was designed for - not designed, it was designated for the use with Nikityuks pension - in conjunction with Nikityuks pension. So if they buy something for themselves for entertainment purpose mostly, they use their pension and that specific amount goes from that green TD Visa and it - it was being paid from their pension from that PC account they had pension accumulated.

25 30 Q. Yeah.

A. And there was third Visa, CIBC MasterCard which is very convenient to use for gas for fuel basically. And

Pavel Danilov - Cr-ex (cont'd)

they - they - they paid from that Visa for gasoline and they paid balances on that Visa - MasterCard I mean from my money.

Q. The Nikityuks say that after they arrived in - after they arrived in Canada, they never had access to a debit card, is that correct?

A. To what?

Q. After the Nikityuks arrived in Canada, they did not have access to a debit card, correct?

A. No, it's not correct. [Indiscernible] have it says to that bank account joint with Svetlana, they always had that debit card and well they could - even if they lost it, they could easily go to the bank and get new one. But - well they didn't actually need those debit cards if I think about it because even we didn't use them. You need that debit card basically only for online banking. You need to know the number of the debit card to look into the website, that's it. But - well maybe - I - I don't know. I don't want to speculate here, but they always had their debit cards. Maybe they didn't use it, I don't know.

Q. The Nikityuks will testify that if they wanted cash, they had to ask Svetlana for it. Isn't that what happened?

A. Because money for - for their pension, it was accumulating on that PC account and yes Svetlana had access card to that PC account and - well if they asked Svetlana to withdraw some cash, she immediately did that and - well, technically it's like one day notice because sometimes you can go right away and withdraw, but they never needed that urgently. Like next week we will need like \$200, please withdraw it. And I think finally Svetlana just gave them their own access card and they withdrew it on their own. But I'm not sure because they never could memorize pins and they always had trouble with that and always

asked Svetlana.

Q. Okay. The Nikityuks remember needing to give Svetlana two days' notice to get cash from her, isn't that correct?

5 A. I don't know. It may be week notice, it may be one day notice, it may be one hour notice, it may be want cash like right away. It wasn't an issue at all, it wasn't a problem.

Q. But they had to go through Svetlana, correct?

10 A. Not really, no because they always could use their credit card to pay for anything they wanted. Then we could pay for that thing from their pension if they wanted to use something to - to buy something nice for themselves, so send gift to relatives in Russia or friends in Russia. They were
15 supposed to use green TD Visa card and they always did - did that and it wasn't an issue at all.

Q. But you agree, they would have to go to Svetlana for cash.

20 A. They didn't have to because they had green TD Visa. If they - they - they - they could get cash advance with TD Visa, you know, right?

Q. The Nikityuks will testify that other than what I've posed to you, they had no other access to their pension money.

25 A. They will again testify all of the things which are not true.

Q. Okay. You - you said yesterday that you like record keeping, right?

A. Yes.

30 Q. But it's true you never showed the Nikityuks any records on how their pension was spent, correct?

A. Every month. I - I printed statements of

Pavel Danilov - Cr-ex (cont'd)

their - that account in PC for them every month.

Q. Okay. And these are the statements you produced for this litigation, correct?

A. I think for this litigation I produced a lot of statements. I - I don't have specific recollection about those specific ones, but I believe - yes I did produce those too - yes.

Q. Okay.

A. Because you asked me to produce statements for all my bank accounts.

Q. Okay. Well - well let's - let's talk about - let's talk about these - these records. You testified yesterday I believe that - or the day before, that you kept - you kept the financial records in the basement, correct?

A. Hard copies, yes.

Q. Hard copies. And you showed us pictures of where your office was in 2013, correct?

A. It's still there.

Q. Okay. And those pictures were taken two years after you moved out, correct? Two years after - let me restate - restate, I apologize. Those pictures were taken two years after the Nikityuks moved out, correct?

A. I'm not sure about specific dates when I took those pictures. I took those pictures at some point when litigation was already ongoing, yes. And - but I took those pictures for this specific purpose to show to the court that Nikityuks always have access to the bank accounts. And if you're trying to imply here that two years before, like in 2011 or before, it wasn't like - like that, well in this case we - we need to call maybe another 10 witnesses who will testify that it's - it's - it was.

Q. The Nikityuks will testify that they did not

know where to find hard copy records showing - showing the family finances.

A. Is that a question?

Q. Isn't that in fact the truth though? That
5 they didn't...

A. Of course not...

Q. ...know where those....

A. ...of course not 'cause they knew everything
and they had easy access to that. There were no locks on the
10 door and there were plenty of times when we were not at home and
they were shy to go to the basement and look at those records.
They could - they could access anything easily. And we didn't
limit anything for them and they just never paid any attention
and never were interested. And that's what they testified
15 actually if you remember.

Q. Well the Nikityuks will also testify that
they did not know that financial - family financial records were
kept on your Local Area Network. Isn't - and - and that's in
fact correct, they didn't know that those records were on the
20 Local Area Network, right?

A. I think they did because Valentin actually
used that P drive to keep all pictures in it and he could easily
see that there are other directories in that P drive. There is
- there are like photos, there is another directory investment -
25 investments, there is another directory statements, another
directory bills - there are a lot of directories over there and
I saw that.

Q. Mr. Danilov, let's just quickly look again at
the document that was before the court just before the break.
30 It's Exhibit 1(A) and I believe it's 28.

THE COURT: Tab?

MR. BORNMANN: Q. Tab 28, it's page 173 of

Exhibit 1(A).

A. I think Your Honour just saw that document. It's what - the - the statement of the loan agreement.

5 Q. That's right. And your testimony that this was produced in 2009, correct?

A. Yes, that's - so sometime in January - yes.

10 Q. And would it be a fair statement to say that this looks very similar to a lot of the financial records you've produced using your software, correct?

A. Yes.

15 Q. Yeah. And you'd agree with me that it's in English, correct?

A. Well yes. Sure. But - well I think anybody could understand the word credit line or credit by CIBC - if they wanted, they would understand.

20 Q. Okay. But you also will admit as you did in testimony a moment ago that - for example with online banking, the real problem was not being able to speak the language, correct?

A. Yes, that's why we enrolled Nikityuks to YMCA English classes in 2009 because it was the real issue. It was a big problem for Svetlana to kept - keep up with this.

25 Q. And not even - you - you're having trouble paying a phone bill in Germany because you don't speak that language, correct?

A. I - I'm having trouble to find the German website where I have to click a button to - to find where I have to pay that bill. If I see that bill, I understand the bill.

30 Q. So you would agree with me that even if the Nikityuks have found this information, which they deny, this would not be of much assistance in learning what's going on with their money, correct?

Pavel Danilov - Cr-ex (cont'd)

5 A. They always could ask for any assistance from me or Svetlana. We always were available for them and one thing that - well we tried to indicate them to our best effort as - as much as we could at the very beginning in 2008, but well it wasn't that easy because they were living here alone - in Innisfil I mean. And well, during that year while they - they were living alone, they figured that they don't pay much interest to that. So when we actually moved together all in 2009, well we - we still tried and Svetlana made a few efforts to teach Valentin how to access those financial records, so the network and how to use online banking for the CIBC account. But that's what Svetlana will testify, so - but I - I know that we did a lot of efforts, but they never paid attention and we understood that in their age it might be difficult, so we didn't
10 insist.

15 Q. Okay. So do you - of course you agree the Nikityuks transferred 260,000 plus US dollars to you between April and June 2008, right?

A. Yes.

20 Q. And....

A. Not to me, to Svetlana.

Q. To Svetlana. And after this money was transferred, it ended up in your Interactive Broker account for trading, correct?

25 A. Yes.

Q. Okay. And you did not put the savings into a bank account or an account that was separate from an account containing your money, did you?

30 A. Interact Brokers account was separate from all other accounts.

Q. Did you - but you had some of your money in that account too, didn't you?

Pavel Danilov - Cr-ex (cont'd)

5 A. Yes, but when Nikityuks transfer money we actually didn't transfer all transferred money to that account. So we kept it as equivalent to the entire transfer from Russia as possible. So there was some my money on that account, then we added money transferred by Nikityuks but with some deduction which was equivalent to my old money already owned in that account. We always tried to - to make it - to - to keep it clean.

10 Q. But there was some mixing, correct?

A. There was what?

Q. There was some mixing of your money and the transfer money, correct? I think you just admitted to that.

A. No.

15 Q. Okay.

A. I admitted that - yes of course. There - there was a transition period, a few days, maybe a couple of weeks, when there was some mixing, but we actually removed that mixing as soon as possible.

20 Q. Okay. And...

A. Technically.

Q. ...and then shortly thereafter we have the big loss, right?

A. Yes, exactly.

25 Q. Okay. Now the Nikityuks will testify that they've asked you to put their money in a separate account and you refused. Was that correct?

30 A. They never asked me about anything like that because they transferred money to Svetlana and that was agreement. And another part of the agreement was our promise to take care of them until they die.

Q. The Nikityuks will also testify that they - they - you told them that the savings couldn't be put in a

separate account. That this was not an option. Is that correct?

A. I'm not sure what they're referring to. I don't recall any such event. As a matter of fact, I don't
5 recall any requests from Nikityuks about that money until February 2012.

Q. The Nikityuks will say that when they asked you about their savings, after - and this is the period of time after you've moved into the house, that when...

10 A. I...

Q. ...that when the...

A. I....

Q. ...Nikityuks asked you about their savings, you told them to mind their own business.

15 A. I'd have to - well in phases here that there is no such thing as Nikityuks savings.

Q. Okay. So let's just talk about the money they transferred you. The Nikityuks will say that after they moved into the house and then a number of months later you moved
20 into the house, they asked you what the status was of the money they had entrusted with you and you said, mind your own business. Is that what happened?

A. No. As a matter of fact I gave them printouts from Interactive Brokers account and other accounts
25 which at that point actually been using to support Nikityuks several times during those three years. But again, they never paid attention. They were listening then they took that statements with [indiscernible] and those - those were - well like very good efforts to explain them what was going on, but
30 they didn't - they never paid attention and they had no idea where all those documents disappear. I don't know.

Q. Just so I understand this, Mr. Danilov, the

Pavel Danilov - Cr-ex (cont'd)

Interactive Broker account would show the - the \$200,000 trading loss, would it not? Isn't that correct?

A. It sounds about right. Yes...

Q. Yeah.

5 A. ...at some point, yes.

Q. And - and - and your testimony is that you showed them this statement, told them what had happened and they didn't show any interest, is that correct?

10 A. No. See the thing is that after that big loss, I kept funding that account with my own money and sometimes I printed out statements for Nikityuks from that account and from other accounts which I funded with my own money including TFSA accounts of Valentin and Alla Nikityuks. I funded with my own money. So there were a lot of - well reports
15 or statements or charts or anything I provided for Nikityuks, but they - they don't understand this stuff. So they - they never paid attention and never interest.

Q. They weren't interested in the fact that the balance was very low in the Interactive Broker account, correct?

20 A. It wasn't very low.

Q. So my understanding is then that you replenished the Interactive Broker account from your salary, is that right?

25 A. Yes, I kept doing that all the time. I - I would bonuses - like annual bonuses every year and basically all - all of those bonuses were transferred to Interactive Brokers and some other things like if - if I have extra couple thousand by - by some reason, I always invested it.

Q. Okay.

30 A. And the thing is that see - I considered it as my business, so I kept that business ongoing as - as long as I could until all this litigation things happened. After that I

Pavel Danilov - Cr-ex (cont'd)

had to pull out all money from everything.

Q. All right. So in - in addition to replenishing the Interactive Broker account which is your testimony, that's - you also - it's correct you also opened two
5 Tax Free Savings Account at TD in 2009 in the names of Alla and Valentin, correct?

A. What do you mean by you?

Q. Well perhaps we could look at the document. If I could direct your attention to Exhibit 1(A), Tabs 44 and
10 45?

A. Yes.

Q. And I put to you these are new Tax Free Savings Accounts - applications to open new Tax Free Savings Accounts in the name of - the first one at Tab 44 is in the name
15 of Alla Nikityuk, that's on page 252.

A. Yes.

Q. And you turn the page, there's a section called Third Party Determination Statement....

A. Yes. So and back to my initial question,
20 what - what do you mean by you?

Q. You, Mr. Danilov or your wife or working together as husband and wife, you opened these new - these new Tax Free Savings Accounts. There's one at 252 - page 252 and there's another one at page 265, one in the name of Alla
25 Nikityuk and one in the name of Valentin Nikityuk. And according to these documents, it appears that you did this on October 1st, 2009.

A. I would like to attract your attention to page 254 of this document please.

Q. Okay. Just before we start though, you would agree that you - these two accounts were opened by you and/or
30 Svetlana in the names of Alla and Valentin, correct?

Pavel Danilov - Cr-ex (cont'd)

A. No.

Q. Did Alla and Valentin go open these accounts?

A. Yes, with Svetlana.

Q. Okay. So the Nikityuks will testify that
5 they had no idea these accounts existed until after they left
the house...

A. Okay.

Q. ...in 2011.

A. Let - let - let me attract your attention
10 please to page 254. This is Alla's signature over there, isn't
it? So this is Alla's signature. So we go to the next page
255, it's Alla's I.D.s...

Q. Okay.

A. ...which you supposed to present when you
15 open a bank account. You cannot open bank account in Canada, if
any bank, you can try, without personal presence. You can try.
You must be present at that appointment to open a bank account.

Q. But you would agree with me that these
account application forms are in English, correct?

A. Yes, that's what Svetlana was there for. She
20 was translating everything.

Q. And you would agree that these documents show
that there is a Power of Attorney on both accounts in favour of
Svetlana Danilova, isn't that right?

A. Direct me to the page, please.

Q. So if you look at page 253 and at the top of
page, "will any other person" and then there's a hole punch in
the original which has blocked out which appears to be an H,
"have trading authorization on this account".

A. Yes.

Q. And it's checked....

A. Svetlana - Svetlana had trading authorization

Pavel Danilov - Cr-ex (cont'd)

on this account and I have trading authorization on this account. And Svetlana had pair - Power of Attorney - yes.

Q. Yeah.

A. But it was Power of Attorney required by TD
5 Bank because some of this was - was going to - to a trade on that account.

Q. Okay. And I - I see if you carried on the same line that it'll say that neither you nor Svetlana had a financial interest in the account according to this application,
10 is that correct?

A. What page?

Q. So we're looking at page 253 and this is under the header "Third Party Determination Statement". And will any other person have a financial interest in this account
15 and the box that says no is checked. You would agree that that's in fact the case?

A. Where is this box?

Q. Page 253.

A. Yes.

Q. The top - the first line, under the heading "Third Party Determination Statement" is will any other person
20 and then there's - there's three options you can check and the third one is have a financial interest in the account.

A. It - it appears to be checked as no, but see
25 the thing is that we funded this account with my money and well, we - we - we actually - and probably nobody paid attention to that checked box, one of those things.

Q. Nobody paid attention. Okay. But - and you and Svetlana had full control over these accounts, correct?

A. No, Svetlana had full control. I only had
30 trading authorization.

Q. Okay.

Pavel Danilov - Cr-ex (cont'd)

A. 'Cause Svetlana had full control over, you know, finances and everything the Nikityuks because she had Power of Attorney.

Q. And...

A. I didn't.

Q. ...after the Nikityuks moved out, they obtained statements that showed these accounts being emptied...

A. Yes.

Q. ...shortly after they left the house.

A. Yes - because - well they left, we figured that we don't have to pay them support and there were two accounts opened in their names, so I had to get some finances to, you know, keep up with those support payments. And basically - yeah, while - while Svetlana had Power of Attorney, we transferred those assets from those two accounts because they were funded with my money and they had to find some, you know, quick financial source to - to pay support payments.

Q. Right.

A. And Svetlana still had Power of Attorney she initiated those transactions.

Q. The - the Nikityuks are going to testify in some detail as to the financial arrangements they recall, Mr. Danilov, and they will - they will testify that you told them when they - when they would - they would ask you about money from time to time that at least on one occasion, if not more, you said do not worry, you will die soon. You told them not to worry and suggested they would die soon, is that correct?

A. No, it's not correct. The - the only thing I can think of - see it was that life insurance because maybe they misunderstood me somehow, but exactly it was, as I testified yesterday, that around mid-October 2011, I started to show around life insurance for them. And at some point - and to be

precise, on October 17th, I found very attractive option and in the morning of that day I explained to them that it would be nice if they had to pass a simple interview on the phone and then get their medical exam because they were in good shape back
5 then after a bunch of surgeries and stuff and it was good timing to go through that medical exam and get better cost for that insurance payment. So basically that's what I told them in the morning and I mentioned that it will be life insurance covering their final expenses and I explained to them the final expenses
10 area because they're huge in Canada. And that's why they basically need that life insurance and - but of course for our purposes too because life insurance, it's a good investment in their age.

Q. Investment's the word, isn't it Mr. Danilov.
15 Really what you thought at the time was this is a potential investment, this life insurance policy, isn't that right?

A. A life insurance is always investment. You pay some premium, if something happens, you - you get a lot of money. So it was investment.

20 Q. And you - you and Svetlana would be the beneficiary of this life insurance, correct?

A. No - Nikityuks in favour of each other, that's what I suggested to them. And basically we never actually spoke about who was supposed to pay that premium for
25 insurance. I believe they assumed that I was talking about their pension, but I wasn't. And the real issue wasn't who it was going to pay for that, the real issue was to - to get them again through that medical exam to get better cost. But if they offered me back then that they will pay for that premium from
30 their pension, I would really appreciate that. But we never talked about it. That's the - the only event I recall in regard of their possible death when we have talked about. Not -

Pavel Danilov - Cr-ex (cont'd)

nothing else - no.

Q. The Nikityuks also remembered when bringing up issues of money with you, at least on one occasion if not more, you would have said stay out of your way or something to
5 that affect?

A. If you want to hear my version of that, I will say that they were taught by Yana Skybin to tell her that stupid stuff.

Q. Okay. The Nikityuks will say that you told
10 them to pay their gas, internet use - I would assume this is the extra traffic for the T.V. shows...

A. Told them....

Q. ...and computer use from their pensions. Items that they had expected to be paid for from the interest on
15 their - on their money.

A. I'm sorry, could you please speak your question in pieces because I have to answer differently on different parts of this question.

Q. The specific and - the specific allegation,
20 Mr. Danilov, is that you told them they had to pay for gas, internet and computer use from their pensions.

A. Gas - you mean gasoline or...

Q. Yes.

A. ...gas as [indiscernible]?

Q. Gasoline for the car.
25

A. No, I paid for gasoline for the car. They - they used MasterCard - CIBC credit card to pay for gasoline and then I paid those balances myself. But in June, approximately 2011, when we figured that they don't learn any basic in YMCA
30 and they keep attending YMCA just for entertainment purpose, I suggested that okay guys, you are the drop going there because it doesn't make any sense 'cause it's like four kilometres every

Pavel Danilov - Cr-ex (cont'd)

day with no result. See after four years of English classes in YMCA they still don't understand any basic language and that's what - what they were designed to go there for. So it's entertainment for them from now on and I suggested that if you want to go there to entertain yourselves, may - maybe you could cover at least gas expenses from your pension. Yes, I suggested that and they agreed. And it happened in June 2011. And it - it - it fits completely our previous arrangement that we use their pension for entertainment.

Q. The Nikityuks will say that you became hostile when they asked you about - or they asked you for an accounting of their money. Is that correct?

A. No.

Q. And the Nikityuks will say that after they moved out, you - you sent them a cheque for 1,741 through the YMCA, but - but then you put a stop payment on it and that's correct, right?

A. Not exactly. As I explained before, they were hanging that cheque in their pockets for a month or so.

First time went we tried to cash it out was December [indiscernible], more than months when I issued that - that cheque actually. And in the meantime - in the meantime, while they were hanging that - with that cheque and didn't cash it out, we figured that they already received the same amount for the same period of time from Ontario Works. So in December - or November the 10th, we cancelled that cheque because they - and well where is correspondence in the file, actually and we'll talk - with Svetlana probably - maybe will testify that actually it was Yana who suggested to them not to cash out that cheque because the application for Ontario Works was in progress and they were waiting for the decision. That is fraud. It's welfare fraud.

Pavel Danilov - Cr-ex (cont'd)

Q. So the Nikityuks will also testify that they have statements from when you transferring all the money out of these Tax Free Savings Accounts using the Power of Attorney after they had revoked those Powers of Attorney.

5 A. That is not true. They brought that new Power of Attorneys to the house on October 24th. The transactions are initiated at October 2000 - 3rd [sic], a day before they ended it, but they were - initiated when the Power of Attorney was still in place. But then, you know, that you
10 need like three days for transaction to cycle and if it's cashing out, you need extra two days. So....

Q. And....

A. And it's one thing and another thing is that, as Valentin says, he has no idea that those account - even
15 accounts even existed, so why - why - why he - he bothers? It - it was my money and - yeah, it was account in his name, but he said that he didn't even know that the account existed so what's the problem here?

Q. The Nikityuks will say that you wrote to the
20 YMCA after they moved out and said that the Nikityuks were unable to care for themselves, is that correct?

A. No, we wrote to YMCA - and by the way, that email - that mail was never answered or responded in anyway. We wrote to YMCA that we are concerned about them and they may be
25 hiding some capacity issues because well we lived with them for a long period of time and we observed the both of them. What's most important is that the last appointment with the specialist doctor, Mossman (ph), actually was - was a big concern. And we wrote to YMCA that yeah, there might be capacity issues over
30 there and maybe they need to go through capacity assessment and then we are sure that they won't pass it. It's very complicated thing that capacity assessment, you know.

Pavel Danilov - Cr-ex (cont'd)

Q. You said - and I may have been around a long time, I'm not sure, but you also said that the Nikityuks had no idea how to manage their finances, correct?

A. That's still true.

5 Q. Okay. And you have - and I believe under oath at the 20th - 2014 examination, you expressed the opinion that the Nikityuks would likely not pass a medical capacity assessment, correct?

A. That's what I just told you.

10 Q. Okay. So you agree with that statement?

A. Yes.

Q. Okay. And the Nikityuks will say that after they moved out of the house, they found additional accounts in their names at the TD Bank. Is that....

15 A. What is the question, I'm sorry?

Q. Is that true that there were additional accounts at the TD Bank in their name?

A. There - there was our joint account in TD - TD Bank for all four names, mine, Svetlana, Valentin and Alla, 20 which was - well initially it was ours with Svetlana, but we added Nikityuks to that account to avoid banking fee because if you add senior on the account you don't pay for it.

Q. Okay. And the Nikityuks will testify they didn't know about that account until after they moved out...

25 A. Yeah.

Q. ...is that right?

A. And my question to them will be why they closed it.

Q. But....

30 A. They - they had no idea what that account was for...

Q. Okay.

Pavel Danilov - Cr-ex (cont'd)

5 A. ...and they might - 'cause if they - well were capable and understanding people, they could imagine that closing account without even telling me might cause big financial problems. And by the way, they did the same with another account in Scotiabank and finally the same with account in CIBC where it was transferring those sponsorship payments.

Q. And these were accounts that had their names on, correct?

A. Yes.

10 Q. Okay.

A. It was one big family, you know. We - we - we didn't hide anything from them. They could easily access statements of the bank if they wanted. They - they could do it if they want.

15 Q. So yesterday - or actually I believe it may have been on Monday, you told the court about invitation that was prepared for Valentin's daughter which involved an application to the Government of Canada...

A. Yes.

20 Q. ...and I believe....

A. Valentin wanted to invite his daughter. We - we didn't object...

Q. Right.

A. ...we were completing her applicant.

25 Q. And I believe that you testified that there was a CRA assessment, Valentin's income attached with the purpose of proving his income to the Government of Canada, is that correct?

A. Yes. Yes, he had to attach some kind of proof of income - yes [*indiscernible*].

30 Q. Okay. And you testified that this was proof that Valentin knew he had an income of about \$40,000 in 2010, is

that correct?

A. Yes, sure. He was completely aware of the entire document. Whereas the document, I think was one or two attachments and one of the attachments is proof of income and that proof of income in this case was CRA assessment for year 5 2010. And of course he was completely aware of what - what's in that assessment and what's the purpose of that document. Otherwise he wouldn't be allowed to invite his relative for a visit.

10 Q. But you would agree that that document is prepared in English, correct?

A. Yes, of course it's in English.

Q. Okay.

A. But of course he was explained in every 15 possible detail what is it for, what is it and why it's - why.

Q. And in fact the invitation was prepared by Svetlana, correct?

A. Text, yes - but he read through this because - well it was translated to him. He signed it and finally he - 20 oh, I'm not sure invitation actually in Russian - it's - it's invitation to Russia.

Q. The CRA tax assessment was in English, correct?

A. Yes. Assessment was in English, but 25 invitation I did was - I'm not sure....

Q. Okay.

A. Svetlana might know that better what language...

Q. Okay.

A. ...we had because it wasn't me who prepared 30 it.

Q. But we can agree that Valentin didn't control

Pavel Danilov - Cr-ex (cont'd)

that \$40,000 of income, did he?

A. What do you mean by control?

Q. Valentin did not receive \$40,000 and then make decisions about what happened to it, did he?

5 A. He did receive that \$40,000 in the form of services and other good stuff. He lived in the house. We - we purchased food for him, we paid for utilities and - it's - well it's - it's obvious, if you have all this stuff, someone gotta pay for this and....

10 Q. To be precise though, Mr. Danilov, you would agree with me that what he got was \$40,000 worth of services from you and Svetlana, correct?

A. Not from me and Svetlana.

Q. But he did not receive \$40,000 cash, correct?

15 A. Of course not. Who did?

Q. And in fact this...

A. My - my...

Q. ...CR....

20 A. ...my money get - get transferred from one bank account to another all the time. I don't pay cash to anything. I even don't have cash in my wallet right now. It doesn't mean that I don't have that money and I don't pay them - whatever, it is still income. And if you look at the sponsorship agreement, it - it says pretty clear that support
25 payments can be done by any form by sponsor.

Q. But in fact the CRA assessments of Valentin's income and Alla's income were really part of an income splitting scheme for you, correct?

30 A. Yes, sure. Four people - four adult people live in the same house all the time share everything, the total household expense is \$80,000 per year if you divide 80,000 by two it comes to \$40,000 - it's income.

Pavel Danilov - Cr-ex (cont'd)

Q. And the Nikityuks never made decisions about how this \$40,000 was spent.

A. They could if they wanted. What - what decisions specifically are talking about? The decision to pay
5 the hydro bill or not to pay it or what?

Q. Well Mr. Danilov, I believe when you get paid money goes into your bank account and then you make decisions about where you send that money, correct?

A. I - I'm doing my best to do that, but you
10 understand that if - if you are using services such as utilities, electricity, gas - you - you don't actually make that decision. You make that decision at the beginning when you sign the contract with hydro, but after you done that, then you just pay bills and you must do that otherwise you will sit without
15 electricity.

Q. Right. So you were providing the Nikityuks with an income, but you were deducting almost the entirety at source, correct?

A. I'm not sure what you mean by deducting.

Q. The cash did not make it to the Nikityuks.

A. I think - I think what was going on here is pretty clear. I'm not sure what kind of words you're trying to put in my mouth, but it's very simple actually I explained that many times and it's easy. The entire household expenses for
25 four adults living in the house was \$80,000 per year. Those four adults were sharing everything and that's why that \$40 - that \$40,000 of Nikityuks income come into the picture because it's half of 80,000. And half of those bills which were coming on every month basis were paid from our account with Svetlana
30 and approximately half of those expenses were paid from that account were both Nikityuks aware of but with Svetlana in it because someone would have make those payments right. Because

Pavel Danilov - Cr-ex (cont'd)

Nikityuks were not able to use online banking because they didn't understand English. So that's how it worked actually. And if you ask me now, what specific expenses were paid from my account and what specific expenses were paid from Nikityuks
5 account, I cannot now tell you without looking into actual records because I don't remember. But approximately half of those were paid from one account and another half we paid from another account including all basic expenses, cars, gas, food, mortgage payments, everything. And please keep in mind
10 Nikityuks didn't pay rent. I didn't charge rent.

Q. Okay. So let's move on to life in the house after you moved in.

A. Yes.

Q. The Nikityuks will testify that you put
15 restrictions on the mailbox and specifically that after you moved in you took away their key to the community mailbox, isn't that what happened?

A. Of course not. Usually they - let's say they lost their key from the mailbox, you - you can ask Valentin
20 Nikityuks what he would do. You - you can try to ask him. Suppose he lost his - his key to the mailbox, what he would do. I'm really interested in that answer.

Q. So the Nikityuks will also testify that you regularly spoke to them in a demeaning manner. Is that in fact
25 what happened, Mr. Danilov?

A. I never speak in demeaning manner. I'm well educated person and not like some drug addict or whatever.

Q. And the Nikityuks will say that you discouraged them from seeing their friends, isn't that correct?

A. No, there are about three dozen of pictures
30 in the case where I can see Nikityuks with other friends.

Q. And the Nikityuks will say that you monitored

Pavel Danilov - Cr-ex (cont'd)

their emails in the house, is that correct?

A. I'm not sure by what he means by monitored, but every email which was coming to the - to - to Nikityuk or to Alla was read out loud by the entire family because it was one
5 big family and they didn't have to monitor them. If they wanted to share something with me, they called - Nikityuk - Valentin had his computer and whatever. But - see the thing is that that email was sent to my business domain name and then the owner of that domain and I'm responsible for my users to make sure that
10 those users don't make any terrorist threats or don't have child pornography on their computers or anything like that. So yes, I monitored those emails of course because I am a business owner, I must do.

Q. Yes. And in fact you produced in your
15 documents numerous emails between the Nikityuks and other people, correct?

A. Yes.

Q. Okay. And after the Nikityuks moved out of the house, you blocked - you - you blocked and froze the email
20 addresses that they were using, correct?

A. It wasn't after they moved out of the house, it was after they figured that they're defaming us and that probably at some point there will be some, you know, litigation. So I blocked that account for evidence purpose just in case.
25 And it's still there, so I can access any his mail as in evidence if it's required by a court.

Q. Now on Monday you testified that Svetlana was doing grocery shopping part-time for the family, is that correct?

A. Well if 99 percent of the time is part, then
30 yes.

Q. Okay. And Svetlana was taking her parents to

doctors' appointments?

A. Yes.

Q. Were these....

A. It was like her full-time job, but she - she
5 will testify about.

Q. And - but at the time, you testified
previously also that you're of the view the parents were
extremely lucky to have passed their medical exam through
immigration, correct?

10 A. Yes.

Q. Okay. And you testified that you had to set
up appliances and such in your "own time" at the house, correct?

A. Yes. I set up all appliances in the house
myself.

15 Q. Yes.

A. I didn't call any technician. I - I did it
myself.

Q. Yes. But you - you had referenced this as a
difficulty - a difficulty that you had encountered after the
20 Nikityuks had immigrated to Canada.

A. I never said - said difficulty. I said that
the time when we were coming to the house - to our primary
residence every week, on the weekends, wasn't recreational time.
That's...

25 Q. Right.

A. ...exactly what I said.

Q. You said it was a bit of a nightmare,
correct?

A. Yes.

30 Q. Yep.

A. That's what I said.

Q. Not - nothing entertaining or recreational

about it.

A. But I wasn't referring to - specifically to those appliances at that. The nightmare, it was by different reason because sometimes we have to - to rush into Innisfil in the middle of the night to get Valentin to emergency room. Sometimes I was pulled out of the meeting because some guy came to the door and wanted to do something in the house because it's a new house and there is a lot of stuff to do by the builders. So yeah, it was a nightmare.

Q. But you knew it was going to be difficult, that the Nikityuks were new to this country, had no other family, they were older, they didn't speak English. You knew it was going to be difficult for them, right?

A. Yes. Sure. It's still difficult.

Q. And you would have known that it was going to be difficult for them too, right?

A. Yes, sure. And for me we appreciate that fact and - see the thing is that we always tried to do our best to make it less difficult and well that's why we actually decided to live all together because it's much easier - like way much easier to take care of them when we live all together.

Q. Yeah. And take care of them. But you acknowledged that the Nikityuks have now been living independently for four and half years, correct?

A. No, not really living independently. They still depending on other people.

Q. So Mr. Danilov, I want to talk about a particular incident involving you and Mr. Nikityuk in - in the period of time where - after you moved into the house.

A. You - you have to be more specific because I don't recall any incident.

Q. The Nikityuks will testify to an occasion

Pavel Danilov - Cr-ex (cont'd)

where you, Alla, Svetlana, Valentin were having an argument in the kitchen and in that argument Valentin said, I've had enough. I'm going back to Saint Petersburg and I will live there homeless. Do you remember that instance?

5 A. No.

Q. Okay. Mr. Nikityuk is gonna testify that you became angry on that occasion and you picked up a plate and you threw it against the wall and - and in fact there was resulting damage on the wall. And Mr. Nikityuk will show the court a - a photo of the damage that was done to the wall and I want to put this to you so you have an opportunity to advise the court as to whether or not you - you recall this event. And I'd like to draw your attention to Exhibit 2(A), Tab 10.

A. 2(A).

15 Q. 2(A), Tab 10. And - and it's page 67. So it's the red book, volume 1 out of the red book and it's Tab 10, page 67. And Mr. Danilov, is this not a picture of the wall after you threw the plate at it?

20 A. I have no idea what - what - what is the picture.

Q. Okay.

A. When - when it has been taken and where it has been taken and by whom it has been taken. It can be anything.

25 Q. Okay. Now Mr. Danilov, Mr. Nikityuk will also testify that on an occasion, you became angry with him and threw a glass cup at his feet and then told him the next one will be at your head. Do you remember that event?

30 A. No. I - I have an idea where he might pick it up, but it - it's actually from Russian movie. He speaks in - in exact words - there's an exact Russian movie - but this is my speculation.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. And so this is around the time where there was a discussion - there was a - actually I'm not sure where - I'll let - I'll let the Nikityuks testify as to their recollection, the - I want to talk about Social Housing.

5 A. Yes.

Q. Now we heard from you on Monday I believe or - actually probably it was yesterday, that in July 2011 the topic of Social Housing came up, that the Nikityuks, you know, wanted Svetlana's help with that, but Svetlana was - and you
10 were disgusted with that because with a \$40,000 annual income they didn't qualify and you explained to them that you did not want to be a part of what you termed a scam. Is that correct?

A. Yes. But I would like to make tiny correction here, that topic came up much earlier, I think
15 approximately in spring. But what happened in July, Alla actually asked Svetlana to go with her and apply for Social Housing and Svetlana rejected because we didn't want to spend time on this thing and those explanation that is disgusting that is the same like stealing from homeless they were coming up or -
20 or something.

Q. Okay. But with a \$40,000 annual income, why didn't you just suggest to them that they get their own apartment without you? That's plenty of money to set up your own household. Why didn't you suggest that?

A. Because that 40,000 it works only if we live
25 all together. If - if they have their separate apartment, it cannot be 40,000. It's completely different financial arrangements because I still have my house, I still have to pay the same expenses but they are not living in that house anymore
30 and any extra residence for them, it's extra expense. So that's why we didn't want that and we didn't offer that. But they didn't - they didn't ever ask. And they didn't ever ask because

before that we offered them home and they rejected.

Q. Okay.

A. And they were not feeling probably comfortable to come up to that topic again.

5 Q. But you would agree that \$40,000 should be more than enough on the - if we take those calculations you put in the January 27th, 2008 email - \$40,000 would be more than enough to...

A. Yes...

10 Q. ...live independently.

A. ...40,000 would be more than enough but they couldn't provide 40,000 for them obviously if they were living separately.

15 Q. But you would agree that in the normal course of things Mr. Danilov, when adults are unhappy living with each other and they have income, they go their separate ways, right?

A. See that's the thing, we had no idea that they are unhappy. They were extremely happy until Yana Skybin showed up.

20 Q. But in the normal course of things, when adults no longer want to live together and they have their own income, they - they just go. Don't they, Mr. Danilov?

A. What - you want my - like my opinion of it?

25 Q. I'm trying to understand what's going on here.

A. I don't have any statistics to - to respond to your question. Maybe some people do that, maybe some people don't. How to respond to your question, I don't know.

Q. But this is about you, Mr. Danilov.

30 A. Yes.

Q. If you're living with another adult and they decide they no longer want to live you, if they have their own

Pavel Danilov - Cr-ex (cont'd)

income, they can just go can't they?

A. Yes, they - probably they can if they have their own income they can - yes.

5 Q. So if they didn't have their own income, why was this a scam?

A. Because they were not eligible for Social Housing and well we - we know that. They have like - they keep concealing their income 'till this specific date. If you look at their last CRA assessment, it's still only Russian pension 10 there. They don't show Nikityuks - Valentin's dividends there, they don't declare that they have any support cheque from me, even that \$150 for Alla, it's still there. Just look at their CRA assessment. So they are still scamming the Social Assistant.

15 Q. They - they don't have - I'm talking about in 2008. If they didn't have access to that \$40,000 income if they left the house, then why is going to Social Housing a scam? They don't have the 40,000 Mr. Danilov. They only have - you just said it a second ago, they only have it when they live with 20 you.

A. You were talking about 2011, weren't you?

Q. Yes.

A. So in 2011, they had this income.

Q. But only if they stayed with you.

25 A. No. They wouldn't have 40,000 they would have less, but they never discussed it with me.

Q. Our clients will say that relationship had broken down at that point.

A. I had no idea about that.

30 Q. They will testify that you were aggressive, that there was financial control and they could not - they could not continue to live with you, Mr. Danilov. And that - I put to

Pavel Danilov - Cr-ex (cont'd)

you that's in fact the case, wasn't it? That's in fact what was happening at that time in 2011.

A. No, it's - it's - it's all lie.

5 Q. I would suggest that your main concern in 2011 was covering one half of your household costs and you needed their "income" to pay those expenses, isn't that really what the concern was for you Mr. Danilov?

A. Their income, I was providing for them myself and they're forgetting that, right.

10 Q. But I suggest to you these arguments about Social Housing were really fights about living independently, weren't they Mr. Danilov?

A. No. Those were - first of all, there were no fights like whatsoever. And even though discussions about Social Housing always were - well in living it's a normal family discussions and we were very - extremely patient I think I would put it to - to respond to all those inquiries on everyday basis. And well I was trying to avoiding them mostly because well - first of all, it - those are Svetlana's parents, not mine and it's her business. And another thing, yeah okay she was - Svetlana was completely capable of handling those discussions and explaining things to - to her parents, but once and a while I participated in them and I explained many times that Nikityuks are not eligible for Social Housing because they have this income. But it all was about Social Housing. They never raised question like why we don't rent or why anything like that and I think reason for that was their recent rejection of nice, spacey condo we purchased for them because back at that point they said that they couldn't live separately. And okay, we were able to cancel that condo and after that they simply were shy to lay the question again because maybe they - they - they thought that I - I can become angry or whatever, but they never raised that

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question - never. And all talks are in 2011 since approximately
spring 2011 were specifically about Social Housing and we
actually couldn't understand why they keep talking about that.
We already explained everything for them. It's ridiculous and
5 we - we were talking about that again and again and again and
now I know why.

Q. Mr. Danilov, let's turn to what happened
after the Nikityuks left the house and they're just a few brief
points here that Your Honour can squeeze in before the break
10 with your permission.

THE COURT: Yes.

MR. BORNMANN: Q. This - we heard about the car
yesterday which had the lease with you and Svetlana's name on
it.

15 A. Yes.

Q. And it's true that Valentin had had a car in
Russia and he sold it when he came to Canada, with the proceeds
- the proceeds of that sale being some of the cash he
transferred over, correct?

20 A. No, they paid for the container shipment from
that cash.

Q. Okay. But he had a car in Russia, correct?

A. Yes.

Q. And he always had a car in Russia, right?

25 A. Not always, but yes most of the time as my
recollection to the best of my knowledge - yes he had some car
always.

Q. And when Alla and Valentin left the house we
heard from you that you - you insisted on them returning the key
30 because of insurance issues, correct?

A. Yes, I couldn't give him that car because he
didn't have insurance.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. But you would admit with a \$40,000 income, Mr. Nikityuk could simply have taken over the lease from you and got his own insurance, right?

A. Yeah, but he didn't.

5 Q. Okay. So Valentin will testify that he has a car now. Mr. Nikityuk's gonna testify that he also has an insurance now.

A. Great.

10 Q. And I put to you that, you should have - well I'll put to you that another option available to you at that moment when the Nikityuks were leaving the house, was the idea of Valentin taking over the lease and getting his own insurance, but instead you chose to demand the key back, correct?

15 A. That idea wasn't available to me because we didn't even know where they would live for a while and as a matter of fact, it turns out that Nikityuks were forbidden to communicate with us. As they put it, being under some kind of YMCA witness protection program. So no, it wasn't an option.

20 Q. And Mr. Danilov, that decision about the car left Alla and Valentin Nikityuk, two elderly people with a history of medical problems, with no transportation, correct?

A. I'm sorry....

25 Q. Mr. Danilov, you'd - you'd agree that leaving that decision of yours to hang on to the key, left Alla and Valentin, two elderly people with a history of medical problems, with no transportation, right?

A. It - it's not my decision, it's requirement of law. If you drive a car you must have insurance.

30 Q. And it's true there's no public transit in your subdivision - the Rankin subdivision?

A. In Innisfil, no.

Q. Okay.

Pavel Danilov - Cr-ex (cont'd)

A. But they managed it somehow. They called Yana Skybin and she arranged transportation. Right. So....

Q. You also talked yesterday or the day before about furniture in the house.

5 A. Yeah.

Q. The furniture at the house and you indicated that you had taken some money that had been transferred to you by the Nikityuks and used it as "settlement expenses to purchase furniture and appliances", correct?

10 A. Yes - and - yeah, well I would estimate that around \$15,000 or something like that.

Q. And....

A. There were appliances there - well nice pieces of furniture - new furniture actually, it was a new house, it was new furniture - a lot of new furniture - yes.

15 Q. And this was during the time you were still living in the Etobicoke apartment, correct?

A. Yes.

20 Q. And so my understanding was at the time you divided up the household expenses on a ratio of 7:2, correct?

A. But furniture wasn't household expense, only amortization of furniture was household expense and for that I - actually CRA rules how to account that. I believe it's 20 percent per year you must deduct if - if your couch gets older, you know.

25 Q. You - you would agree that much of what's in the house in Innisfil is paid for with the money that the Nikityuks transferred to you, correct?

A. It's difficult to say, but yeah you can put - can put it that way. But they didn't take anything of that when they left there - they abandoned all that.

30 Q. They - they just took their personal

belongings, correct?

A. Yes.

Q. Okay.

A. They could - could take whatever they wanted.
5 They didn't. They were like - I don't know, four T.V.s in the house, four couches, like couple of tables, many chairs, shelves, everything and they're still there.

MR. BORNMANN: All right. Your Honour, this may be an occasion for a break.

10 THE COURT: We'll go for lunch and return at 2:15.

R E C E S S

15 U P O N R E S U M I N G :

MS. CHAPMAN: Good afternoon, Your Honour.

MR. BORNMANN: Your Honour, may I?

THE COURT: Yes. Mr. Danilov, if you could just return to the stand.

20 MR. BORNMANN: Q. Mr. Danilov, I'd like to turn to the condominium - the 2009 condominium event. Now, either yesterday or the day before, you testified that you knew the Nikityuks wanted to live alone, right?

A. At that point, yes. When we purchased the
25 condominium for them, yes. They'd expressed some thoughts about that and well we told them that we won't rent because we don't rent, but we can purchase condominium for them. So then we did.

Q. So there were some conversations about this living alone, yes?

30 A. In 2009, some - yes.

Q. Okay. And your testimony is that you in fact purchased a condo for the Nikityuks by putting down a \$5,000

Pavel Danilov - Cr-ex (cont'd)

deposit with Pratt Homes.

A. Five thousand deposit, yes. And well - it was supposed to be ready in two years - I believe closing date approximately was in two years so they would get it in 2010.

5 Q. Okay. And my understanding from your testimony is that the - because of the Nikityuks' health issues, the idea of owning the condominium was overwhelming and that...

A. No.

Q. ...led to you terminating the arrangement.

10 A. My testimony was little bit different. In fall 2009, Nikityuks started to attend YMCA English classes on everyday basis and well they - my understanding is that it was really hard for them because they didn't understand anything there. They were well - very overwhelmed - overwhelmed with and
15 I'm sorry. And that's what Alla was saying to Svetlana. But Svetlana will tell that about that. And on top of that, they still were experiencing a lot of health issues and there were many appointments like almost every day but at least two, three times a week, something like that. Again, Svetlana would better
20 testify that 'cause she was accompanying them to all those appointments. So it was - it - it seemed to be completely impossible for Nikityuks in - in the autumn 2009 when the Agreement of Purchase and Sale of condo was already signed to live independently. And that's what Alla told Svetlana and well
25 we figured out that she going to get rid of that condo.

Q. Okay. I suggest to you Mr. Danilov that, that's not in fact what happened, but what in fact happened was that you purchased this condominium for Anastasia, isn't that the truth?

30 A. No - no of course not because Anastasia was University of Toronto student, she already have her own place in the City of Toronto, in the downtown actually. And condo in

Barrie for her, I cannot imagine what the heck she would need it for.

Q. Well - and we'll come to that in a second 'cause the Nikityuks remember that this condo was purchased for Anastasia and keeping in mind that it wouldn't be built for two years at - at a time when she'd be finished at the University of Toronto. And in fact, the idea that - that - the hope - your and Svetlana's hope was that Anastasia would take that condominium....

A. No. It wasn't a hope and we knew at that point that she was dating a German guy already and eventually she would be moving to Germany - not to Barrie. There is no job for her in Barrie.

Q. But that came later, didn't it Mr. Danilov? And that's why you had to cancel the condominium because Anastasia didn't want it. Isn't that what happened?

A. No. Condominium was for Nikityuks, it was two bus stops from the hospital and - well it would be inherited by Anastasia after I and Svetlana would die, I would - I would suppose - so yes - because we have both our wills in favour of Anastasia. But it doesn't mean that it was purchased for Anastasia.

Q. You - you must agree though, Mr. Danilov, that - okay it doesn't sound - you'd agree that it's unusual - it'd be unusual to purchase a condominium that was two floors, that was not going to be available for two years for an elderly couple that wanted to live independently.

A. Well it wasn't like a necessary requirement - immediate requirement for them to live independently like right away. We agreed before that we would be living all together and they expressed their desire to live independently at that point and well we reacted in - in the best way for everyone in the

family. That's how it seemed at the moment because - well I don't rent because I consider rented money just waste and if - if I purchase a condominium or house or any kind of real estate, it's investment and it's important for us because we are new in
5 Canada - we are new comers ourselves and our retirement will be quite old when it comes to that and having reverse mortgage on that condo would be a real - a real help for us. And well when we die, Anastasia would inherit it which - well probably she would appreciate it and in the meantime Nikityuks would live
10 there rent free and - well it would be perfect investment and I always invest.

Q. Alla is gonna testify that when Anastasia communicated the fact that she was not interested in that condominium, that she begged you to let her and Valentin have it
15 and you said no. Isn't that in fact what happened, Mr. Danilov?

A. No, it's not true and I believe when Anastasia will be here on Wednesday, you can ask her about the same event.

Q. I want to turn to the basement at the house
20 on - on Rankin, Mr. Danilov.

A. Sure.

Q. So my understanding from your testimony and - is that it was finished sometime in 2010, is that correct?

A. I believe so, I don't remember the exact
25 months or date. It was quite a while actually - several months in a row and well I believe - yes it was something - summer 2008.

Q. Okay. And you indicated that one of the reasons the basement was finished is Alla didn't want to go to
30 the - didn't want to use the bathroom across from your office upstairs, correct?

A. Yes, that's what she told Svetlana some

Pavel Danilov - Cr-ex (cont'd)

point. It - Svetlana will testify about that and - well I can - like I can understand that - like people might feel uncomfortable, you know.

5 Q. And you'd agree that by finishing the basement, value has been added to this house...

A. Yes.

Q. ...that's in your name.

A. Sure. Of course a lot of value and it's not just \$50,000 we spent on finishing basement. Value increased, I 10 believe, I don't know which factor - two or three. Because - well it's - it's nice and - very nice and finished basement very convenient and you got a lot of extra space. You got two extra bedrooms, one of them is being used as an office actually and well we got one more T.V. for Alla's room, she could watch her 15 favourite T.V. program separately from Valentin and not disturbing anyone because it's a very noisy program and - yeah well it - it was for them mostly and well not actually by their request, but we did it for them.

20 Q. Okay. Let's - let's pick up on the television topic.

A. Yes.

Q. Again where you - you testified that previously that - that the Nikityuks don't understand English, correct?

25 A. Yeah, you testified that.

THE COURT: Well Mr. Bornmann isn't testifying. He asked questions....

A. Yeah, I know - but I - I - I didn't tell the Nikityuks don't understand English. I - I told actually quite 30 the opposite that Valentin actually understands English because he has education and it's requirement to understand English to have his diploma or whatever - his qualification - what it is -

Pavel Danilov - Cr-ex (cont'd)

it's - it's really requirement.

MR. BORNMANN: Q. Okay.

A. So if - if he pretends that he doesn't understand English, it's - it's just - just play, you know, because - well Basic English, he understands.

Q. Mr. Danilov, I suggest that you've testified under oath in 2014 and submitted other documents through counsel which admit to the fact that the Nikityuks do not understand English, correct?

A. Well it's - it's a wide topic actually. You can be able to understand up to certain extent and don't understand after that extent. So depending on what they're going to ask me about.

Q. Okay.

A. Basic English he understands. Advanced - advanced topics as finances and all that stuff, probably he doesn't.

Q. Okay. So the Nikityuks are going to testify that they do not speak or understand English at this time. And they will also testify that they didn't speak or understand English in - during the time that they were living with you at the house, Mr. Danilov.

A. Yes, they didn't and well of - of course they don't - they - they don't understand English good enough to live independently - yes, agree with them.

Q. And I understand that from your testimony that, I believe you said I paid for cable at the house, is that correct?

A. Yes, I did.

Q. And I assume you mean cable for the entire household, correct?

A. Yes, sure. It was contract with Rogers.

Pavel Danilov - Cr-ex (cont'd)

Q. And that was part of the living expenses that were included in your...

A. Yes.

Q. ...loan agreement, correct?

A. Yes.

Q. And I understand that that was an expense that was divided 50/50...

A. Yes, it was shared...

Q. ...after you moved in.

A. ...expenses - yes.

Q. Okay. And it's correct....

A. Just set in point again as I explained it, I believe yesterday, that after I lost my discount in - 50 percent discount as former Rogers employee was September 2011, I suggested that the Nikityuks better pay for Russian T.V. programming from their pension because we didn't actually watch Russian T.V.

Q. Okay. And so after you cancelled the Russian T.V. channels, you continued to split the cost of cable 50/50 with the Nikityuks, correct?

A. They left after that - like couple of weeks after that, so no.

Q. But all along, 50/50 they'd been paying for the English channels that you and Svetlana were watching, correct?

A. It's not just English channels, it's a lot of services from Rogers. It was home phone, it was internet, it was cable T.V. and there were two cell phones for Alla and Valentin and we and Svetlana also had cell phones and most of that stuff was divided, half and half, yes.

Q. Okay. It just it doesn't seem very fair, Mr. Danilov, with respect to the television, does it?

Pavel Danilov - Cr-ex (cont'd)

5 A. I'm not sure what you mean. The agreement with Nikityuks - the initial agreement with Nikityuks when they came to Canada was that for their entertainment they pay from their pension and it was like the only thing they paid from their pension. By the way it was \$600 per month, not 200 as Alla told me before they came to Canada.

Q. Okay. So Mr. Danilov, I'd like to turn....

10 THE COURT: I don't understand what was 600 a month. The cable or the pension?

A. No, \$600 per month was Nikityuks Russian pension.

THE COURT: All right. Thank you.

15 A. But they told me that it was 200 before they came to Canada and that's the number which is in - in that famous email of January 27. They never objected that that number's wrong.

MR. BORNMANN: Q. Would the pension was their spending money is, as you put it, correct?

20 A. Yes and at that time I thought that it was 200 per month and then for that 200 per month, well that's a good - good amount to spend for entertainment by going to festivals, to [indiscernible], to African Lion Safari - to whatever. But then in a couple of months they first transfer their Russian pension accounts to the bank account and I actually see that it's not 200 it's 600. But I didn't tell them anything about that 'till 2012.

Q. Okay. So Mr. Danilov, I'm looking at the document at Tab 10 of your supplementary damages brief.

A. Okay.

30 Q. I believe it's Exhibit 5, it's at page 119.

A. Give me a few seconds, I need to fix it.

Q. For everyone else's reference, that's Tab 10.

Pavel Danilov - Cr-ex (cont'd)

A. Hold on one second. Okay Tab 10.

Q. Mr. Danilov, this is the document that your lawyer took you through near the end of your testimony.

A. Yes.

5 Q. It's entitled "Losses by Today, Damages All Dates"...

A. Mm-hmm.

Q. ..."November 17th, 2004 through to May 7th, 2016", correct?

10 A. Yes.

Q. And my understanding is that this is a summary of all the money you are claiming in this action, correct?

15 A. No, it's - it's just list of damages from my personal financial software. It's way more than I'm claiming, actually.

Q. Okay. So perhaps we can start there just to save the court time. What are you not claiming?

A. Nothing specific.

20 Q. Sorry?

A. Nothing specific. See the thing is that the damages in the claim, they were correct at some date in the past. But damages kept accumulating since then and this is the printout of damages as of May the 7th, 2016.

25 Q. Well Mr. Danilov....

A. Wait, I'm - I'm not sure, did we claim future damages in the claim or not, so....

30 Q. Mr. Danilov, in order for the court to understand your claim, it needs to know what you are asking the court to give you and what's in here for some other for reason.

A. It's - it's not a claim. It's not a claim.

Q. So - okay. So maybe - maybe we just look at

some of these totals and you can tell me whether this is part of your claim or not.

A. Well....

Q. So let's start with damages before Canada
5 debt. Are - are you looking for that - are you looking for court to award you that amount of money, yes or no Mr. Danilov?

A. Before payment of debt?

Q. Are you asking the court....

A. It depends. There is no easy answer for that
10 because we both understand that Nikityuks are judgment [indiscernible], but - so it doesn't make any sense to claim those damages from them, they don't have anything to - to pay me back. But see if the court decides that I need to pay them back money they transferred to Svetlana as a gift, I want to raise
15 before Canada debt deducted from that amount first...

Q. Okay.

A. ...that's why I'm claiming.

Q. Okay. So let's start with the idea and I
know you do not admit this, but for the sake of looking at this
20 damages chart, let's assume that the Nikityuks still have 260,000 plus US dollars invested with you and that this action is about whether they get it back or whether you get to keep it. So in the scenario that they get it back, you would like before Canada debt deducted from their money, correct?

A. Yes.

Q. And am I also correct in understanding that
all of this, everything under before Canada debt, these are all obligations that come out of this agreement...

A. Of 2004.

Q. ...from 2004. Now - now our clients - and I
30 want to be very fair to you, so I'm gonna state this as - as clearly as I can. The Nikityuks say there was no deal in 2004 -

2003, 2004. They say there is absolutely no deal. If they succeed and this court finds that there was no deal made in 2003, 2004, then do you admit that there is no other basis for you claiming the before Canada debt?

5 A. I'm having trouble to understand...

Q. Okay.

A. ...the question. I know that there was a deal and well hypothetical scenario when there were no deal means Nikityuks were not even close to Canada at this point, so...

10 Q. Okay.

A. ...that's important.

Q. Except - okay. Let's put this disputed deal in 2004 to one side. You have, on no other instance, demanded payment for these before Canada debts, have you - other than - like - other than the 2003, 2004 agreement that's in dispute. So....

A. No.

Q. We're disagreeing about that, Mr. Danilov. What - so has there been any other demand on your part for payment of these debts?

A. No.

Q. And has there been any promise from the Nikityuks to pay these debts other than that 2003...

25 A. 2004 agreement.

Q. ...2004 agreement?

A. Yes, only that.

Q. Okay. And the first instance which you claimed this damage was when you issued your statement of claim in this action, correct?

A. I believe so, yes - because that statement of claim made it like lost in history because there were

amendments, there was fresh statement of claim - but yes, I believe so - it - it was claimed at - at the first version, yes.

Q. Okay. Than you. Now Mr. Danilov, can we jump to page 123 please?

5 A. Yes.

Q. And I - I see it says CPL lost investment income.

A. No, it's other page.

Q. Sorry. I see damages, CPL direct....

10 A. Yes.

Q. And below it, as I understand it, you basically have transportation costs and home maintenance costs...

A. Yes.

15 Q. ...connected to...

A. Innisfil.

Q. ...a second property in Waterloo.

A. No, it's not second property. It's a rented apartment actually.

20 Q. In Waterloo.

A. In Waterloo because it's close to my new job and I moved there, otherwise I would have to go there on every day basis and I did actually for a month so, about that.

25 Q. Okay. Perhaps we could jump to the big one here, up on page 124.

A. Mm-hmm.

Q. The damages at '06, the destroyed - destroyed businesses...

A. Yes.

30 Q. ...red profit.

A. Yes.

Q. So you testified on Monday that you developed

Pavel Danilov - Cr-ex (cont'd)

a prototype system in September 2012, online trading right?

A. Developed in 2012, yes. It was a ready and profitable in September 2015, I believe. Yeah.

5 Q. Okay. And to support this claim, you've produced a number of what are called strategy testing reports specifically for the Euro, the US dollar, the Australian dollar and the Pound, correct?

A. Yes, those are currency pairs which proved to be profitable working with this software prototype.

10 Q. Okay. So - and I'd like to draw your attention to Tab 9 of the supplementary damages brief which is Exhibit 5.

A. Page 118? But it's different volume.

15 Q. This is - this is on page - oh I beg the Court's pardon, it's Tab 8 of the supplementary damages brief which is Exhibit 5 on page 15. But I understand this is a Strategy Tester Report for the Swiss Franc and US dollar, is that correct?

A. Yes.

20 Q. And you - you said on Monday that back in January 2015 the Swiss Bank removed the floor on the Swiss Franc as compared to the Euro, isn't that right?

A. Yes.

25 Q. So with this Strategy Tester Report you explained yesterday that - that this is - this essentially models - these are models that work on a dimmer account with fake money.

30 A. Yes. With real prices though and - and real peaks like every contract when someone buys and sells currency is reflected in this historic data.

Q. That - that's the key part, Mr. Danilov. This is modeled on historical data, right?

Pavel Danilov - Cr-ex (cont'd)

5 A. No, this model was tested before and not on this specific currency pair, but it was tested on many other currency pairs since 2013 when it was developed. And basically the rule is that you develop the software, you use some data to feed the model. So you teach the model how it will work with this data. Usually about 80 percent of historical data is used to teach the model how to work with it. Then 20 percent of remaining data is being used to check how the model actually works with the data it never saw before. And then when
10 everything is ready, you could remodel on the real-time data and see how it works in real time.

15 Q. But you didn't provide us with this information related to the Swiss Franc and the US dollar until last Friday, even though the information for this test was available much earlier in 2015. Certainly by the time you've given us our first damages brief earlier this month. That's right.

20 A. Not really, no. See I actually mentioned that I have like multimillion damages which are difficult to calculate in my affidavit for summary judgment. But there were no exact number there. And well since then I kept thinking how to prove that number. And basically what I know that - that model was working already in 2013 and it was ready and I was going to put it in production, not for US - US or Swiss though.
25 I was testing US, Swiss Franc the - the entire time - I couldn't understand why it's not working. It didn't work 'till January 2000 - 2015. But I was testing it all the time and I couldn't figure out what was the cause of this problem. But it wasn't profitable before 2015, but was aware and I was testing that.
30 And they were ready to put into production after all testing - after real-time testing of it - after everything - I remember almost exact date, it was right after our discovery, it was

Pavel Danilov - Cr-ex (cont'd)

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sometime in May and I believe it's May 20 something - May 22nd of 2014. It was right after discovery. So if I had money at that account - real money to count at that time, I - I would have at least three currency pairs working. And they were keeping and generating very good profit. But - but see it was dimmer account with fake money. I didn't have real money because I spent most of my real money on legal costs in this action. So basically I kept working in US, Swiss Franc. I couldn't understand why it's - it - it wasn't working and then this event in January 2015 happened and National Swiss Bank removed that floor and I figured that that was the reason. And yeah, since - since then our - this - this pair is the best. It's the most profitable pair of all it. So I would actually put it in production right after that floor has been removed.

Q. But Mr. Danilov, I propose to you this is all retrospective - hind...

A. No.

Q. ...hindsight's 20/20 isn't it?

A. It's - it's - it's real - real prices actually. If it was working on real money it will be - would be the same prices and the - the same thing and - well it's - it's actually working right now in dimmer account this - this thing and it's - it generates profitable trades and I can demonstrate that.

Q. Mr. Danilov, it's true isn't it that the only real - the only real evidence before this court with respect to your trading activity is the loss of about \$200,000 in a matter of days back in 2008, right?

A. I'm - I'm sorry, I....

Q. The only evidence before this court, Mr. Danilov, as to your trading history, is this \$200,000 you lost back in 2008 in your words "over a matter of days". We - we -

there's no other - everything else you've tendered here is hypothetical, it's fake money and it's models. It's looking back at historical data and building up what the most profitable opportunity was that you missed out. But when you actually had
5 money - when you had the Nikityuks' money in your account, you blew it and you blew a lot of it in just a few days. That's correct...

A. Yes.

Q. ...right Mr. Danilov?

10 A. I don't consider that a loss as I explained already. It was valuable lesson and we learned that lesson and kept working. We never gave up. And usually the companies who developed the software of this class, they invest much more than \$200,000 and it wasn't Nikityuks' money by the way.

15 Q. And you told the court about your strategy of leveraging, correct?

A. Yes.

Q. And that's where by you borrow money to buy your securities or currencies, correct?

20 A. It's not like you do that on purpose, it's just how the system works. You borrow automatically.

Q. 'Cause in your words it magnifies the profit, correct?

A. Yes. And it magnifies the losses too.

25 Q. Exactly. And when you start to lose, there could be a margin call and so you don't have the opportunity necessarily to ride that out again. You need to pay up when it goes down, isn't that right?

30 A. When you trade currencies - yes, there is an opportunity or margin called, but it's - it's all actually taken care of by the broker automatically. The broker just automatically closes your position until it feels safe and you

never lose more than you have. It's all taken care of automatically. And even if you trade with fake money, there is a fake margin call if this happens.

5 Q. So Mr. Danilov, just above the destroyed businesses we have defamation \$250,000 and then there's a notation "CLC". What does that mean?

A. Can you reference me?

10 Q. Sorry. This is off page 124 of Tab 10 of your supplementary damages brief, this is the document that your lawyer took you through. Just provides a high level account of the damages. So on page 124, it says damages defamation and then under defamation there's two entries of CLC. What is - what does that mean?

15 A. Well I put that abbreviation over there in 2013, I believe it means something like case law *[indiscernible]* or something like that because that number actually came from a real case and there was very similar to either our case *[indiscernible]* and the plaintiff who was one guy over there against 2 - his nieces, he - he was granted 125,000 and our case 20 is twice bigger, we have 2 plaintiffs and 4 defendants.

Q. So this is a projection of your damages for...

A. Yes.

25 Q. ...defamation based on your analysis of the case law?

30 A. Yes, but - well keep in mind that in case of defamation in writing, illegal - illigal *[sic]* I'm not sure how to pronounce that, I don't have to calculate damages because defamation in writing can bite you in the ass in 30 years and that's - well you - you - you know that better than anyone, right?

Q. But just so I understand this and - and I

think you said yes, but just so the court's hear, these numbers are based on your projection of damages following a review of the case law?

A. Yes.

Q. Okay.

A. Yes. It's - it's just that case was very similar to ours.

Q. Okay.

A. But yes it's not my....

THE COURT: Mr. Bornmann, I understand this to be not out of pocket expenses. This is his view of what the damages are, but that's - not - these are not out of pocket expenses and these are eventually arguments through counsel.

MR. BORNMANN: Yes, Your Honour.

A. Yes, you got it.

MR. BORNMANN: Q. So yesterday you'd indicated that the litigation that we're all here for had been a disaster on your life and that the - you'd incurred damages because you were involved harassment campaign that started with Fernandes Paralegal, correct?

A. Yes.

Q. And specifically you said that it was a disaster, that you had to put all the money you had on credit lines and Tax Free Savings Accounts into legal costs which could have been invested to produce income, correct?

A. Yes. We closed all our TFSA accounts - well almost right back in 2012 when we started this litigation. Our RRSP accounts I - I still keep withdrawing money from our RRSPs still today like I can withdraw 5,000 per day and that's what we are doing right now. And credit lines - yes, I have balances in the amount of approximately 100,000 of all kinds of credit -

credit lines I could [indiscernible].

Q. Okay. Very quickly, could we just go to Tab 3 of your damages brief, that's Exhibit 4.

A. Yes.

5 Q. And pages....

A. Oh Exhibit 4, I'm sorry. So what tab - I - I think a different volume.

Q. Sorry, Tab 3 of Exhibit 4. My apologies.

A. Oh it is four?

10 Q. At pages 44 to 45. If you could start on page 44, Mr. Danilov....

A. One second...

Q. Let me know when you're ready.

15 A. ...please, I need to fix it again. So Tab 3, you said - 3?

Q. Tab 3 of Exhibit 4.

A. Tab 3, Exhibit 4. Ready.

20 Q. And on page 44 there's a cheque, number 17 for \$10,769.

A. Yes.

Q. And then on the next page, on page 45 there's cheque 18 for \$9,441.

A. Yes.

25 Q. And then on page 46, there's a cheque - cheque number 1 on April 22nd for \$6,000.

A. Okay.

Q. Am I correct in saying these are all legal costs?

A. I'm not sure, they probably are.

30 Q. Okay.

A. I need to - to - to look what's actually in this cheque because see I have three credit lines and I keep

balancing them to - to get the lowest possible interest rate.
So if I get something on - on - on the credit line with seven
percent, I try to move that expense to the lowest which is five
percent in - in President Choice and sometimes I have - well I -
5 I still can borrow against the house, so - it's - it's
[indiscernible].

Q. Okay. Can I turn your attention to Tab 4?

10 THE COURT: Just for clarity purposes, this is
not a bank account it's a credit card that he's
drawing on. You haven't made that clear, but -
isn't that what this is? He's writing cheques on
a credit line as opposed to taking money out of
his own account.

MR. BORNMANN: Yes, Your Honour.

15 THE COURT: Isn't that what this is?

MR. BORNMANN: That's my understanding. It's a
line of credit on which these cheques have been
drawn.

20 THE COURT: Right. So the balance is going up,
not down.

MR. BORNMANN: Yes, Your Honour.

THE COURT: All right.

MR. BORNMANN: Q. On Exhibit 4, Tab 4, page 82.

A. Exhibit 4, page....

25 Q. Page 82. There - I see on April 15th the
cash advance for \$2,600.

A. I'm - I'm sorry, page?

Q. Eighty-two.

A. Eighty-two. Yes.

30 Q. I see on April 15th, you got a cash advance
for \$2,600, correct?

A. Yes.

Pavel Danilov - Cr-ex (cont'd)

Q. And then on April 25th, you received a cheque for \$4,200, correct? The line of credit cheque.

A. Yes.

5 Q. And another line of credit cheque on May 1st for \$4,827, correct?

A. Yes.

Q. And am I correct in saying that these are also legal costs as well?

10 A. I'm not sure. Probably not because usually legal costs are about \$10,000 cheque.

Q. Okay.

A. Those small cheques probably not legal costs.

Q. But I'm right in stating that you and your wife were the ones who commenced this litigation, correct?

15 A. Well we still had account with them.

Q. So it was your choice to involve yourself in this litigation, correct?

20 A. Not really, no. Fernandes Paralegal started to threaten us with litigation and we decided that we actually probably need the lawyer just in case. And then we figured that Nikityuks were defaming us all over the place, so we decided that we probably need to - to start something.

25 Q. So Mr. Danilov, just want to go back to these CPL direct damages on - that are summarized on page 123 in your damages brief - or your supplementary damages brief. This is Exhibit 5.

A. Okay.

Q. It's page 123.

A. Yes.

30 Q. And is it fair to characterize these as costs arising from your new job in Waterloo? Yes?

A. No because if there were no CPL, I would sell

the house and just move to Waterloo.

Q. Okay. But to be clear, you lost your job at IBM in 2013 because of restructuring, lots of people...

A. No, I lost...

5 Q. ...let go at the same time.

A. ...my job in IBM in 2015.

Q. But it was a mass termination, lotta people lost their job at the same time.

A. Yes. Yes.

10 Q. And that had nothing to do with the Nikityuks, correct?

A. Yeah.

Q. And lots of people after that were out there competing for available jobs we can assume, right?

15 A. Sure.

Q. And in - in Waterloo, I mean we all know there's lots of tech and IT companies, so you would agree that it's not surprising that you ended up there, right?

20 A. It is because I didn't even look there at first. See the thing is that I spent - well I've been to a couple of interviews in Toronto, but well they're not good fits. I got - well a call from Alex Severin because he saw my advertising - I'm not sure in [indiscernible] or Monst - Monster or something like that and he offered me some opportunity, but
25 then he disappeared once he figure out who I am and where do I live. And then - well I have to build a new metal because I figured that recruiters and my friends they don't offer me any opportunities like it was very surprising because before that it was quite an opposite. Even when I been working, I - I got lot
30 of offers and stuff and well technically I never considered that.

Q. But you don't know why Alex didn't help you,

Pavel Danilov - Cr-ex (cont'd)

do you? You - you don't know why he really didn't help you.

A. Oh yeah. I'm pretty sure I know why.

Q. He could have - the truth is Mr. Danilov, he could have decided not to help you because he heard about your work - your complaint - I heard a complaint about your work or...

A. No.

Q. ...it might have been - it could have nothing to do - nothing to do with anything related to the Nikityuks.

A. Exact conversation was we were talking about five minutes about that job opportunity about job description and stuff and he said I will send you more detail job description by email in few minutes because we were talking about that and I was asking about actual job description. He described me to the job, it seemed interesting, but then he said that he will send me something in three minutes. And then he started to write my name and my last name and he made and all contact information to send, you know, that stuff to - and once he figured that I'm part of the [indiscernible] in Innisfil, he erupt [sic] the conversation in 10 seconds and never called back, never sent any emails, never returned my calls. I tried to call him back couple of times after that.

Q. But you have no idea why he didn't get back to you.

A. I have an idea.

Q. And - so now you live in Waterloo and the house is empty, correct?

A. Exactly.

Q. And you've made no attempt to rent it out, correct?

A. No, we don't want to rent it out - well we want to rent it out, but first of all it's not that easy and

Pavel Danilov - Cr-ex (cont'd)

well, I'm expecting that this matter will be resolved one way or another in probably a couple of months, maybe half a year, I don't know and to - to have a tenant - I - I'm not in this business, you know, to have a tenant for - for six months it's probably more expenses than - than profit, so it just doesn't make much sense.

Q. But you're - you're paying all these costs, big expenses associated with a house and making no effort to generate revenue with it, that's correct?

A. We would have if it made sense, but I feel like it doesn't make sense now at this point. We offered that house to Nikityuks, they rejected.

Q. And well the Nikityuks will testify that - they will deny that you ever offered them occupancy of the house after they left.

A. I - I'm offering it to them right now. Let's - let's see what they deny.

Q. But you have reduced their support payments by \$800 and I think you said because - since the CPL was granted, you had to deduct monies to share - to take into account their share of taxes, mortgage payments, utilities and so on and you did that unilaterally, correct?

A. Actually, it's one of the reasons and it's more like emotional reason. But the real reason is that you cut me from my source of income and that source of income was approximately - well it would provide me about 1,000 maybe plus per month and that money I would use to support Nikityuks. But you put CPL on the house so I cannot increase limit on my equity credit line against the house, I cannot re-borrow, I cannot invest that money. So I don't receive those dividends monthly in the amount of approximately \$1,000 which would go to Nikityuks for instance. So they - they did it to themselves.

And of course I - I wanted to make a point that you - you do something stupid like this again, probably will be even worse.

Q. Okay. So it was financially inconvenient for you to carry on support at the level or making payments....

5 A. Yeah, I cannot afford it. I simply cannot afford it.

Q. Okay. So I'd like to turn you to Tab 1 of Exhibit 2.

A. Exhibit 2.

10 Q. It's the sponsorship agreement.

A. Okay.

Q. A please. It's the - it's 2(A) - it's the volume 1 of the red book. And you would agree, Mr. Danilov, this is the....

15 A. I - I'm sorry, what tab?

Q. Tab 1.

A. Yes.

Q. And you would agree, Mr. Danilov, that this is an undertaking to the Government of Canada.

20 A. Yes.

Q. And that's a very serious promise by you to the Government of Canada, correct?

A. Yes.

Q. And you would agree - and I'm just gonna direct your attention to the header that says "Obligations of the Sponsor and If Applicable, the Co-Signer". And this - this undertaking is given by you and your wife, correct?

A. Yes.

30 Q. You're - you're - you're - you're the wife - you're the sponsor?

A. No wife is the sponsor, I'm co-sponsor.

Q. And you are the co-sponsor. And you would

Pavel Danilov - Cr-ex (cont'd)

agree that it states that, "I promise to provide for the sponsored person and his or her family"...

A. For ten years, yes.

Q. ..."for the basic requirements for the period
5 that begins on the day on which the sponsored person enters
Canada with a temporary resident permit or if already in Canada
on the day on which the sponsored person obtains a temporary
resident permit following an application to remain in Canada as
10 a permanent resident, and with any other case on the day of
which the sponsored person becomes a permanent resident." And
you would agree, Mr. Danilov, that this ends in 10 years - the
last day of the period of 10 years. So you know that this
agreement was signed on the October 27th, 2004?

A. And the end of sponsorship is June 14th or 13
15 still 2018 - see if you're going there.

Q. So once June 2018 comes, you're off the hook
on this undertaking, correct?

A. On this undertaking, yes. I have another
undertaking. I undertook to support Nikityuks a lifetime in
20 exchange of that transfer to Svetlana, you remember.

Q. Okay. Mr. Danilov, if I can draw your
attention to the top of the second column.

A. Yes.

Q. And my understanding is this explains what
25 the basic requirements are...

A. Yes. This is a...

Q. ...that you are undertaking...

A. ...definition....

Q. ...to Canada...

30 A. Yes, this is the...

Q. ...to support...

A. ...definition....

Pavel Danilov - Cr-ex (cont'd)

Q. ...it says basic - I'm sorry, Mr. Danilov, please let me finish. Basic requirements include food, shelter, clothing, fuel, utilities, household supplies, personal requirements and healthcare not provided by public health including dental care/eye care. That's what that says, correct?

A. Yes, that's what that says.

Q. So you're - you're promising to Canada that you are going to support the Nikityuks with respect to of those basic requirements for a period of 10 years, right?

A. Yes - and I insist on me obeying all those requirements. It's Nikityuks who are trying to break this sponsorship agreement...

Q. Okay.

A. ...you - you know that. With the help of YMCA.

Q. So Mr. Danilov, we're going to get to that in a moment, but the court needs to understand what your undertaking to Canada was in this particular instance.

A. Yes.

Q. So the second paragraph of the right column, you agree it says, "I promise that financial obligations or other personal circumstances over the applicable period referred to the above, will not prevent me from honouring this agreement and the sponsorship undertaking that I signed or co-signed." Is that what it says?

A. Yes. You are reading it.

Q. And then the third paragraph down, "I promise that the sponsored person and his or her family members will not need to apply for social assistance benefits."

A. Exactly. And they didn't need to do that in 2011.

Q. Then there's a fourth paragraph in your

Pavel Danilov - Cr-ex (cont'd)

undertaking to Canada. It says, "I promise to respond promptly to requests for help from the supported person and his or her family members by giving money, buying items or providing services for their living expenses."

5 A. Exactly. I need to point out here that since October 2011, there were no [sic] any requests from the sponsored person to me to provide them with any help. None whatsoever.

10 Q. So this goes on to indicate that the sponsored person, so that would be the Nikityuks, will make every reasonable effort to provide for their own basic requirements. But Mr. Danilov, you'd agree with me under that heading it says important information, it says "elderly parents or grandparents who are sponsored are not expected to look for a
15 job or to care for themselves", correct?

A. Exactly and that raises - raises the question why Yana Skybin tried to provide them with some kind of jobs when they applied to Ontario Works in 2011. But see what's important here is that it doesn't matter, elderly persons or not
20 elderly persons, they still need to use any reasonable effort and they don't because for instance, I didn't know when I signed the sponsorship agreement or even later that Valentin Nikityuk had dividends and private pension from his former employee in Russia which he keeps concealing over there. And well that's
25 one of the reasonable efforts he is supposed to use when he was going to provide for himself.

30 Q. So Mr. Danilov, we're gonna hear from the Nikityuks that when they signed this agreement they - they hadn't made up their mind about immigrating and they wouldn't make up their mind for another three years. But this was part of an ongoing discussion possibly of - of - of a family - of a family reunification. And I put to you that is in fact what

happened there.

A. I'm not sure what - what - what happened there - could you indicate please because you - I lost you.

5 Q. The Nikityuks had not decided whether or not they were going to immigrate to Canada when they signed this document, Mr. Danilov.

A. No, if they signed this document they've decided.

10 Q. And....

A. Otherwise, I - I wouldn't pay any expenses for that immigration. That decision has been made.

15 Q. All right. So the - and from the Nikityuks perspective, if they were going to immigrate, any - making any reasonable effort to provide for their own requirements, you would - you would agree that when they signed this, owning an apartment, a summer house, a garage, a car, plus other savings and in addition to Russian pensions, dividends too - though these are akin to a pension, the - that all would be reasonable. Bring over a quarter of a million dollars and they have their
20 ongoing Russian pensions. That would be reasonable efforts, would it not?

A. Yes, probably but they wouldn't be even close to Canada if they insisted on that approach because I wasn't interested.

25 Q. And the Nikityuks did liquidate all their assets when they decided to come, right?

A. Yes.

30 Q. And they transferred that money over, a quarter of a million dollars US to you, right?

A. To Svetlana.

Q. And as we've discussed a moment ago, you admitted that - it says that elderly parents are not expected to

Pavel Danilov - Cr-ex (cont'd)

look for a job to take care for them - to care for themselves...

A. Yes, of course they're not expected...

Q. ...okay.

A. ...to do that - of course.

5 Q. And if you - if you go to the next paragraph after the elderly parents paragraph it says, "Sponsored persons under family members who are being abused or assaulted by their sponsors should seek safety away from their sponsors even if this means that they will have to apply for social assistance
10 benefits."

A. Exactly.

Q. It's....

A. That's the whole point of this case. This is - this flaw in the law who everybody's trying to exploit you -
15 simulate abuse, you're off hook of sponsorship agreement.

Q. But you would agree that this undertaking to Canada is unconditional and cannot be terminated, right?

A. Yes. I'm not - I'm not trying to terminate it.

20 Q. Okay. And so you agree it's not cancelled by relationship breakdown or your financial circumstances, correct?

A. No, there were no relationship breakdown and - well under - well to - 'till the last day 'till they left, we were sure that they were happy. They never complained about
25 anything.

Q. So Mr. Danilov, yesterday though you also said, and again I believe you said yesterday, you would not have agreed to sponsor the Nikityuks if Alla had not promised to transfer this money, correct?

30 A. Yes, it was a hard time actually for our family because we just immigrated to Canada. I had only \$45,000 annual income and two more adults on that income, it would be

too much. And when my wife approached me with the idea of sponsoring her parents, I - it - it was my - the only and first and immediate concern, like how am I supposed to do that. But then that concern dissolved when Alla Nikityuk promised me to provide that - that transfer to Svetlana.

Q. And yesterday or the day before you testified, I believe it was on Monday, you testified that you couldn't afford to support more dependants. You said it was simply impossible in the circumstances, correct?

A. Yes, in 2004 - yes.

Q. But you've also testified now that you knew you were committed to support, correct?

A. When I signed?

Q. Yes.

A. Yes, of course I knew. But that point I was under the impression that they are going to transfer all property proceedings to Svetlana so the problem has been solved.

Q. Mr. Danilov, I want to take you to a document in Exhibit 1(A), Tab 131. This is actually Exhibit 1 - in fact, I think it's page 805 at Tab 131 in - and I'm not sure which - it's 1(B) - it's Exhibit 1(B), Your Honour. Have you found it, Mr. Danilov?

A. What tab?

Q. It's Tab 131. This is in your - your document brief here. And - have you found it, Mr. Danilov?

A. Yes.

Q. This is a letter that you wrote me on March 1st, 2013, correct?

A. Yes.

Q. And if I can...

A. But....

Q. ...take you to the second page on page 805.

Pavel Danilov - Cr-ex (cont'd)

5 A. I'm sorry, I need to comment on that before you ask questions about that. This is without prejudice and the reason why it's included in this brief is because you disregarded this - you or your office, you disregarded this note and you put this document in a motion record of yours and then after discovery you said that I withdrew that without prejudice thing because I put it in some kind of brief or whatever, but it's actually you who did it - disregarded his without prejudice notice and put it in the motion record. But I don't object to answer your questions. It is just a note.

10 Q. Okay. Thank you, Mr. Danilov. So on page 805, there's a third paragraph down and you would agree that you wrote - this is in 2013, "Obviously this scheme will lead to the very fast depletion of the remaining loan principal because I do not intend to spend a cent of my own money on Valentin Nikityuk and never did as I personally told Alla back in 2004 when she signed the sponsorship agreement."

A. Yes.

20 Q. And Mr. Danilov, it's true that you have not been providing basic requirements since 2011, correct?

A. I did.

25 Q. Mr. Danilov, the Nikityuks, deprived of their savings, have had to live on their Russian pensions supplemented by Canadian Social Assistance and a Canadian Rent Subsidy, isn't that correct?

30 A. You said since 1000 - 2011. All 2012 I was providing to them amounts in about \$1,020, \$1,050 per month. They were withdrawing those amounts from that joint account in CIBC all 2012 and I believe part of 2013 'till the motion for CPL came up and they never showed any cheque or any withdrawal reversal in any of their income declarations - not in ODSP, not in Ontario Works, not in CRA assessments. So as you are aware

of, I'm obligated to provide to them, but they're obligated not to go for Social Assistance. At least they are obligated to tell me when they go for Social Assistance. So if they go for Social Assistance secretly and keep concealing their income, they receive from me - well I'm not intending to pay twice
5 [indiscernible].

Q. Mr. Danilov, but you would agree that even in the event of relationship breakdown - so in - presently we're in litigation, so even if abuse did not occur and our clients will say it did, you understand that the sponsorship is not canceled
10 [sic] - cancelled, correct?

A. It's not.

Q. Okay. So can I take you - I want to turn your attention to Exhibit 2(A), Tab 42. My apologies, it is
15 actually Exhibit 2(B). This is the second red book.

THE COURT: So what tab is that in the book?

MR. BORNMANN: It's at Tab 42, Your Honour.

THE COURT: Thank you.

MR. BORNMANN: Q. So Mr. Danilov, have you found
20 that document?

A. Yes, I think so. It's...

Q. It's at Tab 42.

A. ...ODSP statement.

Q. Yes. So Mr. Danilov, I put to you that what we have at Tab 42 is correspondence dated May 4th, 2016 from the
25 Ministry of Community and Social Services advising that \$18,924 have been paid in Social Assistance to the Nikityuks for the period November 2011 to April of 2016.

A. Yes. It's - by the way this shows span when I see the total amount Nikityuks received from Social
30 Assistance. I was under impression that see it should be more, but - well - I'm already paying off that thing and the speed and

the rate how I'm paying that off it's none of Nikityuks' business because it's my own agreement with ODSP and the payments covering it.

5 Q. But Mr. Danilov, isn't it right that you breached your undertaking to Canada...

A. No, it's not right.

Q. ...and Mr. Danilov, you breached your undertaking and we now, Canada, is essentially picking up part of the tab, isn't that right?

10 A. No, it's not right. It's Nikityuks who breached that agreement with the help of YMCA and they put me in position when I owe something to the government. I was never going to find myself in that position and this is part of the defamation claim action.

15 Q. You've not reimbursed the Ministry for this amount, you've - by your own testimony you've negotiated....

A. I'm doing it right now on the monthly basis and the - the rate at which I'm doing it, it's none of Nikityuks' business.

20 Q. You testified in court that that rate is \$70 a month, isn't that right?

A. Yes, it is.

Q. And you don't pay interest on that amount, do you?

25 A. That I don't know.

Q. And you are aware that the County of Simcoe and the Hatlon Ministry of Canadian Social Service they - they all have recovery units that decide who's responsible for money and then go after those people, correct?

30 A. And yes I already have my own agreement with - with one of those recovery units. That's what I'm trying to tell you for - for past half hour.

Pavel Danilov - Cr-ex (cont'd)

Q. Yeah. So instead of paying a thousand dollars to the Nikityuks a month, you're paying \$70 to ODSP, right?

A. Yes.

Q. Okay.

A. Because they keep concealing their income, they keep concealing every cheque they receive from me and I don't have any other choice because otherwise I will have to pay the same twice.

Q. And Mr. Danilov, we could go back to the document you showed the court last week - or sorry, yesterday - I believe it was yesterday, it's in Exhibit 1(B) at Tab 86, it's page 476.

A. Tab - I'm sorry?

Q. Tab 86.

FEMALE VOICE FROM THE BODY OF THE COURTROOM:

1(A).

A. No, it should be 1(A) then.

MR. BORNMANN: Q. Sorry, Tab 1(A). It's in my binder too, I'm sorry.

THE COURT: What's the tab number?

MR. BORNMANN: Tab 86, Your Honour at page 476.

Q. And Mr. Danilov, this is a letter from a Citizenship and Immigration Canada dated March 12th, 2013.

A. Yes.

Q. And you would agree that Citizenship and Immigration Canada also has taken the position that you've breached your undertaking, correct?

A. Yes because Nikityuks defamed me before Immigration Canada. That's the whole point of the story, see. They wrote some weird letters over there and with the help of Yana Skybin and YMCA, now Citizen and Immigration Canada thinks

that I am an abuser and that I'm - that I'm not obeying the terms of sponsorship agreement. That's the whole point of this litigation.

5 Q. But Mr. Danilov, you would agree that whether it's entering into this sponsorship agreement without ever intending to spend a cent on the Nikityuks or whether it's...

A. About...

Q. ...whether it's....

10 A. ...spending a cent on Nikityuks, I must respond to you. That first of all that was without prejudice - first of all. Second of all, it was intending as start of negotiations and third of all, everything about my intentions of spending money on Valentin Nikityuks changed after they left the house back in October 7 - 17th, 2011 and started to defaming me
15 and my family. So everything has changed since then. And now my - my relationships with Valentin Nikityuks are completely different from they were before that October.

20 Q. Well Mr. Danilov, whether it's the sponsorship agreement or the loan agreement which is helping - helping with the income splitting or the CRA income declarations for the Nikityuks, they're designed to help with the income splitting, you'd agree that it appears that your willing to do whatever is the most financially convenient for you at any given time. Isn't that....

25 A. For family.

Q. But it's really what is financially best for you, correct?

A. For family. You're putting...

Q. Mr. - Mr. Danilov....

30 A. ...here the cart before the horse, you understand that.

Q. So Mr. Danilov, I just a few more questions

here, Your Honour.

THE COURT: do you want to reserve them for after the break or are you going into another section or it's 3:30, I'm just wondering if we should take a break for benefit of...

MR. BORNMANN: Yes, Your Honour. Thank you.

THE COURT: ...all in attendance. So we'll come back in 15 minutes.

R E C E S S

U P O N R E S U M I N G :

MR. BORNMANN: Your Honour, may I?

THE COURT: Yes.

MR. BORNMANN: Q. Mr. Danilov, when you let the Nikityuks move into the house in 2009, it was because the Nikityuks didn't want to live in an apartment.

A. 2008.

Q. 2008, correct?

A. No, they didn't say that they don't want to live in apartment - well they did, actually - so yes, they wanted to live in the fresh air by the lake in the house, it's much better than to live in the apartment.

Q. And when you made this decision, you took their preference, their interest into consideration, yes?

A. Yes, sure and there were other considerations too. We thought a lot about that and we decided that yes, we probably can afford that and probably the house would be good investment because it always - always - already, I'm sorry - already have been proven to be a good investment because the house while being built during the first year gained in price \$30,000.

Pavel Danilov - Cr-ex (cont'd)

Q. The Nikityuks had just trusted you with a large sum of money to finance what, I'll use your words, not theirs, to finance lifetime support, right?

A. The house has nothing to do with that money.

5 Q. But the Nikityuks had trusted you with a significant amount of money to provide for their lifetime support, correct?

A. I cannot speak about what they thought or what they trusted, probably they did - of course they did
10 because finally they decided to transfer that money to Svetlana.

Q. And after trusting you with that money, Mr. Danilov, I put to you that in almost everything you've done since 2009, you have preferred your own interests over the interests of the Nikityuks.

15 A. There is no my interest here at all. If it was up to my interest, Nikityuks would still be in Russia or maybe they [*indiscernible*], I don't know.

Q. Mr. Danilov, you chose to invest in more profitable "risky securities" preferring your own interest in making a profit and proving a concept with a software product.
20 You - in all - in all these actions, you - you put your own interests ahead of the Nikityuks, didn't you?

A. No.

Q. And after you lost that almost \$200,000 in -
25 in your own financial scheme, you assigned those trading loss mostly to the Nikityuk instead of absorbing that loss personally, isn't that correct?

A. No, it was Svetlana's money.

Q. Mr. Danilov, we only have one or two
30 documents left here, but this one is in your book, Exhibit 1(B), Tab 36 - 136 - Tab 136...

A. Tab 136.

Pavel Danilov - Cr-ex (cont'd)

Q. ...of Exhibit 1(B). It's a document entitled "Summary of Investment Portfolio February 2008 to April 2013".

A. Yes.

Q. And you'll agree with me that there is, in
5 the first column a list of dates and in the second column, there is a header "Source/Destination of Funds in Canadian Dollars" and then there's four sub-columns: from the Danilov's to the Danilov's, from the Nikityuks to the Nikityuks, correct?

A. Yes.

Q. And then right at the bottom we have on
10 December 31st, 2008, you have a signed - what's listed in the comment as a portfolio loss in 2008. So if you look at that bottom right cell...

A. I'm - I'm sorry...

Q. ...it says - Mr. Danilov, let me finish my
15 question please?

A. ...it's - it's very small font, I....

Q. Mr. Danilov, please let me finish my
question. At the bottom right corner of that chart, the comment
20 says portfolio lost in 2008 and it's a total of 100,000 - \$198,310 and of that in your system you've assigned 182,439 to the Nikityuks. Mr. Danilov, it is clear that you have assigned the vast majority of your reckless trading loss to the Nikityuks, is that not correct?

A. It's not correct. And it's not correct
25 because of the history of this document. You forced me to prepare this document assuming that there were two shares in all this investment portfolio and you - you had the motion about that to force me to provide you with this document. So I had to
30 provide you with this document. Following your instructions, but there are - like if there were two shares from Danilov's and from Nikityuks and some of mine actually were Nikityuks and

Pavel Danilov - Cr-ex (cont'd)

basically all this document is created on that hypothetical scenario you suggested at that motion and forced me to provide. So I - I - I don't think that you should make a big deal of this document. It simply doesn't make any sense because it
5 hypothetical.

Q. Well you know Mr. Danilov, it really doesn't end there does it because after you assigned the trading losses to the Nikityuks in your - in - in your financial arrangement, you were actually - use the tax losses yourself personally to
10 carry forward on your own income taxes, isn't that right?

A. Those income taxes and tax returns I've been receiving, they were used in the interest of the entire family and half of that family is Nikityuks. So they also were buying good food, fruits, vegetables, using that tax return money I was
15 receiving from that. It's nothing to do for me personally. If it was up to me personally, believe me I would be in way better position now than I am now.

Q. Mr. Danilov, let's look again at Exhibit book 1(B) and it's at Tab 135, page 816. So that's Tab 35....

20 A. What tab? I'm sorry - 155 or....

Q. One thirty-five, I'm sorry.

A. Tab...

Q. One thirty-five.

A. ...135. Page?

25 Q. Page 816.

A. Yes.

Q. And this is - you would agree with me that this is a Notice of Tax Assessment for you, personally in the year - for the year 2008, correct?

30 A. Yes, it's correct and it states at - at - at the top line 236, net income is negative and it's \$182, 850 - no \$182,850.

Pavel Danilov - Cr-ex (cont'd)

Q. So you would agree with me Mr. Danilov, that after assigning the trading losses in your own ledger to the Nikityuks, you then used those same losses as a tax loss carried forward on your income taxes, correct?

5 A. It's - it's completely correct thing to do because those were business losses and they were claimed at the business - whatever it is in the big business - tax - tax return business, I forget how they call it.

Q. So you lost...

10 A. Business losses.

Q. ...so you lost the money the Nikityuks gave you and then you used their loss carry forwards, correct?

A. Used what?

Q. Their loss carry forwards?

15 A. Yes, I used loss carry forwards - yes.

Q. And after the loss you moved into the house with the Nikityuks, correct?

A. No - yes.

20 Q. And you did so despite the fact the Nikityuks had made it clear that they wanted to live separately, right?

A. Yes, it's not up to them to decide. It wasn't their house.

25 Q. And when the Nikityuks made it clear that they did not want to continue living with you, you again preferred your own interest in keeping that house over their wellbeing, right?

30 A. Nikityuks kept changing their mind about living together, living separately during all those years - several times and every time when they change their my - mind, I end up with 25 years or 5 years or some - somewhere else years commitment, so....

Q. And - and Mr. Danilov, this is a house they

Pavel Danilov - Cr-ex (cont'd)

believed that was - they believe was theirs because you and Svetlana falsely told them that, isn't that right?

A. No, it's not right, it's ridiculous accusation and I told so about - about that gazillion times
5 already.

Q. And this is a house you could only purchase with their contribution of money, isn't that right?

A. No, it's not.

Q. And it's a house that their contribution
10 allowed you to renovate and furnish, correct?

A. No, I renovated the house with my own money. I have very good job and good salary, I can afford that.

Q. And this is also a house they helped to maintain, correct?

A. Well the only duty on Valentin Nikityuks was
15 to vacuum the house, another duty was to pick up mail, so if you consider that a lot of help, then yes.

Q. And when it came time to divvy up the money you had, you chose to support your daughter Anastasia's desire
20 to rent separately, again choosing her interests over the Nikityuks, right?

A. My daughter almost never required support since I would say 2006. She's completely independent.

Q. Okay. And you've had now eight years to try
25 and earn some of this money back that you lost in trading through your salary, through self-employment, through tax refunds, through trading, but you haven't, have you?

A. I would have if I had let's say at least some - some of money I spent on this litigation.

Q. Okay. But we've already established - and
30 we've already established that despite your undertaking - undertaking to the Government of Canada, you have left the

Pavel Danilov - Cr-ex (cont'd)

Nikityuks in the position where they have no choice to take Social Assistance or \$18,000 of it and a Rent Subsidy for the housing, that's correct right Mr. Danilov?

5 A. Nikityuks did then - did - did it - did it to themselves. They falsely accused personal abuse, used this flaw in the law to go around sponsorship agreement and to other agreements we had and - well left the house illegally applied for Social Housing, for Social Assistance and put me in position where I'm having trouble to put my finances together as well.

10 Q. But you have continued to live comfortable enough to take the occasional sun vacation still, right Mr. Danilov?

A. Yes, I must have some vacations because my job is pretty hard, you know.

15 Q. Okay. And so instead of doing any - any of those things for your wife's mother, your stepfather - and - and - instead of giving them their money, instead of helping them to set up the modest retirement that they expected in this country, you've compounded the harm by suing them. You've essentially
20 sued your victims, Mr. Danilov.

A. They - they can go back to the house any minute now if they want. All they have to do is to leave Social Housing and admit that their payment is wrong and they can go to the house and live there again as much as - as long as they
25 want. We offered them so, but Alla Nikityuk responded that she doesn't want to because she's not comfortable paying for the water metre. She wants to use water as much as she needs and not think about it.

30 Q. Mr. Danilov - these are my final questions, Your Honour, I - I want to put - put to you the case that the Nikityuks make out, those false statements you made about the house, those false statements that you made about the financial

arrangement that the Nikityuks could expect here in Canada, that's fraud and that's fraudulent misrepresentation.

A. And I am responding to you that it's all defamation and they will be responsible.

5 Q. Mr. Danilov....

A. Together with YMCA and people who helped them to do that.

10 Q. Mr. Danilov, what you did with the Nikityuks' money, using it as your own, that's called conversion. I put to you that is the tort of conversion.

A. Whatever.

Q. And the enjoyment and the benefit you've obtained from that money, Mr. Danilov, that is unjust enrichment.

15 A. Is that a question?

Q. I put to you that that is unjust enrichment.

A. What do you want me to respond to that - do you want me to respond to that or?

20 Q. And if I suggest to you, Mr. Danilov that by breaking the agreement you had with the Nikityuks about the money, modified as it was with respect to the house, that's breach of contract. And I put to you that in choosing your own interest, having been entrusted with the Nikityuks money, that was a breach of fiduciary duty. And I put to you that all the
25 Nikityuks money that you used on the house at Rankin, money for the down payment, money for the mortgage, money for utilities, money for furniture and there's more - all of that - as well as the Nikityuks work on the house, shovelling, attending to cleaning while they lived alone, all of that has created a
30 constructive trust in favour of the Nikityuks in that home, Mr. Danilov.

THE COURT: You can agree or disagree, that's

Pavel Danilov - Cr-ex (cont'd)

what counsel's asking you for I think. Is that fair?

A. I disagree.

MR. BORNMANN: Those are, subject to further re-examination, those are my questions, Your Honour.

THE COURT: I have a few questions for clarification and that may open up some questions from you sir or Ms. Chapman, but first of all, I just want to touch on the pension from Russia. Maybe it's not in dispute, it's about 600 a month. Earlier we heard about pensions being deposited quarterly and then moving to his PC Financial. Was it not disputed that's roughly what they've received?

MR. BORNMANN: Yes, 600 a month. Yes, Your Honour.

THE COURT: Okay.

MR. BORNMANN: Your Honour, it's a little - it's complicated a little bit because of the exchange rate....

THE COURT: I understand that, but it's not 200 it's - it's not 200.

MR. BORNMANN: Yes, Your Honour.

THE COURT: I have some questions about the financial loss, but I think you've touched on that in your later comments because you put Mr. Danilov to his statement and his tax return from 2008. Is that the only tax return that you have for him? You suggested he carried these losses forward. I saw them in that return that you took us to, he got a refund of about \$27,000 - a tax refund.

Pavel Danilov - Cr-ex (cont'd)

MR. BORNMANN: Yes, Your Honour. There's, Your Honour at page 834 of the Plaintiff's Damages brief, perhaps the witness can confirm, there's another credit in the year 2012.

Q. Is that right, Mr. Danilov?

5 A. Those were carried forward losses and yes I kept using them piece by piece for several years. Last time it was in 2015 tax return - maybe 2014, I'm not sure. The - the remainder.

10 THE COURT: All right. Another question I had was with respect to the visit by the defendant's daughter and he had to send in CRA proof of assessment. I never saw the assessment but I presume it showed he had a certain amount of income to figure 40,000 was used.

15 MR. BORNMANN: Yes, Your Honour I believe that.

THE COURT: Is that - is that what it showed?

A. I think it's somewhere in the file separated from that invitation because they produced it at some point. And yes it was about 40,000 - \$50,000 - 57, I believe.

20 MR. BORNMANN: Your Honour, I believe it's at Tab 59 of Exhibit 1(A).

25 THE COURT: And so it seems obvious to me that Notice of Assessment would have been based on the tax return filed by the defendant or the defendants. I don't know if the tax return's included or what the source of income was to show that 40,000 and perhaps Mr. Danilov nailed down the tax return at that time, I don't know.

30 A. Yes, we did tax returns for them. Yes we did and there - there were two sources of income reported in that tax return. It's income from investment interest which has been used to pay for half of household and Russian pension of both

Pavel Danilov - Cr-ex (cont'd)

Nikityuks.

MR. BORNMANN: And the Nikityuks will testify that they never in fact had possession of those funds, that the Danilovs assumed control of...

5 THE COURT: I understand that from his evidence, but I don't - I didn't see the tax return. So I'm gathering from what the witness testified is this is his allocation of income from the family investments in terms of the expenses he paid on their behalf. That's - is that - is that where 10 this 40,000 comes from?

MR. BORNMANN: My - my understanding - I can't speak to - my understanding of Mr. Danilov's evidence is that he made a calculation based on what made for the most efficient 15 income split with respect to his salary and then assigned that portion of - of income to Alla and Valentin Nikityuk respectively [sic] and filed returns. And that's how he calculated that number. Q. That's correct, right Mr. Danilov?

20 A. No, the number was calculated based - based on the actual bills I paid and invoices and other expenses like groceries and everything. And the - the way of calculation is very simple, again at four adults living in the house, they share everything and they pay for everything half and half.

25 THE COURT: All right. I'll just - if you don't have any further questions then maybe leave that for Ms. Chapman if she wants to deal with some aspects of that on re-examination. Does that complete your questions? It doesn't open up any other questions for you?

30 MR. BORNMANN: No, Your Honour.

THE COURT: Ms. Chapman, do you want a - is there any re-examination? Do you want to wait until

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tomorrow? I don't know what your plan is.

5 MS. CHAPMAN: I think at this point maybe we'll wait 'till tomorrow. Did you want to know - or be able to review the Notice of Assessment for each of Nikityuks from that year?

THE COURT: I'll just leave that for you to....

MS. CHAPMAN: Okay. Sure.

THE COURT: Put your hands on it

10 [indiscernible]....If there's anything that should be brought to my attention other than general impression I have from your client's evidence. So I'll leave that for another day if - if needed. And then tomorrow we'll be able to turn to Mr. Mae.

15 MR. MAE: Your Honour, just one clarification, Ms. Chapman's gonna do a re-examination first, that's what I would assume to be the case?

THE COURT: Yes.

MR. MAE: Thank you, Your Honour.

20 THE COURT: And she may have further re-examination after your....

MR. MAE: Absolutely, the cases are slightly different.

THE COURT: Right.

25 MR. MAE: That would make sense.

THE COURT: Yes.

MS. CHAPMAN: I do have those affidavits that we spoke about yesterday...

THE COURT: Right.

30 MS. CHAPMAN: ...that you were requesting copies of.

THE COURT: Should we have them filed as

exhibits?

MS. CHAPMAN: I have not filed them as exhibits.

THE COURT: No, should we now?

MS. CHAPMAN: Yes, I think we should.

THE COURT: All right. So you've got two
5 separate affidavits?

MS. CHAPMAN: Yes. So we would have Exhibit 6,
the affidavit of Anastasia Danilova. And Exhibit
10 7, the affidavit of Jan Niklas Caspers, J-A-N, N-
I-K-L-A-S, Caspers with a C.

THE COURT: All right. So if you'll pass those
to the Registrar, I'll have a chance to look at
them later.

EXHIBIT NUMBER 6: Affidavit of Anastasia
15 Danilova - Produced and Marked.

EXHIBIT NUMBER 7: Affidavit of Jan Niklas
Caspers - Produced and Marked.

MS. CHAPMAN: Thank you.

THE COURT: So if there are no other
20 administrative issues, we'll adjourn to tomorrow
at 9:30.

MS. CHAPMAN: Thank you, Your Honour.

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M A T T E R A D J O U R N E D

313.
Certification

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

5

I, Lauren Burch, certify that this document is a true and accurate transcript of the recording of Danilova v. Nikityuk et al. in the Superior Court of Justice held at Barrie, Ontario taken from Recording No.

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3811_02_20160518_090259__10_MULLIGG.dcr, which has been certified in Form 1.

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(Date)

L. Burch
(Signature of authorized person)

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THURSDAY, MAY 19, 2016

THE COURT: Good morning everyone. I think where we left off, Ms. Chapman's going to do re-examination.

5 MR. MAE: Your Honour, before the re-examination starts, there's a few housekeeping matters I want to address. First one, which is the New Year's one, Your Honour, I'm going to bring about at this moment available motion for an order for disclosure against the co-defendants. We - we've actually agreed terms in the - what we're actually after is something from Revenue Canada to show the date that Yana Skybin was appointed as a representative of the Nikityuks. The -
10 yesterday or the day before, there was reference to the webpage at the CRA which was updated in April 2011. Yana Skybin's evidence and the documents show she wasn't appointed until October 2011. We believe that the date reference on the website is just the date the page was updated as opposed to the information contained within the page. And my friends at the CLC are trying to get that information from Canada Revenue Agency. But dealing with the amorphous blob that is the
20 Canada Revenue Agency, you have fax numbers and probably everything goes in a pile and it waits. So we - we're asking you to make an order for disclosure against the co-defendants. But in the draft order is also an order for Canada Revenue Agency to expedite the release of the information just in hope that we could reach somebody to get that information to you before this trial
30

concludes.

THE COURT: All right.

MR. MAE: I have a draft order, my - my friend has seen it and he's approved it. I haven't shown a copy to plaintiffs' counsel yet, maybe I should. Actually give her the courtesy of seeing a copy but it doesn't really involve the plaintiffs' counsel in any way, but I'm sure that she would - might have to at least say something about it.

THE COURT: All right. Well the - the extent of this order affects Canada Revenue Agency. Obviously they are not a party to this proceeding so it is sort of a faint hope that they would respond.

MR. MAE: Absolutely, it's just so they have - have something like - my - my friend's willing to send in the Letter of Authority from his clients' signed by them, but it's just to give it some - some weight - some gravitas and candidly, several of us have reached out to friends, colleagues or accountants to see if they could get us a direct line and fax number of anybody at the CRA who could receive the information rather than it going to the general pool.

THE COURT: All right. So that's allowed to be sent in by the defendant's counsel, I take it?

MR. MAE: It - it - it would, yes.

THE COURT: Mr. Bornmann, you're undertaking to do that I guess?

MR. BORNMANN: Yes, Your Honour.

THE COURT: Server - server or fax it to the

Revenue Canada as soon as possible.

MR. BORNMANN: Yes, Your Honour.

THE COURT: All right.

MS. CHAPMAN: The only thing I - I would state on the record is, these - these aren't the real issues. These issues were addressed in the examinations for discovery, but there was a dispute on which date that Yana Skybin became CRA representative for the Nikityuks. But I'm not going to oppose having the records.

THE COURT: All right.

MS. CHAPMAN: I just want to make it clear that this didn't arise from Mr. Danilov's examination.

R U L I N G

MULLIGAN, J. (Orally):

All right. Your point is it could have been obtained much earlier. So I will sign the order and we will see whether there is a result obtained in the fullness of time and hopefully before the trial is over.

MR. MAE: Thank you, I'm obliged Your Honour. And if I can just take that copy back...

MS. CHAPMAN: Sure. Yes.

MR. MAE: ...'cause I need one to photocopy to issue.

THE COURT: I've signed one copy, but there will have to be copies.

MR. MAE: Yes, we'll - we'll address that in the break, Your Honour.

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5 THE COURT: And I'll get a photocopy in due course when he comes back. Madame Registrar, I'll make a note - eventually I'll make a note on the back of the Trial Record for [indiscernible].

MR. MAE: Thank you, Your Honour. I'm obliged.

The second issue, Your Honour, is one that in all the years I've been in this profession is one that I've not had to deal with before. Mr.

10 Danilov is still under oath and he's still under cross-examination, it appears that - not it

appears, I can actually speak to it with my own eyes, that this morning in this court he was sat

15 in the back of the court or in the same place with his wife actually looking through exhibits.

We - he has been warned outside of the court he is - that he is under oath and shouldn't be

discussing his evidence. This is a fairly serious issue and I appreciate that Mrs. Danilova

20 has been in court throughout his evidence, but that doesn't enable him to discuss this matter with her. Additionally - and I hate to throw

rocks, but it would appear that there have been consultations as well and I - I generally trust

25 all opposing counsel to abide by the rules and I'm not sure, in this case, that that's actually

taken place, Your Honour. They - they were in conference this morning in a conference room from

30 9:00 a.m. until court started. And I believe my - my friend, Mr. Bornmann, has something to add

to that.

MR. BORNMANN: Simply that, Your Honour, there appeared to be conversation about the sponsorship

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5
agreement and I, like my friend, certainly give my friend the benefit of the doubt on this matter. And speaking for - submitting for the Nikityuks, at this point I simply - we simply wish to bring this to the Court's attention and with the hopes that the Danilovs understand the seriousness of their obligation with respect to this matter.

10
THE COURT: All right. Well....

15
MR. MAE: And in - indeed, Your Honour - sorry, but - so I'm casting no stones against my friend, Ms. Chapman, but the issue has been raised and it needs to be made clear that even though they've been living and breathing this case for five years and they share a bed every night and they go home, now is not the time for them to be discussing the - the evidence. A witness exclusion order's been made and of course it can never extend to a party, but they now need to be told on the record, Your Honour, with respect that they should not be discussing the - the evidence.

20
25
THE COURT: All right. Well first of all the rules of professional conduct limit what counsel can discuss with their clients during examinations or part of cross-examinations. So Ms. Chapman, perhaps you want to speak to this issue first because it brings you into the fold, I think in a way.

30
MS. CHAPMAN: It does. And I'm not denying that I met with Danilovs this morning. We have other witnesses that need to be coordinated, including

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5 their daughter and husband who are travelling here from Germany. I can advise the Court that I am not discussing the evidence with my clients and I have reminded them, a few times, that I cannot do so. So it's simply not true and it's not taking place. I'm - I'm not sure what else to say.

10 THE COURT: All right. Well that - that - I'm satisfied about your conduct. What about your clients' conduct with respect to each other being one witness who's still to testify in terms of any cautions the bench should give them with respect to discussions outside of court?

15 MS. CHAPMAN: Well they have heard those cautions from myself. They have now heard them from counsel and I think they would appreciate what they are hearing now, that again, they are not to discuss the evidence in this case with one another during their - the course of their examinations and cross-examinations.

20 THE COURT: All right. Thank you. So I'm going to speak to the two plaintiffs, Mr. and Mrs. Danilov. You've heard well this discussion. It's very important you do not discuss the evidence with each other. I appreciate that you are both in court hearing this and you're entitled to hear that because you're participants, but you're not entitled to discuss evidence from one witness you heard for the other. In other words, Mrs. Danilov [*sic*] cannot discuss preparation of her own testimony with Mr. Danilov based on what he said. I expect her to

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come with an independent mind, without having discussed the issues with him. And that implies - applies to him to because he still has to be cross-examined and may indeed be giving further evidence later in response to the counter claim. So I - I hope that you'll keep that in mind and not discuss or look at any exhibits other than those that you're authorized to look at through the court or through counsel. Do you understand?

SVETLANA DANILOVA: We were advised by our counsel [*indiscernible*]....

THE COURT: All right. Thank you. So counsel for the defendants, I've made that warning, I've discussed the issue with Ms. Chapman. I'm satisfied with her response and I hope that we could proceed without those concerns cropping up again.

MR. MAE: Absolutely, Your Honour. And again for the record, no stones were cast of my learned friend, it was against her - her clients.

THE COURT: All right. I understand. So with that in mind, are we ready for some re-examination if any? Is there to be re-examination?

MS. CHAPMAN: Yes, I do have a few questions, Your Honour.

THE COURT: All right. So Mr. Danilov, if you could return to the witness box.

PAVEL DANILOV: RECALLED

RE-EXMAINATION BY MS. CHAPMAN:

Q. My first question, Mr. Danilov is with regards to Exhibit 1(A), Tab 29.

A. Okay. My only question with regards to Tab 29 is whether Alla or Valentin Nikityuk responded to this email.

5 A. I'm not sure. There were hundreds of emails going back and forth, mostly between Svetlana and Alla over [indiscernible], I don't know. Maybe they did, maybe they did not. I'm not sure why Valentin kept this specific email. Maybe for some purpose, I don't know. There were many emails. This
10 is one of them.

Q. Okay.

THE COURT: Just for clarity, we refer to these by tab number, but this is - this is an email which some of them - at least some of the parties
15 call an offer. I think your client takes a different position, but this is - this is like a financial statement email, just to identify it.

MS. CHAPMAN: A calculation...

THE COURT: Calculation....

20 MS. CHAPMAN: ...I believe is what...

THE COURT: Canadian calculations.

MS. CHAPMAN: ...Mr. Danilov - Canadian calculations.

THE COURT: Is according to what he says...

25 MS. CHAPMAN: Yes.

THE COURT: ...was left off the email.

MS. CHAPMAN: Correct.

A. And actually email is actually on Tab 30, next tab.

30 MS. CHAPMAN: Q. Yes - so - sorry, Tab 30 is the same email.

THE COURT: So I think that what the question

was, the answer was that there was no specific response. Is that what I take it from this?

MS. CHAPMAN: Correct.

5 A. I - I - I don't recall any specific response and I'm not sure why this email kept specially. There were many of them.

MS. CHAPMAN: Q. Mr. Danilov, you spoke yesterday about having to make a down payment for the purchase of Rankin Way?

10 A. Yes.

Q. Could we now turn to Exhibit 1(A), Tab 16? This is a - your CIBC Investment Statement dated June 30th, 2008. And what was the value of your investments in that account on that date?

15 A. \$10,991.12 and it was RRSP account and we were eligible for first home time buyers program if we wanted to withdraw that money.

Q. Could you explain what the first time home buyers program is as far as you understand it?

20 A. As far as I understand, people who buy house or condo or like real estate property - just primary residence in Canada for the first time, they can withdraw money from their RRSP without tax paid and use that money for down payment.

Q. Thank you. And at Tab 17, you have a TD
25 Waterhouse Investment Statement.

A. Yes, it's a statement in Waterhouse of Svetlana Danilova of proof. My wife's RRSP - self-directed RRSP.

Q. And on page 49, could you advise...

30 THE COURT: Sorry - sorry what tab was that?

MS. CHAPMAN: Sorry, Tab 17.

THE COURT: Thank you.

MS. CHAPMAN: Q. Page 49, could you advise the court the value of that portfolio?

A. It's \$1,850.02.

Q. And that statement was for the period April 5 1st, 2008 to June 30th, 2008?

A. Yes, it's the status at the June 30th.

Q. And at Tab 18....

A. Tab 18, is a statement of my self-directed RRSP in the same organization, in TD Waterhouse. And it's again 10 for June 30th.

Q. And the total value of that portfolio, I believe is on page 51 of Tab 18.

A. Yes and it's \$23,671.25.

Q. And at Tab 19, we have the Manulife Financial 15 Statement. I believe these would be shares that you owned at Rogers, is that correct?

A. Yes, it was shares accumulation plan. So there is this very nice program in Rogers, so you can buy Rogers shares and the company adds up to the same amount you pay. So 20 you can spend up to four percent of your salary on company shares. Buy them every month and company adds the same amount as - as the benefiter. So at - at July the 1st, 2008, I had value in those shares there. It's opened on July the 1st. Counsel, it's 4,604.96.

Q. And finally at Tab 20, you have the April 25 2008 statement for your Interactive Brokers account.

A. Yes. And at page 56, there is equity summary in base currency section and it's for the period April 1st 'till April the 30th. And I'd like to attract attention to the number 30 in the column prior period. It's little bit to the right of the section. And total of the prior period, which means before April the 1st, was \$28,228.99. And the first transfer from

Saint Petersburg, happened on April the 1st.

Q. Thank you.

A. So I think all this sums up to something like 69,300 something.

5 Q. Could we now turn to Tab 3 which is also Exhibit 1(A)? Mr. Bornmann took you through this document yesterday.

A. Yes, he did.

Q. Could we turn to page 17, please?

10 A. Yes.

Q. Mr. Bornmann addressed a paragraph with Section 4, titled "Debt Reduction". Did you have a debt of \$24,000?

A. Yes. We had a credit line in President
15 Choice Financial and I believe balance was about \$24,000 at this point when we applied for mortgage with Scotiabank. But the thing is that we applied not just for mortgage but for the package of two products, it was mortgage and equity credit line. And in equity credit line, I have possibility to borrow up to 80
20 percent of my equity in that house. So once I paid down payment which is - which was about \$50,000, 80 percent of \$50,000 comes to about 40,000 in available funds in equity credit line. And basically that was the condition of this agreement, that we using PC credit line and start using the equity payment plan.
25 Basically pay off the balance in PC with this equity credit line right away. And that's what we did actually.

Q. And so if you turn to page 16 which is at the same tab.

A. Mm-hmm.

30 Q. It appears that the Scotia total equity plan is marked yes.

A. Yes.

Q. Is that the plan you're referring to?

A. I think so. I - I know that there - there was some additional papers somewhere about that specific credit line, but I'm not sure how they produced them out of this one because they were changing all the time. No. Once and a while when we get enough equity accumulated in the house, our equity - not balance equity, we go to the bank and we increase - increase very little that equity credit line up to the next 80 percent of what's accumulated recently and we again re-borrow that money and invest it. That's what we do.

Q. And then finally, Mr. Bornmann took you through the damages summary which is at Tab 10 of Exhibit 5. And if you could leave that open, I'd also like to have a look at....

A. Yes, supplementary or....

Q. Yes, the supplementary, Exhibit 5.

A. Yes.

Q. Tab 10.

A. Mm-hmm. Tab 10.

Q. And in addition if we could also look at Exhibit 2(B), Tab 39.

A. Tab - I'm sorry?

Q. Thirty-nine. Page 511 in Exhibit 2(B).

A. Yes.

Q. If you recall Mr. Bornmann had some questions for you yesterday with regards to damages that you claimed in relation to the CPL on your home...

A. Yes.

Q. ...correct?

A. Yes.

Q. And at Tab 39, could you....

...OBJECTIONS BY MR. BORNMAN

...SUBMISSIONS BY MS. CHAPMAN

5 THE COURT: All right. Ms. Chapman, the cross-examination as I recall did seem to focus on the strategy trading, if I could call it that, it was part of the supplementary book - rather large numbers that were shown there. Isn't that - wasn't that the focus? I mean the - the CPL damages seem to be the focus of the cross-examination.

10 ...SUBMISSIONS BY MS. CHAPMAN

MS. CHAPMAN: Okay. I'm prepared to not ask these questions at this time. I do know that I have another opportunity to examine Mr. Danilov in relation to the counterclaim. So....

15 THE COURT: All right. I'm just not even sure I'm looking at the right document because I thought you said you were taking me to number 9 in the sup - supplementary.

20 MS. CHAPMAN: It was - it was Tab 10 in the supplementary.

THE COURT: All right. Yes, that's the...

MS. CHAPMAN: Summary of damages.

25 THE COURT: ...multi - multipage lists and we focused on - in one page in particular - or Mr. Bornmann focused on.

MS. CHAPMAN: Correct.

THE COURT: All right. So you're satisfied that you may be able to deal with this issue later...

MS. CHAPMAN: Yes.

30 THE COURT: ...if necessary. All right. So we'll....

MS. CHAPMAN: So those are my questions at this

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time.

THE COURT: Mr. Mae, are you ready to begin your cross-examination? Would you like a break?

Would you like to start now?

5 MR. MAE: I'm happy to start now, Your Honour.

THE COURT: All right. So we're taking our usual - usual break at some point later on.

CROSS-EXAMINATION BY MR. MAE:

10 Q. Mr. Danilov, you started your first claim in April 2012. Do you recall that?

A. I believe so, yes.

Q. And both you and your wife were joint plaintiffs?

15 A. Yes.

Q. And all the defendants currently in this action were all named as defendants, correct?

A. Yes, unless - well we can talk about some name for YMCA considerations because some names were - legal names were mixed up.

20 Q. That's right. You - you - incorrectly named the YMCA, but it's - we're all here and we're named correctly.

A. I believe it's fixed - yes.

25 Q. And that's - you eventually start a second action in October 2013?

A. I believe it was Notice of Action filed October 10th - October 11th, something like that.

Q. And in that action, both you and your wife were joint plaintiffs?

30 A. Yes.

Q. And again, the same defendants.

A. Yes.

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Q. And it's correct that both of those actions were consolidated into the matter that is now before the court?

A. This is my understanding, yes.

Q. And it's fair to say that you and your wife
5 have been dedicated to proceeding with these claims since you've started them.

A. Sure.

Q. And you spent a - a lot of....

A. I'm not sure - I'm not sure what you mean by
10 dedicated, but yes we've spent quite a lot - a lot of time on this and at some point of time we were self-represented. Yeah, it was difficult.

Q. So you've spoken with your wife a lot about this case?

A. Sure.

Q. And you know very well what her evidence is?

A. Yes, it's the same evidence. It's just there are some things which she knows better, yes.

Q. Yes. And vice versa, she knows your
20 evidence.

A. I hope so.

Q. Yeah. You hope so. And would it be fair to say - or would it be correct to say that both you and your wife are on exactly the same page on all matters in this claim?

A. Yes.

Q. So would it also be correct to say that any evidence you give about matters that affect you jointly, your wife is going to be bound by it?

A. Yes.

Q. And would it also be....

MS. CHAPMAN: That's unfair.

MR. MAE: It's too late.

Pavel Danilov - Cr-ex (by Mr. Mae)

THE COURT: Well I could....

MR. MAE: You could disregard it if you want,
Your Honour. But....

THE COURT: There's somebody raising their hand
improperly, I think.

INTERPRETER: Your Honour, I'm the interpreter.

THE COURT: Yes.

INTERPRETER: And they ask the counsel to be a
little bit louder.

MR. MAE: Louder?

INTERPRETER: I'm having difficulty hearing you
because - the back.

THE COURT: Your back is to her and so she's
not...

MR. MAE: Yes, Your Honour.

THE COURT: ...I know it's not - Madame Registrar
- Madame Reporter is the microphone amplifying or
just recording?

COURT REPORTER: This - in this courtroom, Your
Honour, it just records.

THE COURT: All right. So....

MR. MAE: I wonder, would it be possible for the
interpreter and the Nikityuks sat in the witness
box? Would that - would that be permissible?

THE COURT: Will that disturb you in terms of the
conversation that they're having in - in Russian
while you're speaking?

MR. MAE: I'll pace myself to allow them to catch
up. If - if it becomes a distraction, Your
Honour, I'll - I'll certainly say.

THE COURT: Do you want - do you want to move
them into the witness box?

Pavel Danilov - Cr-ex (by Mr. Mae)

MR. MAE: Absolutely. One - one of the things of course with raising one's voice, it creates a whole different tone and....

THE COURT: You're yelling.

MR. MAE: Exactly, Your Honour.

THE COURT: All right. So I'm going to suggest Madame Interpreter that you move into the jury box with - with the - the defendants. Mr. Bornmann?

MR. BORNMANN: Your Honour, may I quickly consult with my clients on this?

THE COURT: Yes. I'll just take a brief adjournment so you can have a discussion. And then we'll come back and see if this works.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Mr. Mae.

MR. MAE: Appears that we may - may have been able to solve the acoustic issues.

THE COURT: All right. I understand we have two new interpreters. Perhaps we should swear them.

MR. MAE: Absolutely, Your Honour.

THE COURT: If there's gonna be some changes in interpreters along the way - so if you would just come forward and identify yourselves one at a time.

TATIANA BEKKER: INTERPRETER SWORN - Russian/English

THE COURT: Thank you, Ms. Bekker.

Pavel Danilov - Cr-ex (by Mr. Mae)

ASAD MEDJIVOV: INTERPRETER AFFIRMED - Russian/English

5 THE COURT: Thank you, sir. So to the interpreters, earlier in this trial we made an order that the interpreters can assist the two defendants and their counsel with discussions over the lunch break or at other breaks. Do you understand that, sir?

10 INTERPRETER: Yes.

THE COURT: Ms. Bekker, do you understand that?

INTERPRETER: Yes.

THE COURT: Thank you. Mr. Danilov, if you'd just return to the witness box.

15 A. I'm - I'm sorry, Mr. Mae, could you please repeat your last question? I'm afraid I misunderstood it.

THE COURT: That was the question about one person's evidence binding the other.

20 MR. MAE: Binding the other. And of course I'll repeat the question and my friend will jump up and say that's not fair as she did before. So....

THE COURT: She'll have a fresh opportunity.

MR. MAE: Absolutely.

25 THE COURT: But is it a fair question really? I mean we're talking about two individuals who are obviously spouses, but they're here to give evidence independently and they're not - we don't have authority to be absent and give evidence - not like a corporate situation.

30 MR. MAE: Absolutely, Your Honour. I'm not gonna - I'm not gonna push that, so....However, I will

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start where I was going.

THE COURT: And of course you want to make sure the interpreter can hear you and...

MR. MAE: Absolutely.

THE COURT: ...you're not going too fast for her.

MR. MAE: Yes, the interpreter has instructions to throw things at me if I become too quiet. So far so good.

THE COURT: She heard that.

MR. MAE: I'm not surprised. May I continue then?

THE COURT: Yes.

MR. MAE: Thank you, Your Honour. Q. And in these proceedings, you and your wife were both examined at the same time?

A. You mean for oral examination?

Q. I do, sir.

A. Yes.

Q. And you filed - neither of you have filed any corrections in respect of the answers given during that oral examination, correct?

A. We did not - we were going to, but decided not to. There was one small typo actually by reporter and well it - it changed meaning a little bit, but it's not important.

Q. And the various letters that have been written in the - under your name, under your wife's name or under both of your names which are being produced in these proceedings, you would have both seen them before they were sent?

A. Yes.

Q. And you would have both read them?

A. Yes.

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Q. And you would have agreed to contents?

A. Depends on the letter.

Q. Well we'll come to individual letters, but let's just deal with as a general proposition.

5 A. Generally, yes - but there may be some differences in recollection.

Q. Now your wife had a Power of Attorney for the Nikityuks, correct?

A. Yes.

10 Q. And as I understand it, you did not have a Power of Attorney, correct?

A. Correct.

Q. And you would agree that your wife as an Attorney for the Nikityuks owed them fiduciary obligations, correct?

15 A. Correct.

Q. And do you know what fiduciary obligations are?

20 A. I think I do in general, not in - not in legal terms, but in general.

Q. Let me have your general understanding. What - what's your general understanding of fiduciary's obligations?

25 A. Well there are different kinds of Power of Attorneys and as far as I understand, Power of Attorney supposed to be doing stuff for people who give you Power of Attorney in their interest.

Q. In their - in their interest, so....

A. Yes.

30 Q. Have you heard the phrase or have you heard of the proposition that an attorney has to put the person who granted that attorney to them, their interests above all? Have you - have you heard that?

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5 A. Above all? Like what you mean by all? All is a lot of things.

Q. Okay. So let's break it down. You give me Power of Attorney to act as your Attorney.

A. Yes.

Q. I have to put your interests above mine, would you agree with that?

A. So you give me Power of Attorney?

Q. No, you give me Power of Attorney.

10 A. I give you Power of Attorney.

Q. Yes. So I'm your Attorney.

A. Yeah.

Q. Everything that I do, I have to do for you, above myself.

15 A. I don't think so.

Q. You don't think so.

A. No.

Q. Okay.

A. Generally speaking, most of the time she is, but there may be a lot of situations where no - no under any circumstances. I can give you an example.

Q. By all means, please do.

A. Let's say if - who gives Power of Attorney to whom, I'm sorry?

25 Q. Well let's - let's just talk about me and you. Let's - let's be cozy about this. So you've - you've given me Power of Attorney.

A. I give you Power of Attorney.

Q. Yes.

30 A. If I'm trying to break a law, then no.

Q. Okay. But let's say I want to do something for myself that causes me damage, I can't do that can I?

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A. No.

Q. Okay. Would you agree with me as a general proposition that the Nikityuks trusted you?

A. Yes, they - they said that many times.

5 Q. And would you agree with me that the Nikityuks trusted your wife?

A. Yes of course.

Q. Would you agree with me that they relied upon you?

10 A. Yes of course.

Q. And they relied upon your wife?

A. Of course.

Q. In fact, they were dependent upon you both, weren't they?

15 A. Yes because they came here under sponsorship agreement and sponsorship agreement implies that there is some kind of dependency. It's kinda definition of the word.

Q. And would you agree with me, sir, that you too had a fiduciary obligation towards the Nikityuks?

20 A. I'm not actually well familiar with the word fiduciary - to be honest. So maybe, maybe not. Depends on the definition. If you give me the legal definition I might answer your question more carefully.

Q. Well - well let's not get into to law because
25 I appreciate you're not a lawyer and I'm sure that some of you would object and if I start asking you legal questions, so I'm trying to keep it to general issues. So the same questions I asked earlier on with respect to trust, reliance, et cetera...

A. Yes.

30 Q. ...you - you believe you owed those duties to the Nikityuks?

A. Yes of course.

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Q. Okay. And you'd also agree with me that you owed them contractual duties?

A. Yes and the other way around too, it was both ways.

5 Q. And you would agree also that your wife would owe the Nikityuks cont - cont - contractual obligations?

A. There were several contracts in this picture. In some of them, she did. In some of them, she didn't.

Q. And in the ones she didn't, they'd be?

10 A. Mine.

Q. Yours. Okay. So they've just - trying to bring some basic concepts here before we continue. So assuming for one second that - and I know you're going to deny anything happened, but assuming for one second that the Nikityuks were
15 abused, would you agree with me that that would be a breach of the sponsorship agreement?

A. See abuse clause is a part of sponsorship agreement. So I think abuse is nothing to do with sponsorship, actually per say - because there is instruction - direct
20 instruction in sponsorship agreement, what happens in case of abuse. And....

Q. No - I - I - I appreciate that, but I'm just asking you just to agree conceptually.

A. Conceptually, sir.

25 Q. Okay. So it would be a breach. And would you agree with me again conceptually, if the Nikityuks were abused, that would be a breach of your fiduciary obligations?

A. Again, I'm not sure what fiduciary obligation is, but probably - probably I agree.

30 Q. And again - and I'm not expecting you to agree, the underlying proposition - the assumption, but assuming the Nikityuks were financially abused, financially controlled,

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financially limited, that would be a breach of the sponsorship agreement?

A. There weren't financial control. Maybe interpreted too many ways. In good ways and bad ways.

5 Q. Well let's talk about the bad ways.

A. And....if - if you're talking about bad ways, then yes.

10 Q. And the - the same would apply to your support agreement with them. In other words, the separate agreement that you had for lifetime support.

A. You mean the loan agreement?

Q. I'm not calling it a loan agreement at the moment.

15 A. I don't - I don't have any support agreement with them.

Q. Okay. Well - I....

A. The loan agreement between family members.

20 Q. That - that's my term, sir. So you - you reached an agreement with them, so you say, to give them lifetime support.

A. Yes.

Q. And so if you didn't give them the lifetime support, that would be a breach of that agreement on your part - again, conceptually.

25 A. Depends who breached the support agreement in the first place. If they put me in position where I cannot obey my obligations on that support agreement, it's - it's a breach, but not from my side.

30 Q. Okay. But if you breached it from your side without them having done anything, you would agree?

A. Yes, of course.

Q. Okay.

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5 A. But if they breached it then it's - it's not my fault, right.

Q. Of course you're well aware that the underlying - or the open position of the Nikityuks is that you did breach all of those agreements, yet you appreciate that that's their case, that's their counterclaim.

A. Yes that's the counterclaim. I have a lot of doubts actually that it's actually Nikityuks position. I'm pretty sure that it's position of Mr. Bornmann.

10 Q. Well - changing topics slightly again, I'm just dealing some foundational issues because we've never had the opportunity of conversing before. So it's nice to get to know you.

A. Thank you.

15 Q. So it's - it's fair to say that both you and your wife are fluent in the English language.

A. More or less - yes.

Q. And - and if more or less, at least highly proficient?

20 A. Repeat please?

Q. So if - right when you said more or less...

A. Yes.

Q. ...with respect to fluency, so you - you're highly proficient in the English language.

25 A. Well English language is not my first language, you're aware of that.

Q. I'm sure it's not.

30 A. I'm - I'm much better in Russian than in English and - but, yes I believe that I understand at least 80 percent of conversations around me and I can speak more or less freely and usually I understand what people are talking about.

Q. Perfect. In fact, your English is much

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5 better than my Russian, sir.

A. Yeah, it's - it's normal.

Q. No, your English is better than my Russian.

A. I know - I know that's normal.

5 Q. So when you write letters in the English language, you're fairly certain they convey what you want to convey, correct?

10 A. Well more or less and I must admit that I usually have to go through every letter from top to bottom again and again, check spelling, check grammar using technical tools - but I always try to reach same status when I'm more or less sure that it's what I mean - yes.

Q. You said in evidence the other day that you like to keep lists, correct? But that's what you said, sir.

15 A. No - not really, no. I said that I like to keep records.

Q. Records - and I'm happy with records.

A. Okay. Lists, it's a little bit different things.

20 Q. And you would describe yourself as logical?

A. I'm physicist and I'm very proficient in mathematics. I must be - yes, sure.

Q. And you're detail oriented - you like details?

25 A. Yes.

Q. And you're ordered in your approach?

A. I'm sorry, what?

Q. Ordered. Now you're asking me to define something in the English language.

30 A. Maybe you could rephrase?

Q. Well you're - you're logical in your approach.

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A. Yes.

Q. And the records you keep, you're methodical about keeping them?

A. Yes.

5 Q. Especially the important ones?

A. Yes.

Q. And you keep copies of all important records?

10 A. At least recent ones. See they - they all expire at some point and at some point when I think that I don't probably need them anymore, I destroy them because, you know, they take a lot of space.

Q. And well what do you do when you destroy the paper ones? Do you scan them and back them up electronically?

15 A. Not every one of them, no. Only important ones.

Q. The important ones.

A. Most of the time. But not necessarily because usually I don't have time for that. I'm busy otherwise.

20 Q. And we - we saw photographs of your basement office.

A. We did?

Q. We did.

A. Okay.

25 Q. You - you showed a photograph of your basement office...

A. Sure.

Q. ...during your evidence. And we saw the rows of shelves with the various green binders with all of your records in.

30 A. Yes.

Q. And presumably you keep them all in order. They relate to each other. They're not haphazard?

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5 A. Most of those records I keep in basement, those are records which are received from outside world one way or another way like from banks, from insurance companies - it's documents. Some of them have electronic copies. Some electronic copies don't have hard copy - no, there are both of them, not necessarily duplicated.

10 Q. And you referenced earlier on, you produced in these proceedings, a copy of the - what you call the loan agreement.

A. Yes.

Q. In the English language.

A. Yes.

15 Q. And you testified that there was a written Russian translation of that, correct?

A. Yes.

Q. But somehow you never kept a copy. Why is that, sir?

20 A. Because loan agreement was designated in the first place just for CRA. CRA doesn't need the Russian translation. Only people who needed Russian translation were Nikityuks or the defendants in this action. And specifically for them, my wife had written that translation for them. So they completely understand what they were signing. We didn't need that Russian translation in record. I - I understand where
25 you're coming from, but usually contracts are made in two languages and - but we didn't do that in this case because basically the only party who needed that document was CRA.

Q. You haven't answered my question, sir.

A. What was your question, I'm sorry.

30 Q. Why haven't you kept a copy of that document?

A. Because it all happened at home and we didn't have a copy machine at that time and it - it wasn't necessary.

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Q. You didn't have a scanner?

A. No.

Q. You worked at - was it Rogers at that time?

A. Yes.

5

Q. And Rogers don't have scanners?

A. But when the loan agreement has been signed we were all at home. I wasn't at Rogers and I'm not supposed to be using company scanner for private matters, you know.

Q. You....

10

A. Maybe they have, maybe they don't - I don't know.

Q. You didn't think of keeping a copy with the Russian agreement just in case the Nikityuks ever wanted to look at it again?

15

A. Never came to my mind, you know, that Nikityuks may pull out something like this. And I didn't even think that we need that entire agreement actually with them in writing.

Q. I'm...

20

A. Actually never thought of that - no.

Q. ...I'm suggesting to you sir, that the whole reason this agreement hasn't been produced is because in Russian - because it never existed, sir. That's the truth, isn't it?

A. It's your opinion, it's not the truth.

25

Q. You testified early on this morning when your counsel re-examined you and you also testified yesterday about hundreds of emails with Alla and Valentin Nikityuk after the one that's been referred to as the offer.

30

A. After and before, but those were emails between my wife and her parents. I didn't correspond to Nikityuks by email. Maybe couple of times.

Q. Where - where are they? I haven't seen them

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produced.

A. Because they're irrelevant.

Q. How do you know they're irrelevant? You haven't produced them, you haven't disclosed them. This is the first time we've heard about hundreds of emails in this court. Why haven't you produced them?

A. We've produced all emails which were considered to be relevant. If you want to see another 200, I can produce them, it's not a problem.

Q. No, it's a bit late for that, sir. You should have produced them by now.

A. No, I shouldn't. They're irrelevant.

Q. So we're - we're already aware you have a Master's Degree in physics.

A. Yes. And post-graduated education of three years in [indiscernible].

Q. And you would describe yourself as very well educated, wouldn't you?

A. Yes.

Q. In fact you've say so in paragraph 33 of the statement of claim that was issued. You describe....

A. I did?

Q. Yes. You described yourself as well educated.

A. Sure.

Q. And your wife has a Master's Degree in mathematics?

A. Yes, she does.

Q. And you have a daughter who has a Master's in physics from the University of Toronto.

A. Yes. And some extra education on top of that too.

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Q. Yes. And your daughter did her undergrad in physics and mathematics.

A. Yes.

5 Q. Would you describe yourself as high flyers in the educational world?

A. I'm not sure what that means.

Q. You think you're a cut above other people?

A. Maybe.

10 Q. You think you're better educated than other people.

A. No, I think that I'm pretty average actually.

15 Q. No. But of course - but for this law suit and but for what you say is a breach on the part of the Nikityuks and the actions of the YMCA, you'd now be living in a palace. That's what you said.

A. Yes, if events took different road and if I wasn't involved in this specific legal action. At this point the family would have at least several millions in cash.

Q. And you'd be living in a palace?

20 A. Well you understand what I meant, right. So it's - it's not literal statement.

Q. Yeah.

25 A. But I wouldn't buy an actual palace, but maybe we - we - we would upgrade our house and maybe we - we would buy separate house for Nikityuks which they always - always dreamed about - probably - probably - maybe we change located to something like better on the lake or something like that - yeah. We - we - we would definitely live better - much better.

30 Q. And would - would it be correct to say that you and your wife both worked hard to gain your educations? You made sacrifices to go through your education?

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5 A. Well it was many years ago. First of all, it was fun...

Q. You're the first person...

A. ...and yes it was hard work.

5 Q. ...you're the first person to say that physics is fun.

A. No. You - you can talk about that with my daughter and her husband on Wednesday. They - they - they fun.

10 Q. But you - you - you worked long and hard to get where you are, correct?

A. Yes, of course.

Q. And you came to Canada in August 1996 as immigrants - landed immigrants.

15 A. No, we came to Canada in July - well exact date, I think is, July the 7th, 2003.

Q. Oh '96 is when you left Russia to go to...

A. Latvia.

Q. ...Latvia.

A. Yes. We spent seven years in Latvia.

20 Q. So you came in 2003. Did you speak English before you arrived in Canada?

A. Yes.

Q. And how - how was your level of proficiency in English when you arrived?

25 A. I passed yield's (ph) exam before coming to Canada.

Q. So you didn't have to go through any of the newcomer type of services to learn English as a Second Language because you already spoke it?

30 A. We tried actually, I believe. I'm not sure what was that kind of Settlement Services. First month here in Canada, we attended couple of times some classes at - in

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Toronto, but it was complete waste of time so I stopped right away.

Q. So - but - so then you did actually work and you worked constantly to, I'd assume to, improve your English language. It's - it's always a battle with a second language, isn't it?

A. What we did actually to improve our English skills, we watched a lot of T.V. series like Friends, like Everybody Loves Raymond, like Stargate, like a lot of that. And well we watched them several times so at some point our English becomes much better.

Q. And you - you would agree though that going to a country where you don't know the language, it's - it's a learning curve for anybody, isn't it?

A. Oh yeah, sure.

Q. And it would be a learning curve particularly for Nikityuks.

A. Yes, that's why we enrolled them in English classes in 2005. But my wife can testify about that much better.

Q. And you testified yesterday that Mr. Nikityuk could speak Basic English before he arrived in Canada.

A. I'm pretty sure he could because - again, he had English classes in school - in high school, then in military college and it's a must to understand Basic English if you, you know, like study something in military college. And then he has second - second high education as a professional engineer, I believe, it's something like electric mechanical institute and you must pass English exams over there like all of the time. He - he just to get all necessary credits, he had to learn English to - to have skills and translate in English newspapers to go through technical literature for all that stuff. He - he

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just - if - if he had that diploma, he must have Basic English.

Q. And - so on that, first of all you said you were pretty sure, so you don't actually know, do you?

A. Well it's - it's basic concept.

5 Q. No, but you said I'm pretty sure.

A. Yes, I said...

Q. That means....

A. ...pretty sure which means that I'm - well sure more or less.

10 Q. But you do not know, do you?

A. I know from my experience that every high education institution in Russia teach English to their students - every. And if - if you want to get a diploma from any high education institution in Russia, you must learn English - Basic English.

15 Q. How - how old is Mr. Nikityuk now?

A. Close to his eighties, I believe.

Q. Close to his eighties. So he would have been in high school in Russia in his teenage years?

20 A. Yes.

Q. So that's what about 60 - 60 years ago.

A. Okay.

Q. And he - and he would have been in the military 50 years ago?

25 A. My wife can better testify about that because every - everything I know about it, it's - it's hearsay from my wife.

Q. Okay. But you - you would agree with me that if he did learn English, it was a long time ago.

30 A. Sure. But if it's - it - it - it's like a bike, you know.

Q. Maybe for some, not for others.

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A. Sure.

Q. So reverting back to you, so you - you came to Canada and you've had a - a - a number of jobs.

A. Yes.

5 Q. And....

A. Not a big number, but yes.

Q. And you - you - you mentioned in your testimony about having created a page on LinkedIn yourself.

A. I - I'm sorry?

10 Q. You - you - you have a LinkedIn profile.

A. Yes.

Q. Yes. And that's the one where you said you have about 500 connections.

A. Yes.

15 Q. And on your LinkedIn profile, it lists your - your various jobs that you've detailed in these proceedings.

A. Yes, has every - everyone's LinkedIn profile does. It's the purpose of LinkedIn.

20 Q. So if I may, I just - Your Honour, this would be a new exhibit. It's been disclosed to my friend private. This is a - Mr. Danilov's LinkedIn page, if I could hand up a copy to Madame Registrar please and one to Mr. Danilov.

A. Yeah, I had a question about that before I answer any questions.

25 Q. Well, you're not really here to ask questions.

A. See it doesn't look like my original LinkedIn profile because I see here some language I don't understand. Is it Japanese or what is it?

30 Q. That I don't know, sir. That's how it came off on the printer. I'm not a computer wizard like you.

A. Yeah, my LinkedIn profile is pure English and

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I don't understand what - it - it - it actually looks like, I don't know...

Q. I - to me it....

A. ...maybe Persian, maybe Arabic - but implying that I'm connecting to Al Qaeda somehow, what....

Q. No, I'm not making...

A. Oh okay, good.

Q. ...I'm not gonna suggest that, sir.

A. Okay, good.

Q. I - I'm - I'm only interested in the - the basic information about your - your - your work history.

A. Okay. So I have no idea, just for the record, why this unknown to me language is in this printout, but I definitely can speak about English part.

Q. Yep.

MS. CHAPMAN: Okay. My only concern is that I'm not sure what my friend's going to refer to, but even date et cetera are also - and I believe it's Arabic. If you look at the bottom left hand side, it appears that LinkedIn has been set for some reason to the Arabic language rather than to English.

A. Yeah, AE means Arabic in [indiscernible] I believe. Yeah - now, that I'm looking at that. I'm not - I'm not sure why you downloaded my profile...

MS. CHAPMAN: So if what's being asked...

A. ...from Arabic [indiscernible]....

MS. CHAPMAN: ...is in English, I'm okay with that, but....

THE COURT: All right.

MR. MAE: And it's - it's only for the main information just - just so we have something to

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follow the dates through. Quite why it came up on LinkedIn like that when one does a Google search, I can't speak to. I'm not an internet wizard.

5 THE COURT: Listen you're not - you're not concerned with anything that's not [*indiscernible*] in English.

A. It's interesting because....

MR. MAE: That - that's correct, Your Honour.

10 THE COURT: And the - the purpose, if you're doing this is for?

MR. MAE: For - for - just the history of the jobs. I just want to make sure that I understand the time sequence of the various employment and that.

15 THE COURT: All right.

MR. MAE: Certainly, there is not going to be any suggestion whatsoever of any links to anything that....

20 THE COURT: You're just focusing on the job history...

MR. MAE: Absolutely, Your Honour.

THE COURT: ...and whether he can agree or disagree with the entries there?

25 MR. MAE: Absolutely. Q. So if - if we just go through the entries and they - they work backwards, don't they Mr. Danilov? So currently....

30 A. It - it appears to be so, yes. But see again, I'm having trouble actually understand those records because even month on this unknown to me language. All - all - all I can recognize here just years.

Q. Okay. Well let's - let's just look at the -

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let's look at the description.

A. Okay.

Q. You - you can fill in the dates hopefully.

A. Sure.

5 Q. So you - you're currently senior data architect by Prophet Consulting.

A. No, I'm currently senior database developer at Waterloo Research Incorporated. It's right on the top.

10 Q. Well I'm - I'm looking at the senior data architect.

A. No, look at the top.

Q. I'm looking here, sir. And it says....

A. No, currently I'm senior database developer at Waterloo Research.

15 Q. So - so that's your day job, correct?

A. Yes, it's full-time job.

Q. Okay. And you've had that job since?

A. Since - since November 2015. I'm not sure about exact date.

20 Q. Okay.

A. But it - one second - it's - it's right on the top. I'm - I'm not sure why you don't see it. It's right under my name.

25 Q. So you describe yourself as senior data architect with Web Profiting. That - that's your own company?

A. Web Profit Consulting is my corporation I registered when I was between jobs, between IBM and Waterloo Research just to be open for opportunities like contract opportunities if something comes up.

30 Q. And then before that, you were a senior IT specialist at IBM?

A. Yes.

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Q. And that would have been between 2009 and 2015?

A. Yes, September 2009 - September 9th, 2009 and last day in IBM was February 28th, 2015.

5 Q. And then before that, sir, you were at Rogers as a network management analyst from 2007 to 2009?

A. Correct.

Q. And then before that, you were a senior data and network architect at Telx, T-E-L-X, Inc.

10 A. Telx Incorporated, it's the same company as Compass Incorporated just they had different names....

Q. Oh so that was - that was Compass?

A. It was Compass, they had different names for retail and for wholesale.

15 Q. And then, before that - sorry that was 2003 to 2007.

A. Yes...

Q. And then....

A. ...right after immigration 'till Rogers.

20 Q. And so with each one of these jobs, is it fair to say that each job you've had is better than the previous job?

A. I wouldn't say so. There were advantages and disadvantages. They all are more or less equivalent. Better
25 yes because salary was increasing.

Q. Yes. And that was - so - so you work hard and every job you took, you increased your salary.

A. Yes.

30 Q. And you worked hard to have gone forward and make more money.

A. Yes.

Q. Presumably you described yourself as an

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ambitious person.

A. No.

Q. You're not ambitious?

A. No, not at all.

5 MR. MAE: Your Honour, I'm just looking at the time. I'm going to go into a new area there. I'm wondering if it's time for the break?

10 THE COURT: All right. Before we lose sight of that, perhaps we could make this last exhibit an exhibit for the limited purpose that you introduced it. And then we'll take a break for 15 minutes.

EXHIBIT NUMBER 8: LinkedIn profile of Pavel Danilov - Produced and Marked.

15 MR. MAE: With respect to that limited purpose, Your Honour, just - just the - maybe I'll ask one other question then while we're - we're on it - although we touched upon it.

Q. But on the front page, it says you have plus 500 - in the top left hand corner, does that mean plus 500 connections?

20 A. Yes, it's more than 500 and most of them are gained during the period when I was between jobs because my recruiters for I knew before, they didn't speak to me so I had to build up my new network. I registered LinkedIn profile, paid for it and started inviting recruiters. So pretty much most of
25 recruiters who registered on LinkedIn have a [sic] open profile and once you invite recruiter it gets connected automatically. That's why there are so many of them. Actually, valuable maybe one or two.

30 Q. Just one more question then, Your Honour. You also have other social media with connections on them, friends on Facebook.

A. Facebook I have, yes.

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Q. And how many friends do you have on Facebook?

A. Twenty.

MR. MAE: Thank you, Your Honour.

THE COURT: All right. We'll come back in 15 minutes.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Yes, Mr. Danilov, if you return to the witness box.

THE COURT: Yes, Mr. Mae.

MR. MAE: Q. Thank you, Your Honour. Mr. Danilov, how would you describe your wife's relationship with Nikityuks before they came to Canada?

A. Dedicated.

Q. Dedicated. And what about your relationship with the Nikityuks? How would you describe it?

A. Very good.

Q. Very good. And as we understood from your evidence, your parents passed away while you were in university?

A. Yes, I was a student - second grade. My father passed away when I was in second grade. My mother survived him for five or six years - oh I'm sorry, by the way, I would like to correct my answer about number of Facebook friends. In the - during the break I just looked it up, it turns out to be 54.

Q. Well thank - thank you for that. And when you immigrated to Canada, would you - how - how would you described your wife's - your relationship with the Nikityuks during that period?

A. Perfect.

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Q. Would you say - or did she say that she missed her mother?

A. Yes, a lot and she did a lot of things just to keep them up and in good shape.

5 Q. And did she become sad about missing her mother?

A. Yes, sometimes.

10 Q. And would it be fair to say the phrase, absence makes the heart grow fonder - have you heard that phrase before?

A. No, I didn't hear that phrase before.

15 Q. You - you haven't heard that one - about that. That's just a common English phrase. The longer you're away from somebody, the more fond of them you become. You - you miss them.

A. Well yes - sure.

Q. And your wife missed her parents?

A. Yes.

20 Q. Now you - you said a moment ago that your relationship with the Nikityuks was a - a - a positive one, but isn't it fair to say that your relationship with Valentin was somewhat strained - your personal relationship?

25 A. No, it was normal relationship. You know she's [sic] stepfather of my wife. She's - well he - I - I said she, right.

Q. You did say she, yeah.

30 A. He - he - he - he - I do that from time to time. And basically, see I would say that - no it wasn't strained, it was normal. Completely normal. He never complained about me, I never complained to anybody about him and we kept normal relationship. He - he - he's not actually a relative [indiscernible], he - he's just a family member. And

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well - for...

Q. Well....

A. ...for - for - for - for this position in the family, I think that it was very, very normal to have this kind of relationship with him.

Q. Would it surprise you that Mr. Nikityuk described his relationship with you before he came to Canada as being strained?

A. Yeah, it'd really surprise me. Fact it was big news for me.

Q. That was big news for you?

A. Yes.

Q. So you would say that your relationship with him was not strained?

A. Yes.

Q. Isn't it the case - the - the reason - or one of the reasons why the Nikityuks wanted to live separately when they were coming to Canada always because of that - be - because of a strained relationship?

A. They never - well - gave me any notice in any form about that strained relationship, so I - I - I cannot tell about relationship. And that statement that they wanted to live separately is actually questionable because they changed their mind many times.

Q. Sir, when they were coming to Canada, you had no intention of spending any of your money on Valentin.

A. No, that is not true.

Q. That is not true?

A. Yes, that is not true. And the email you are going to reference to was created as a kinda - conversation starter only without prejudice or purpose with Mr. Bornmann after everything they're talking about here happened. And when

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it happened in October 2011, I changed my opinion about Valentin Nikityuk dramatically.

Q. But in that letter, you wrote - and we - we can dig out the letter and I can show it to you, but I'm sure
5 you can remember the words, "I never intended to spend any money on Valentin and I never did." And "I never did". That was your intention because your relationship was strained.

A. No. It was - well - about that.

Q. It wasn't about that. So...

A. Yeah.

Q. ...you're bringing them to the country, you're sponsoring them and you're not - you never had any intention of spending your own money on them.

A. Well that intention to bring them to the
15 country was originally coming from my wife, Svetlana. And my concern at that point was exactly what you are talking about like, where am I supposed to get money for that. And I was assured that it's not an issue by Alla Nikityuk. So that's what I'm talking about.

Q. But you've also testified that outside of the
20 sponsorship agreement which was for a 10 year period, that the letter of support would be for - for their lifetime.

A. Could you please repeat your question
'cause....

Q. Yes. You - you've testified...

A. Yes.

Q. ...that in addition to the 10 year obligation
under the sponsorship agreement that you saw it more than that, you saw it, I think it was, a lifetime obligation - lifetime.

A. Yes. And well I'm still standing on that -
30 yeah.

Q. But you didn't.

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5 A. If - if you want me to comment something about letter I wrote to Mr. Bornmann, included - well there were many letters actually. He - he never responded.

Q. Well sir....

5 A. And maybe I wrote something emotional over there. I can admit that if you want.

Q. Okay. So - so you are an emotional person, are you?

A. Yes.

10 Q. You have the same range of emotions as everybody else...

A. Who isn't?

Q. ...but hap - happiness?

A. Who isn't?

15 Q. Sadness?

A. We all have emotions. Sure.

Q. Anger?

A. Yes. Sometimes.

20 Q. It's a little bit more than sometimes, isn't it, Mr. Danilov?

A. No. No.

25 Q. We'll come onto that. So the decision's made for the Nikityuks to come to Canada. Would you say that your wife was excited about the prospect of her mother coming to Canada?

A. What timeframe you're talking about?

Q. Before they came to Canada.

30 A. Well there were actually two decisions to be made - actually, even more. First decision, is very old decision, decision to immigrate. It comes to back to 2004. Another decision, actually when the opportunity to immigrate, I need Visa and a passport. It's not a decision. To go or not to

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5 go and who actually goes because there were several opportunities there. Alla could go alone, no one could go or they both could go. So basically what - what timeframe are you talking about. And that decision was supposed to be made in the beginning of 2008.

Q. Well, thank you for that long explanation, but it actually wasn't an answer to my question.

A. Yes.

Q. So I'll ask - I'll ask it again.

10 A. Yes.

Q. Before...

A. Mm-hmm.

Q. ...the Nikityuks arrived in Canada...

A. Mm-hmm.

15 Q. ...is it fair to say or correct to say that your wife was happy or excited about the prospect of being reunited with her mother?

A. Yes, we both were.

20 Q. You both were. And they spent over a period of time - a long time on the telephone, talking about plans.

A. Yes, every day - Svetlana with Alla, actually.

Q. And you got annoyed about that, though didn't you? You found it annoying.

25 A. At some point when - well see - I - I - I got annoyed with all those very long overseas long distance conversations about the same thing again and again like where are we going to live in Canada, like - what - how much life was Canada - is in Canada. What we actually did and you know, all -
30 all - all this stuff. Old people get concerned about their wellbeing and they kept asking Svetlana about it again and - Svetlana will better testify about it.

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Q. But - but you got annoyed about old people, as you refer to them, being concerned about a new life in a new country, halfway around the world. You got annoyed?

A. No. No. No.

Q. You - you got annoyed.

A. It's not like that.

Q. You got annoyed about the calls.

A. Yeah, about money spent on those calls.

Q. Well - no it wasn't that. Sir, let's take you to the transcript of your evidence in your examine for discovery, all of the - 9th of April, 2014. Sir, you made a hand signal, sir. Microphones don't pick up hand signals.

A. Yeah, I'm just ready.

Q. Do you have a copy for the witness of the transcript?

THE COURT: The registrar has a copy to give to him now, Mr. Mae.

MR. MAE: Oh - I'm - I'm obliged. Q. I want you to turn to page 109 of your transcript.

A. One hundred and nine?

Q. One hundred and nine. So we're going to start at line number 2, sir.

A. Mm-hmm.

Q. And this is your evidence, this is you speaking. "The main reason for that is" and I'm assuming there is a typo there, "is was because countless telephone conversations every day. Svetlana was discussing all this stuff with Alla again and again and again. And Alla kept asking her like what can they afford and how much is that and how much is that and is that enough money, \$200,000 to live in Canada? And basically it was the decision point for them I guess. Because they were going to sell their property - family property

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actually in Russia, and well I was see to those countless conversations. It was very annoying every day, like one hour - one hour - half on the phone long distance, overseas. I'd send them email like look at that, don't speak about that anymore."

5 That's what you said.

A. That's exactly what I said just minute ago.

Q. You were annoyed.

A. Yes because overseas telephone conversations they cost a lot.

10 Q. It's no question you're not really a patient person are you, sir?

A. Oh I am.

Q. You are a patient person?

A. Yeah.

15 Q. That's not what the Nikityuks say about you, sir.

A. I know.

20 Q. Now when the - when you were thinking of the Nikityuks coming to Canada, is it fair to say that you understood that due to their ages and lack of knowledge of English, that they would not be able to work or support themselves independently?

A. Yes, of course. We never actually talked about them working.

25 Q. And the idea of them coming to Canada, was risky to you. There - there was a risk to you in - in putting your name to the sponsorship agreement, correct?

A. Back in 2004, yes very much.

30 Q. Well the - the risk is still today in 2016 in the sense that you have an obligation that is to be met. That's a risk isn't it? An obligation is a risk.

A. It's not a risk anymore. I already have the

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obligation.

Q. And when they came to Canada or before they came to Canada, you really had no idea as to what the lifetime support would cost.

5 A. I had an idea because we already were living in Canada, but I understood, of course, that there is some significant time difference between the moment I co-signed the sponsorship agreement and Nikityuks actually arrived to Canada. And of course, I understood that during those several, probably
10 years, some things may change. Like rent might go up, food cost may go up - yes, but I had an idea because we already were living in Canada.

Q. And in terms of the other variables. Let's look at some of the others. You had no idea how long the
15 Nikityuks would live.

A. Yeah, well I had an idea of course - but yes, sure I can [indiscernible].

Q. And you had no idea as to future cost of living increases? No - no - nobody can predict the future with
20 finance, couldn't they sir?

A. Some people can, but they all are reach away.

Q. And when you're having the discussions with them about how much they were bringing over, you - you didn't have an exact amount did you?

25 A. No, not at all. And basically well - I could imagine how much the family property would cost at that point and I had of course some number in mind. But not exactly - not in 2004 - no.

Q. And well let - let's projected sir to 2007
30 when things were starting to move and shake a little bit, immigration approvals had started, all the steps have started to come in.

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5 A. There were no [sic] any steps in 2007 except one, basically a step, it's the decision of Immigration Canada in the end of the year which was I think November or December, I'm not sure.

Q. Well - let - let's go through your understanding of the immigration process. You've been through it yourself to come to Canada.

A. Yes, but it's different process. I'm professional immigrant, they - they are sponsorship.

10 Q. Yes. But you - you submit the application to the high commission.

A. Yes.

Q. And in this case the Nikityuks submitted theirs to the London office.

15 A. No we did that.

Q. You did yours in London.

A. We did in London and we submitted Nikityuks application here in Canada on their behalf.

20 Q. And so half of that process is the security clearances...

A. Yes.

Q. ...the family connection clearances...

A. Yes.

25 Q. ...the review of the support of the sponsorship agreement...

A. Yes.

Q. ...and then - then into the medical.

A. Yes it's the last step, I believe. My wife knows better.

30 Q. And - well let's just talk about what you know and if you don't know, you can stop me. But a letter would have reached the Nikityuks from the high commission saying you

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have to go for a medical with an approved medical practitioner.

A. Yes...

Q. Yes.

A. ...and it's supposed to be like very much
5 licence grade - that professional and they have at least
registered all over the world, that's what I remember.

Q. And at that time - so you're saying that's
the end of 2007?

A. Mm-hmm.

10 Q. So you still really have - number one, no
idea about how they gonna get - come into Canada, correct?

A. Yes.

Q. But if they come into Canada, you still have
no idea exactly how much they're bringing.

15 A. At that point I already have some idea
because - well we were watching the prices of our real estate in
Saint Petersburg - but - well in 2007, not - not very accurate.

20 Q. And again, you have no idea as to really what
your exposure was to them financially because you didn't know
what they were bringing, you didn't know how long they would
need your support because lifetime is the key, not the 10 years,
correct?

A. Yeah, you keep putting these words in my
mouth that I had no idea. Idea I had.

25 Q. Well we argue it was a guess, wasn't it? It
was speculation.

A. Not really.

Q. No.

A. It - it was an informed guess.

30 Q. An informed guess, okay. So you knew at that
moment how much you were earning?

A. Repeat please?

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5 Q. At that point in time, you knew how much you were earning. That - that's something that you knew.

A. You mean my salary?

Q. Yes, your salary.

A. Yes, of course we knew.

Q. So that you knew - sir, that's the only thing that you knew...

A. Yes.

Q. ...was how much you were earning.

A. Yes, that I knew actually.

Q. And you have no guarantee of your employment continuing.

A. Well it was full time employment. Very stable, I would say and even when in 2009 with this acquisition thing happened I kept my salary when I started to work for IBM and nobody actually asked us - we just became IBMers. And even when all this restricting in IBM happened in 2015, I got a package. Right now I think that I could get better if I go to the lawyer, but well....It - it was decent package.

Q. But....

A. Well see I'm....

Q. But that's the only - the - the only thing you knew for certain was how much you're earning at that point in time.

A. Yes.

Q. And - and anything else was speculative, hypothetical and based on variables, correct?

A. Yes.

Q. Okay.

A. Sure.

Q. And at that time, your wife Svetlana wasn't working?

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A. She - she was self-employed with our - well at - at that time you mean end of 2007?

Q. Correct.

A. Yes. In - in - in - in the summer 2007 we
5 actually came up with this business idea how we could support Nikityuks if they bring at least something and transfer that into family business to Svetlana. And well, we didn't know the exact amount of course, but we actually already had some kind of business prototype working.

10 Q. But as I understand it, during that year and subsequent years, Svetlana's earnings were fairly minimal, weren't they?

A. Yes.

Q. About - in the region of about \$3,000.

A. Yes - see we were investing in our business
15 and we were hoping that it will grow. But yes, she - Svetlana was like a subcontractor for my Web Prophet - sole proprietorship. At that point it wasn't corporation. It was just me and Svetlana was doing a lot of things like data
20 analysis, like website development, database cleanup things - pretty much all like *[indiscernible]*....

Q. So - so the other thing Svetlana had at that
time, 2007 - 2000 - yeah 2007, was that income that you
affiliated to her from your business or was she earning it from
25 actually working for other people?

A. I was paying her salary, but we have some
business income. Not consistent, but from time to time, very
significant, from time to time nothing, but it was some - some
cash flow from that.

30 Q. But essentially, you were the sole breadwinner.

A. Say again.

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5 Q. You - you - you were the primary source of income for your family.

A. Yes.

Q. Yes. And so you're supporting yourself...

A. Yes.

Q. ...you're supporting your wife...

A. Yes.

Q. ...and at that time, Anastasia was in University of Toronto.

10 A. Anastasia was supporting herself - well she got OSAP.

Q. She - she got some.

A. OSAP.

Q. OSAP.

15 A. So I'm sure you paid it back far ago and I think it happened during her second year in university and then she kept doing that on her own and she was working all the time, so she was independent.

20 Q. And - but you were financially supporting her as well for her volleyball activities around the world, weren't you?

A. No, it was completely - she was completely on her own in that. There were...

Q. She wasn't made...

25 A. ...very serious competitions on - on the level playing game for Team Canada actually and at that level if you participate in some - some kind of tournament, they'll pay your fee and if you win something it's your money. So she was on her own with that.

30 Q. But I - I understand that you were supporting her as well in that endeavour.

A. Morally.

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Q. Morally.

A. Yeah.

Q. Interesting. So let's just go back to the agreement again just so I understand it. You say that the agreement - the intent was that you would be giving the Nikityuks lifetime support when they get to Canada - 'till their dying breath, you're supporting them.

A. Yes. It's one part of the agreement. Another part of the agreement, but before them coming to Canada, they transfer all family assets to Svetlana.

Q. And part of their lifetime support sir, is to - it was completely risk free to them.

A. All support was more or less risk free for them because I accepted all those risks and even when - in August 2008 that market crash happened, Nikityuks had no idea about that 'till - I don't know, I think 'till now because when I even tell them about that they don't believe.

Q. Well not believing you is one thing and hearing that information from back in 2009 as the reason that you've moved into Rankin Way, another thing sir, isn't it?

A. It wasn't the reason. Moving us to Rankin Way was discussed - it wasn't even discussed, actually - there was nothing to discuss. It was our primary residence. We actually intended to sell that house in 2008 and the reason why we permitted Nikityuks go live in that house during 2008 'till June 1st, 2009 alone was very simple because our daughter was living with us in apartment in Etobicoke and well, she was paying her share of rent over there and well we simply were waiting until she finds her own place which happened in May 2009 and we immediately moved to Innisfil. It always was the plan.

Q. So you're - you're seriously suggesting that you lost almost a quarter of a million dollars and you never

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told the Nikityuks about it at the time?

A. Oh we did, they just didn't believe.

Q. Oh so you did tell them?

A. Yes, sure.

Q. Oh, I see.

A. They just didn't believe and we didn't insist. They still don't believe. I even printed statements for them and these charts and stuff and explain everything - they didn't care - they never cared about any financial issues.

Q. And when you told them that was the reason why you all had to club in and move in together to save expenses.

A. Well move in together of course saved expenses, but it - saving expenses it wasn't the reason it was consequence. Living together was always the plan.

Q. So let's go back then to the - the risk free element of your agreement with the Nikityuks. So if the money runs out, it's your risk.

A. Yes.

Q. Okay. And you really have no idea as to how much support they would need?

A. You - again, saying the same words...

Q. I - I am.

A. ...I had no idea was how I did.

Q. And there was never an agreement was there as to how the support would be calculated?

A. It's very easy, you just sum up monthly bills for basic expenses. Anybody can do that, even people who know only basics of mathematics like grade 12.

Q. And do you ever have a discussion with the Nikityuks as to how much they would be receiving?

A. Receiving what?

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Q. From - in - in terms of the support, the financial amount of the level of support they were getting.

A. I can provide them with support in any form, it doesn't mean cash. And pretty much everything which I was going to provide for them is listed in that email they keep calling offer, but it's just calculation. And if they could point me at anything in that email they didn't receive from me, that would be interesting actually - but anything.

Q. So the money the Nikityuks sent in with Canada, I've heard you refer to it in your testimony as a gift.

A. Yeah, turns out to be gift.

Q. Please let me finish my question.

A. Sure.

Q. You've referred to it as a gift or present.

A. Yes.

Q. You've also referred to it as a loan.

A. Yes.

Q. And also you've referred to it as an investment in the family business or in - into actual property.

A. Yes.

Q. Yeah. So you keep re-categorizing this money for different purposes, don't you?

A. So what.

Q. So what?

A. Yes.

Q. Well it's very important, sir.

A. What is the question?

Q. They're all different things aren't they?

A. No, it's all the same.

Q. Well a gift, a loan and investment are the same thing?

A. Yes.

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Q. That's nonsense.

A. The thing is that Nikityuks gifted that money to Svetlana. It was part of the agreement of 2004 and after that, at some point in 2009, we were trying to maximize our
5 income of Nikityuks or income of entire family because back then we were one, big, four people family and well one way of doing that was optimizing taxes and we got advice from CRA how to do that and at that point, that loan agreement comes to picture. That - that purpose of that loan agreement and calling that gift
10 as a loan was very simple, to make all support payments I pay to Nikityuks, they investment interest which is tax deductible for me and puts me in the - in lowest tax bracket, that's it.

Q. So you re-categorize something in order to save yourself some money. That - that's the long and short of
15 it, isn't it?

A. It doesn't....

Q. That's the long and short of it.

A. There is a relationship here between Nikityuks and Svetlana, it's one thing they gifted her that
20 money to Svetlana. And another thing here is my relationship with Nikityuks - my and with Nikityuks. It's different there.

Q. Thank you for the explanation, but let's go back to the fundamentals. You turn the money into one thing and it has certain tax consequences. You turn it into something
25 else it has other tax consequences, correct? Yes or no.

A. No.

Q. Okay. Let's - let's go through this then. So if it's a gift, tax consequence, yes or no?

A. If it's a gift I don't believe that I pay any
30 tax on that gift on the principal I mean - because it's a gift.

Q. And....

A. If that gift becomes a loan and investment,

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well a loan for investment purpose between family members, there is another thing.

Q. I....

A. Was supposed to be a taxable difference, no.
5 Loan for investment purpose, it's monthly payments not principal.

Q. How can a gift then become a loan?

A. You - you know that. We just said...

Q. I don't...

A. ...we just signed...
10

Q. I don't know that, sir.

A. ...a loan agreement.

Q. I don't know that. You - you re-categorized it as a loan, didn't you?
15

A. Okay. I did.

Q. And you say you did it on the advice of the Canada Revenue Agency.

A. Yes. The question was....

Q. Just - just...

A. Svetlana was....
20

Q. ...a yes or no.

A. Svetlana was talking to CRA so basically you already mentioned that was hearsay, so....

Q. And so you re-categorized something in order to make it more tax advantageous to reduce your taxes.
25

A. Yes.

Q. Okay. So how then does the loan suddenly become an investment in a family business? That's a whole differently ball of wax.

A. There is a loan between family members. Nikityuks are lenders, I am borrower and I invest that borrowed money into my family business, that's how it becomes investment
30

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into family business. And if you read the loan agreement, you can see that I can invest that money on my own discretion. And my discretion was to investment into family business.

5 Q. Sir - sir, I've got the loan agreement, you drafted it. It carries no weight with me. You said that you were audited by Canada Revenue Agency and you sent them a copy of the loan agreement?

A. Yes.

Q. And...

10 A. With a lot of other documents supporting it.

Q. ...and you drew attention in your chief - if I could go to Exhibit - Exhibit 1(A), Tab 32, actually let's go to the Tab - Tab 31 first. So Tab 31, that's a letter from you - to you from Canada Revenue Agency, April 2nd, 2009.

15 A. Yes.

Q. And it requests from you itemized expenses claimed on line 221 of your return and for investment counsel, accounting fees and then we get down to the third part, the interest paid on the loan used for investment purposes. Provide
20 a statement from the lender which includes the following details: the date the loan was granted, the amount of the loan, total amount of interest you paid during the - that - that's what you're referring to as the audit?

25 A. Yes. It's - they asked for those documents for all year to be provided.

Q. And the loan agreement which we see at Tab 27, has an amount of the loan in it, all \$263,586 Canadian.

A. Yes.

30 Q. So you sent to Revenue Canada the amount that you had borrowed from the Nikityuks was \$263,000 correct?

A. Yes.

Q. That wasn't true though was it?

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A. It was at that point.

Q. It was at that point. I thought you said that \$50,000 of that money was Svetlana's share in family property?

5 A. Yes.

Q. Yes you did, didn't you?

A. And we make that - make that withdrawal from their principal of the loan. I can say you when.

10 Q. Well this is sounding a little bit like tax fraud to me, sir.

A. I'm sorry?

Q. It's sounding a little bit like tax fraud to me.

A. I don't understand.

15 Q. Well you - you tell Revenue Canada that you borrowed \$263,000 which includes \$50,000 which you're now saying you did not borrow.

A. No way, I'm not saying that.

20 Q. That's exactly what you're saying, sir. That's exactly what you're saying.

A. No everybody understood that in that amount of money there is Svetlana's shares and it's - it was up to me and my wife actually went to withdraw that share from the loan - the principal of the loan.

25 Q. Did - did you ever tell Revenue Canada about that?

A. They requested for the statement for the first year and it's in the statement. Yes we....

30 Q. It show - it shows a withdrawal of the capital, but the loan is between you and the - on the one side the Danilov's and the Nikityuks on the other side. The loan agreement says that they loaned you \$263,000 when they did not

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according to you now. Where am I going wrong with this, sir?
Why am I not understanding?

A. I am not sure what you're not understanding.

Q. I think you very well know what I'm not
5 understanding. Your story does not add up.

A. That's your opinion.

Q. So if we're to believe you, that \$50,000 was
your wife's return on the property. Then that's what you're
trying to tell us, isn't it? Fifty thousand dollars was your
10 wife's share of the apartment in Russia.

A. Yes.

Q. She never disclosed that to Canada Revenue.

A. She didn't have to.

Q. Capital gains, have you heard of that sir?
15 You've seem to heard of everything else within the tax rules.

A. It's maybe capital gain on some property
abroad, but as far as I know, I have to disclose that only even
I have property which costs more than \$100,000.

Q. The fact of the matter is, if we're to
20 believe you, your wife's taxable gain on her share in the
property in Russia according to you was number one, not
disclosed to Revenue Canada, correct - yes or no?

A. I didn't have to disclose that.

Q. You didn't have to.

A. I didn't have to because it's less than
25 \$100,000.

Q. So you've been in Canada since 2003?

A. Yes.

Q. And you're aware that Canadians are taxable
30 on their worldwide income, correct?

A. Yes and I do all my taxes through software
which called TurboTax and every step when I do when I submit a

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tax return is controlled by that software. If I am doing something wrong there, it - it's [sic] immediately advises me.

Q. Oh.

A. And as far as I recall, I have to disclose
5 foreign property and foreign property - capital gain or whatever you called it, only that foreign property costs more than \$100,000.

Q. Did you ever make any disclosure to - or your wife make any disclosure to Revenue Canada about owning foreign
10 property?

A. We did all disclose - disclosures they asked us to do and we provided them with a big file of documents and they can ask us for anything else they want. But - see it's - it's - this all happened in 2008 and so far so good.

Q. So when you came into Canada, we see that you
15 brought in \$41,000 of your own cash.

A. Yes.

Q. Yes.

Q. And you don't pay tax on money that you bring
20 into the country, but....

A. I don't.

Q. No, you didn't did you?

A. No.

Q. Okay.

A. I don't have to.
25

Q. Because that's simply your capital.

A. Because it's - because it was taxable abroad and that tax is already paid.

Q. And in fact, when - when an immigrant comes
30 to Canada, the money they bring with them, as you just said because they've been taxed abroad, they start with a clean slate.

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A. Yes.

Q. Yes.

A. Exactly.

5 Q. And on the transfer slip that the Nikityuks completed that had the word present on it in Russian...

A. Mm-hmm.

Q. ...the reason the word present on there related to issues of money leaving Russia.

A. I don't know about that.

10 Q. Okay.

A. Is it - it is actually a one - one of the issues we would like to resolve during the Nikityuks examination 'cause I have no idea what tax they were going to save - like what they're talking about. I don't know anything about what
15 kind of tax and for what.

Q. Now the purpose of the Nikityuks coming to Canada was basically for a family reunion and access to the Canadian healthcare system.

A. Yeah it was the only reason.

20 Q. And we - we - we've heard some testimony about the health issues that Mr. and Mrs. Nikityuk - or certainly one of them had cancer - or did - did they both have cancer?

A. They both had it.

25 Q. And when somebody has cancer, mortality is - it's a concern, isn't it.

A. Yes, sure.

Q. And especially with an older relative that is halfway around the world.

30 A. Yes, sure.

Q. And your wife is the only daughter of Alla.

A. Yes.

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Q. And your wife is being treated of a child of Valentin since about the age of 13.

A. I believe so, yes.

Q. And it's fair to say that your wife stood to benefit substantially if the Nikityuks were to pass away?

A. Yes. We have Wills signed by both Nikityuks and I believe they favour my wife.

Q. And if that's yes - well let's turn to them. They - they're at Tab 39 of the bundle in front of you, Exhibit 1(A) Your Honour.

A. Tab - I'm sorry?

Q. Tab 39. So at Tab 39, connecting at page 220 - this is the Last Will and Testament of Alla Valentin.

A. Appears to be so.

Q. And if we go to page 221 - well actually start at 220 first, paragraph 3(A) she leaves her estate to her husband. The bottom - bottom line, sir.

A. Page - I'm sorry, what page?

Q. Page 2-2-0, 220.

A. Two, two, zero - okay. Yes.

Q. "In the event of my husband Valentin Nikityuk survives me by a period of 30 days, to pay transfer and assign the residue of my estate to him for his use absolutely".

A. Yes.

Q. So first of all, Valentin - Valentin...

A. In favour of [indiscernible] - yes, I know.

Q. ...and then paragraph - the next paragraph we have alternates. And the alternate A) is that it goes to your wife, Svetlana.

A. Yes.

Q. And then B) if Svetlana doesn't survive 30 days, goes to you.

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A. It appears to be so. I didn't know that.

Q. And then if we go to Tab 40, which is the Last Will and Testament of Valentin Nikityuk.

A. Mm-hmm.

Q. Page 226.

A. Two, two, six.

Q. And we go to the bottom of that page, we see a mirror provision that he's leaving everything to Alla if she survived by 30 days.

A. Mm-hmm.

Q. And then on the next page 227, we have the same alternates, your wife and you.

A. Yes. It appears to be so.

Q. So you stood to gain substantially when they passed away, correct?

A. I don't know what you mean by substantially.

Q. Okay. Let's take out the word - let's not get into semantics. You stood to gain.

A. Yes.

Q. Okay. And during their lifetime, after their life in Canada, we've already established that your wife held Power of Attorney for them both.

A. Yes.

Q. And that - and those Power of Attorney, allowed her to access their money, deal with their banking, et cetera.

A. I would like to make small comment here. Maybe those questions should be addressed to my wife because I already know about those documents, actually never read them.

Q. You - you - you've never seen the Power of Attorney?

A. I saw them like lying on the table, but....

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Q. But you - you - you knew - okay, you knew they were Powers of Attorney?

A. Yes.

Q. Okay. And you know about Power of Attorney -
5 at that time you knew what Power of Attorney was? You - you - you knew Power of Attorney was an authorization to do things....

A. Yes, sure.

Q. Okay. So you knew therefore your wife was authorized to do the Nikityuks banking.

10 A. Yes.

Q. Okay.

A. And I know that she arranges to that Power of Attorney in many organizations and was using it actually - of course.

15 MR. MAE: Your Honour, I'm just about to go to another area which may take a bit of time. I'm wondering whether the lunch break should be taken now as this is a convenient pause?

20 THE COURT: Yes we can do that. We can adjourn now and come back at two o'clock.

MR. MAE: Thank you, Your Honour.

R E C E S S

25 U P O N R E S U M I N G :

THE COURT: Yes, Mr. Danilov, would you like to return to the witness box? Yes, Mr. Mae.

30 MR. MAE: Q. So Mr. Danilov, when the Nikityuks came to Canada, the plan was to live separately, that's the initial plan.

A. To live separately - yes they wanted their own apartment and we rented apartment in the same building very

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close, but - well technically it's separately.

Q. And when they moved into the property at Rankin Way, you described a situation of your assistance having to go up there on weekends to assist them, set up appliances -
5 you - you recall that?

A. Yes, sure - not just appliances. Appliances is one time thing, but....

Q. And then with the trades people.

A. Sorry?

10 Q. Dealing with the trades people, the contractors who were knocking on the door.

A. That too and - see those not on weekends mostly because those people came during working week. But the assistance in this manner was like mostly on the phone
15 explaining them what to do but sometimes on weekends too - yes.

Q. And you - you described - I believe your - your exact words were, "It was a nightmare".

A. Nightmare was a little bit bigger thing. Nightmare was the - the - we - we had to react very fast on many
20 occasionally [sic] and sudden things like, you know, something happens to Valentin and all of a sudden we have to jump from the bed at 1:00 a.m. and rush into Innisfil like 80 kilometres to the north and bring him to emergency room. This kind of stuff.

Q. And so dealing with specifically the issues
25 arising from the Nikityuks being unable to communicate for themselves, it's fairly annoying wasn't it?

A. No. I respect elderly people and understand their problems so does my wife and - well it wasn't annoying, it was hard.

30 Q. It was hard. Took a toll on you a bit, didn't it?

A. Say that?

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Q. It - it - it put additional pressure on you.

A. Yes, it was additional - sure.

Q. And you gave testimony about on the weekends specifically dealing with the appliances on your own time. You
5 - you used those words. You recall that?

A. I did, sure.

Q. Strange thing to say dealing with appliances on your own time in a house that you claim you own. Can - can -
can you explain that?

10 A. I'm not sure what to explain here. It is what it is.

Q. Well the - the two things are mutually exclusive.

A. No.

15 Q. You - you're saying it's your house.

A. I wouldn't say that and well if you think so, 'kay what can I say.

Q. Okay. Now the - the shared expenses in respect of the property after you all moved in together....

20 A. After when we lived all four in one house...

Q. Yes. Yes.

A. ...all the time - yes.

Q. So the shared expenses would have included the mortgage?

25 A. Yes.

Q. Property taxes?

A. Yes.

Q. Property insurance?

A. Yes.

30 Q. All of the usual utilities, hydro....

A. Yes.

Q. Did it have gas to the property as well?

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A. [Indiscernible] - yes.

Q. Yes. And water sewage?

A. Yes. And food and clothing.

Q. So everything down the middle?

5 A. Not everything, no. Vacations doesn't go there.

Q. Well I wouldn't call a vacation a household expense in that context.

10 A. There were other expenses on top of household expenses which we considered shared.

Q. And before you moved in together...

A. Yes.

15 Q. ...you were paying the mortgage and the outgoings on Rankin Way.

A. Yes.

Q. And you were also paying the rent and your outgoings on your property - on your - the apartment in Etobicoke.

A. Yes.

20 Q. Yes.

A. And it - it wasn't our properties, it's rented apartment and that - that expense wasn't shared.

Q. And as I recall, you all moved into Rankin Way on June the 1st, 2009.

25 A. Yes.

Q. So for the first half of the year you were basically maintaining two households - or one and a half if you were sharing the expenses of Rankin Way.

A. You mean before June.

30 Q. Before June - yes. The first half of the year.

A. Yes we were maintaining two households - yes.

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Q. And so you had two [indiscernible] of expenses basically?

A. Yes.

Q. Yeah. And then obviously for the second half, that's all pooled together and you're only dealing with expenses of Rankin Way.

A. Yes, it was a good saving.

Q. Now I understand that that year your gross earnings before tax were \$96,777, does that figure sound correct?

A. May need to look it up, I don't remember it. It was like many years ago.

Q. Well let's - let's look at your damages brief which is Exhibit 4, Tab 79 - Tab 79.

A. Okay.

Q. You - you have it at page 557?

A. Yes.

Q. And this is a document entitled "Tax Return Summaries of Pavel Danilov and Svetlana Danilova Filed and Corrected to Ten Percent of Nikityuks Interest Income". We're - we're looking at the same document?

A. Yes - yes we're looking at the same document, but see this is the hypothetical document.

Q. Well I'm thinking - well you're saying that your employment earning figures cited in that document are hypothetical?

A. No, employment is - is the same now.

Q. Okay. But that - that's - I took you to that because....

A. Ten percent is hypothetical because actual interest was...

Q. I'm - I'm not interested.

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A. ...bigger.

Q. Yeah. I'm not interested in the 10 percent. I'm interested just determining your employment income and you have - you actually say net employment earnings, but I believe
5 you mean gross - that's before tax - 96,7781 [sic]?

A. Net employment income....

Q. Net - net - net usually means after tax.

A. I think so, yes.

Q. Yeah. So you - you think you earned just
10 short of a hundred thousand after tax?

A. Yes.

Q. Well did you - do you have your tax filing to show this?

A. I think it was supposed to be somewhere - not
15 in this - on this tab because this tab has specific purpose to show the difference between a real filed tax returns and hypothetical tax returns if Nikityuks are - well, kept receiving same interest as they lived in the house after they left.

Q. Well sir, maybe you can help me with this
20 because I understand your pre-tax earnings before tax to be 96,000.

A. They were different years.

Q. Well I'm taking about 2009.

A. Well...

Q. If - if I'm wrong....
25

A. Net employment earnings should be correct and I - I said that there were some business earnings too, so it's my belief net employment here might include - I'm not sure actually. I need TurboTax - the - the actual assessment because
30 like those are just printouts from - from tax software - something.

Q. Well....

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5 A. But - well - I - I think that this isn't a correct number. My net employment earnings and why so high it's probably there was a big bonus - because at that time my salary was 86,000 a year...

Q. Yes.

A. ...in 2007.

Q. So 80 - so again 86,000 before tax.

A. Yes 86...

Q. Oh okay.

10 A. ...before tax, but there may be bonus on top of that and....

Q. How - how - how big a bonus?

A. Well sometimes up to 14 percent.

Q. Fourteen percent.

15 A. Sometimes.

Q. So that's about 15 grand - well less than 15 grand.

A. Yes.

20 Q. Okay. So that would have taken you up to about 96 then. So that - that's your gross income. That's the income that you received. You - you get your paycheque...

A. Yes.

Q. ...and on your paycheque there is an amount to you...

25 A. Yes.

Q. ...and on your pay slip it says this amount is going to the Government for a CPP, EI....

A. Yes - and I actually believe that we have my T4 somewhere in the file.

30 Q. Well that's what people are struggling to look - look for....

A. I think all T4s are in the file - all T4s.

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We - we just need to find them. I'm not sure.

Q. Okay we - we've located them. Thank you, Mr. Bornmann.

5

THE COURT: Counsel, we found yesterday Notice of Assessment at Tab 135, but the T4s may be somewhere else, I don't know.

MR. MAE: Yes. I - I think the T4s actually are in Exhibit 1(A) at Tab 23.

A. Okay.

10

MR. MAE: Q. And if I could direct you to Tab 23, page 147.

A. Yep.

Q. And that's your T4 for the year 2009?

A. It's one of them. There is another one.

15

Q. And there's another one on the next page.

A. Yes.

Q. So - so on the first page you have income of \$71,044.10.

A. Yes, that's Rogers income.

20

Q. And that - that's your gross income before tax?

A. Says employment income.

Q. Yes.

A. Okay.

25

Q. And then on the next page, you actually had employment income from...

A. IBM.

Q. ...IBM for 25....

A. IBM Canada Limited.

30

Q. For \$25,733.

A. Yes, that's what it says.

Q. So both of those appear - you're the

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mathematician, but they appear to be to equate to around
\$96,777.

A. I'm physicist.

Q. Sorry?

A. I am physicist.

Q. You're a physicist. Okay. But you're better
at math than me, sir.

A. Okay. But what - what you want me to do,
just add them up?

Q. But - but we're just going back to the
plaintiff, your 96,000 on your spreadsheet here...

A. Yes.

Q. ...that's your gross income, that's before
tax.

A. Is it?

Q. Okay. This is your figure, sir.

A. Yeah, okay. Those figures are calculated in
- in tax preparations software TurboTax, so if - if it's 96
there then it's 96.

Q. Okay.

A. Both T4s are accounted appropriately.

Q. So - but let's - let's look at this page here
- or 557, the...

A. Of what?

Q. ...5-5-7 of Tab 79, the one that you....

A. *[Indiscernible]*

Q. I didn't - I didn't realize that.

A. I'm sorry.

Q. I didn't realize it had left your possession.
It's the damages brief for this please.

A. So you want me to keep them both?

Q. Oh no, you can just go back to the damages

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brief. Thank you.

A. So it was Tab 70 - what?

Q. Tab 79, sir.

A. Tab 79.

5 Q. So you're on page 557?

A. Mm-hmm.

Q. And so just dealing with your column first, you've got income of - gross income of \$96,777.81.

10 A. It's - it's net - net employment earnings. It's not gross income. It's net employment earnings - that's what the line says.

Q. Well that's what the line says, but I'm telling you that that's your gross earnings.

A. Okay if you say so.

15 Q. Why - okay, but I....

THE COURT: I - I accepted it as gross because it's based on the T4s and you told me you said that...

MR. MAE: Thank - thank you, Your Honour.

20 THE COURT: ...who would net is - doesn't help us.

MR. MAE: Thank - thank you. Q. And you - you had some dividend interest of about \$973?

A. Yes.

25 Q. And you got net self-employment income minus 51,972.

A. Yes.

Q. And so you've got a gross income before tax of \$45,779.42 that year.

30 A. Yes.

Q. And then we see you have deductions. And over to the next page on page 558...

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A. Yes.

Q. ...you get down to your tax deducted 23,950 and you end up then with a tax refund calculation of 20 - 25,739.

5

A. Yes.

Q. Yeah.

10

A. But it's - when you started to talk about all those deductions, those are hypothetical because the - the - the real tax return which was filed it has more - had more deductions.

Q. Okay.

15

A. It wasn't 10 percent. Ten percent is hypothetical. But investment income I pay to Nikityuks was much more than 10 percent, so that deduction from investment it - it - it's bigger than in - in this specific *[indiscernible]* summary. There is a summary printed out from my TurboTax software specifically for the - this demonstration purpose.

Q. So I just want to go back and just to help me with some broad *[indiscernible]* numbers.

20

A. Mm-hmm.

Q. So taking into account your tax refund...

A. Yes.

Q. ...and the - the paycheques that you end up within your hand...

25

A. Mm-hmm.

Q. ...you - you - you end up with about 70 - \$70,000 of spending money. Is that about right? 'Cause if you've got a total net income of 45,779 - actually it's \$60,000 - it's more like \$60,000.

30

A. Okay.

Q. And I'm - I'm just trying to understand the - the finances. So that to me, if it's right about \$60,000,

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you would agree that would - divide that by 12, that's about 5,000 a month.

A. Yeah. I - I'm trying to understand what - what - what you're asking me.

5 Q. Well if you got \$60,000 over a 12 month period...

A. Yes, it's about 5,000 per month.

Q. ...5,000 a month - right. And....

10 A. You - you understand that tax return actually comes in one big lump sum.

Q. I do.

A. It's - it's not distributed over 12 months.

Q. I'm - I'm - I'm well aware of that. I'm just...

15 A. Yeah.

Q. ...doing - doing an annual calculation.

A. Okay.

20 Q. Out of this \$5,000 a month, you've got 1,500 groceries - 1,500 - you - you mentioned 1,500 in your evidence in-chief.

A. It's possible.

Q. Yep. And you've got the mortgage.

A. Yes.

Q. Yep. You got the taxes.

25 A. Yes.

Q. You got the lease payments on the vehicles.

A. Two vehicles.

Q. Two vehicles. And you're paying gasoline for two vehicles.

30 A. Yes.

Q. And you're paying insurance for two vehicles.

A. Yes.

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Q. Yeah. And you're paying household insurance for - for the build and for the contents.

A. Yes.

5 Q. And you're paying for your internet, your cable.

A. Yes.

Q. And - and pretty much every other expense.

A. Pretty much. Yes.

10 Q. And of course this was after the - the Nikityuks nest egg being lost here in the stock market.

A. Yes.

Q. Yes. So fair to say that money was a little bit tight?

A. Yes.

15 Q. And of course that's after you all move in together - before you moved in together, you weren't getting the - the income splitting tax breaks were you before - before you moved in together?

20 A. We have income split there too, but in different proportion.

Q. Different - but it increased when you all moved in together.

A. But it didn't increase. The money expenses are the same - I mean our household expenses are the same...

25 Q. The - the - the deduct....

A. ...but proportion is different.

Q. Yes. So you ended up a little bit better off financially all living together.

A. Yes, sure.

30 Q. Yeah. Okay.

A. Only you didn't have to go through all this process to - to get that statement from me. It's obvious.

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Q. So you all move into Rankin - the house at Rankin and the - before you extended the basement, what I see is that the square footage of the house is 7 - 1,787 square foot, does that....

5 A. This was before the basement....

Q. Before the basement.

A. Seventeen hundred something - yes.

Q. And it had three bedrooms?

10 A. One, two, three - yes. And a loft which can be converted to a fourth bedroom.

Q. I'm just talking about actual living space...

A. Yes.

Q. ...not to be confused.

A. Three bedrooms - yes.

15 Q. And there's no separate sort of outhouse or granny flat where somebody could live and lounge around?

A. No.

Q. No. And so you've shared a kitchen and laundry facilities?

20 A. Yes.

Q. And you've shared the dining room?

A. Yes.

Q. And....

A. Garage for two cars.

25 Q. Yeah. So you have four adults...

A. Mm-hmm.

Q. ...living in a relatively small house.

30 A. It's not small - for two adults, it's not small. There are three bedrooms, there are four of us, two sleeping together, two sleeping separately.

Q. Oh.

A. It's exactly fitting the picture.

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5 Q. And well one of the - the great - you - you described having four televisions, but did you have like one sort of, I would call it a lounge or T.V. room or....

A. Yes. It's - it's called great room.

5 Q. The great room.

A. Yes.

Q. And it's quite easy to get in each other's way, isn't it, in that type of environment?

A. Yes, sure.

10 Q. Yeah. And also look at it....

A. Maybe I should - well if you're meaning T.V., then we had our separate big T.V. in our bedroom. So if - if - if we had disagreements what to watch it wasn't a problem because we had four T.V.s actually at our house.

15 Q. But people living together though, you - you get in each other's way. As you said that you - you get at each other's feet from time to time.

A. No, never happened.

20 Q. Just a moment ago I said you get in each other's way.

A. No, you asked me hypothetically like it's easy, right? I said yes it's easy, but it never happened.

Q. Oh so you rethought a little bit. So you've got four grown adults...

25 A. Mm-hmm.

Q. ...living together in a relatively small space.

A. Mm-hmm.

Q. That's what you had.

30 A. Yes.

Q. And....

A. Relatively - depends on what you mean by

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relatively. See it's two floor house with three bedrooms, great room, garage for two cars and - and whatever - it's - it's - well I'm not sure like from you as a lawyer perspective, but - but for me as a normal person it's pretty big house.

5 Q. Well I wouldn't - I wouldn't call being a lawyer, but I think I'm normal as well. But the point is you have the - the watershed facilities and the only privacy space would be the bedrooms and the bathrooms. Weren't two separate great rooms. There wasn't a library or a different room for
10 somebody to go into. Either you're all in that room together or you were in your bedrooms.

A. That's why we finished bedroom.

Q. Yeah. So but I'm just dealing with the initial - initial stages.

15 A. Yes.

Q. Okay. And it would be fair to say that there would be family disagreements?

A. No.

Q. You're - you're saying there were no family
20 disagreements?

A. Not so ever 'till October 17, 2011.

Q. So you're saying that's the very first family argument.

A. No you said disagreements before.

25 Q. Okay. They're disagreements, arguments - let's....

A. Every family have arguments occasionally. Right. It would be a perjury to say no, never.

30 Q. And so is it a - the distinction between disagreement and argument.

A. Yes.

Q. Okay. Well what....

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A. What - what - arguments when people are trying to convince each other to another perspective - another point of view. Disagreement is when they cannot reach that agreement.

5 Q. Well maybe it's a question of semantics to me. An argument is the same as a disagreement and you - you did have arguments with the Nikityuks from time to time, didn't you? You're shrugging your shoulders, sir. That - that microphone doesn't pick up.

10 A. I understand what you mean and I think I understand your question. I understand that there is no win answer in this question. If I say that there were no arguments then yeah, probably someone can come up with some situation which are - some people can call an argument. But if I say yes
15 there were arguments, you will say ah-ha see, there were arguments. So it's - it's - it's a really difficult question to answer and I don't know how to answer it.

20 Q. Well let me - let me just ask it with a simple yes or no because it is a question that can be answered with yes or no. Were there arguments, yes or no?

A. No.

Q. You had no arguments.

A. No.

25 Q. Okay. Then I'm putting to you that's not the case, sir. And we'll be hearing from the Nikityuks about - about that situation. Yana Skybin, you mentioned her name several times in your evidence in-chief.

A. Mm-hmm.

30 Q. Now correct me if I'm wrong, you've never spoken with Yana Skybin have you?

A. Personally, I never did.

Q. Okay. So it's logical then for all but not

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having spoken with her, you've never had an argument with her?

A. Yes, it's logical.

Q. Yes. And you've never had a disagreement with her to use the other word.

5 A. Yes.

Q. And....

A. If you're asking about me personally.

Q. I am asking about you personally.

A. I'm glad we are on the same page.

10 Q. And you've exchanged no harsh words with her because you've not spoken.

A. Yes.

Q. Now with respect to your wife, she enjoyed, I'll call it the unpleasant relationship with Yana Skybin, didn't she?

15 A. Yes.

Q. And in fact, we see from your productions - I'll be dealing with this more with your wife, but there's emails that you've produced where they're exchanging pleasantries, they're talking about doing certain things, going to church - you - you've seen those emails, haven't you?

20 A. Yes, sure.

Q. Yes. And your wife never - never had any arguments or disagreements with Yana Skybin?

25 A. You should ask my wife.

Q. Well I'm asking your knowledge.

A. To the best of my knowledge, no 'till really the last month.

Q. So you said. And so it'd be fair to say that Yana Skybin would have no reason to want to cause you or your wife any harm. Would you agree with that?

30 A. You might think so, yes. It was my

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impression 'till the very last month.

Q. The - the YMCA organization, you're - you are not personally a member of the YMCA are you?

A. No.

5 Q. And you had no direct dealings with the YMCA personally?

A. No.

10 Q. And the program in which the Nikityuks were involved, the English as a Second Language class, no fees were paid to the YMCA for that service, correct?

A. To YMCA, no.

15 Q. And we've heard that with those ESL course, the Nikityuks were enrolled basic - basically to learn English. Is that a fair categorization?

A. Yes, that was the purpose.

Q. And the purpose arose because your wife was finding it difficult in catering for all their needs?

A. Yes. My wife tried to solve their problem and had YMCA to do that.

20 Q. And in fact, the - the lack of English of the Nikityuks was a real burden for your wife?

A. Oh yeah.

Q. Sorry?

A. Oh yes.

25 Q. Oh yes. And the Nikityuks say that she was in desperate need for them to learn English.

A. Yes.

30 Q. And would it be fair to say that with that desperate need, your - your wife was under pressure - under strain?

A. She was dedicated and she is dedicated to her parents. I'm not sure about pressure, you should ask her.

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Q. Okay. So when the Nikityuks are placed into the hands of the YMCA for the courses, is it your position that the YMCA owed the Nikityuks a duty of care - a duty of responsibility?

5 A. The real client of YMCA was my wife actually. Nikityuks, they were simply follow her instructions and Yana Skybin instructions.

Q. Well - I'll ask the question again. I'm going to disagree in that your wife was a client of the YMCA.
10 When the Nikityuks were at the YMCA, can you accept that the YMCA owed them obligations?

A. Yes, of course.

Q. Okay. And the extent of those obligations, you have described them as fiduciary, wouldn't you?

15 A. Well - I'm saying again, I'm not sure all the meaning of this word and I don't under - don't know how to answer that question.

Q. Okay.

A. I - I - I don't know that word.

20 Q. Is there a copy of the Trial Record that could be provided to the witness? Do you have the copy of Trial Record? Your Honour, if I could - while copies being located, I'm looking at the statement of claim, in Tab 1, paragraph 15, page 7.

25 A. What tab - I'm sorry?

Q. So Tab - Tab 1.

A. Tab 1.

Q. Page 7.

A. Yes.

30 Q. Paragraph 15.

A. Yes.

Q. This is your statement of claim and this was

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a statement of claim drafted by your counsel on your behalf.

A. Okay.

Q. And it was drafted on your instructions - on instructions you provided to your counsel.

5 A. Okay.

Q. And it sets out your position.

A. Yes, okay. So...

Q. Okay. So....

A. ...if it means that I explained to my counsel
10 what I actually mean and my counsel decided to use this what?

Q. Well let's look at the whole sentence though. Let's - let's not just look at the - if I could just read - paragraph 2009, "Plaintiffs' alleged Alla and Valentin entered into a contractual fiduciary relationship with the defendant
15 YMCA for the purpose to integrate the parents into Canadian Society." That - that's - that's your position on the pleading.

A. Yes.

Q. Okay. And we've touched upon already
[indiscernible] the level of understanding of the word
20 fiduciary. You recall that?

A. Yes.

Q. Yes. Okay. And we spoke about the fiduciary obligations arising from the Power of Attorney.

A. Yes, I recall that.

Q. And I'm putting it to you sir that the
25 fiduciary obligations which you say the YMCA owed the Nikityuks equivalent to fiduciary obligations from you and your wife owed to the Nikityuks.

A. I don't think so. Pretty much the - the only
30 obligation I'm aware of, of YMCA before Nikityuks was teaching them English.

Q. But your own claim says that there's

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fiduciary relationship, that's what you claim. So who am I to disagree with that, sir?

A. Well English class supposed to be somehow related to that fiduciary word here.

5 Q. And when the Nikityuks go to the YMCA, sort of request help, the YMCA, under this fiduciary relationship, is obliged to assist them, correct?

A. Yes, sure.

10 Q. Thank you. And I indicated to you that earlier on that my general concept in the concept of the law, the obligation of a fiduciary is to put the beneficiaries' interest above his own. So in other words, the YMCA has to serve its client's interest.

A. If you say so.

15 Q. Okay. Well I do say so. So let's look at the - at the abilities of the Nikityuks as you categorize them - not as I categorize them. I'm stressing that. So they couldn't speak English.

A. That's what they say, yes.

20 Q. That's what they - no, that's you said.

A. Yeah.

Q. You - you say that they can't speak English.

A. Yes.

25 Q. And you've said that in many documents on many occasions and under oath that they can't speak English.

A. Yes.

Q. Okay. And they couldn't manage to grasp the simple concept of using online banking.

A. Yes.

30 Q. And in fact, with respect to the online banking, you eventually gave up because you deemed it hopeless.

A. I didn't say that.

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Q. You didn't say that? You absolutely certain?

A. Not absolutely, but I think I didn't say that.

5 Q. Can we somebody - sorry, could - could you show him the....

A. Well if - if you can say [indiscernible] I - I might admit that I might say....

Q. Oh you might admit that. Well let's not deal with....

10 A. 'Cause if we go to transcripts and this.

Q. Yeah let's not deal with might. Let's actually deal with it.

A. Okay.

15 Q. So if the witness could have the transcript of these - the examination. If you could turn to page 133. So you have that in front of you, sir?

A. Yes.

Q. And let's look at line 16 onwards. And the - the - this was your evidence under oath, sir.

20 A. Mm-hmm.

Q. "Well oh first well - sorry at first when we go - when Nikityuks came, we actually started to educate them on how the payment system work. How line banking is working, how this stuff should be organized and when the bill comes, what is the deadline and all this stuff - but well, after 10 or maybe 20 attempts to explain Valentin how to log onto the bank and how to work with statement, I gave up because it was hopeless."

A. Okay.

Q. So you did say hopeless.

30 A. I did.

Q. Okay. Then so - I don't want to misquote you in anyway, sir.

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A. Sure. I recall that now.

Q. And they couldn't grasp any financial matters?

5 A. I don't know, they probably could if they wanted, but they were never interested. So - yes because they were never interested they could not.

Q. And you gave up on that as well?

A. Yes.

Q. Okay.

10 A. I'm sorry we - we done with transcript?

Q. I - just leave it there for a moment, we may have to come back to it. And by the time they leave the house, they still can't speak English.

A. Yes.

15 Q. And so really they're no further ahead.

A. Really - what?

Q. They're no further ahead. They've not advanced. They've not progressed.

20 A. Yes it looks that way because I - I can explain that. At some point we requested actually the attendance books from YMCA and it turned out that they were transferred back and forth between first and two and back to first and back to two and to three and to two like three years in a row - it's levels. And well I - I cannot actually imagine
25 why it happened, but it looks like yeah they couldn't - they couldn't learn English. They didn't.

Q. And both you and your wife tried to teach them various things, how to use household appliances.

A. Yes.

30 Q. And they couldn't get to the - get to that either, could they?

A. No, they figured most of that stuff -

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appliances are easy, you know.

Q. And once you tried to teach them things online banking they lost the passwords.

A. Well I know that they had those passwords
5 written somewhere not to forget them. It was actually one password.

Q. But they lost it.

A. I don't know.

Q. You don't - you don't know or you don't
10 recall?

A. I don't know.

Q. Okay. Well let's - let's help refresh your memory. Let's go to page 135 of your transcript.

A. One - what page?

Q. One hundred and thirty-five, sir.
15

A. One thirty-five.

Q. And line 22.

A. Mm-hmm.

Q. Oh - actually this is - the part answered by
20 your wife, but I'll still put it to you. Your wife says, "I was teaching them on how to use the appliances"....

A. See it's that's - that's what I was suspecting of the very beginning that it's - this is actually transcript of my wife because - well....

Q. Oh you - you were there though when this
25 evidence was given.

A. Yes. Yes.

Q. Okay. And your wife says he recorded the passwords, then he lost the handwriting.

A. That is what she said, yes.
30

Q. So your wife would not be....

A. See you - you actually better ask my wife

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about this stuff because it was she who was teaching Valentin all the time - most of the time. I - I - I didn't spend much time on that.

5 Q. But were you aware that he lost the passwords at the time?

A. I don't recall that.

Q. Okay.

A. But - well - I - I know that they were losing all the passwords and pins all the time in general.

10 Q. And then whenever you tried to teach them, they never paid attention and didn't care.

A. Oh they tried to pay attention - honestly. But see in their age it's very difficult to keep up with all this and other stuff, we understand that.

15 Q. Okay. So that's what you're saying now.

A. Hmm?

Q. That's what you're saying now, correct?

A. Yes.

20 Q. Okay. No that's - let's go to page 137 of your transcript. You'll see at line 13, it says examine of Pavel Danilov.

A. Mm-hmm.

Q. So this - this examination switched between you and your wife; you were both in the room at the same time.

25 A. Yes.

Q. And let's go down to line 24.

A. Mm-hmm.

30 Q. And this is your evidence, sir. "No they were never interested in any financial stuff like maybe the first week or so, but then no - never. We're trying to teach them, but they never paid attention or didn't care."

A. Yes. You can interpret it to mean both ways,

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you know, because when you start to do something and at the - at the first moment it's interesting. They honestly are trying to pay attention, but then after like fifth or sixth attempt, it's - well they figure how bad they - they cannot do that. We
5 forget how they cannot do that, so they stop paying attention.

Q. And all in the concepts that you are trying to teach them, presumably to you, should be easy concepts to grasp - were easy things to grasp weren't they.

A. For me, of course easy.

10 Q. Yes.

A. I am IT guy and my wife, well, pretty much my family is all IT technology and well all this modern things and - well for them it's difficult, of course.

15 Q. And it's fairly frustrating isn't it trying to explain something to somebody who just simply doesn't get it.

A. No.

Q. You - you don't think so.

A. I don't think so, no.

20 Q. I'm putting to you that you were getting frustrated with the lack of progress....

A. That's why I tried to keep myself in some distance from this process. It was my wife's thing.

Q. Because you - you were frustrated - you were getting frustrated.

25 A. No, I tried to be not frustrated and that's why I tried to - took away those - those stuff. I had other things to do and I - I was provided with a family and most of my time I just worked to, you know, provide for my family.

30 Q. Well let's continue with the list of inabilities of the Nikityuks. I had another document, Your Honour, which my - my friend - see this was actually produced of the plaintiffs in the undertakings. I have a copy for the

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witness. If it could be....A copy that was produced by the plaintiffs' in their undertakings. And it's entitled "Episodes Questioning Mental Capacity of Alla and Valentin Nikityuk". So you've seen that document before, sir?

5 A. Yes, sure.

Q. And you prepared it?

A. Yes.

Q. And on the last page, we see that it was last updated May the 25th, 2014.

10 A. Yes, right after all examination as an undertaking.

Q. Okay. So in terms of the actual preparation of this document...

A. Mm-hmm.

15 Q. ...did you prepare it or did your wife prepare it or did you both prepare it?

A. Both.

Q. Both. Okay. So let's go through this document and we'll spend a bit of time because I really want to understand what was going on. So paragraph 1 you say, "Valentin never could figure out the T.V. remote."

20 A. Mm-hmm.

Q. "Always got angry when it was left on DVD input and not cable."

25 A. Mm-hmm.

Q. "Same with other technical things: cell phones, washer dryer, coffee maker, et cetera. The only thing he could manage was a vacuum cleaner with the on/off switch."

A. Yes.

30 Q. You wrote that?

A. Yes. And I observed that many times. So like if I forget T.V. remote on - for only input then, Valentin

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became nervous and he was trying to figure out like why it's not working and despite we explained him every time that he just need to switch input, well it was kinda struggle for him.

5 Q. But you - he - he got angry. That's what you wrote here, he got angry.

A. Yes, sometimes he yelled and well - you - you - you left remote.

Q. He'd yell at you?

10 A. Generally in the air, but see the thing is....

Q. But - but he'd yell at you as well?

A. No, I might be even not at home.

Q. Did he yell at your wife too?

A. Generally - in the air.

15 Q. Creates a bit of an atmosphere when somebody's yelling in a small house.

A. No, see I know the guy for like 30 years - almost 40 years. He's harmless. Like we - we - we never actually - but he overacted during all this yellings [sic] and stuff.

20 Q. So let's look at paragraph 2, when Valentin drove the car with manual transmission, Chevrolet Aveo...

A. Mm-hmm.

25 Q. ..."he refused to use the fifth gear all the time motivating that he didn't want to because he got used to four gear cars in Russia. On the highway the car was turning inside out, making a lot of transmission noise and didn't bother him at all."

A. Yes.

30 Q. So - so you had discussions with him about that?

A. Yes, of course. And it - well not

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discussions, like why you don't turn the fifth gear on.

Q. Did he get angry?

A. No.

Q. He didn't get angry.

5 A. I actually almost never was in the car with Valentin 'cause I like driving myself, but this is actual observation from my wife. You should ask her about that.

10 Q. Okay. So I guess you're gonna give me the same answer with respect to number three which was "Confused how to operate the lights in the car. We had tried to explain to him how to operate the lights." And again so we, that's two of you. So...

A. Yes.

Q. ...you - you tried to explain things to him.

15 A. Yes. See several - well many times actually Svetlana discovered that after Valentin used on the Civic the high beams by some reason had turned on. But we knew that he always drove back and forth to YMCA during like daylight and what's the reason to have those high beams on. So we asked him, 20 he didn't even notice, but next time they are on again and it's - at some point or several times I explained him myself how to operate with lights high and all this stuff. I - I - I explained him many times.

Q. So did he get angry about that?

25 A. Did he?

Q. Did he get angry about it?

A. No he was listening to me.

Q. He - but you told him many times and....

30 A. Yes and next time it happens again and he's listening again.

Q. And - and you use that as a - being a ground to question his mental capacity?

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5 A. Yes because - well what - see the thing is that I found the definition of mental capacity in Wikipedia and the definition is very simple. First to understand information that is relevant to a decision and second to appreciate the consequences of a decision. I can - well tell that now - say probably consider use as something to - to one.

10 Q. So let's continue with all of these things that you're having to deal with - with the Nikityuks. Four and five both also deal with the automobile and you're going to give me the same answers aren't you? You tried to explain the things to him.

A. Yes, four the same answer. And five, yes it - well yes the same answer but it's much more dangerous actually.

15 Q. Okay. And you say that Valentin wasn't getting angry. Was he getting upset at being told?

A. You should ask my wife about that because....

20 Q. I'm asking you 'cause you - you spoke with him....

A. With me, no.

Q. [Indiscernible] - okay.

A. But I spoke about all this stuff maybe like five percent of the times.

25 Q. This document you prepared, paragraph 8...

A. Yes.

Q. ..."Valentin always was very sensitive about what we said - we said to correct his driving skills." So what do you mean about that - sensitive?

A. Well you know sensitive.

30 Q. Sensitive. Okay. I asked you earlier on about him getting angry. So the next sentence, "He gets angry and acting rude referring to his 50 years driving experience

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that cannot be compared to ours. Pavel has 30 years' experience, 10 in Canada with no ticket."

A. Yes.

Q. So he was getting angry.

5 A. That - that - that's why he listened to me, but tried not - you know - not - not that much to listen to Svetlana and - yeah he - he sometimes got angry. Yeah.

Q. So he did get angry.

A. Yeah.

10 Q. And he expressed that anger towards you and you responded, didn't you? You didn't. You - you're shaking your head, sir. You're supposed to answer for the microphone.

A. No, I didn't. I'm sorry.

15 Q. And then so in these discussions with him about his driving abilities, you'd be saying things to him about your own driving prowess wouldn't you? You - you'd be telling him you're a better driver than him. You have no tickets, you've been driving for 30 years.

20 A. No. Him [sic] knew that very well. I didn't have to tell that actually and he listened to me...

Q. Well...

A. ...more or less.

25 Q. ...I'm looking at your sentence again. "He gets angry and acting rude referring to his 50 years driving experience that cannot be compared to ours." So that - that's - that to me sounds like that was an argument.

30 A. I already told you that most of the times or - Svetlana spoke - Svetlana spoke to him about his driving skills because he was dealing with them all the time. He was accomp - she was accompanying them to doctor's appointments all the time, several times a week and well sometimes they drove together to YMCA. Several times I believe - and yeah well she -

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she had much - much better like possibilities to observe all - all this skills and his, you know....

Q. I - I will certainly be asking your wife and all that, thank you for your assistance. Paragraph 9 dealt with
5 the expired insurance policy.

A. Yes.

Q. That - that was subject of the discussion at the time with you?

A. It wasn't a discussion, he just found that
10 expired insurance in - in his wallet and - but it - it happened like let me think around October the 15th or something like that before they were - might be the 10th - middle of October, right before they left.

Q. Okay. Let's look at paragraph 10, "Nikityuks
15 have been attending English classes at YMCA for over three years but did not pick up even the basics. They admit themselves that they don't read, don't write, don't speak and don't understand - and don't understand English."

A. Yes.

Q. So you wrote that.

A. Well yeah.

Q. And that's completing our position with you saying Valentin speaks Basic English and....

A. I think he should.

Q. He should have.

A. Yeah.

Q. Not - but earlier - your testimony previously was that he does and now it's he should.

A. Yes, I - I still - I am still sure that he
30 does, he just pretending not to.

Q. Okay. But then you're using that in this document as a way of challenging his mental capacity.

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A. Not his, both.

Q. And then paragraph 11, you talk about confusion, dealing with the Russian Consulate and being unable to follow simple written instruction in their own language.

5 A. Yes.

Q. It's fairly frustrating, isn't it?

A. I never did that with them. You should ask my wife. She had assisted them with all Russian Consulate business.

10 Q. So the next things deal with the Russian Consulate. Let's talk about paragraph 14. This is a long paragraph, let's break it down.

A. Mm-hmm.

15 Q. So September 2011 during thunderstorm, power went off...

A. Mm-hmm.

Q. ...Valentin's computer improperly shut down and the hard disk got damaged.

A. Yes.

20 Q. He then accused you of breaking his computer.

A. Yes. Remember at that time they already had a plan to leave the house in place. It's September 2011.

Q. So he accused you...

A. Yes.

25 Q. ...of breaking his computer.

A. Yes. Through the network.

Q. It's a bit of annoying isn't it? Somebody accusing you of something that you didn't do.

30 A. It wasn't annoying, it just was the first time when I seriously started to question his mental capacity.

Q. But you had an argument over it, didn't you sir?

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A. No.

Q. Yes, you did. That's what Mr. Nikityuk's gonna say. And you say he - that if Pavel could not do that physically in the room in terms of repairing the computer,
5 demanded you that....

A. Why I would break his computer then to spend my time to repair it - it - it....

Q. But this is your word, "He demanded"...

A. Yes.

10 Q. ..."a free repair."

A. Yes.

Q. Well let's - let's deal with a few of those words first. If somebody makes a demand of you...

A. Yes.

15 Q. ...it's fairly - that's - that's fairly off-putting isn't it?

A. I wouldn't repair it anyway.

Q. No you wouldn't would you, 'cause you wanted to charge him for it. You wanted to charge....

20 A. No it's ridiculous. Common.

Q. No sir, you wanted to charge him for repairs....

A. Charge?

25 Q. Yes, you wanted to charge him. You - you demanded money from him.

A. I didn't.

Q. I suggest to you, you actually did and that's what Mr. Nikityuk's gonna say.

A. I did not.

30 Q. And you were very busy...

A. Yes.

Q. ...at work at that time.

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A. Yes.

Q. So you got this extra thing to deal with...

A. Yes.

Q. ...more - more pressure on you.

5 A. It - it wasn't pressure, I just dealt with it when I could. And in a week or two I repaired that computer, I replaced the hard drive, I restored all his stuff from the backup which was through the network by the way and it happened right before his birthday October the 7th. So it was actually
10 birthday present.

Q. But you said here, "Pavel did his best to repair the computer by Valentin's birthday and by October 7th. It was done for free." If - if - if that's such a big thing, you're saying you did it for free. Why - why would you need to
15 say you did it for free? Surely doing something for a relative...

A. Because of that...

Q. ...would be free.

A. ...point when I wrote this document I already
20 knew that Valentin is saying that I charged him for that. I did not charge him for that. It's - it's considered my statement that what he's saying about charging is a simple lie.

Q. The fact is you did charge him

A. No.

25 Q. You were going to charge him.

A. No. Common.

Q. You - you said your time was like - your professional time was 80 bucks an hour.

A. Yes.

30 Q. And....

A. So he could appreciate the value of the present.

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Q. Oh so you did say - you did tell him. So when you give somebody a gift, you actually tell him the value of that gift.

A. He says you broke my computer through the network. I am saying common, you're a - what - what - what you're saying here that I just broke it to spend my time to repair it. I spend like seven hours repairing it, maybe - maybe more and my time costs - I'm professional - IT professional, my time costs \$80 per hour multiplied by seven, what I am an idiot to break your computer. That's what I said to him.

Q. So - so you said that to him in a patronizing, condescending tone?

A. No.

Q. Well just - if you - the way you just said it to me now sounded patronizing and condescending.

A. Okay. If it sounded to you that way, okay.

Q. And that's how it may have sounded to Mr. Nikityuk. You shrug again, the microphone....

A. If you say that, you know, in - with - with a smile and as a gift for his birthday then - well it - it should - it shouldn't be that frustrating or whatever - how you put it demean - demeaning manner.

Q. Well you - you're re-categorizing things just in the same way you re-categorized the - the money that came from Russia, sir.

A. Yeah about that, I'm glad you brought that topic again.

Q. Well....

A. I would like to respond to that.

Q. No, you've had your chance to respond. Your counsel can do that.

A. Yeah - yes. If - if I'll have that chance,

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then...

Q. Sir...

A. ...yeah okay.

Q. ...this is not a dialogue.

A. Okay.

Q. And then you say, "Valentin did not appreciate the gift once the computer started working again. Valentin began to unplug the network cable to protect it from Pavel's attacks."

A. Yes.

Q. So what was all that about?

A. Yeah. He kept insisting that I broke his computer through the network - as if I didn't direct access to that computer, if I wanted to break it, which would be stupid and he started to plug out the - the network cable from the computer. And well - okay emails come through the wire and as a professional engineer, Valentin supposed to know that. And if you turn off computer from the network, you - you cannot expect your email come, right? So that's what I explained to him many times. And we actually ended up with a sign computer sticker. I wrote sticker for him that emails come through the wire. That's it.

Q. So you wrote him a note like you would write for a child, emails come through a computer.

A. Well - yes.

Q. So you treated him like a child?

A. Not like a child, it just - it was just a reminder. I told you that. It was time when I seriously started questioning his mental capacity. It was like first time.

Q. Now let's go down to paragraph 2, there under decision making.

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A. Yes.

Q. Well sir, let's look at paragraph 1 first.

A. Yes.

Q. You wrote this, "When we criticized
5 Valentin's car skills and tried to explain to him how controls
and buttons work and what he was doing wrong, Alla would always
get the - Alla always became very protective of him simply not
understanding that he puts both of their lives in danger." So
let's look at that word criticized.

10 A. It's just a word.

Q. It's just a word.

A. Yes.

Q. It's more than a word, it's an act.

A. No it's - it's a word because - well it's -
15 it - it means exactly what you just read several paragraphs
about. Nothing more, nothing less.

Q. Well you're proficient in the English
language. Criticized means criticize - you were critical of him
- to his face.

20 A. There were reasons for that.

Q. And how did he react when you were being
critical? He got upset, didn't he?

A. Sometimes, sure.

Q. Yeah. Yeah of course he did.

25 A. Who doesn't?

Q. Exactly, who doesn't?

A. Mm-hmm.

Q. Who - who doesn't get upset when they're
being criticized? You're no different to anybody else, are you?

30 A. I believe it's normal. Yeah.

Q. Yeah.

A. Sure.

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Q. In paragraph 2, "Starting from approximately April 2011, Alla began to ask Svetlana about application for Social Housing on every day basis. She was listening very carefully, all explanations why it's not possible, sometimes
5 even agreed. But then said something like we still need to try. The next morning, all the discussions start from square one." Were you involved in those discussions?

A. We were.

Q. There you were. So how's that....

10 A. Not - not every day. It's question to my wife, actually.

Q. So that's something I need to deal with, with your wife?

A. Yes.

15 Q. Okay. But when you were involved, you - you did have some discussions directly with the Nikityuks about that.

A. Yes. If you're asking about frequency with Svetlana, it's like every day; with me, might be once a month.

20 Q. Okay. That you have the same discussion with them over and over again?

A. Yes.

Q. Okay. And how did you respond?

25 A. I provided them with charts and explanations and statements and showed them that they were not eligible and well they seemed to understood, but next day Svetlana says, you know what, they asking about the same thing again.

Q. Becomes tiresome doesn't it, somebody asking you the same thing over and over again?

30 A. Yes, of course.

Q. Yes. And it's fair to say that you let your displeasure - you - you make it clear that you were displeased

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about having to deal with the same thing over and over again.

A. No, we made it clear that the attempt or their desire or whatever it is to get Social Housing it's the same as stealing from homeless and they're not - they are not going to be any close to that because it's disgusting.

Q. So you discussed it with them?

A. Not with them.

Q. Well, you expressed your disgust to them didn't you?

A. No. We expressed that we would be disgusted if they tried to pull this up.

Q. So you - you lectured them again just like you would with a child.

A. Not with a child, with a [indiscernible].

Q. So you accused them of essentially what they wanted to do was criminal and....

A. It's welfare or Social Assistance fraud, that's how it's considered. 'Cause there is no legal way they could obtain Social Housing in Canada.

Q. You gave testimony with respect to the cancellation of the Russian T.V. subscription.

A. Yeah, I think I explained that.

Q. And you explained that in court. Did you explain that to the Nikityuks...

A. Yes, sure.

Q. ...at the time? And did that result in a disagreement?

A. There were no disagreement. I offered them a simple thing, if they still want to watch Russian T.V., six channels from Rogers then they - they gotta some how to pitch in because I cannot afford to pay for those channels 8 - 8 - \$80 per month.

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Q. Oh the - the T.V. channel though for them wasn't really a luxury, was it? It was something for them - basic it was their primary source of entertainment in their own language.

5 A. Yes and it was our agreement at the very beginning when they came to Canada that they pay for their entertainment from their pension, so that was - what I suggested and they refused. So my understanding was that they don't need those channels anymore and I will make that clear for me. So I
10 cancelled them.

Q. So you say....

A. And they - and they started to watch it on - on computer.

Q. Well the Nikityuks, I understand, are going
15 to say the opposite that they wanted to continue with the T.V. channels and....

A. Well it's not what Alla told me, so....

Q. Okay. So there - so there's a disagreement there.

20 A. Well there were no disagreement at the times.

Q. And then....

A. It seems to be now.

Q. And then - then the subscription changed over to using the internet. You recall whether it was gonna cost
25 another five bucks a month on the internet?

A. No, I explained them that one hour of T.V. watched on computer, it's about one gigabyte of extra traffic. And with my new contract with Rogers I had to pay, I'm not sure, but it's something like - well several dollars per gigabyte, I'm
30 not sure. At some point it was two, at some point it was two point five, at some point it was five - but now I'm not sure how it was at that point. But anyway, it's extra expense and if

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Valentin thinks that it's free, it's not.

Q. No. And - and you explained that o him
didn't you?

A. Yes.

5 Q. Yes. And he didn't understand that day. Or
you didn't....

A. I explained that him in Russian, I believe he
understood.

10 Q. In terms of what the Nikityuks could do
around the house, we've heard that Valentin could use the - the
vacuum cleaner.

A. Yes and it was his duty to vacuum the house
and he did that all the time.

Q. It was his duty. Okay.

15 A. Well, we all have duties, you know, like....

Q. But the - they weren't allow - allowed to use
the dishwasher, correct?

A. I'm sorry, say again.

Q. They weren't allowed to use the dishwasher.

20 A. They were not allowed?

Q. Yes.

A. They were - what way they were not allowed?

25 Q. I don't know, you tell me. That's my
understanding. They - they weren't allowed to use multiple
appliances.

A. That's ridiculous.

Q. That's ridiculous, is it? What about Alla
planting things in the garden? She wanted to plant something in
the garden. She was - that was refused. Do you recall that?

30 A. She could plant whatever she wanted. They
never even...

Q. Well...

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A. ...talked about that.

Q. ...I understand the Nikityuks' evidence is going to be that they were limited in using things around the house and they weren't allowed....

5 A. Oh - yeah - you know what, I - I am aware that they are going to testify a lot of weird - weird things that never happened and we actually have proof like [indiscernible] proof that some of them at least a lie. So....

Q. Well you'll have your chance...

10 A. Yes.

Q. ...to convince the court...

A. I hope so.

Q. ...there.

A. Yes.

15 Q. So what we've addressed is a system, a regime in the house where you have the Nikityuks, who you say are pretty - pretty incompetent, they - they can't do much for themselves. That - that - that was the general regime, wasn't it? That was what was happening. They couldn't do anything
20 without you.

A. I'm not sure what you mean by regime.

Q. Regime. Okay. I'll use a different word.
Way of life.

25 A. No, they were okay because most of things were done by Svetlana and they were doing what they could and we appreciated that. But again, you better ask Svetlana about that because - well I was out. A lot of time I was working for IBM in the office then. There was one year when I was working from home like hundred percent of the time, but it was in the
30 basement. I didn't deal with Nikityuks much because I was like in - in the basement office. But Svetlana was dealing with them all the time, doing all stuff with them and she - she knows much

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better what they did, what they didn't, what they were capable to do, what they were not capable.

Q. They - they were getting under your feet though. They were - it - it was irritating, it was tiresome,
5 wasn't it?

A. No, not at all.

Q. I put it to you that's exactly what happened. Are you familiar with the phrase familiarity breeds contempt?

A. No.

Q. Do you - do you understand what I mean by
10 that?

A. Familiarity?

Q. Breeds contempt. When you have two or more people in close proximity for a long time, they get on each
15 other's nerves. That's what happens.

A. Well it's not in our nature, you know, as Russian people. In Russia we appreciate big families. We appreciate when several generations live together like children, parents, grandparents, sometimes grand-grandparents in big
20 houses or not very big houses. It's in our culture. So maybe your - your phrase is very suitable for Canadian life of style, but not for ours.

Q. Well I put it to you sir that that's exactly what happened. You started living together, you didn't really
25 want to live together because that wasn't the plan and then eventually having to deal with these elderly people and their incompetencies, it just became too much for you...

A. No.

Q. ...and way too much for your wife.

A. It - it never was too much for us and
30 especially for my wife.

Q. And that's the reason why the Nikityuks

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decided they wanted to live separately again.

A. I'm not sure about their exact reason, but we'll try to figure it out during their testimony.

Q. That - that's why.

5 A. Yeah - it - it's....

Q. They were not - they were not happy, sir. They wanted to leave.

A. It's - it's your opinion and we'll - we'll prove that they were extremely happy until they met and started to socialize with Yana Skybin.

MR. MAE: Well - you're let - Your Honour, I'm going to move into another area....

THE COURT: Yes, did you want to take the - no you passed up an exhibit.

15 MR. MAE: Oh - oh I thought you wanted the exhibit. Sorry, Your Honour.

THE COURT: No [*indiscernible*].

MR. MAE: Thank - thank you, I'm obliged.

THE COURT: Should we give it a short note - a short title, Mental capacity notes - would that cover it?

MR. MAE: I think that would cover it.

THE COURT: And I take it these were made not contemporaneously, but as of....

25 MR. MAE: They were part of the undertakings and delivered May 25th, 2014.

THE COURT: So it wasn't an ongoing record, it was the period afterwards.

MR. MAE: Yep, that's my understanding.

30 THE COURT: All right. So Exhibit Number....

CLERK REGISTRAR: Nine.

THE COURT: Do you have a copy, Madame Registrar?

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CLERK REGISTRAR: I have a copy.

THE COURT: All right. So we'll take our
afternoon break now.

EXHIBIT NUMBER 9: Mental capacity notes -
Produced and Marked.

MR. MAE: Thank you, Your Honour.

R E C E S S

10 U P O N R E S U M I N G :

THE COURT: I guess, Mr. Danilov, if you could
return to the witness box.

MR. MAE: Thank you, Your Honour. Q. Mr.
Danilov, just before the break you wanted to turn back to the -
15 the tax issue, so I'm gonna give you opportunity to say what you
would like to say on that.

A. I would like to bring your attention to the
simple fact that wire transfer documents where it says present
in Russian were produced by Community Legal Clinic on February
20 2016. 'Till that moment we didn't know that it was a present.
What we knew it was - what was discussed in 2004, I believe,
that Nikityuks transfer all money to Svetlana in exchange of
lifetime support. And when we came up with the loan agreement
of 2008, I did my best - to the best of my understanding or what
25 is actually the agreement piece and I put it on paper to protect
Nikityuks' interest and mine. So that loan agreement reflects
pretty much my - a little of understanding how it actually was
when Nikityuks came to Canada in June 2008. What we knew, that
money supposed to be transferred to Svetlana, never paid back in
30 exchange of lifetime support for Nikityuks. That it was a gift
or present, we became to that knowledge only in February 2016.

Q. Thank you for that, but again, just so we -

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we understand the same thing. The principal amount of the loan in the document you post 263,000 and that included what you say was your wife's share in the proceeds of sale of the property in Russia.

5 A. About that - you please test - ask my wife because she has better knowledge about that.

Q. No - but no - okay, but you prepared the document.

A. Say what?

10 Q. You - you prepared the loan agreement - you personally.

A. Yes.

Q. You said you got template off the internet.

A. Yes.

15 Q. Yeah. And you're a bit of a number guy.

A. And at that moment when I prepared that document, basically the loan agreement looked - the sum of the loan or the principal amount of the loan looked to me as 263,000 Canadian dollars.

20 Q. Okay.

A. A week later we deducted 50,000 because it was actually Svetlana's share. We didn't deduct Anastasia share - yeah. It's still there.

25 Q. So - okay so that - that actually makes it yours because you have two sums of money because Anastasia had, according to you, the - the same percentage interest in the property in Russia.

A. Yes, but she didn't express her interest in deducting that money from the loan agreement so far.

30 Q. When - when did the - the property in Russia was privatized. Help me with this because I actually don't know.

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A. Me neither.

Q. Okay. So the blind leading the blind then. No money - was - was any money paid to the government to purchase the property on privatization?

5 A. My understanding is that when you - well something probably has been paid, it's not like you're buying property from the government, it's just some fee.

Q. So it's....

10 A. And it's - there is no taxes over there, there are just some - well legal fees, I believe - administration fees or something like that. When you sell your primary residence you don't pay any taxes. There is no capital gain over there.

15 Q. So - so in Russia there's no capital gains tax?

A. No

Q. Okay.

A. On - on - on primary residence, no.

20 Q. And your wife then didn't contribute to any purchase price of the property in Russia. She didn't write a cheque.

A. What - what - what purchase price?

Q. When you privatized....

A. The - the - when it was privatized...

25 Q. Yes.

A. ...again, it doesn't mean that you are buying it from the government. Government just give it up to you for free...

Q. Yeah. Okay. So....

30 A. ...with some administration fee.

Q. And - and - and that's what I'm trying to ascertain that Svetlana - oh and of course - no - nobody, other

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than paying a - a fee to the government, nobody wrote out a cheque - a purchase price cheque did they?

A. And I have no idea.

Q. Okay. But we get back to - you know the fact
5 remains that in the loan agreement, your wife earns the entire sum of money coming over as a - as a loan.

A. Yeah, it was easier to do it this way and week later we just deducted it and their - their principal amount became 200,000 - exactly what Nikityuks were expected
10 there as their capital or whatever you put it and - well that - it is what it is.

Q. It is what it is anyway. But I think we both agree that 263 is the loan number.

A. What is loan number?

Q. Well we - we agree to disagree as the case
15 may be. The Nikityuks say that 262 was all of their money. So they say that number in the agreement is the correct number.

A. At that point it wasn't Nikityuks money as it turn - turns out. See it just - we didn't know that it was a
20 gift. We didn't convert or transfer anything. I just put on paper to the best of my knowledge and understanding what was going on the conditions of the verbal agreement made in 2004.

Q. So - so the verbal agreement is....

A. Verbal agreement was Nikityuks transfer all
25 money to Svetlana in exchange of lifetime support.

Q. And was there any discussion at that time or any time prior to the money coming over that the Nikityuks could have that principal - the capital back?

A. No. That was the point of the whole story
30 that never they get it back. They transferred in exchange of lifetime support. And if you think about it, even if you limit ourselves to the 10 year commitment of sponsorship agreement,

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200,000 divided by 10 is 10 - 20,000 per year. It's not that much.

Q. So basically your position is that it is security...

5 A. Yes.

Q. ...for - for you.

A. For me? Yes.

Q. That it wasn't a loan.

10 A. It - it was security for while - how you put it.

Q. Okay. So let's move - move forward, so we - you've testified already - and I'm not gonna ask you the same questions over and over again because...

A. Okay. Thank you.

15 Q. ...I can agree that would be very annoying.

A. Yes.

20 Q. But all money was lost in the stock market all those periods of days. And I just want to talk about the - the reaction of the Nikityuks to the information that all of the money was lost. Would it be fair to say that they didn't care?

A. They didn't care.

Q. They didn't care.

A. They didn't care.

25 Q. And they - they kept on going on through life the same. Kept entertaining themselves.

A. Exactly. I think they didn't believe us.

Q. I'm sorry.

A. I think they didn't believe us.

Q. They didn't believe you that it was lost?

30 A. I think so, yes. I - I - I cannot speak of them, but I think that they didn't believe me.

Q. That must have been - and I - and I know

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you've categorized the loss of the money in various ways. You've lost - you categorized it as an expensive lesson, a small loss - I can't think of the other - the other phrases I've heard.

5 A. I didn't categorize it as a small loss. It was a disaster actually. But it was - well it was very expensive lesson. We didn't give up and now we have - actually we would have working business, very - very - very close.

Q. So - so - so you say. So you say. But...

10 A. Yeah. Well....

Q. ...it - it's a disaster. That's actual.

A. It seems like a disaster at the moment - yes.

Q. And then of course, we have to project ourselves back to 2008...

15 A. Yes.

Q. ...we - we can't look at it in - with hindsight at the time. That was wow. You lost all of that money over a short period of time.

A. Yes, sure. And - yeah.

20 Q. And - and money at that time already excluded that nest egg on - on an income basis, it - it was fairly tight 'cause we went through your income for 2009 which was the year following. But money wasn't plentiful, was it?

A. Money was what?

25 Q. Wasn't plentiful. There wasn't plenty of money. There - there - it was tight.

A. Might have enough to - to - to live.

Q. Well you had enough to live, you're still alive now, but it was tight.

30 A. Yes it was tight during the year, but see once in a year we were getting big tax return cheque and that tax return cheque helped us to pay back accumulated credit on

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our line of balances during the year. So overall with tax return, it was enough.

Q. Well of course the tax return came later on.

A. Yes.

Q. As - as you said earlier on.

A. Tax return comes once in a year, yes. So we used to - we always used that tax return payment to pay off accumulated balances on the credit lines as much as we could.

Q. So like many Canadians, you're essentially digging into your credit line throughout the year, putting it back with your tax refund.

A. Yes.

Q. And of course with the hope you're gonna get a tax return, as opposed to the actual knowledge.

A. Well actually it wasn't a hope as it was hundred percent confidence that eventually we will be able to come up with something working - and we did finally. It happened in 2013 proto....

Q. Again, we're going back to the time not what you know or you say you know now. So let's project ourselves back to - to the actual time. So you - you lose all this money. The Nikityuks don't care and they go on living their lives and entertaining themselves.

A. Yes.

Q. It's a bit galling, isn't it?

A. Not really. See there is 2008 when they have - half of 2008, they don't care and then there is 2009, they don't care. Then there is 2010, they don't care. And there - there is almost all 2011 they don't care. It looks like almost four years they don't care. But we keep living together and you will see from our evidence that they were extremely happy during that time. I believe we were okay with that. We were happy too

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because they were happy.

Q. But then they're asking you for things, they - they're unable to do things. It - it's all - it all adds up, doesn't it. It....

5 A. What adds up?

Q. Well the whole situation. It's an uncomfortable experience. You've lost your nest egg, you were hoping to set up this business. You're working really hard. They're enjoying themselves and you're supporting them from, as
10 you say, your own funds now as opposed to the inspected investment interest of their money.

A. I kept investing and sometimes those investments were very successful and we generated actually some extra profit with those investments. So when I am saying that
15 we were confident that we will be able actually - eventually to return all losses and to make the things working, well I am confident that we - we would be able to do that. And I was confident at the moment because - see - well I - I know very well about my capabilities and what I can do and what I cannot
20 do and we never gave up. We kept working on those things and I am a specialist and - I'm a very high level professional actually. I know pretty well - familiar with the subject and very familiar with the technology and - well....

Q. But....

25 A. I - I - I knew what I was doing.

Q. Well okay, you knew what you were doing.

A. And my wife was a big help at that.

Q. But every year in the - as I understand your tax returns, every year you offset against your income fairly
30 significant amounts of losses.

A. Yes, that is the point of this, you know, financial diagram I would put it because I have been told by my

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lawyer that scheme is some kind of criminal flavour word, so I'm not using that word anymore. I'm using diagram. So the - the - the diagram of this arrangement was very simple. It was investment, so what I paid to Nikityuks was investment interest. Investment interest is tax deductible and that's why you see these big deductions.

Q. So if....

A. There is 40,000 in Nikityuks in income, it's 40,000 deduction from my business and it puts me immediately in the lowest tax bracket.

Q. Yes. And - and that's of course then when you're categorizing the money as an investment.

A. Yes, it was investment into family business. That's the point of the story.

Q. And you - you appreciate of course that if it's a normal, repayable loan or loan referred payable investment to your business, at the time when it becomes no longer repayable, that - that's a capital gains tax issues as well, the forgiveness of the loan.

A. Again, all this financial diagram has been audited by CRA in 2009 and approved. And we actually have been audited this year again and approved again.

Q. The - the money was so - so tight that even the extra gas money for the Nikityuks to go to the YMCA was fairly severe wasn't it.

A. I can elaborate about that if you don't mind - because if - if - if - it's not a yes or no question.

Q. No. Please - please feel free - fee free.

A. Basically what happened approximately in June 2011, I was looking like at Nikityuks progress in YMCA and we figured out at the family meeting that they didn't actually make much progress in English in like four years.

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5 Q. Oh sorry sir, I think you've misunderstood the question.

A. Yes.

Q. I'm - I'm happy to let you continue...

A. Mm-hmm.

Q. ...but....

A. I - I will come to the gas expenses in a - in a second.

10 Q. Well I'm talking right at the beginning, the decision for the Nikityuks to go to the Y.

A. Gas expenses - it was shared expense and well I drove one car, Nikityuks drove another car. It was approximately half and half and gas expenses were treated as shared expenses.

15 Q. But the - the - the fact that you're considering - or you considered that they're driving 24 kilometres to the Y, 24 kilometres back, that the fact that you're even considering the gas for that, is an indication of how tight money was.

20 A. But what is - I'm sorry, what is your question?

Q. Well sir, it - it's a - it's a relatively short journey 24 kilometres in - in Canada.

25 A. When - when it comes to every day, it's - it's not such....

Q. It's 4 - 48 a day, but the fact that you got to that level of minutiae, to consider that deduct, you - you're considering financial implications, the cost of the gas.

30 A. Yes. I was considering it, but see again, well Nikityuks supposed to be happy and we figured that when they attend YMCA they meet new people, they have a lot of fun, they attend festivals and they attend all kinds of events, it'd

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be nice. But YMCA and - well they were like in - in - in a good meaning of this word, they were crazy about YMCA. And well - what - whatever makes them happy. And I - I was ready to pay even more gas expenses to make them happy.

5 Q. But all the while you - you work five - five days a week, sometimes more?

A. Sometimes on weekends.

Q. Yeah.

10 A. It's not like a normal work day. Sometimes I am on call and people can call me at 2:00 a.m. let's say if - well network in airport isn't working and turns out that it's IBM machine and I have to support that and....

Q. And....

15 A. I'm preparating [sic] for the staff sometimes, you know.

Q. Yeah. And you have the weight of the world on your shoulders. You have an important job, you have to support effectively a family of four adults....

A. Exactly.

20 Q. It - it's all on you.

A. Yes.

Q. And you work long hours, you work weekends, you work evenings.

25 A. Sometimes. Not - not every weekend, but when I'm on call, yes.

Q. Okay. It - it - it's difficult isn't it when....

A. Yes, sure. I'm not saying it's easy.

30 Q. Especially when every - the people around you make - don't appear to appreciate...

A. Oh they appreciated...

Q. ...what you do.

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5 A. ...that. If you're going there, don't go there. They appreciated that a lot.

Q. Thank - thank you for the warning.

A. Yeah. You will see physical evidence of that when time comes.

Q. We'll - we'll - we'll come to the photographs. I - I - I am going to take....

A. Not just photographs.

10 Q. But - but obviously the Nikityuks weren't happy because they - they - they wanted to live somewhere....

A. No, it's obvious that they were happy until some moment in the summer, maybe spring 2011. Then somewhat - someone taught them that they're doing something wrong.

15 Q. And presumably by saying someone taught them, you're referring to Yana Skybin.

A. I didn't say that, but thank you.

Q. No, but - but that's what you're saying. That's what you're thinking about...

A. Yes. Yes.

20 Q. ...let's - let's not be shy.

A. Yes, I think it was Yana Skybin.

Q. Let's not be shy.

A. Yes.

25 Q. I'm gonna ask you about that shortly. I'm not skipping over it, so please don't think...

A. Okay.

Q. ...I'm ignoring what you say. Do you ever recall your wife losing her patience with Valentin?

A. No.

30 Q. You don't.

A. No.

Q. Okay. Is that because you weren't there - at

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the house a lot of the time?

A. No, I don't think so. There were plenty of times when I was there - yeah, so no I don't recall that.

Q. And it's fair to say though, that if you're
5 out at work and things are going on at home, you don't actually necessarily know what's going on and rush over there, correct?

A. Well normally we were communicating with my wife, you know, in online chat like skype when you type things, you know, sometimes on the phone - no, I always knew what was
10 going on.

Q. Yeah, but - but you - you know what you were told, but you weren't there to see it yourself were you?

A. It's obvious of question.

Q. Okay. Thank you. I just wanted to
15 understand that. And when the....

A. But I'm sorry, I need to put a small remark on that. Last year, like part of 2010 and 2011, I was working from home hundred percent of time in the basement. It was new IBMs policy.

Q. Sorry which year - which year...

A. They were trying to....

Q. ...was that again, sorry sir.

A. It was part of 2010 and 2011.

Q. Up to what time - time period in 2011?

A. Oh I'm - I'm sorry, what I'm saying. Yeah it was - no in 2011, I was work - working from home I think half of the year.

Q. The first half of the year?

A. And - the second half of the year. Because
30 we had the restructuring. Then I was working from home entire 2012.

Q. Okay.

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5
A. Then they started to move people around like
- because....

Q. I'm - I'm not interested in 2012. Nikityuks
have gone....

A. Yeah. So 2011 I was working from home.

Q. And that was second half of the year.

A. Second half of the year.

Q. So second half of the year and you would
agree is after June.

A. Yeah it's summer and a little...

Q. Okay.

A. ...little time after.

Q. And you don't recall any arguments or
Valentin screaming at your wife?

A. No.

Q. Okay. And from....

INTERPRETER: I'm sorry, Your Honour. I'm again
having some difficulties hearing the counsel.
Can you repeat the last sentence please?

20
THE COURT: All right. Perhaps you just need to
get closer to the microphone, Mr. Mae.

MR. MAE: Yeah - yeah sure. I actually can't
remember - when Mr. Danilov was speaking. He....

25
THE COURT: You asked about if he recalled
screaming....

MR. MAE: June, screaming....

INTERPRETER: Yes.

MR. MAE: Q. Do you recall your wife - or
Valentin screaming at your wife?

30
INTERPRETER: Thank you.

MR. MAE: Thank - thank you for the reminders.

THE COURT: So perhaps if you're just a bit

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closer to that microphone, it's - might make it easier for the interpreter.

MR. MAE: Q. So you - so I think you got to June, second half of the year, you're working at home.

5 A. Yes.

Q. And then....

A. Well most of the time like - almost.

Q. And then I looked down and I was going to ask this question - and now I'm going to ask it, sir. So from the springtime of 2011, that's when the discussions of independent living were raised by the Nikityuks, correct?

A. It wasn't like discussions about independent living. Those were discussions specifically about Social Housing. They never talked to us about independent living or renting something for them or something to that. Those were discussions about Social Housing.

Q. Okay. But you just said something slightly different. If I - I look at your statement of claim at Tab 1 of the Trial Record.

20 A. Tab 1.

Q. I'm - I'm gonna take you to page 21, paragraph 52.

A. Paragraph?

Q. Fifty - fifty-two, sir.

25 A. What page again, I'm sorry?

Q. Page 21.

A. Twenty-one. Okay. And....

Q. This is your - this is your claim...

A. And paragraph?

30 Q. ...filed by your counsel. I should ask, when the claim was issued - or before it was issued, presumably you saw a draft of this claim and you read it.

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A. I saw like four different drafts.

Q. Okay. But this was issued on your behalf.

A. I suppose so.

5 Q. Okay. Well it was, not supposed - it was issued.

A. Well I....

Q. Otherwise....

A. Okay. If - if you say so.

Q. Yes, we - we wouldn't be here sir then.

10 A. Yeah, sure.

Q. We wouldn't be here today.

A. Sure. I'm sorry.

Q. So this is your claim.

A. Mm-hmm.

15 Q. Paragraph 52, "The plaintiffs plead that although the plaintiffs with many greeting cards and expressions of gratitude over the next two years and although they provided letters and emails of friends and family still in Russia expressing their happiness here in Canada with the plaintiffs, the - this idea that Yana expressed to the parents of living independently, did from time to time cause contention in the household."

A. Yes, it's....

25 THE COURT: I think the interpreter's still having trouble.

INTERPRETER: Yes and I apologize. The portion which you started to read...

MR. MAE: I - I'll start again.

INTERPRETER: ...a little bit slower.

30 MR. MAE: Oh certainly.

INTERPRETER: Thank you.

MR. MAE: And obviously just for the Court's

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benefit, one doesn't like raising one's voice all the time unless necessary. So I'm trying to keep this at a level volume.

5 Q. So I'll read it again slowly. "The plaintiffs plead that although the parents provided the plaintiffs with many greeting cards and expressions of gratitude over the next two years and
10 although they provided letters and emails to friends and family still in Russia expressing their happiness here in Canada with the plaintiffs, this idea that Yana expressed to the parents of living independently, did from time to time, cause contention in the household."

A. Well first of all it's supposed to be quote and quote around living independently. That's how it meant to be because it was Yana's idea, Yana's what....

15 Q. So - so you keep saying and we'll be discussing that, but it - it doesn't say Social Housing here it just says living independently.

A. Well....

Q. It does. And I didn't draft....

20 A. Discussions were about Social Housing. The idea maybe was about living independently, but discussions were about Social Housing. Those are different things.

Q. So tell me about the contention in the household. See content - contentions another word like argument.

25 A. Contentions have relief if, you know, like I already, I think explained that many times that every day starts - but well you better talk to my wife about that because I was present like once in a month for those discussions. She was there all the time.

30 Q. But this - this is your joint claim.

A. Yes, but she knows better about that. She can explain it better what contentions were if they were.

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5 Q. Okay well let's just look at paragraph 53 then because we should deal with them both together just in case you're gonna tell me something differently. "The plaintiffs' allege that in or about the summer of 2011, these contentions became more frequent and the parents fought more and more for their right to independence." So now we're up to the word fought, the past tense of fight. So they were - they were fighting to live independently. A raising - raising your hand in a dismissive manner, doesn't - doesn't help for the transcript sir.

10 A. Well that - it says what it says, but what happened there were a lot of discussions about Social Housing. For them it probably was a synonym. So....

15 Q. Those contentions, they involved shouting?

A. Not I'm aware of.

Q. Not that you're aware of.

A. Yes.

Q. Okay. So it's possible there was shouting.

A. Say what?

20 Q. So if you're not aware of it, it's possible they were shouting.

A. I'm not I'm aware of.

Q. But....

A. Possible.

25 Q. Okay. Great. Swearing, bad language?

A. Bad language, I don't believe it. Swearing, I don't think so.

Q. Again, but possible.

30 A. You are trying to put words in my mouth which I don't want to say because I wasn't present at the scene. You better talk to my wife about it.

Q. No, I'm - I'm - I'm not trying to put words

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into your mouth. I'm trying to understand what the case is that ultimately....

A. When I was present at the scene, there were no any yelling, any shouting, any swearing, anything like
5 kicking or hitting or throwing glasses or anything like that. It's - if - if they're saying there was, it's - it's a lie. I didn't see anything like that.

Q. So you didn't see anything like that....

A. No.

10 Q. What about Mrs. Nikityuk getting into such a state that she locked herself in the bathroom for refuge?

A. I'm sorry, what?

Q. Mrs. Nikityuk locking herself in the
bathroom. You don't know anything about that?

15 A. I don't know anything about that.

Q. Okay. But it could have happened...

A. No.

Q. ...when you weren't there.

A. It's ridiculous.

20 Q. Oh it's ridiculous. So you - you - you refuse to accept something...

A. Yeah. If you...

Q. ...that you didn't see?

25 A. ...if you knew my wife as - as good as I do, well you wouldn't believe it.

Q. And in the evenings the Nikityuks spent most of their time in the bedroom, did they - or didn't they?

A. Evenings in the bedroom?

Q. Yes.

30 A. Valentin spent most of his time in front of T.V., so did Alla in front of other T.V. in the bedroom - well if they're going to sleep - well sometimes they went to sleep

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maybe early, I don't know. But nothing special about that. Bedrooms are for sleeping and well - and great room is for having entertainment and that's what they did all the time.

5 Q. My - my understanding is that that's what you said wasn't happening. The Nikityuks spent their time in the bedroom and they'd only come out when you and your wife are not around.

A. They're lying.

Q. Okay.

10 A. May - maybe they're referring to time when they supposedly were living in shelter, but actually they were living at home.

Q. No. They - they were referring to the time they were living with you, sir.

15 A. And what time was that - like what timeframe if I may - dates.

Q. I don't know any dates sir, I wasn't there.

A. All right.

Q. I believe - I believe....

20 A. Me either.

Q. Yes, you were there, but you never saw it either. So Mr. Nikityuk, you had mentioned he's ex-military - he - he was in the Russian forces or Russian services.

A. That's my understanding, yes.

25 Q. Would you say he's a proud man?

A. I believe so.

Q. Hardly likely to take offers of help from other people.

30 A. Oh he ask for help from other people all the time. All kinds of help and all kinds of people and well....

Q. Let's put it another way. He didn't take offers of assistance happily, did he - by which I mean

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instruction on criticism, he didn't take it lightly, did he?

A. He's really proud of his driving skills and that's I think most of it. And see the - the point here is that some of his driving skills were actually, in my opinion, little bit dangerous. So we were trying to nicely correct them so he doesn't put the entire family in trouble when he was driving Alla and Svetlana for instance somewhere. So one - one time when he messed up with that mile and kilometre button it - it was really dangerous actually. But it - it was Svetlana who witnessed that, so you better ask her.

Q. Okay. But so we'd agree that he's a proud man.

A. Yes, sure.

Q. And earlier on, in terms of the word criticizing, didn't accept being criticized?

A. You have to understand that English is my Second Language.

Q. I - I understand that perfectly.

A. Criticizing may be too strong word for that.

Q. But....

A. I - I admit that I put it in the document. But criticizing what I mean is trying to correct and make it not that dangerous.

Q. But sir, you were telling him he was wrong. He had made a mistake. That's what you were telling him.

A. Yes, sure.

Q. Okay. And he didn't like - he didn't like...

A. Nicely and...

Q. ...that.

A. ...very passionately.

Q. So - so you say, sir. But he didn't like it, did he?

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A. I don't know, ask him.

Q. Well he didn't react well to it, did he?

A. Sometimes you cannot really tell how a person reacts in what you are saying. Like if he turns around and goes away, is it well....

Q. And sometimes somebody could be really upset and not show they're upset.

A. Yes, sure.

Q. So it's possible that Valentin was really upset.

A. Possible.

Q. And as I understand from your earlier testimony, you - you had full access to his email account, correct?

A. All email accounts in my domain.

Q. Yeah.

A. Because I was the one who opened it.

Q. And you had to monitor those accounts as you said yourself for issues of terrorism and child pornography.

A. Those are examples. Course it's my obligation and .CA domain registration authority, I'm a member of that organization.

Q. But - you - you didn't, you weren't saying that though in - you're saying that as example, not - you had no concerns about terrorism and child pornography.

A. Not really, no. Sure.

Q. Okay. But the Nikityuks would have been aware that you could have complete access to their emails.

A. Every email they were receiving from anyone was read out loud in front of entire family by invitation or Valentin Nikityuk or Alla Nikityuk from his room.

Q. Well I'm not - I'm not concerned about the

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incoming emails, I'm concerned with the outgoing emails. So you....

A. Outgoing emails I didn't monitor.

5 Q. You - so you - so you say. So you say. But it's fair to say that the Nikityuks knew that everything they sent out in the form of an email, you could see if you wanted to.

A. If I wanted to, yes.

10 Q. Yes.

A. But I have better things to do.

Q. So makes 'em - makes it hardly worthwhile on their part to say anything negative about you in an email that they know you could have read. Fair comment, isn't it?

A. You should see those emails.

15 Q. Well I've - I've seen the emails. It - it seems insane to me that somebody would write a letter, particularly it's ironic in this case, because it is about letters where things negative, according to you being said, that somebody would write that...

20 A. According Valentin.

Q. ...knowing that they could get caught.

25 A. When Nikityuks left the house, somehow he managed to set up another email account for him. I didn't participate in that. And that account I cannot monitor and - well - he was able to do that at any time when he was living in the house.

Q. Oh I - I - I have - I have - I have no doubt - doubt of that, sir. But it's his....

A. But he didn't write - so....

30 Q. But - but....

A. He was okay with me allegedly monitoring his emails. There is nothing in those emails to monitor in them.

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Q. So number one, you had the ability to, correct?

A. Technically, sure.

Q. Yeah. Not technically, physically....

5 A. Physically and technically are the same thing in this case.

Q. Oh okay. In fact, in one of your opinions, you said he could do that from anywhere around the world, so it wasn't just a question of doing it in the house.

10 A. Yes, of course.

Q. Okay. So - so we've got that. So you knew that you could do that.

A. Yes, I knew. Of course.

15 Q. And you made - all the Nikityuks are aware that you are a computer expert, yes?

A. Yeah, he calls me computer guy.

Q. Computer guy. Okay so you're computer guy. And they would therefore be aware that you could look at their emails.

20 A. I cannot tell you what Valentin was aware of and what he wasn't because somethings he was aware of big surprise from me.

Q. Okay.

25 A. And some other things he wasn't aware of, also big surprise from me.

Q. But - it's fair to say though you've already addressed that under that basic knowledge of information, it's highly unlikely they would have said something negative in those emails to family and friends knowing that you could see them.

30 A. I cannot comment on that.

Q. You can't, no. Your Honour, I'm looking at the time. I'm wondering if this is a convenient place to stop?

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5 THE COURT: All right. Mr. Danilov, you can stand down now until tomorrow. Mr. Mae, how are you doing for timeline? I seem to be observing that a lot of your questions, they're on the position of the - other defendants.

MR. MAE: Well....

THE COURT: But there may be some...

MR. MAE: Yeah.

THE COURT: ...tie in to your own claims.

10 MR. MAE: Absolutely. And in fact, that's why it's convenient to stop - to stop because the - the remainder deals with the claim relevant to my clients. But obviously it's important to deal with these foundational issues.

15 THE COURT: All right. And how much time do you anticipate for tomorrow? We're a little behind schedule, at least according to what the - Ms. Chapman was hoping for.

20 MR. MAE: Yeah, we are Your Honour. And I am mindful of that, but given the size of this - this case, I have to be as thorough as possible. I - I'd like to say the morning. That's what I'd like to say. But justice on the other one said to me when he asked me how long I would be and I said a minute, he said I used to be a swimming coach and I know what a minute is. So....

25 THE COURT: Well because it's - because he's my cousin, I'll accept anything that he said to you as fairly credible.

30 MR. MAE: And - and he was a swimming coach.

THE COURT: All right. I'm not holding you to timelines, I'm just trying to determine where

we're at. I recognize it's an important case for all parties and I'm not trying to limit that. I'm just trying to...

MR. MAE: I - I appreciate that, Your Honour.

THE COURT: ...do the best I can to get this case dealt with within the time period that we have available. As counsel well know if we don't finish it within the three week period, it may well have to go over to the next sittings which is a ways away.

MR. MAE: Yeah, I'm - I'm well aware of that, Your Honour. And hope - hopefully I'll be done be - before [indiscernible]. Nobody knows where the cross-examination will be at in the flow.

THE COURT: All right. Ms. Chapman, does that help you?

MS. CHAPMAN: It does.

THE COURT: We'll adjourn then 'till tomorrow morning.

MR. MAE: Thank you, Your Honour.

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M A T T E R A D J O U R N E D

452.
Certification

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

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I, Lauren Burch, certify that this document is a true and accurate transcript of the recording of Danilova v. Nikityuk et al. in the Superior Court of Justice held at Barrie, Ontario taken from Recording No.

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3811_02_20160519_085931__10_MULLIGG.dcr, which has been certified in Form 1.

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(Date)

L. Burch

(Signature of authorized person)

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*This does not apply to the Ruling which has been judicially edited.

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