

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)

20

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 20, 24 and 25, 2016 at BARRIE, Ontario

VOLUME II

25

APPEARANCES:

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A. Mae and W. Thomson	Counsel for the Defendants (Plaintiffs by Counterclaim)

30

(i)  
Table of Contents

**SUPERIOR COURT OF JUSTICE**  
**T A B L E O F C O N T E N T S - V O L U M E I I**

5 May 20, 2016: Page 453  
May 24, 2016: Page 612  
May 25, 2016: Page 708

**W I T N E S S E S**

<u>WITNESSES</u>	<u>Examination in-Chief</u>	<u>Cross- Examination</u>	<u>Re- Examination</u>
DANILOV, Pavel			615
By Mr. Mae		453	
15 DANILOVA, Svetlana	618		
By Mr. Bornmann		772	
CASPERS, Anastasia	719		
By Mr. Bornmann		721	
20                   By Mr. Mae		731	
CASPERS, Jan Niklas	758		
By Mr. Bornmann		758	
By Mr. Mae		761	
25			
Ruling			650
Ruling			657
30			

(ii)  
Table of Contents

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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Danilova v. Nikityuk et al.  
Pavel Danilov - Cr-ex (cont'd)

FRIDAY, MAY 20, 2016

THE COURT: Mr. Mae, are you ready to continue?

MR. MAE: Yes I am, Your Honour.

THE COURT: Mr. Danilov.

5 MR. MAE: Your Honour, as we finished yesterday you asked for an indication as to how long I would be today. I'm still hoping to be done by lunchtime. However, at some point during the examination an answer provided by Mr. Danilov with respect to certain evidence may result in more time being needed with him. So - so I just give fair warning of that.

10 THE COURT: Mr. Danilov, would you come back to the stand please?

15 PAVEL DANILOV: RECALLED

CROSS-EXAMINATION BY MR. MAE (CONTINUED):

20 Q. Mr. Danilov, I assume we agree that on August the 19<sup>th</sup>, 2011 your wife made a telephone call to Yana Skybin?

A. I - I don't recall any conversation about that so far.

Q. But are - are you aware that your wife phoned Yana Skybin on August the 11<sup>th</sup>, 2011?

25 A. Yes, I am aware.

Q. Okay. But you weren't there during the conversation?

A. No.

30 Q. Okay. And we have the - the weekend of August the 20<sup>th</sup>, 2011 where you were constructing the gazebo....

A. What specific date to....

Q. Oh the weekend of August the 20<sup>th</sup>, 2011.

Pavel Danilov - Cr-ex (cont'd)

A. 20<sup>th</sup>, 2011 - was Saturday - yes.

Q. Yes. And that - that's the weekend your daughter and her - whether it was her fiancé or husband at the time, they - they visited.

A. Fiancé - yes.

Q. And I understand from your evidence in-chief that you were in the garden doing - doing the work - whatever was necessary, you were with her and your daughter's husband.

A. It's but - yeah, it wasn't the garden back then.

Q. Okay.

A. Yes.

Q. But - but you were outside.

A. Yes.

Q. And you were aware at the time that something was going on in the house, some discussion, argument, dispute between the Nikityuks, your wife and your daughter was involved in that - but you heard nothing, correct?

A. No, I wasn't aware that there was a discussion.

Q. But you....

A. I was outside, I knew that they all - Svetlana and Valentin and Alla, they were inside. That's all I knew.

Q. So - so you have no direct input on what happened during that discussion?

A. No.

Q. I think the answer should be yes, you have no direct - but you - you weren't part of it.

A. I wasn't.

Q. And is it fair to say that you accept that on August the 23<sup>rd</sup>, 2011, the Nikityuks went to the YMCA, met with

Yana Skybin and made a complaint of the allegation of abuse?

A. That thing I know from the log of Yana Skybin.

5 Q. And you have no evidence to suggest otherwise that that meeting did not take place?

A. No, I don't have evidence like that.

Q. And if I can direct you to Exhibit 3(A), Tab 1 - and I should actually....

A. I'm sorry there - there are two....

10 Q. I - I should say, Section A. If you see this one, leave a tab at the front that says A...

A. A.

Q. ...so if you go to A, Tab 1.

A. Okay.

15 MR. BORNMANN: Sorry, Your Honour. The interpreter has indicated that he's having trouble hearing the questions from counsel.

THE COURT: All right. Mr. Mae....

20 MR. MAE: I will try to speak louder, Your Honour. Q. So you have the document in front of you, Mr. Danilov?

A. Yes, I do.

Q. And you would agree that this is the log prepared by Yana Skybin that you've seen in these proceedings?

25 A. Yes, but I - I saw two versions of that log. I'm not sure which one is this. There is one slight difference between them in the middle.

Q. In the middle?

A. Yes. Not in here - not here.

30 Q. Oh those are the extra pages that were actually prepared by Ruth, you'll see them at Tab 2. So on August the 23<sup>rd</sup>, 2011, you already said that you have no

evidence to - to deny that this meeting took place. Do you have any evidence to suggest that the Nikityuks did not show bruises to Yana Skybin on that day?

A. Yes, I do.

5 Q. And what is that evidence, sir?

A. It was in transcript of Alla Nikityuk.

Q. Oh.

A. She....

10 Q. That's going to come out later on. I want to know if you have any physical evidence that bruises were not showing.

A. Technically yes because there were a lot of pictures taken on the weekend of August 20, 2011. Taking them by Valentin Nikityuk of Yana's birthday party. And those  
15 pictures show Alla sitting at that table with open sleeves and - well they seem happy, there are no bruises and again Yana Skybin confirmed in her examination - oral examination that that day everybody at her birthday party was happy. There was nothing special about it.

20 Q. Well - well, we'll turn to that and I'll - I'll actually take you to that photograph very shortly, sir. But Yana Skybin's log says that she was shown bruises and you have no specific evidence that she was not shown bruises.

A. I didn't say that.

25 Q. Well I'm putting....

A. I wasn't at that meeting.

Q. Exactly, you weren't at that meeting. So you don't know what was shown.

A. No.

30 Q. Okay. And do you accept that Alla had any bruises at all?

A. No.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. And you do not accept the possibility that Alla had no bruises?

A. I don't accept the possibility.

Q. Okay. You were present when Yana Skybin was  
5 examined for discovery, correct?

A. Yes.

MR. MAE: And this - this is somewhat unusual,  
Your Honour. I'm actually going to take Mr.  
Danilov to a comment he made on the record during  
10 the examination of my client. So if - if His  
Honour could be shown the transcript of Yana  
Skybin. And also the witness.

CLERK REGISTRAR: Exhibit 1 to the witness.

MALE VOICE FROM THE BODY OF THE COURT: You - you  
15 don't have one for the witness?

CLERK REGISTRAR: I have one.

MR. MAE: I believe I have two copies. If I can  
have one - one moment. I do, I have two copies.

THE COURT: Okay.

MR. MAE: Is - is there a copy for His Honour?  
20

THE COURT: Not yet.

CLERK REGISTRAR: I don't have one.

MR. MAE: Okay, well I can give you a copy for  
the witness.

THE COURT: Well the witness has one now. Now I  
25 have one. And the date - Mr. Mae the date of  
the....

MR. MAE: The examination, Your Honour, is 10<sup>th</sup>  
of April 2014.

THE COURT: Thank you.  
30

MR. MAE: Q. You recall being at that  
examination Mr. Danilov?



Pavel Danilov - Cr-ex (cont'd)

A. Yes, I already answered.

Q. Okay. So let's turn to page - excuse me just one second, I lost my page reference. Can I just have a moment, Your Honour? My...

5 THE COURT: Yes.

MR. MAE: ...my formatting's gone out on it - on my document. Sorry. Yes Your Honour, I do apologize. Q. Let me take you to page 107, sir. And we're going to start....

A. One hundred and seven?

10 Q. One hundred and seven. This was the cross-examination on the examination for discovery of Yana Skybin by your former lawyer, Mr. Timokhov (ph). So if we start with question 629 at the bottom. Mr. Timokhov (ph) says or asks, "They were slightly visible, right?" And Yana says, "No, they  
15 were visible. She was wearing a shirt and they were under her - the sleeves, but if you lifted up the sleeves, you wouldn't miss them. They were very obvious and visible." Question: "How did they look like? They were from fingers or from punches - that was one big bruise. Just describe them." "No, it wasn't one  
20 bruise, it was a few bruises in maybe five centimetres range in both arms and they were gray, yellow, green colour." And then there's a comment attributed to you, sir. Would you read that out?

A. I said to Mr. Timokhov (ph), "No, they were  
25 old." I wanted him to ask that question to Yana, that's it.

Q. You - you were referring to....

A. I wasn't under oath, right and I - I was trying to help my lawyer to do the examination.

Q. Okay.

30 A. And all I have to do for him just to - to - to make it clear were there bruises or did she see them or didn't she - or whatever. I knew that there were no bruises and

I wanted my lawyer to ask that question.

Q. Well it doesn't say that, sir. It says, "No, they were old."

A. It just there was no question mark there  
5 because it was comment to my lawyer.

Q. Sir, that's a statement, "No, they were old."  
That is a statement.

A. It - how it looks in the transcript.

Q. No, sir it was a statement, "No, they were  
10 old."

A. No, it was suggestion to my lawyer to ask  
that question.

Q. Now I understand that the Nikityuks went to -  
Alla Nikityuk went to the doctor's on August the 22<sup>nd</sup>. Were you  
15 aware of that?

A. I know that they were going to go to the  
doctor.

Q. Okay.

A. About that - my wife might testify about  
20 that.

Q. Okay. But do you have any knowledge or  
evidence as to whether the appointment was kept?

A. Yes, I know it was kept.

Q. Okay.

A. But my wife...  
25

Q. So...

A. ...better testify.

Q. ...who would have gone to the doctor's with  
Alla?  
30

A. Svetlana.

Q. And she would have been there for any  
consultation?

Pavel Danilov - Cr-ex (cont'd)

A. Yeah.

Q. And as I understand your position in previous communications or examinations, et cetera that you're relying upon the appointment of the doctor's as also being no proof of  
5 bruising, correct?

A. As far as understand, they didn't complain about any bruises.

Q. No they didn't.

A. There were no [sic] any bruises. It's  
10 ridiculous.

Q. No they didn't, but not complaining to the doctor about a condition doesn't mean to say it doesn't exist, does it?

A. Well even complaining to the doctor doesn't  
15 mean that they did exist.

Q. Okay. So look, I go to the doctor with a cough and I have a large rash on my leg. I don't tell the doctor about the rash, I'm wearing long pants, he doesn't see it. Do I have a rash, yes or no?

A. I don't know.  
20

Q. You don't know. Well follow me through again, sir, you're an intelligent man. I'm telling you I have a rash on my leg. I go to the doctor to complain about a cough...

A. Mm-hmm.

Q. ...I'm wearing long pants.  
25

A. Mm-hmm.

Q. So - and I don't show the doctor my rash.

A. Mm-hmm.

Q. Do I have a rash, yes or no?

A. I don't know.  
30

Q. You don't know. Okay. You can be  
[indiscernible], sir.

Pavel Danilov - Cr-ex (cont'd)

5 A. You can keep asking the same stupid question again and again, but the answer still be the same.

Q. But it's not - it's not the same, sir.

THE COURT: All right. Mr. Mae, no point arguing with the witness. I get your point.

MR. MAE: Thank you, Your Honour. Q. You still have Yana's log open in front of you, sir?

A. Yes, I....

10 Q. September the 30<sup>th</sup>, 2011 reports another visit by Alla and Valentin Nikityuk. You have no evidence that that consultation - that meeting did not take place, correct?

A. No, I have no such evidence.

15 Q. Okay. And with respect to the photo entries in the log, the events between the 4<sup>th</sup> of October and 17<sup>th</sup> of October which refer to various meetings, you have no evidence that they did not take place, correct?

A. What's the last date?

Q. The 4<sup>th</sup> to the 17<sup>th</sup> of October.

A. No, I don't have such evidence.

20 Q. Okay. So let's talk about October the 17<sup>th</sup>. That was the day the Nikityuks left the house at Rankin Way.

A. No, it's not - 17<sup>th</sup> you say.

Q. Yes.

A. Seventh or seventeen?

25 Q. Seventeen - one, seven.

A. Okay. October 17<sup>th</sup>. Yes. They - they left house on October 17<sup>th</sup>.

Q. Okay. So you gave evidence previous as to what happened on that day.

30 A. Yes.

Q. And leading up to that day, you discovered that a bank account had been closed. Do you recall that?

Pavel Danilov - Cr-ex (cont'd)

A. Bank account has been closed around...

Q. October the 4<sup>th</sup>.

A. ...the 5<sup>th</sup> - yeah maybe 4<sup>th</sup>. I - I don't know. I figured that out way after Nikityuks left the house  
5 actually.

Q. Okay.

A. Well I figured out that account was closed. I didn't figure out who closed it because I was under impression that some bank guy in mistake closed it and I was arguing with  
10 this bank like all weeks - like couple weeks before October the 7<sup>th</sup>. I was really upset about that because that account was very important. That account was for transit mortgage payments. I was transferring to Scotiabank and I couldn't figure out why it's not working. So I made many telephone calls to the bank  
15 and was - I was arguing with them. I was - well raising my voice with all them. They couldn't answer why the account was closed. Nikityuks were sitting somewhere in the kitchen and laughing and I couldn't figure out why they're laughing and later - like couple weeks after they left, we actually figured  
20 out that it was them who closed that account.

Q. Oh you figured out after they left?

A. Yes, way after that.

Q. See that - that's not the case at all, is it? Your wife went to the bank on October the 17<sup>th</sup> and found out  
25 that Nikityuks had closed the account.

A. No.

Q. Are you sure about that, sir?

A. You can ask my wife. I'm not sure what specific date she had go to the bank actually, but it - it - it  
30 definitely wasn't October 17<sup>th</sup>. When Nikityuks left on October 17<sup>th</sup> it was 9:00 a.m. [sic]. Banks didn't work at that time.

Q. Okay. Can - can the witness be shown the

Pavel Danilov - Cr-ex (cont'd)

transcript of his examination of discovery? Have it in front of you, sir?

A. Yes.

Q. I'd like you turn to page 50. So let's start  
5 at line 11 and I'm going to read out to you the words that were spoken, sir. "In the beginning of October, I figured that I don't see that account on my online webpage and I cannot transfer money to or from it. And I call the bank several times and I was arguing with the banks like why you close my account,  
10 like what the hell's going on. Nobody could tell me exactly what was going on. Nikityuks were sitting in the corner giggle, you know, laughing and I couldn't figure out what - what the hell was going on. And a few days later we called again and again and the account wasn't still working. And finally on  
15 October the 17<sup>th</sup>, Svetlana went to the branch and spoke to the bank - bank manager. And the branch manager told Nikit - and the bank", so start again, "And the branch manager told the Nikityuks closed the account on October the 5<sup>th</sup> and Svetlana told me about that and when I asked Valentin, why'd you close  
20 the account, he said because - because and while we started to talk about the account and what they were for and I tried to figure out the reason why." So you did know on October the 17<sup>th</sup> that they closed the account, didn't you sir?

A. No, actually I didn't. I - I remember that  
25 testimony. But that specific date - well maybe back that time I remember better, but now I'm thinking that it was way later actually. Because we have letter from the bank which we received, I believe, sometime in November and my impression is that's where I actually know it from. But you can ask my wife  
30 about...

Q. Well...

A. ...specific date.

Pavel Danilov - Cr-ex (cont'd)

Q. ...I'm asking you, sir. That's your evidence under oath. That's what you said under oath.

A. I know.

Q. Now let's look at Yana's log.

5 A. Yes.

Q. The entry for October the 17<sup>th</sup>. This was prepared well before you were examined. Let's look at the first line, "Got the call from A and V at night saying they are outside because of confrontation. Daughter discovered that the couple had closed the joint account and was very mad with them."

A. That's what Yan - Yana wrote in her log, so....

Q. Wrote.

A. It's not in even under the oath.

15 Q. Doesn't matter it's not under oath. It was written at the time. It reflects what she was told at the time. It reflects....

A. That's what Nikityuks told her, not me.

20 Q. And that's what you said under oath in your transcript, sir.

A. I agree with that. Maybe at that time I remembered better.

Q. Oh right. Selective memory.

A. Yeah. Sure.

25 Q. So there's a - there's an argument on October the 17<sup>th</sup> and you and your wife lose it with the Nikityuks, don't you?

A. No.

30 Q. And that's why they tried to leave. That's why they did leave on that evening.

A. No, they decided to leave way before that.

Q. They left on that specific evening because of

that event, sir.

A. Not at that specific evening. They actually got an offer from the social housing in Barrie, that's why they leave.

5 Q. They left that evening because of that argument, sir.

A. They left that evening because they had offer from social housing on October 17<sup>th</sup>.

10 Q. So you keep saying.

A. They have evidence of that.

Q. And then - and then you tried to stop them leaving by seizing garage door opener so they couldn't take the car with them.

15 A. Yes, I wanted Valentin to return the key because he didn't have insurance on my car.

Q. And so two old people, 9:00 p.m. at evening on a cold - during the fall in Innisfil where there's no public transport, they can't speak English and they go - they - they leave. That - that's fairly significant. That - that shows major intent on their part, doesn't it?

20 A. Does what, I'm sorry?

Q. Two elderly people...

A. Mm-hmm.

Q. ...they don't speak English...

25 A. Don't speak.

Q. ...in a small town like Innisfil...

A. Mm-hmm.

Q. ...on a fall evening...

A. Mm-hmm.

30 Q. ...no transport - no public transport...

A. No public transport.

Q. ...they still leave.



Pavel Danilov - Cr-ex (cont'd)

A. They leave - yes. Yes. They called Yana Skybin; she arranged transportation.

Q. They also tried - tried to phone the police as well, didn't they?

5 A. I don't think so.

Q. You gave evidence of it. You said - you said that Valentin had...

A. He showed me the phone...

Q. ...his 9-1-1 phoned.

10 A. ...and was pretending that she's [sic] pressing some buttons and he was saying like if I press this button police will be here right now. So like okay, press your button.

15 Q. And then he had a problem with the phone, didn't he?

A. I don't know.

Q. You - I believe - I believe you said that.

A. Yeah it looked that way.

Q. Okay.

20 A. Yes. But there were two more phones at his disposal he could use. 9-1-1 you can dial from pretty much any phone, even for free.

Q. But he can't speak English can he, sir?

25 A. But he could speak something even if he pressed that button, right. His address he knew. What that phone was for, I don't know.

Q. So you mentioned early on about photographs.

A. Mm-hmm.

30 Q. And I assume that you've heard the phrase the camera never lies?

A. Maybe I did, maybe I don't.

Q. Oh the photographs you're referring to,

Pavel Danilov - Cr-ex (cont'd)

you're trying to suggest that they constitute evidence of a general set of circumstances, correct?

A. Yes, of course.

Q. And you would agree with me sir that a  
5 photograph shows what it sees at that moment.

A. Yes, of course.

Q. Just like a balance sheet on a trading account, it shows you the amount in the account at close of business.

10 A. Yes, of course.

Q. Yes. And so it's fair to say that before or after the photograph is taken, there could be a significantly different event, correct?

A. Yes, sure.

15 Q. Okay. And it's fair to say that when people are taking family photographs, they smile in their photographs, don't they? That - that's what I've seen in all of your photographs. I see - I see smiles.

A. Yes, smile - sure.

20 Q. Yes. And....

A. Sometimes they don't.

Q. Sometimes they don't. Most of the time they do. And the most popular thing that somebody says when they pick up a camera and point it to somebody is, smile - most  
25 people say, don't they?

A. I don't know what they say - said back then at Yana's birthday. I wasn't there.

Q. Well I'm - I'm referring to - as well to the photographs that you've put in evidence that you went through  
30 the various photographs of the Nikityuks at....

A. For many years.

Q. Yes.

Pavel Danilov - Cr-ex (cont'd)

A. Mm-hmm.

Q. Let's look at the photograph that you refer to Yana Skybin's party, it's at Tab 66 of Exhibit 1(A).

A. Sixty-six.

5 Q. Yes and it is on page 435. This is the photograph of Yana Skybin's birthday party that you're relying upon, sir.

A. One of them, yes.

Q. Well where's the other one?

10 A. Next page I believe.

Q. Alla's not in the other photograph on the next page, is she?

A. Yeah, well there are several of them actually, but only two here. Probably there - there is something that can be attached to - to - to our first volume of protection. But there were several photograph places - the most important.

Q. Well let - let's deal with the photograph because this is the one that I'm gonna call that you're relying upon. And this is the photograph that you say demonstrated Alla have no bruising, correct?

A. It probably doesn't demonstrate that Alla has or doesn't have bruises, but normally - 'cause you keep referring to things what people do normally - so normally, if people have bruises they don't wear shorts or dresses like this.

Q. Are you producing any expert evidence to support that opinion, sir?

A. Let me think. I think that question has been asked at the examination to Yana Skybin and she already said.

30 Q. Not really, sir. The question was do you have any expert....

A. No.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. Right. Simple. So we look at this photograph of Alla. Alla is the lady third in the center of the photograph, there to the left and she's wearing a short sleeve t-shirt or - that's - that's what I would call it, correct?

5 A. I'm not sure what is intention, but....

Q. She's the lady in the pink.

A. Yes.

Q. And her - her arms are exposed.

A. Yes.

10 Q. Yes. And the photograph's not high resolution, it doesn't show the presence or absence of bruises...

A. No.

Q. ...does it. Okay.

15 A. But that's not the point.

Q. No, that is the point. It does not show...

A. No. The point...

Q. ...the presence or absence.

20 A. ...the point is that short sleeves - and people don't wear short sleeve shirts if they have bruises on their arm...

Q. So....

A. ...normally.

Q. So you say, sir.

25 A. Yeah it's my opinion and opinion of other people.

Q. Now....

30 A. I don't know what kind of expert you require for this opinion. It's, you know, like reasonable person would say.

Q. Sir, this - this half of the arm - up here by the shoulder, what - what would you call that? Would you call

that the arm or would you call it the shoulder?

A. I think shoulder.

MR. MAE: Shoulder, okay. And for - for the record, Your Honour, my hand was just below my shoulder above my tricep.

THE COURT: And just while you're at that, this picture is taken August 20<sup>th</sup>, 2011 it looks like.

MR. MAE: That's correct, Your Honour. That this is a - a photograph taken at Yana Skybin's birthday celebration.

Q. Would it be fair to say sir, that bruises may not have started showing?

A. I'm not an expert in bruises.

Q. You're not an expert. Okay. So let's just ask about your experience. You bang your leg, you bang your arm on something, bruises occasionally come up quickly and sometimes they don't come up for a couple days, do they?

A. I don't know.

Q. You don't know. Okay. It's possible though to get a bump and the bruise not show for a couple of days.

A. If you say so.

Q. Okay.

A. I - I'm not an expert.

Q. Now this photograph, how did you get a hold of it?

A. It was in photo directly of the p-drive where Nikityuks - or Valentin specifically was downloading all the pictures on the drive.

Q. Okay. And part of your claim against the - my - my client and the Nikityuks is there's some big conspiracy, correct?

A. Yes.

Q. Would be fairly foolish wouldn't it to put a

photograph like this - or have it - have it taken if it says what you think it says. It - it would be foolish, wouldn't it, sir?

5 A. What would be foolish in this case not to take pictures of actual bruises having the camera in hands. That would be foolish. So I'm - I'm not saying that Valentin Nikityuk is a fraud, he is not. So the fact that he didn't take those pictures means that there were no bruises.

10 Q. Well so - so you say. He can be asked about that. Let - let's look at page 437.

A. Page - I'm sorry, what?

Q. Page 4-3-7.

A. Page 4-3-7.

15 Q. And this is another photograph from the same birthday event from Yana Skybin's Facebook page. You had produced this in evidence, correct?

A. Yes.

Q. Yes. Okay. And you obtained this photograph from the Facebook website, correct?

20 A. *[Indiscernible]*....

Q. Okay. Well when I said you - you or your wife obtained this from Facebook. It's - this is a screenshot.

A. Yes, sure.

Q. And we see at the top Facebook.com.

25 A. Yes.

Q. And it shows Alla in the photograph with Yana and two other ladies.

A. It doesn't show Alla.

Q. No, sorry - Valentin. Sorry, shows Valentin.

30 A. Yes.

Q. And then picture on page 4-3-8 - oops sorry - different picture. So again there's a photograph published on a

public website...

A. Yes.

Q. ...of attendants of the birthday party.

A. It seems like that - yes - because it says on  
5 - on the right August 21<sup>st</sup>, 2011. I suppose it's the date when  
Yana uploaded that picture to the Facebook and it looks like  
it's the next day.

Q. And then let's look at page 438.

A. Yes.

10 Q. This is a picture from Yana Skybin's Facebook  
page which you downloaded it on the 25<sup>th</sup> of February, 2013  
according to the headnotes, correct?

A. Again, Svet - Svetlana did that.

15 Q. Oh Svetlana did. And we see Valentin in the  
background.

A. Yes.

Q. And you're trying to allege some conspiracy  
and you're using this a part of your evidence, correct?

20 A. No it's not evidence for conspiracy. It's  
evidence that Yana Skybin and Nikityuks were friends at that  
time. And Yana Skybin, multiple times and very explicitly  
denied that. So she lied under the oath.

Q. Did - did she deny that they had a social  
relationship?

25 A. She denied that she was friends with  
Nikityuks.

Q. Did she deny that she had a social  
relationship, yes or no?

A. I don't remember.

30 Q. Okay. Did she deny that she spent time with  
the Nikityuks, yes or no?

A. No.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay. So she has a relationship with them, so what of it sir?

A. Sure.

Q. Now let's jump forward to tabs - Tab 89 of  
5 your photograph. These are the photographs that you went through in your evidence in-chief, correct? Well some of them.

A. Some of them, yes.

Q. And is it fair to say that when we flip through all of these photographs - and we can look at anyone,  
10 pick - pick one at random, very staged photographs aren't they? The person knows that they're being photographed. They're all standing here, they're all posed. Yes?

A. Yes.

Q. Yes.

A. They're not actually staged. It's like well  
15 you sit at the table, someone take a picture, there's nothing staging about that.

Q. Okay.

A. It's - it's normal. That's how things work.

Q. That's right, it is normal. Camera is put in  
20 front of everybody at an event or at a location, smile. And that's what all of those photographs show. Correct?

A. Correct.

Q. Okay. And would you agree with me as a  
25 general proposition that people can be friends and then become enemies or fallout with each other?

A. Not really - no.

Q. Oh you - you've - so you've never had a friend that you've fallen out with?

A. None of my friends became my enemy. Some  
30 people start to ignore people and avoid them, but none in my - not in my experience though, but - yeah I suppose that might



happen. Sure.

Q. Okay. Thank you.

A. Things happen.

Q. Yana's birthday party was no secret was it?

5

A. No.

Q. You - you - you knew ahead of time that the Nikityuks were going to Yana's for the birthday celebration, correct?

10

A. We - we knew that they were going somewhere. Maybe Svetlana knew that they were going to Yana. I didn't pay attention actually - much of attention, I was busy otherwise.

Q. Okay. Well we'll deal - we'll deal with that later. I'll ask Svetlana then. But generally, the relationship between the Nikityuks and Yana was not a secret. It was...

15

A. No.

Q. ...family knowledge.

A. Yes.

Q. Okay.

20

A. Yana was a family friend and the friend of the entire family.

Q. Well not you, you've never spoken to her sir.

A. Yeah well - yes, except me probably.

25

Q. Okay. Can I ask you to turn to Tab 90? And what we have is a certified translation of a number of - a number of cards, a number of well wishes.

A. Yes.

Q. And why have you produced those, sir?

30

A. To prove that at least to my birthday - well it wasn't actually my real birthday, I had birthday on February 29<sup>th</sup>, but it was close to my birthday on 2011, I believe it was like March 1<sup>st</sup> or something like - until - 'till that time, Nikityuks were happy and really appreciated what we are doing

for them. That's what it says like in plain words.

Q. Well let - let's turn to page 5-6-6 for a moment, I just - I just want to go - go through these. So the first card, I'm looking at the English trans - translation of course, it is at the bottom August 2000 - 2010 the first section, correct?

A. Yes.

Q. And it - and it's extending congratulations on the wedding anniversary.

A. Yes.

Q. Yes. And then the next one is February 2011, "Happy Birthday".

A. Yes. It was the most important one - yes.

Q. And then the one below that, 3<sup>rd</sup> of August 2010, congratulations on the 8<sup>th</sup> day of March.

A. Yes, that's for Svetlana. Yes.

Q. Yes. And then the next one is headed "Congratulations on Anniversary of Your Wedding".

A. Yes.

Q. And that's - does not appear to have a date. And then the last one is from 2008, "Happy Birthday".

A. Well I - I know the date of that one, I believe it was 2009 and 2008 - yes it's happy birthday.

Q. So 2008.

A. Yes.

Q. And two things, first - firstly you - you keep these cards - these birthday cards....

A. We keep some of them, not all of them. It's, you know, it's - it's not like very special place to - to keep all the cards. We found what we found.

Q. But you - you don't keep a copy of the Russia translation of the loan agreement?

Pavel Danilov - Cr-ex (cont'd)

A. Also don't Nikityuks.

Q. And so you - you mentioned yesterday in your evidence about your culture, big families living together - that type of situation.

5 A. Yes.

Q. Is it part of your culture to give cards on special occasions, isn't it?

A. Yes.

10 Q. Yes. So that's all these cards show, they're on special occasion. Well wishes were being conveyed.

A. I'm sorry what is the question?

Q. These cards just show that well wishes or congratulations are being conveyed on those events.

A. Yes, sure.

15 Q. And that - that's what polite people do.

A. Yes, sure.

Q. Okay.

20 A. Polite, normal, reasonable people, family people, people who appreciate each other, people who - you know, happy with each other. If - if you are not happy living with some person you don't send them cards.

Q. So - so you say. So as I understand your case against my client, your allegation is that Yana Skybin put the Nikityuks up to all of this.

25 A. Not really, but yes - in the most part, yes.

Q. Well what - what you mean not really? That's what I understand your case to be.

30 A. It - it all came together actually. Nikityuks wanted to live in Social Housing, they were looking for a ways [sic] to do that and Yana Skybin actually - she get out the - the way for them.

Q. So....

Pavel Danilov - Cr-ex (cont'd)

A. And starting from that point it became a conspiracy because we didn't know anything about that.

Q. So you're not saying that she put the idea of Social Housing in their heads?

5 A. Well that I'm not sure because it looks like Yana Skybin actually - well, arranged some meeting in Toronto for Nikityuks with people who lived in Social Housing and Nikityuks liked the idea. But she probably didn't put the idea of Social Housing in their heads, but once they expressed the  
10 interest in it, she figure out a way.

Q. So you - so you say. You have no direct evidence of that though do you?

A. Direct evidence.

Q. Yeah.

15 A. You knew it's like this, common.

Q. Yeah you - you weren't there, you have no other witness who can support that.

A. Support what exactly?

Q. What - what you believe the situation was.

20 You don't have a third witness who sat in the room during those alleged discussions, do you?

A. Well Nikityuks have make it sound all that at their examination.

Q. Well they will - they will deal with that.  
25 You do not have a witness do you?

A. Nikityuks are witnesses.

Q. No, you do not have a witness.

A. No.

Q. Okay. And you - you mentioned people in  
30 Toronto and as I understand your - your evidence that at some stage in April 2011 onwards, the Nikityuks at some stage say you need to speak to Yana, Yana knows all about this. That - that's

your evidence, isn't it?

A. It was in summer, not in April.

Q. But - but that's your - that's your evidence, isn't it?

5 A. It's my wife's evidence.

Q. And you mentioned that the Nikityuk had friends, met people in Toronto, correct?

A. Yes.

Q. So - so you accept that as a fact.

10 A. I believe it to be true.

Q. Okay. So if the Nikityuks were using Yana's name - if and I'm not saying they were, if they were using Yana's name, maybe it was to give some credibility to what they wanted to achieve? Do you follow all that, sir?

15 A. No.

Q. You don't believe that.

A. It was - it was different. See we were explaining them all summer and before that and even later that they're not eligible for Social Housing. But it contradicted what Yana was saying then at the same time and they accepted Yana's suggestions, not ours because they considered her that - she was like a professional of some kind and we are just idiots who live in Canada for - for many years and so many mistakes.

20 Q. Well assuming....

25 A. That's what the conversations were about.

Q. Yeah, assuming that to be correct - and I'm not saying it was, isn't it possible that they just used Yana's name to add weight to what they were saying?

30 A. No they were trying to involve us in this thing.

Q. Well you have no direct evidence that Yana Skybin advised them to do anything fraudulent, correct?

Pavel Danilov - Cr-ex (cont'd)

A. I'm not sure what is direct evidence in this case? I'm thinking.

Q. Okay. Yeah - let's break this down. You were not involved in any of those discussions, correct - those  
5 alleged discussions?

A. Discussions about Social Housing?

Q. With - with Yana Skybin.

A. With Yana Skybin, no.

Q. Okay.

A. But with Nikityuks, I was involved in some.

Q. And you have no witness who was involved in  
10 any of those discussions with Yana and the Nikityuks, correct?

A. I don't.

Q. Well when I say...

A. But my wife might know about that.

Q. ...when I say you, I'm talking the collective  
15 you now. I'm talking you and your wife.

A. You should ask my wife...

Q. All right.

A. ...because she might know about someone.

Q. Well I've seen your witness list and there's  
20 nobody on it.

A. Okay.

Q. And you - you will agree with me sir that the  
25 Nikityuks found out about Social Housing from other people -  
other - other than the YMCA, correct?

A. I believe it to be true.

Q. Now when these discussions - these alleged  
discussions were ongoing during the summer of 2011, it's fair to  
30 say that you or your wife had Yana Skybin's contact details,  
correct?

A. Yes.

Pavel Danilov - Cr-ex (cont'd)

Q. Yes. Didn't pick up the phone and call her  
did you...

A. Svetlana...

Q. ...to talk to her?

5 A. ...did.

Q. Well we'll - we'll come to that. I'm gonna  
deal with that. Svetlana had some discussion that I believe  
you're referring to of August the 19<sup>th</sup> - or that we - we dealt  
with earlier on, correct?

10 A. If it was 19<sup>th</sup> then yes...

Q. It was.

A. ...Svetlana knows better.

Q. But you didn't pick up the phone and call  
Yana, to say what - what's going on?

15 A. There were many conversations with many  
people. But see I - I personally didn't call Yana like ever...

Q. Okay.

A. ...but my wife might. You should ask her.

20 Q. Your wife might - okay. And to your  
knowledge, neither you nor your wife picked up the phone to call  
the YMCA to complain, correct?

A. Again, you should ask my wife. I never  
called YMCA myself...

Q. No.

25 A. ...except one time when I called Susan Green.

Q. And neither of you spoke to any family  
members or family friends to speak to the Nikityuks, correct?

30 A. All family members of Nikityuks are in  
Russia. It's surprise for me that Yana Skybin is next of kin  
for them.

Q. Well - but didn't Valentin's daughter visit  
in August 2011?

Pavel Danilov - Cr-ex (cont'd)

A. Yes. That daughter lives in Russia.

Q. But she visited.

A. Yes.

Q. And she was at your house for several weeks.

5 And so you didn't speak with her, you didn't say, hey your  
parents are on some crazy idea of going into Social Housing that  
we're disgusted with, have a word with them. You didn't did  
you?

10 A. During that visit Nikityuks didn't actually  
speak about Social Housing, they were occupied otherwise by  
entertaining Valentin's daughter. But all those discussions  
they renewed with like, you know, enforced strengths right after  
she left.

Q. So it wasn't discussed, was it?

15 A. Discussed what?

Q. With - with her daughter - with Valentin's  
daughter?

A. We didn't discuss that.

Q. Okay.

20 A. But Nikityuks I think might - I don't know.

Q. Well you don't know.

A. With - with her daughter, no it - it wasn't  
discussed.

Q. And....

25 A. And - and why it should be discussed with -  
with Valentin's daughter, I don't understand the point like -  
what - what you're trying to figure out here. I might - I might  
help you.

Q. No. You - you've already helped enough.

30 Thank you, sir.

A. Okay. Great.

Q. You have no documentary evidence that Yana



had any discussions with Social Housing with the Nikityuks prior to August 2011, correct?

A. I think you should go through all of that with my wife because she might know better.

5 Q. I - I - I'm finding it quite strange that every time I ask you a very simple question that you obviously know the answer to, you're deferring everything to your wife, who has sat in the courtroom...

A. Because...

10 Q. ...and hearing all of this.

A. ...yes - sure because she will give you much better testimony about that than me.

15 Q. I'm asking you, sir. Do you have any documentation to show - to support your position that Yana Skybin discussed Social Housing with the Nikityuks prior to August 2011?

A. I don't think so.

Q. Okay.

20 A. But there were a lot of verbal discussions about it.

Q. Do you have any documentary evidence to support your case that Yana Skybin encouraged your par - the Nikityuks to interfere with their contract with you - their agreement?

25 A. Verbal statements of Nikityuks.

Q. So there are no documents?

30 A. There were a lot of emails, but we need to go through them carefully. There may be some clue, but I'm not sure at this point because those were emails between Svetlana and Yana and Nikityuks and Yana.

Q. And the verbal statements were - we'll deal with the emails. The verbal statement, you're referring to your

discussions with the Nikityuks that you say took place.

A. Yes.

Q. Okay. And you have no evidence whatsoever that Yana Skybin influenced the Nikityuks to do what they did?

5 A. I have a big picture.

Q. Sorry?

A. You can look at her log and you'll see the big picture.

10 Q. Well we can go through the log every entry if you want. We - we can do that, sir.

A. Will do.

Q. Okay.

A. I mean not now.

15 Q. No - no - no - no. You want to do that sir, let's do it. It's your case. Let's go through the log. That's going to....

A. You're going to go through the log right now for every entry?

20 Q. I'm gonna go through the log with you right now, sir.

A. To waste time or for what?

Q. No, sir. You - you said this - the - there's evidence in the log that she....

25 A. Yana Skybin will be testifying, right? Yana Skybin will be testifying here?

30 THE COURT: This is not your opportunity to ask questions of Mr. Mae. It's your opportunity to ask - to answer his questions. Mr. Mae, would it be simpler if you went through the log and draw to our attention those issues that you feel are important?

MR. MAE: I...

Pavel Danilov - Cr-ex (cont'd)

THE COURT: As opposed to line by line and that will assist?

MR. MAE: ...I believe that will be appropriate.

THE COURT: And should we give a few minutes to look it over?

MR. MAE: *[Indiscernible]*, Your Honour.

THE COURT: Would that make sense to - 'cause there's quite a few pages here.

MR. MAE: There - there are and it's Exhibit 3(A) (1).

THE COURT: Now does he have a working copy that you could mark up?

MR. MAE: That I'm not sure about, Your Honour. But I - I - I am happy to give him some post it notes so he could flag the pages for....

THE COURT: Or maybe his counsel has another copy?

MS. CHAPMAN: I believe that we would have another copy.

THE COURT: So he can post it note it or highlight it, whatever he wishes. So maybe we should take a brief adjournment and give him that opportunity. Maybe this is a good time to take a - an earlier morning break with 15, 20 minutes.

The witness can go through there to highlight those he wants to bring to the Court's attention.

MR. MAE: Certainly, Your Honour.

THE COURT: That may save us some time ultimately

MR. MAE: And one thing I will say, Your Honour, this is one of the documents in the request to admit authenticity and I handed up. So I just draw the Court's attention to that.

Pavel Danilov - Cr-ex (cont'd)

THE COURT: All right. So we will adjourn for about 15 minutes or longer if Mr. Nikityuk [sic] needs more time.

MR. MAE: Mr. Danilov.

THE COURT: Sorry, Mr. Danilov. Sorry.

R E C E S S

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

THE COURT: Yes, Mr. Danilov, you may return. So Mr. Danilov, did you have sufficient time to look through your logs?

A. Well yes, Your Honour.

THE COURT: All right. Mr. Mae, you - I think your question was what evidence there was in the logs that she - that Yalana [sic] Skybin encouraged - yes, is that the question?

MR. MAE: That was the question, Your Honour.

A. I believe we were talking about conspiracy, am I right?

MR. MAE: Q. We were indeed.

A. Okay. So let's look then - you - you want me to go so findings right - or you were asking questions on how....

Q. You had the opportunity during the break to go through the log to flag and highlight the entries that you say show evidence of a conspiracy.

A. Okay. So it's kind of my version of this started then and....

Q. Well I'm sure it's your version, sir.

A. Yes and I will explain that version with your permission.

Pavel Danilov - Cr-ex (cont'd)

Q. You don't need my permission, I'm waiting  
sir.

A. Okay. So let's look at that famous record of  
August 23. So what it says, "Alla and Valentin came to see me  
5 in my office. They ask for information about subsidized  
housing." Then....

Q. Read the rest of the sentence, sir.

A. "As they need to separate from their daughter  
and son-in-law." Okay I'll read faster then. "I explained the  
10 sponsorship requirements and the waitlist for subsidized  
housing. They said the atmosphere at home is unbearable. The  
daughter yells at them and attacked Alla. She showed me her  
bruises." Imagine at the meeting that there were no bruises and  
we will be able to prove that which is unusual by the way. And  
15 that's what Nikityuks were counted [sic] on that we won't be  
able to prove that there were not any bruises. But imagine for  
a minute that we will be able to. So you imagine that there  
were no bruises.

Q. Well we - we can imagine it's all your  
20 imagination, but continue.

A. And imagine that there are no bruises. So  
from this perspective, let's go and read further. "She showed  
me her bruises" - but there were no bruises. "The son-in-law  
yells at them too and throw plates at them that ended up making  
25 holes in the wall in living room." Let's forget about that for  
a minute. "There were signs of distress and fear in their eyes  
and voices." Yeah okay, Alla, she - she's a good actress, I  
suppose. Okay. "Alla started to cry, she said the daughter is  
telling her she is crazy and depressed. Alla and Valentin spoke  
30 up when their granddaughter visited last time." Well  
granddaughter is very important. "Their granddaughter was  
shocked to discover what was going on in the family. She spoke

with the parents that told Alla and Valentin things will improve begging them to give it a try." And the timeframe she's speaking about here and it's actually a - can be figured out more accurate from her support letter which is somewhere in the case too. There was support letter to Social - for internal review to Social Assistance or something like that - to whom it may concern or - it has been widely used after that. There is actually specific reference to the weekend before, so it's visit of last time - that visit of last time. It was weekend before August 23<sup>rd</sup> and that's when our granddaughter visited. And our granddaughter visited us approximately once in a month. It was kind of regular schedule. And she remembers and she will testify....

Q. Well sir, I'm - I'm - I hasten to interrupt you, but so - so far I've not heard you say why is this evidence of a conspiracy.

A. Let me continue. We - we imagining - we imaging here that there were no bruises.

Q. No, you're imagining.

A. You - you remember that. Hypothetically speaking there are no bruises. And she - reference to my - to my daughter, Anastasia, Alla's granddaughter, who was visiting at the weekend before and my - my - my daughter she remembers that weekend. It - it was a very memorable - memorable event for the family. Well you asked me, so - so I'm explaining you my evidence. And my daughter will testify that there were no bruises, so that hypothetically speaking there were no bruises becomes some kind of a fact after that. And - okay hypothetically speaking, if there are no bruises - but Yana Skybin keeps saying that she saw them, how she could see the bruises which didn't exist? And we actually have hated them so bad that she didn't see that - Alla Nikityuk admitted that -

that she didn't show Yana any bruises and actually - at the oral examination. And actually Yana admits herself that she didn't - she doesn't remember, then she didn't see, then maybe she saw, maybe she didn't. But here it says very confident of the oral  
5 examination that at her birthday, when Anastasia was visiting same day and birthday celebration was in afternoon - and they returned after that and there were no bruises on Saturday and there were no bruises on Sunday. But see what's interesting here actually, that the entire Nikityuks case there is all this  
10 abuse thing is like a huge bubble built on those bruises which didn't exist. And then it starts all - all here like all this huge log with all this stuff. Yana's there, Yana's this - she's translator, she's not translator sometime, she's interpreter from Russian to Russian I suppose when she speaks the Russian  
15 pension fund in Russia for example. So she's everywhere. And what's interesting here is that she knew that there were no bruises because she couldn't see them. They didn't exist and we'll prove that. And if she knew that there were no bruises, then it's all conspiracy. You must agree, sir.

20 Q. I don't have to agree to anything.

A. Because she knew that it's - there were no bruises. She knew that very well. And it's all matters. Okay, let's go further.

25 THE COURT: Just for the record, for the benefit of the reporter, sometimes the witness is giving his own words and sometimes words from the log, so...

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

30 THE COURT: ...if the reporter has a copy of this later, she'll be able to distinguish his evidence versus what he's reading to the court.

MR. MAE: Certain - certainly, Your Honour.

Pavel Danilov - Cr-ex (cont'd)

THE COURT: Do you understand that, sir?

A. I understand.

THE COURT: Thank you.

A. Let's go further to September the 30<sup>th</sup>, 2011.

5 One month - more than one month after the - those bruises which  
didn't exist hypothetically. "Alla and Valentin came back to my  
office saying things have gotten worse and peace didn't last.  
The abuse is ongoing and they can't live like that. They are  
now hiding in their rooms and come out only when the daughter  
10 and son-in-law are not around." Okay. One month things gotten  
worse. How much worse they can get? Can you give me any  
detail? Like they already have bruises, right. So someone -  
someone hurt them. They already had bruises. So - so month  
after that, things got worse. How much worse? Can give any  
15 detail? I already - I already threw - threw plates on the wall.  
They already had bruises the month before. So on September the  
30<sup>th</sup>, she writes in her log, "Things got worse." What somebody  
got killed or what? How much worse things could get? There are  
no [sic] any details over there. There are no [sic] any details  
20 anywhere...

Q. And how is....

A. ...because there were no [sic] any details.  
These things never happened. That's the point. This is a big,  
big bubble built on those bruises which never existed.

25 Q. And how is that evidence...

A. And she knew...

Q. ...of....

A. ...that those bruises never existed.

Q. Now number one, sir....

30 A. And that's conspiracy.

Q. Number one sir, you don't know what Yana saw,  
do you? You do not know.



Pavel Danilov - Cr-ex (cont'd)

A. I know from her log.

Q. Well her log says she saw bruises.

A. Right. But I know that she didn't because bruises never existed.

5 Q. So - so you keep saying, sir. So you keep saying. So how - how is that...

A. This is the central point...

Q. ...that....

10 A. ...of all this case, that bruises never existed and we are going to prove that. Nikityuks never expected that. Yana Skybin never expected that, but we are able to prove that.

15 Q. How is that evidence of a conspiracy? Where does it say in any of those entries, we conspire, we made up a story? Where does it say that? It doesn't.

A. Have you ever in any case have such kind of evidence of conspiracy? It's obvious, sir. She knew that those bruises never existed, but she confirms that they existed and she keeps saying that all over the place. She keep defaming us all over the place. And those bruises never existed.

20 Q. So you keep saying, sir.

A. That's - that's - that's the fact, actually.

Q. So you keep saying. Where - where's your evidence, sir? Any - anything else in the logs?

25 A. You will see the evidence.

Q. Anything else in the logs, sir?

30 A. Oral log actually confirms all this conspiracy because this is the central point, the events of August the 20<sup>th</sup>. And what's interesting actually here, that - see evening, arrived after her birthday, she sends email to Nikityuks, "Thank you for such valuable gift. You are so generous persons." And it's August the 20<sup>th</sup>. And guess what,

three days later they come for appointment for Social Housing and alleged bruises. Well my version of this thing is like well guys I appreciate your gift, I will do what I can. Come on August 23<sup>rd</sup>, I'll explain you what you have to do.

5 Q. So that - so that's your - you say your version.

A. Yes.

Q. That's your....

A. That's my version - yes.

10 Q. So that's speculation, isn't it? There's no evidence about that.

A. Not really because she knew...

Q. Okay.

A. ...that there were no bruises.

15 Q. So you keep saying. She says otherwise and so do Nikityuks.

A. It's not just me who keeps saying that. There will be other witnesses.

Q. Really?

20 A. Yes.

Q. Which witnesses, sir?

A. Two of them are coming from Germany. They will be here on Wednesday. You will have a chance to cross-examine them.

25 Q. Oh your daughter and son-in-law. That's right.

A. Yes, exactly.

Q. Okay. So that's what - have you finished with the log?

30 A. Yes, I am.

Q. Okay. Thank you for that. So you have no witnesses to support your position that Yana Skybin put the idea

of all these things in the Nikityuks' head, correct?

A. I just explained why I do.

Q. Well - no. Let's - let's break that down again. You're not going to produce a witness that is going to say...

A. That there were no bruises.

Q. ...that I was in the room when Yana Skybin was talking to the Nikityuks and all of this is a conspiracy.

A. Common. You - you...

Q. No. The Court needs to hear it, sir.

A. ...you - you should be logical too. Yana Skybin says that on August 20<sup>th</sup> my daughter saw the bruises. That's what she says in her record. Look August 23<sup>rd</sup>, that's what she says. But my daughter will testify that she didn't see those bruises.

Q. Sir, the source of that information in the log came from the Nikityuks. Yana wasn't at your house, was she?

A. No, I believe they met at her office.

Q. Okay. So Yana is reporting what was reported to her by the Nikityuks. Do you accept that?

A. No, she positions herself as an eyewitness of those bruises which never existed. That's the point.

Q. We're gonna keep going round in circles here, so let's....

A. And she positions as eyewitness of bruises which never existed everywhere to all people, to many organizations, to lawyers, to everybody - that's mad.

Q. This log sir, it's a report of the event on that day. Clearly it shows what Yana saw herself and clearly shows what she was told.

A. Yes, she will help to explain how she saw the

bruises which never existed.

Q. She will, sir.

A. Okay.

Q. Let's - let's move on.

5 A. Let's move on. Thank you.

Q. You have no evidence that Yana Skybin knew about the Nikityuks' finances prior to August 2011, correct?

A. You should ask my wife about that because she...

10 Q. Oh.

A. ...communicated with Yana a lot and I believe there was some communication in 2009 when Svetlana told Yana actually about that.

15 Q. Well I will deal with that with your wife then. But again, whenever I ask you a difficult question you defer to your wife who sat there hearing your evidence.

A. Because you know that I didn't communicate with Yana. You should not ask me questions about Yana. I know very little about that and it is all hearsay.

20 Q. But I'm asking about your evidence now in your case. You are the plaintiff, you are bringing this case. I'm asking....

A. My wife is also the plaintiff.

25 Q. I know she is, sir. But you have no documented evidence that Yana knew specifically about the terms of the financial arrangements between you and the Nikityuks, correct? Yes or no?

30 A. I don't and one of the reasons for that probably is that Yana didn't produce undertaking, number one. She testified at the oral examination that there were a lot of handwritten notes of her - of communications between Svetlana and her in the period from 2009 'till 2011.

Pavel Danilov - Cr-ex (cont'd)

Q. She didn't testify that, sir.

A. She did.

Q. She did not, sir.

A. Well I can refer you to the transcript.

5 Q. She did not and you're counsel will have the opportunity of putting that to Yana.

A. Yes, thank you. So she testified that and she said that those written notes actually never overlapped with the notes in the doc [sic] file in the log we are talking about.

10 And there were many of them in the period from 2009 to 2011. And she undertook to produce those. But she never did and I believe she didn't do that because she was instructed by her supervisors to destroy them.

Q. So you say, sir.

15 A. And in those notes - in those notes I am pretty sure there were some notes about conversations with Svetlana and what actually they were talking about.

Q. Okay. So you say, sir. That's speculation on your part.

20 A. Well....

Q. It is speculation on your part, yes or no?

A. It's - it's - of course it's speculation.

Q. Okay.

A. But only because they destroyed evidence.

25 Q. Let's move on. I'm gonna take you to paragraph 20 of your statement of claim. It's in the Trial Record.

A. I'm sorry what - what tab?

Q. It's Tab 1 of the Trial Record.

30 A. Mm-hmm.

Q. It's your amended statement of claim.

A. Okay.

Pavel Danilov - Cr-ex (cont'd)

Q. And it's paragraph 20, you allege that Yana Skybin had received expensive gifts from the parents in breach of their duties and responsibility as a YMCA employee. What evidence do you have to support that, sir?

5 A. Email from her to Svetlana's parents.

Q. Oh the email that thanked - thanks the Nikityuks for the birthday gift?

A. Yes. And it was so valuable that she expressed her profound gratitude for such [indiscernible] -  
10 valuable gift and she said that Nikityuks are very generous persons. And - well did she send those emails to Alla in days of her birthday.

Q. Let's - let's find that email, sir.

A. Let's. It's email in Russian translated by  
15 the way.

Q. Yes and it's in your productions at Tab 65. Exhibit 1(A), Your Honour, Tab 65. And it's at page 422, the English translation.

A. Four hundred and twenty-two.

20 Q. Four hundred and twenty-two.

A. Yes.

Q. And it's the email marked number 17, dated August the 20<sup>th</sup>, 2011. That's the email you're referring to, sir?

25 A. Yes.

Q. And....

A. Actually I'm referring to the Russian original, but this is the translation.

30 Q. And this is a certified translation that you've produced.

A. Yes.

Q. And the email says, "Valentin and Alla, let

me express a profound gratitude that you have come as well as for your precious gift. You are very generous persons. Thank you very much. Here is the link to [indiscernible]." And there's a link to Cirque du Soleil. That's the email. Okay.  
5 So that's an email sent by Yana Skybin after the birthday party, correct?

A. Yes. Correct.

Q. And at the birthday party, she was given a birthday present by the Nikityuks, correct?

10 A. Correct.

Q. And she sent them....

A. Nikityuks - Nikityuks by the way said at examination that they never gave Yana any presents.

15 Q. No, she's thanking them for - that's what the Nikityuks say, maybe they don't remember. Who knows?

A. Who knows?

Q. But she's thanking them for a birthday present.

A. Yes.

20 Q. And you're aware that Yana Skybin's evidence is that she had \$50 in a - in a card - a birthday card.

A. Yes and she said that it was collective gift from five people attending - or four people attending her birthday. But - well she didn't send the same email or whatever  
25 it is to other people.

Q. How - how do you know?

A. Well she would produce by that point if - if she did. So...

Q. No, sir.

30 A. ...maybe - maybe she should.

Q. No.

A. And another thing is, if it's a \$50 gift card

and it's splitted [sic] between five people, do you actually believe that she can call \$10 gift generous? Like you are very generous persons she says. And translation here - well....

5 Q. The word is bulshoy (ph), isn't it? The word in the original...

A. Yes. Yeah.

Q. ...is bulshoy (ph).

A. Yeah the literal translation is big.

10 Q. That's correct.

A. Or valuable.

Q. That's right.

A. Or expensive. Yes.

15 Q. Yes. And you can't except for one moment can you sir....

A. Ten dollars - no.

Q. It can be a big gift to some - somebody who has no money to give, correct sir?

A. At that point Nikityuks had money.

20 Q. Well....

A. They just withdraw \$300 from their....

Q. Three - three hundred dollars?

A. Couple days before.

25 Q. Do you want to rethink that? Do you want to rethink that...

A. Rethink what?

Q. ...before we go to your transcript?

A. Rethink what?

Q. Do you want to rethink that \$300?

A. Rethink what exactly?

30 Q. The amount that you - the evidence you just gave.

A. Yeah. See you better ask my wife about that



because she withdrew that money.

Q. More like a hundred dollars, wasn't it?

A. I don't remember.

Q. You don't remember.

A. No.

Q. But your wife will remember.

A. Yes.

Q. Okay. So let's just assume for one moment the Nikityuks gave Yana a \$300 gift, what does that tell us?

10 Nothing at all. That they're generous people.

A. It - well....

Q. Let's just assume that for a second.

A. Oh yes assume that and you know three days later they come to her office and allege all that abuse -  
15 common. It's stinky, you can see that right?

Q. No, sir. You have no evidence whatsoever as to what was given to Yana on her birthday other than what's been provided in these proceedings. Simple yes or no. Yes or no?

A. Yes.

20 Q. Yes that you have no evidence, you agree?

A. I have no evidence and there are contradicting testimonials about that gift - very contradicting.

Q. All - all you have is suspicion.

A. Oh yeah - sure.

25 Q. That's all you have is suspicion. Okay. And you have no evidence whatsoever that the Nikityuks offered any form of compensation or gift to Yana Skybin for helping - for her assistance with their housing situation, correct?

A. Correct.

30 Q. Okay. And you have no evidence whatsoever that Yana Skybin asked them for anything, correct?

A. My wife will testify about that. She was

communicating with Yana and...

Q. Well let me ask you....

A. ...mostly with her parents.

Q. Sir, you know what your wife knows. She  
5 knows what you know. She's in the court. You've been dealing  
with this case for five years. I'll ask the question again.  
You have no evidence whatsoever that Yana requested anything  
from the Nikityuks, yes or no?

A. I personally don't.

Q. Okay. And you have no evidence whatsoever  
10 that Yana received anything from the Nikityuks other than that  
birthday gift and some chocolates at some time or other,  
correct?

A. Or some big raise or something else.

Q. Or something....

A. There - there were a lot of - a lot of  
15 versions of those gifts and well - Nikityuks told that they  
didn't give her anything ever. So....

Q. Okay. Great. And when the Nikityuks removed  
20 your wife as their Power of Attorney after they left your house  
- or left the house, I should say to be correct, when the Powers  
of Attorney were changed, they didn't appoint Yana Skybin, did  
they?

A. Alla said they did.

Q. Well if Alla said they did - should we just  
25 look at the Powers of Attorney to see who they appointed?

A. I don't have those, but...

Q. But....

A. ...but Alla said that they gave Yana Power of  
30 Attorney...

Q. Well....

A. ...that's where I base my, you know....

Q. Okay. Well let's - let's actually look at the Power of Attorney. If we can go to Exhibit 3, volume 1 - the green one, yes. And I'm going to take you - if you go to the big green letter B and it - within that subtab, let's go to  
5 Tab 19. Do you have that in front of you, sir?

A. Yes.

Q. And that's a Power of Attorney for Personal Care executed by Alla Nikityuk on October the 19<sup>th</sup>, 2011. You see that?

10 A. Yes, it is - sure.

Q. And if you look at paragraph 1, who's appointed as their Attorney?

A. Valentin Nikityuk.

Q. Okay. Let's go to Tab 20. And this is a  
15 Power of Attorney executed by Valentin Nikityuk also on October the 19<sup>th</sup>, 2011. You see that?

A. Yes and it's Alla Nikityuk. Yes, I see that.

Q. Yes, so they've appointed each other.

A. Yes. But it's not in use. Yeah - we - we -  
20 we read all over those - of those Power of Attorneys. But it doesn't mean that...

Q. Okay.

A. ...others don't exist.

Q. So you're just guessing then.

25 A. No.

Q. You're just guessing.

A. Alla Nikityuk said at oral examination that they gave Yana Power of Attorney. I'm not guessing.

Q. There - there - well there is no Power of  
30 Attorney is there?

A. We're talking about different things.

Q. No. There is not a physical Power of

Attorney, is there?

A. I don't understand the question. We're - you are talking about Power of Attorneys when Nikityuks appointed each other. But Alla Nikityuk at the examination said that they  
5 gave Power of Attorney to Yana.

Q. Well your counsel can ask her.

A. That's all that what I know about that Power of Attorney...

Q. Okay.

10 A. ...to Yana.

Q. Okay.

A. Alla Nikityuk said at examination - but testimonial under the oath of examination as an exhibit right or evidence or whatever. It's considered evidence.

15 Q. Those Power of Attorneys, they appoint each other. Simple.

A. With - with this. Yes I agree. Sure.

Q. Okay. Okay.

20 THE COURT: Mr. Mae, just to be clear, that was Power of Attorney for care, right? You - you were telling me.

MR. MAE: Those - those are the Power of Attorneys that were issued.

25 THE COURT: For care or are they for property or both. I didn't....

MR. MAE: Oh they - there may be one other, Your Honour.

THE COURT: It says personal care.

30 MR. MAE: Those - those are the Power of Attorneys that we were provided with, Your Honour.

THE COURT: All right. They're Powers of

Pavel Danilov - Cr-ex (cont'd)

Attorney for personal care just to be -  
distinguish them from...

MR. MAE: Yes, Your Honour.

THE COURT: ...Powers of Attorney for property.

5 MR. MAE: Your - Your Honour, there may be  
another one that - if somebody is looking for that, we'll sort  
of go back to it when it's located, Your Honour. Q. And as I  
understand it, your position is that you figured out that when  
Yana was named as next of kin for Social Assistance that you  
10 figured out that she had some financial interests. That -  
that's what you believed, correct?

A. It's - it's one of the interesting facts,  
that's it. It's nothing to do with financial interest; I know  
what next of kin means. And there are a lot of issues with that  
15 next of kin thing...

Q. Okay.

A. ...actually. Financial interest is one of  
them.

MR. MAE: Sorry, Your Honour - if we go back to  
20 those tabs, they were hiding in plain sight. If  
you go to Tab 20 and you go two pages in, there  
are the continuing Powers of Attorney - both in  
Tabs 21 and - sorry 20 and 21.

THE COURT: All right. So that covers Power of  
25 Attorney for the property. And once again they  
are appointing each other. Is that - that's what  
these tell us?

MR. MAE: Yes.

THE COURT: All dated on October 19<sup>th</sup>. All  
30 right. Thank you.

MR. MAE: Q. So sorry for interrupting you  
there, Mr. Danilov, but I think I put to you that - well you

believe that when you saw that Yana was named as next of kin on the application for Social Assistance, I put it to you that you figured out in your mind that she had a financial interest. And you said....

5 A. Next of kin thing in application of the Social Assistance raises a lot of issues and financial interest as well.

Q. So - so you say.

A. Yes.

10 Q. So you say. But you have no evidence to support that, do you?

A. We have application.

Q. Oh you have the application.

A. Yes. That's the evidence.

15 Q. That's - that's your - some sort of evidence. Okay. Other than what you've seen in the productions, you have no evidence that Yana Skybin advised the Nikityuks to apply for Social Assistance, correct?

20 A. Other than what we see in productions - yes, that's correct.

Q. When the steps taken by the YMCA after the report of the assault, you accept that they reported - referred Alla and Valentin Nikityuk to the housing shelter. You accept that, don't you?

25 A. To housing shelter?

Q. Yes.

A. Depends on definition of slower - of - of their - of the word referral because I - I think - like my - my opinion is that they did much more than just referral.

30 Q. Well YMCA - let's deal - let's break this down into bite sized pieces, okay.

A. Yes, please.

Pavel Danilov - Cr-ex (cont'd)

Q. We know from the document - hey this is part of your case sir, that the YMCA referred the Nikityuks to the housing shelter. They did, correct?

A. They did, but again at that point, Yana Skybin positions herself as an eyewitness of abuse. It's not just referral, it's much more than that. Because Dorothy Archer, who was actually dealing with Nikityuks....

Q. And - and Dorothy Archer is at the shelter.

A. She is a shelter lady - yes.

Q. Okay. And she....

A. She - she didn't actually see anything. She is not a witness. Everything she will be testifying will be based on Yana Skybin's words where she, as YMCA Settlement consult, positions herself as an eyewitness of events which never happened.

Q. Okay. Let's go back because these are simple yes or no questions. YMCA, Yana Skybin referred the Nikityuks to the housing shelter, yes or no? Yes, isn't it?

A. Yes.

Q. Okay. And the Nikityuks were also referred to Victim's Crisis - that's where they got the telephone, correct?

A. I'm not sure about exact name of organization, but they were, as you put it, referred I think to 20 or 30 of them.

Q. Yes. And also, Yana Skybin referred the Nikityuks to legal counsel, correct?

A. To six or seven of them.

Q. Yes.

A. Yes.

Q. But she referred them to legal counsel.

A. Yes and again, every time she positions

herself as an eyewitness of events which never happened. It's not just a referral.

Q. They were proper steps to take, weren't they?  
Refer....

5 A. Not if you position yourself as an eyewitness of events which never happened.

Q. So an - an eyewitness of events cannot refer the victim of abuse to the necessary authorities for protection?

A. It's malice.

10 Q. That's malice?

A. Yes. She can refer to the lawyer then - yes of course. But when she says that turning off Russian T.V. programming is financial robbery to that lawyer, it's malice.

15 Q. Do you not accept that everything Yana Skybin said to the third party agencies was based upon what the Nikityuks told her?

A. No, it was other way around. It was Nikityuks told everyone what - how Yana Skybin actually told them to tell and we have evidence of that.

20 Q. Well what evidence? I have not seen any evidence.

A. She provided them the - the...

Q. No - no - no answer my question, sir.

A. ...abuse - abuse brochure. It's in her log.

25 Q. She gave - she gave them a brochure on elder abuse, correct?

A. Yes.

30 Q. Okay. We know that she did that. Tell me again, what's this evidence that you have that Yana Skybin told them what to do?

A. She gave them the brochures and I suppose she said look at that brochure, come in a month and tell me what



fits.

Q. Oh you suppose do you?

A. Well yeah because she knew that there were no bruises and there were no abuse. She knew that very well.

5 Q. You - you - you suppose.

A. What other reason that might be if she knew that there were no bruises and there were no abuse? And she translated that brochure to them using Google translator. We didn't actually get that translation produced - to Russia.

10 Q. She did translate it because they can't speak English as you keep telling us. The - the brochure was in English.

A. Yes and she did that with Google translation.

15 Q. Now let's take a look - let's take a look at that brochure. If you can go to Exhibit 1 - I'm assuming it's gonna be in 1(A) because I had separate binders. It's the one with Tab 93 in it.

A. Tab 93?

20 Q. Tab 93, sir. Page 585. Do you - do you have it?

A. Yes.

Q. Okay. And this is your production and this is the elder abuse handout that Yana Skybin admits to having provided to the Nikityuks, correct?

25 A. Yeah - well - yes.

Q. Okay. So let's just go through this document for a minute because maybe we need to agree to some basics. Let's go to page 589.

A. Give me a second please. Five hundred...

30 Q. And 89.

A. ...eighty-nine.

Q. Now firstly, I think we both agree that this

handout is not something that was published by the YMCA, we agree to that?

A. Yes.

Q. Yes. And we would agree that from the front page it is something that is published by Community Legal Aid Education Ontario? It says on the - 585.

A. Yes.

Q. So top of page 589, let - let's see what we agree, sir. Under the heading, "What Types of Elder Abuse are There" and you've got physical abuse - it says that.

A. Yes.

Q. You would agree that physical abuse is a form of abuse?

A. Yes.

Q. And we would agree that that's what the Nikityuks allege happened, correct?

A. No, they alleged bruises.

Q. Physic - resulting - that's a result of a physical assault.

A. Okay. Yes.

Q. Yes. Okay. Let's go to the next page 590.

A. Yes.

Q. Let's look at the section financial abuse.

A. No - what - let's look at the section sexual abuse first.

Q. No, nobody's alleging sexual abuse. Let's deal with....

A. Yeah okay.

Q. Oh - oh so you say that all of these things have to happen for abuse to have taken place?

A. Yeah except sexual abuse. See that - that's the point of this story. Nikityuks arrange everything pretty

much from this brochure except sexual abuse because that would be ridiculous, correct?

Q. Well they have - they haven't alleged neglect, have they? Neglect is on page 590.

5 A. Yeah that would be really difficult for them - yes.

Q. Okay. Right. So let's look at financial abuse.

A. Yes.

10 Q. The Nikityuks have alleged financial abuse, correct?

A. Yes.

15 Q. Okay. And let's look at mental abuse. The Nikityuks have made a complaint of that as well, haven't they? Maybe not in these exact words, but humiliation, insulting, frightening, threatening, treating an older person like a child.

A. Okay.

Q. Yep.

A. I was reading.

20 Q. Okay. And now let's look at page 591.

A. Mm-hmm.

Q. What were the signs and symptoms of elder abuse?

A. Mm-hmm.

25 Q. And you read the first line, "Victims of elder abuse may show signs of any of the following." And line number 2, unexplained physical injuries.

A. Mm-hmm.

Q. And that's what the Nikityuks complaining of.

30 A. Yeah, but she didn't see those injuries right.

Q. Yeah - yeah - yeah. And then on that page,

5 "Why Does Elder Abuse Happen." Well, "Elder abuse happens because of the abusers power and control over a person" and it gives some explanations as to....

A. Yes [*indiscernible*] the whole problem. He's still anti-social behaviour, mental health problems, so....Did Nikityuks allege anything of those?

Q. But they don't have to allege each and every - it's - it's not a cumulative thing, is it sir?

A. Right.

10 Q. And then let's go to page 595 - 595, "Why is Elder Abuse Seldom Reported? Some victims do not report elder abuse because" and there's a list. On that let's look at bullet points number two - or the second bullet point, "They are completely under the control of the abuser, depend on the abuser for food, shelter, clothing and healthcare." Sound familiar to you, sir?

A. Nope.

20 Q. Okay. And then let's go down to the one after that, "They are ashamed to tell anyone that a family member is assaulting them or stealing their money." Sound familiar to you, sir?

A. Nope.

25 Q. Well let's go down to the last paragraph, "There are other reasons why service providers may not report elder abuse. They may not want to involve the police or give up information because they believe that they have a confidential relationship with their client and cannot tell anyone else about what happens in the client's home." Part of your case is that the Nikityuks never reported the abuse to the police, correct?

30 A. Yana never reported.

Q. Okay. What can we point to that Yana would have been obliged to phone the police? Nothing at all.

A. No, there is something. And that something is actually the active policy of YMCA at that point. As it turned out at the material times in 2011, YMCA didn't have any policy related to abuse.

5 Q. That's right, they didn't did they?

A. Except the policy for child abuse or something like that. And Fiona Cascagnette actually testified at oral examination that that child policy was supposed to be applied in case if anything like abuse happens and as there is  
10 no other policy; they were obligated to apply that child protection policy. I'm not sure about exact name at the moment. And that child protection policy clearly states that first thing Yana had to do was report to police.

15 Q. For children. The - the Nikityuks...

A. But they...

Q. ...are not children.

A. ...but they had to apply the same policy because they didn't have any other.

20 Q. The Nikityuks are not children. Number one, do we agree to that?

A. Yes, they are not children.

Q. And number two, they're capable adults, correct?

A. Yes.

25 Q. And capable adults express their wishes, correct?

A. Yes.

30 Q. And we saw from the log - and we've - and you'll be hearing, the Nikityuks did not want to report it to the police.

A. Because there was nothing to report.

Q. They did not want to report it to the police,

yes or no?

A. Because they had nothing to report.

Q. You're not going to answer my question....

A. No.

5 Q. Thank you. There's no obligation to report abuse to the police with capable adults.

A. Any reasonable person would do and Fiona Cascagnette agreed to that in the oral examination. She had said....

10 Q. No she didn't, sir.

A. Oh yes she did.

Q. She's given evidence, your counsel will try to put that to her.

A. Right.

15 Q. So stop misquoting evidence ahead of time.

A. Okay.

Q. You've also produced in your own documentation at Tab 172 another leaflet on elder abuse. Do you have 172?

20 A. One hundred seventy-two. Tab 172? It's not in the volume....

Q. It might be in 2 - 2(B) then. Actually 1(B), I do apologize.

A. My case is empty.

25 Q. Well that was produced by your counsel. Are you able to give him your copy, counsel?

MS. CHAPMAN: Sure.

A. Maybe it's....

MR. MAE: Do you - do you have it, Your Honour.

30 THE COURT: I do have it, yes. It's in this copy I have at 172.

CLERK REGISTRAR: Would you like me to add this

Pavel Danilov - Cr-ex (cont'd)

to the exhibit?

THE COURT: Yeah, that's the exhibit book, is it?

CLERK REGISTRAR: It is.

THE COURT: You should put that in there 'cause  
5 it's not there and it's titled "Abuse of Elders  
and the Vulnerable Adult by Simcoe County".

MS. CHAPMAN: Could you give me a moment, Your  
Honour so that I can get the additional copy that  
I have...

10 THE COURT: Yes.

MS. CHAPMAN: ...so I can....

MR. MAE: Q. So you have the document before  
you, Mr. Danilov?

A. I do.

15 Q. And this is a document in your productions.

A. Yes.

Q. And - so this is not a document that Yana  
Skybin gave to the Nikityuks.

A. No, it's not.

20 Q. And it's a document that you or your counsel  
found and you based part of....

A. No, it's a - it's a document my wife found.

Q. Okay, your wife found it - okay. And - first  
- firstly, why - why is this document in the exhibit book?

25 A. Because it's easily accessible through  
internet since 2005 and our position is that in the absence of  
active abuse related policy, YMCA - like at all no policies,  
Yana Skybin could refer to this easy accessible document. And  
she was familiar with the committee issuing it. That's what she  
30 testified.

Q. So you say.

A. She testified that.

Q. That - that's - so that's - let's look in this document then that you're saying - so I'm misunderstanding that you're saying this sets out the steps that Yana Skybin should have taken.

5 A. Yes, reasonable steps. Yes.

Q. Okay. Right. Thank you. So we can look first at page 999 which sets out....

A. Nine hundred ninety-nine?

10 Q. That's correct. The definition of abuse according to this committee, you see that?

A. Yes.

Q. And it says, "Abuse means misuse of power and/or the betrayal of trust, respect or intimacy between an alleged abuser and an individual which the alleged abuser knew or ought to have known can cause or be reasonably expected to cause physical and/or emotional harm to the person." But that's a fair summary, isn't it?

A. Yes, sure. We - we actually like this document very much...

20 Q. Oh I'm sure...

A. ...so you don't...

Q. ...I'm sure you do.

A. ...you don't have to convince me that it's a good document.

25 Q. Oh thank - thank you, that's extremely helpful. So let's go to page 1000 and we have various definitions there of physical abuse which included hitting, biting, scratching, pinching, kicking, handling a person in a rough manner. You - you - you accept all of that is abuse?

30 A. Yeah, that is abuse.

Q. Okay.

A. Nothing like that happened in our house.



Pavel Danilov - Cr-ex (cont'd)

Q. I understand that's what you are saying, but we're agreeing on some fundamentals here.

A. Mm-hmm. And they're actually possible indicators - a lot of them if you see on the same page.

5 Q. Absolutely. And on page 1001, we have emotional and psychological abuse.

A. Yes. And well we would like actually Yana Skybin to explain which of those [indiscernible] to Nikityuks.

Q. And page 1002, we have verbal abuse.

10 A. Yes. And a lot - a lot of stuff here. Yes.

Q. And you also have financial abuse.

A. Yes.

Q. Which includes overcharging for services, obtaining property and funds without the person's knowledge and full consent.

15 A. You're implying that something like that happened actually so - I wouldn't do that.

Q. And let's go to page 1005, under the heading "Capacity". "Capacity is the person's ability to understand information relevant to making a decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision."

A. Exactly.

25 Q. Yes. And we've already agreed that the Nikityuks are competent. And let's look at the section....

A. Actually no - nobody actually asked them ever to go through capacity assessment. So I don't know.

Q. Well let's look at the second paragraph then, sir.

30 A. Yes.

Q. "An individual is presumed capable of making his or her own decisions unless there is a reason to believe

otherwise. A finding of incapacity is made after an evaluation has been completed." Correct?

A. Correct. Exactly.

Q. And so there's a presumption...

5 A. Presumption - yes.

Q. ...that the Nikityuks were capable.

A. Yes.

Q. Okay.

10 A. And we're all here with all this presumption - yes.

Q. Let's go to page 1007, and bear in mind this is a document that you're saying sets the standards that Yana Skybin of the YMCA should have followed - 1007.

15 A. Yes. Could - could you give me a - like 10 seconds, I might be able to refresh my memory what - what goes next?

Q. No - no - no sir - sir - sir, you're not reading ahead. We're dealing with this page 1007. Let's stick with 1007.

20 A. Sure.

Q. And the heading is "Who Does What When Abuse is Suspected".

A. Mm-hmm.

25 Q. And the second paragraph - because the first paragraph deals with professional caregivers and the YMCA is not a professional caregiver.

A. Exactly.

30 Q. So YMCA would be in the class - class as others. "So when others, neighbours or friends suspect abuse, it should be reported to a trusted individual or agency." And that's what YMCA did, they reported it to the Women's Shelter and Victim's Crisis, yes or no?

Pavel Danilov - Cr-ex (cont'd)

A. They didn't just report.

Q. They reported it, yes or no sir?

A. Yes they did.

5 Q. Thank you. And let's go down to the section  
"Caution". Do you see that in big bold print, cautions?

A. Yes.

10 Q. "Several cautions have been identified with  
the development of protocols for intervention. The following  
concerns are related to the impact of reporting." The first  
bullet point, "Reporting abuse of a vulnerable person in the  
community could expose that person to greater abuse if the  
alleged abuser discharges the agency following the accusation of  
abuse." Do you understand that?

A. Yes.

15 Q. Okay. Second one, "Reporting abuse of a  
vulnerable person in the community could result in the person  
being isolated by the alleged abuser." So is that your  
understanding, correct?

A. Yes.

20 Q. Okay.

INTERPRETER: Sorry wonder if you can instruct  
counsel to go a bit slower because he's speaking  
fast as [indiscernible]. When this gets back to  
me it's like [indiscernible] of the word he  
25 speeds up, it becomes impossible.

MR. MAE: I'll decelerate.

THE COURT: You're speeding up, Mr. Mae. Maybe  
you're looking at the clock.

30 MR. MAE: I - I am, Your Honour and I am mindful  
of the time. Obviously I can't truncate this,  
it's - it's....

THE COURT: Take your time, but just - I think

Pavel Danilov - Cr-ex (cont'd)

the caution is to go slowly so that the interpreters...

MR. MAE: Cert - certainly, Your Honour.

THE COURT: ...can stay with you.

5 MR. MAE: Q. So the next bullet point, "Reporting abuse could result in the relocation of a person at risk to an area not of his/her choice."

A. Yes.

10 Q. Okay. So those are factors - their cautions that Yana Skybin - that is recommended to be exercised. Yes?

A. Yes.

Q. Okay.

A. Can - can I refer you to page 1014?

15 Q. Well we're gonna get there. I wanna go to page 1008 next, okay?

A. Okay.

20 Q. This is my examination. So page 1008, "Reporting Abuse in Residential Settings". So let's look at that. "If you think that an individual who lives in a privately run home including retirement homes is being abused, consider the following options. Discuss your concerns with the vulnerable adult and determine if he or she is capable."

A. Yes.

25 Q. Yes. Okay. The next sentence. "If he or she is cognitively capable, obtain permission to proceed and plan with the individual what course of action will be taken."

A. Yes.

30 Q. And that's what Yana Skybin did with the Nikityuks. Yes? That's what she did.

A. In - in her own way, yes.

Q. Okay. And then let's look at the last line as the other two are not applicable. "Document discussions,

actions and plans." That's what Yana Skybin did, didn't she?

A. Yes.

Q. Okay. Now let's go to paragraph 1000 - or sorry page 1011 and this page is headed, "Assessing Each  
5 Situation". So let - let's - for the first three paragraphs we can just read the head note. "Why is this situation causing concern?" Number two, "How do I feel - how do I feel about this situation of the alleged abuse?" Number three, "What are the relevant factors?" Let's go to the third bullet point, "Is the  
10 person CAPABLE" - capable in capital letters - see that sir?

A. Third - yes.

Q. "A person is presumed capable unless the investigator has reason to believe otherwise."

A. Yeah.

Q. "Capacity to make decisions about finances and property is separate from capacity to make specific  
15 decisions about personal care."

A. Yes.

Q. Okay. And then we go down....

A. I'm sorry - can - can I point to your  
20 attention one simple fact that right after Nikityuks left, we sent to YMCA letter where I expressed some concerns....

Q. No - no - no - no. You sent a letter to the YMCA on October...

A. Yes.

Q. ...the 26<sup>th</sup>, 2011 which we will be coming to  
25 sir.

A. Yes.

Q. And that's after they left.

A. That's what I said.

Q. Yes. So let's go down to the sixth bullet  
30 point, does the person CONSENT" - capital letters consent, you

see that - "to sharing information with others?"

A. Yes.

Q. Okay. And then number four, "What are the values, wishes and goals of the client?" Yana Skybin assessed that, she referred the Nikityuks, correct? She followed their wishes, correct? Yes or no.

A. You are doing all this on the assumption that there was an abuse. There wasn't.

Q. She referred them, yes....

A. And she knew that.

Q. Okay. Yes or no, she referred them.

A. Yes, she referred them - yes.

Q. And then number five, "One of the options for next steps and intervention, consider the facts client desires, those already involved including agencies and the possible consequences of the options." Do you see that?

A. Yes.

Q. And you're relying on this document, sir. Number six - and this is the - this is the biggy, what is the response - let's look at the second - let's look at them both, "utilize resources". Yana Skybin did that. She used external agencies and legal counsel. "Maintain communication, implement plans within timelines, identify possible barriers and opportunities and evaluate outcomes. Secondly, support the person's choice of action." That's what Yana Skybin did. Those are the steps she took, correct?

A. Correct.

Q. Okay. And there's more on that on page 1012. First of all the second bullet point, "Consider the possible consequences if a complaint of abuse is pursued. Many individuals are dependent on the persons suspected of abuse for shelter, financial assistance or personal care. The

Pavel Danilov - Cr-ex (cont'd)

investigator has an obligation to explore with the person their options for continuing care, shelter and service should they chose to pursue alternate arrangements."

A. Shelter is very important here.

5 Q. Of course it is - of course it is. And Yana, through the external agencies, they arranged shelter for the Nikityuks, correct?

A. Yes.

Q. Yes.

10 A. Yes. On October the 7<sup>th</sup>, but Nikityuks never actually lived in the shelter. They - they - they kept living at home. That's - that's very important here. They were already registered at the shelter.

15 Q. "Should they chose to pursue alternate arrangements." This is a document you're relying upon, sir. Let's go down to the third bullet print, "Supporting the person's decision. Supporting the person's choice of action, no matter what decision is made, the person will need your support. Support may include physical or personal care providing it  
20 through agencies, emotional, spiritual, legal or financial. Every effort must be made to assist the person to access the appropriate expert. In some cases, the person may wish that you do nothing further than support them as you have been doing in the past." The Nikityuks didn't want to go to the police when  
25 they reported the assault on August 23<sup>rd</sup>.

A. Of course they didn't because there was nothing to report. That's the whole point of this story.

30 Q. So - so you keep saying, sir. So you keep saying. But the record showed they did not want to go to the police at that time.

A. Of course they didn't.

Q. Okay. And then we have a little bit more on

the issue of capacity. At the last paragraph, "Presuming all determining capacity, remember that a person is presumed capable unless the investigator has reason to believe otherwise." And then, let's go down to the third one because I understand one of your concerns is that nobody contacted my wife or I. "The substitute decision maker, if not the abuser, should be involved if there is a question of competency." So nobody's calling you or your wife because you're the ones accused of the abuse. Makes sense doesn't it?

A. No, because she - she knew that there were no abuse.

Q. It makes sense that you're not gonna contact the alleged abuser. That's what it says in the document you're relying upon, sir.

A. Okay.

Q. So 1014, this was the page you referred to earlier on, sir.

A. Yes.

Q. Okay.

A. With a decision here - let's look at that.

Q. Okay. So let's follow this through.

"Intervention Model for Vulnerable Abuse Victims: Basic Model" and you have the preamble, "Disclose your evidence or suspicion of abuse, assess them by service providers, determine if the person is at risk of serious harm." So we need to go down the left-hand side because we have two options....

INTERPRETER: Your Honour, I'm sorry. Again we are in the same pattern of speeding and not hearing.

MR. MAE: Okay. I'll slow down - I'll slow down.

THE COURT: All right. Just - let's go back to the beginning of page 1014.



Pavel Danilov - Cr-ex (cont'd)

MR. MAE: Q. Yes. So page 1014 is an  
"Intervention Model for Vulnerable Abuse Victims". And we see  
the whole page is a flowchart, correct sir?

A. Yes. Very important - the most important  
5 page in this document.

Q. I couldn't agree with you more, sir. We  
agree on something at last.

A. Okay.

Q. So the first section deals with the  
10 background of the disclosure of evidence, suspicion of abuse.

A. Mm-hmm.

Q. Assessment by service providers...

A. Mm-hmm.

Q. ...and determine if the person is in risk of  
15 serious harm.

A. Yes.

Q. Yes.

A. The - the key point here.

Q. So let's look at the left-hand side of the  
20 flowchart because the word "yes" has been determined. Okay? So  
let's follow through these steps. "Contact police as  
necessary." Doesn't say contact police period. It says "as  
necessary", correct?

A. Yeah.

Q. "Insure safety, provide emergency services as  
25 necessary."

A. Right. Of course it wasn't necessary because  
there were no abuse.

Q. Well - and again, it's set against the  
30 background that the Nikityuks did not want to involve the  
police. And the reason why they did not want to involve the  
police...

Pavel Danilov - Cr-ex (cont'd)

A. Because there was nothing to report.

Q. ...so that - so that your daughter or you did not get in trouble.

A. We wouldn't get in trouble because we were  
5 actually would prefer if police was involved - because police would provide the investigation, clean up our name and we would be good.

Q. It's easy to say that after the event.

A. Oh we kept saying that since then.

10 Q. Let's go to the next part of the flowchart because so far, those steps were taken by the YMCA and Yana Skybin. "Determine if the person is able to understand the information that is relevant to making a decision concerning treatment, intervention and if they are able to appreciate  
15 reasonably" - sorry "reasonable, foreseeable consequences of a decision or lack of decision."

A. They obviously were not able to appreciate those consequences as you can see right now.

20 Q. Do you have any expert witnesses lined up? Any psychologists, psychiatrists?

A. No. That's - that's my opinion.

Q. That's your opinion and you're a physicist, you're not a psychologist.

A. Correct.

25 Q. And so in that part, we go back to the yes. If yes, capable. It flows down to "determine if the person can sense"....

A. How about - how about unsure box?

30 Q. Oh if we go to unsure, it still goes to the same box there. It goes to the same box that I'm referring to.

A. Okay.

Q. All roads - all roads lead to Rome, sir.

Pavel Danilov - Cr-ex (cont'd)

5 "Determine if the person consents to the intervention." So Yana Skybin was following the wishes of the Nikityuks, yes or no?

A. I don't know.

Q. You don't know, okay. Well I'm saying it's  
5 yes. And then we go to the box underneath that, it says  
"Explore alternative living arrangements as necessary. Provide support and assistance as needed." That's what happened.

A. Not really, no.

Q. That's what - that's what happened.

10 A. No, she - again there were no [sic] any abuse. So it's - it's not what happened.

Q. So - so you're saying.

A. Yes.

15 Q. But even if it's no, the box in the middle  
"Provide support activities to minimize abuse, offer services to alleged abuser, document findings." And then they both go down to the last box, "Continue to monitor, evaluate outcomes of intervention, revise intervention plan as required, provide support, practical assistance and referral to community  
20 services." That's what happened.

A. I could refer you to that - Yana Skybin's log again and at some point - and believe it happened on October the 7<sup>th</sup>, some person named Bev has been called to her office.

25 Q. And Bev will be one of the witnesses. She's on the witness list, sir.

30 A. Yes, but my point here is different. See at that point there was some kind of plan created. And there were many steps in those plans. And one of them was collecting evidences like older records of how they yelling at you and I believe some other. None of those records during that monitoring process were provided because there were nothing to monitor it.

Pavel Danilov - Cr-ex (cont'd)

Q. Well...

A. And nothing was going on during that month.

Q. ...your counsel will be dealing with that in her cross-examinations, okay.

5 A. I am responding basically to your long like questioning coming to that last box at the bottom. Continuing to monitor and every laid out counsel intervention. So if she did that properly, continue to monitor - she maybe continued to monitor, but what are results of those monitoring?

10 Q. But they're already out of the house. She is monitoring....

A. No, they are not. They keep living in the house.

Q. I would....

15 A. They came to her on August 23<sup>rd</sup> and they kept living in the house one month after that. Then what's that - during that month, what happened?

Q. Sir, let's go back to the flowchart. Let's look at the "if yes" box. "Explore alternative living arrangements as necessary." That can be for continue to monitor. That's what happens. They were put in alternative housing, they were put in the shelter.

20 A. No what happened, they just didn't want to wait for yes on the waiting list.

25 Q. Okay.

A. That's what happened. Right.

Q. Let's turn over page to 1050 and this is also relevant sir, with respect to the actions of the YMCA and Yana Skybin. This is the intervention model for use with vulnerable abuse victim concerning financial abuse. Okay?

30 A. Okay.

Q. And we have the background information in the

first three boxes, disclosure of evidence, assessment by service providers, et cetera and then big box right across the page, "Determine if the person is capable to consent to the treatment of intervention." We - same - same as on the first one.

5 A. Yeah. Sure - sure.

Q. And let's look at the left-hand side because we're - we've already determined that the Nikityuks are capable, so we'll go down the yes side. Although both of these boxes all go down to the same place. "Develop an intervention plan with  
10 the individual that they agree to participate in."

A. Yes. Well....

Q. And that - that's what happened.

A. Intervention plan happened?

Q. A plan - an intervention plan, yes. It  
15 happened.

A. Yeah. Okay.

Q. "Advise and inform the person about options and community services, refer to appendix of resource provided in this document." So steps were taken to assist the Nikityuks,  
20 correct?

A. There is big difference between steps which were supposed to be taken and steps which were actually taken - but yes.

Q. Okay. And then let's look at the big box at  
25 the bottom. Read the first line, "Depending on the circumstances of the situation" - so the circumstances of the situation, so you appreciate not all situations going to be the same. We would agree to that wouldn't we?

A. Well yes - sure.

Q. Yes. "The following may" - not are, not  
30 will, "may be appropriate". So we have a number of situations and many options, we agree on that? This is the doc...

Pavel Danilov - Cr-ex (cont'd)

A. Of course.

Q. ...this is the document you're relying upon. And there are a significant number of bullet points. So not all of them are applicable. Let's look at the applicable ones. On  
5 the left-hand column, "Refer person to a lawyer or legal aid to obtain advice in relation to revoke a Power of Attorney for property, freezing bank account, et cetera." That's what it says there. That's what happened, correct?

A. Yes.

10 Q. Yes. Okay. Let's go into the right-hand column. "When there is unexplained withdrawal of funds from person's bank account, prompt action is required. Give several considerations: alert the bank manager, arrange transportation to bank, arrange for bank representative to meet with vulnerable  
15 person, obtain written permission to enquire about the account, assist person in closing account and opening new one." That's what happened, isn't it?

A. Not really. Because Yana knew all arrangements - financial arrangements with Nikityuks I believe  
20 since 2009 and well - she - if she was reasonable person or if she was at least an honest person, she would never believe Nikityuks because she knew everything that there were no financial robbery, why they are in Canada in the first place and well that financial robbery - for her it's synonym of Russian  
25 T.V. program you turned on.

Q. But that's....

A. That's what financial robbery for her.

Q. That - that's what happened though sir, isn't  
it?

30 A. No. Nothing like that happened.

Q. Okay. I'd like you to have - to turn to a document which is at Exhibit 3(A), Tab 3. So if you go to the

first Tab 3 and at the beginning of that tab....

A. I'm sorry is it hidden kinda  
[indiscernible]....

5 Q. Yes, it is - yes, it is. We're - we're back  
to that same document. But I'd like you, within that tab, to go  
to page 39. Unfortunately, this was mis - miscopied and there  
are some additional documents at the back. They - they've been  
produced since day one. And I'm looking at page 39 which is a  
document prepared by the Province of Ontario. You see that,  
10 sir?

A. Yes.

Q. And on the front page we have definitions of  
physical abuse and financial abuse.

A. Yes.

15 Q. Yes. And if you'd like to take a moment to  
read them, I'm sure you'll agree that they are....

A. I agree.

Q. You agree to them, perfect.

A. Mm-hmm.

20 Q. I'd like you to go to page 41 in that tab.  
You have it, in bold - the black section at the top?

A. Mm-hmm.

Q. "The single largest factor that contribute to  
the development and/or maintenance of an abusive relationship is  
25 isolation. Talking to a person is one of the first steps to  
breaking down this isolation. If - if a person does tell you  
that they are being abused, you should"....

A. I agree with everything on this page.

Q. Okay.

30 A. It might save some time.

Q. Okay. Perfect but I'm - but we need to  
specifically see what you agree to. Bullet point number one,

"Believe the person." Yana Skybin believed the Nikityuks, she said you have no evidence otherwise.

A. I don't think so. She knew very well that they are lying. That's the whole point of this story.

5 Q. So - so you say.

A. Yes.

Q. But you can't, can you?

A. And that's - that's what we are going to prove in the case against Nikityuks.

10 Q. That's what - that's what you're gonna try to prove, sir.

A. Yes, sure.

Q. And then let's go down to the fourth bullet point, "Do not deny what is going on."

15 A. Nothing was going on. There was nothing to deny.

Q. But Yana Skybin didn't deny what was going on because she believed what was being told to her.

A. Because nothing was going on.

20 Q. Okay. And then let's go down further, "Understand that making efforts to change an abusive relationship is extremely difficult. A person who is being abused can be very afraid and not certain what to do. It can take a very long time for the people to decide to make change in  
25 their lives, to reach out for help, even talk about their situation."

A. So you're implying that that very proud military man was afraid of something, right?

Q. Afraid of being seen by others as weak.

30 Afraid of being seen by others as a victim of abuse.

A. That's what you're saying.

Q. Okay. Let's look at the last two bullet



points, sir - 'cause you - you agree to everything, "Encourage the person to seek help." Encourage. So you agree to that.

A. Yeah, if it was abuse - yes of course I would agree with that.

5 Q. Last one, "Do not confront the perpetrator yourself." You've already agreed to that, so their reasons not to pick up the phone to call an alleged abuser, correct?

A. There were no [sic] any reasons because there no abuse.

10 Q. The reason given in this document, "This could put you or the person who's being abused in trouble."

A. Yana Skybin knew my wife since 2009. She knew that my wife is - well extremely good person in 2009. She live that in 2010. She did that most of 2011 and all of a sudden in August 2000 - 3<sup>rd</sup> [sic], she changed her mind and now she has completely different opinion about my wife. You know what, I - I don't believe that might happen if you actually know a person.

20 Q. You have the same exhibit in front of you, sir. If you can go to Section B, Tab 2.

A. I'm sorry.

Q. Section - Section B. Sir...

A. I have trouble to locate...

Q. ...if you find - if you find the green...

25 A. ...Section B.

Q. ...the green tab.

A. I see Section - yeah. Section B, Tab 2?

Q. Yes.

A. Yeah, this is the plan. Yes.

30 Q. That's right. You call it the escape plan, I believe.

A. They - they called it escape - escape plan.

I believe it's in Yana's log. Escape plan, it's term from Yana's log.

Q. Okay. Well we've heard the word plan in the document we've just looked at. We've seen the word plan.

5 A. Yes.

Q. Okay. And of course a substitute word for plan could be arrangements. It's the same thing.

A. Yeah okay. I would give you that just to save time.

10 Q. So let's - let's look at the English section. Step number one, revoke general Power of Attorney for finances and health - okay. You see that?

A. Yes.

Q. So that was done.

15 A. Mm-hmm.

Q. Close joint bank accounts and credit cards.

A. Mm-hmm.

Q. That was done.

A. Mm-hmm.

20 Q. Find out how to hold mail or open a PO Box at the Post Office.

A. Mm-hmm.

Q. Consult a lawyer, how to put on hold the re-sale of the house until decision is made regarding the assets transferred by A and V...

25 A. Yes.

Q. ...to their daughter when they immigrated to Canada. So far on these steps, I'm not so sure about the PO Box, but these steps have all been taken, correct?

30 A. Yeah - well I'm trying again just to make a point here that they - they were taken, but they were not supposed to because Yana Skybin knew very well that it's over

lie. And that's her conspiracy.

Q. So - so you keep saying.

A. Yes.

Q. So number five, inform pension plan in Moscow  
5 where to deposit the pension in future.

A. Mm-hmm.

Q. Submit direct deposits for Government  
benefits through Canada - so Revenue Canada.

A. Mm-hmm - Mm-hmm.

Q. Open a credit card when the first pension  
10 arrives.

A. Mm-hmm. Yes all those steps were taken.

Q. Okay.

A. Except one. There is one more step here.

Q. Which - which one?  
15

A. Thirteen.

Q. I haven't....

A. The record's read on the Dictaphone and keep  
- well that is where it taken. I - I confirmed them in bulk,  
20 okay. But the - the thirteenth wasn't.

Q. But sir, these - these need to be read....

A. That's the most - that's the most important  
one.

Q. Yes. But they need to be read into the  
25 record. And I appreciate you're gonna say that wasn't done and  
guess what, I'm gonna agree with you. I'm gonna agree with you  
that the Nikityuks did not record any discussions.

A. Exactly, because there were no discussions  
like supposed to be recorded.

Q. That - that - that - so let's back away on  
30 that thought. Number eight, apply for a legal aid certificate.

A. I already confirmed...

Pavel Danilov - Cr-ex (cont'd)

Q. Yes.

A. ...it in bulk that all those steps except 13 weren't...

Q. Okay.

5 A. ...taken. All of them.

Q. For the record then sir, I'll just read them out so that they're on the court record.

A. Yeah, okay. You can make it faster and I'll confirm it....

10 Q. I can't....

A. Okay.

Q. ...I can't make it faster because of the translator. Open an email account in Yahoo or Hotmail. Register for online banking with Scotiabank. Apply for Ontario Works. Apply for subsidized housing. Number 13 that you want to highlight, record tracks on Dictaphone and keep diary of encounters. Also, messages on a cellphone or emails. And we - we agree that that wasn't done. Number 14, pending litigation, lien on the house.

20 A. And 15 which is only in Russian, it says list where to change address.

Q. Okay.

A. Translated.

25 Q. Thank - thank you I was - just about to ask you what that translation was. So - and you've already said all of those things happened with the exception of number 13.

A. Yes, all those things happened with the exception of 13 and that's the whole point of the story.

30 Q. And would you concede or agree that this list was prepared by Yana Skybin in conjunction with one of the professionals from the housing shelter?

A. I'm not sure about level of professionalism

of that person, but what Yana Skybin log says that yes it was prepared in conjunction with some Bev person whose title is advocate - I'm not sure what that means. Is it a lawyer or....

5 Q. Okay. So - so let - let's just summarize what we've been discussing for the last 45 minutes to an hour. Yana Skybin acted in accordance with the protocols set out in those documents. The - the three documents, correct?

A. Disagree.

10 Q. You - oh so you don't agree now?

A. Of course I don't agree. I - I keep saying that because there were no abuse. So there were no protocols to apply.

15 Q. Okay. Just bear with me for one second, okay? Yana Skybin receives the report of abuse.

A. She knows very well that it's a lie.

20 Q. But the steps she followed were all in line with those protocols.

A. If that hypothetical situation happened, yes.

25 Q. Okay. Great. And she found out what the Nikityuks wanted to do. It's one of the steps in the protocol.

A. Yes.

30 Q. Yes.

A. What they wanted to do, she figured out - yes.

35 Q. And she respected their wishes. Yes?

A. I need to think about it. I don't know.

40 Q. You don't know. Okay. But - but we've said - just - just to tidy this up - summarize, she referred them to the shelter - yes.

45 A. Not just referred, she - she positioned herself as an eyewitness of some bruises which never existed. It's not referral, it's much more than that.

Pavel Danilov - Cr-ex (cont'd)

Q. She referred them.

A. Yes, she did.

Q. Okay. And she referred them to legal  
counsel?

5 A. To - to five of them before and I believe Mr.  
Bornmann's the sixth one - yes.

Q. Okay. Well all those four or five - many of  
them work in the same Community Legal Clinic.

A. Some of them.

10 Q. Yeah, okay. And she went to the bank with  
them to assist them with their finances.

A. To many banks.

Q. Yes. And she supported them.

15 A. She says that she was an interpreter - events  
when she assisted them in the banks. I - I'm not sure if she  
supported them or not, but she said that she was just an  
interpreter.

Q. And you have no evidence that Yana was doing  
this maliciously, do you?

20 A. Of course I do. That's what I keep - keep  
saying all the time. Of course she knew that it's all a lie and  
- haha - and well there is some wording in those documents she  
produces which keeps it very obvious that it - it's malice.

25 Q. Well let's - okay let - let's just try to  
understand malice at the moment. Let's make sure that we  
understand the same thing. And this relates to your defamation  
claim which I've yet to get to yet.

A. Yes.

30 Q. Because I'm still dealing with the issues of  
negligence and conspiracy and indifferent a breach of the  
contract. Help me with this. Saying something untrue about  
somebody, you would agree that's defamation?

Pavel Danilov - Cr-ex (cont'd)

A. Depends on - on what - on what that actually is. If it's something pleasant then it's not.

Q. Okay. Let's say something untrue that is negative, let's - let's not play games here sir. Somebody says  
5 something untrue, negative about the person, defamation.

A. Defamation.

Q. Okay. And then on the other side, malice.

A. It's....

Q. But the mere saying something may not be  
10 malicious, let's get to the other side. Pavel is an abuser. You would say that's defamation, yes?

A. Isn't it a question of law?

Q. Well - no - no - no, I just want to understand because you're saying malice. I want to understand  
15 what you understand to be malice.

A. Okay.

Q. Just - so Pavel is an abuser, defamation.

A. Yes.

Q. And I want him to pay for his sins, I want  
20 him to rot in hell and be thrown into prison forever. Sounds like malice to me, doesn't it?

A. Yes, it's very strong malice I would say.  
Yes.

Q. So let me just ask you a [*indiscernible*] and  
25 this - and this is the part Your Honour, depending on this answer, is how long I'm gonna be with this witness. And I'll - I'll explain, as well, ahead of the question. We have a plethora of documents. There are five documents which allege defamation in which defamation is alleged. But their part of a  
30 slew of emails. And depending on Mr. Danilov's answer, we're going to be going through each, every one of those emails because they all need to be explored. So - and what I don't

want to do, Your Honour, is skip this and then have my friend in re-examination deal with these issues with Mr. Danilov. So I'm - I'm trying to avoid expanding time or getting caught by something arising out of this cross-examination. Other than the  
5 defamatory comments in the emails you've referred to....

A. There were - I'm sorry, there were not just emails. There were also letters to me from the Nikityuks.

Q. Okay. Let's use the word communication then...

10 A. Yes.

Q. ...okay to satisfy you. Did Yana Skybin express any malicious comments about what she wanted to happen to you or your wife in any of the emails?

A. Yes.

15 Q. Okay which ones. So I guess we're gonna go through them.

A. Let's go at least through that one where she says that it's a full blown abuse with physical attacks and financial robbery and all this stuff.

20 Q. Okay. So I apologize, Your Honour, we're gonna be some time going through these documents.

A. Oh yeah, let's go through all of them.

Q. Okay you - you have the exhibit in front of you already, so let's go to subtab B(3). So that'll be the next  
25 page.

THE COURT: Which exhibit are we in now?

MR. MAE: Sorry, Your Honour.

THE COURT: Which exhibit are we in?

30 MR. MAE: That is exhibit 3(A). Q. So this is one of the emails that you played in your statement of claim as containing defamation, correct?

A. I'm reading.



Pavel Danilov - Cr-ex (cont'd)

THE COURT: Sorry what - what tab are we at?

MR. MAE: Tab B(3), Your Honour.

THE COURT: Sorry just for clarity, is this one of the five or is this something separate?

5 MR. MAE: No this is one of the five, Your Honour. In fact I can - I can help you in the Trial Record at Tab 1.

A. Yes, it's one of them.

10 MR. MAE: Q. Page 9, paragraph 24 of the statement of claim. So this - this is one of the defamatory emails - alleged defamatory emails. And for the record, we see that it is an email from Yana Skybin dated October the 4<sup>th</sup>, 2011 at 3:30 p.m. to Anthony Cuthbert (ph) and in brackets after his name CLC which means Community Legal Clinic.

15 A. Yes.

Q. So let's look at this email, sir.

A. Yes.

Q. Let's - let's read it through.

A. Let's read the subject first.

20 Q. So the subject matter is "Another Elderly Couple".

A. Which means that there were others before...

Q. Okay.

A. ...so it's even a part of something.

25 Q. So let's read that first. You're not mentioned.

A. Hmm?

Q. You're not mentioned in the subject matter line - your name is not mentioned is it?

30 A. Mentioned. No. My name is....

Q. And neither is the Nikityuks' name mentioned. In fact neither name is mentioned anywhere in this email,

correct?

A. Yeah - correct.

Q. Okay. And we see from the header, you're the computer guy as you call yourself.

5 A. Mm-hmm.

Q. This email is not copied to anybody else.

A. Yes, it's not copied.

Q. Okay. So first line, "Sorry I did not catch your first name. Could you please tell me what it is?" So  
10 second paragraph, "I have a case of elderly abuse. It's a couple. They were sponsored by the daughter and husband and transferred all their access to the daughter's account before arriving. The daughter and spouse use the funds to build a house and made investments that their daughter is now managing."  
15 So that's based on the information provided by the Nikityuks to Yana Skybin. Agree or disagree?

A. Not completely - no. She knew very well that we didn't use the funds to build the house since 2009.

Q. Okay. So you say.

20 A. Mm-hmm.

Q. "The arrangement was that the mother and stepfather live with them comfortably until the end of their days. The daughter has a general Power of Attorney on both of them. She has full access to their bank account and it's joint  
25 with her and her husband." No problem with any of that so far?

A. So far.

Q. Okay. "Their pension comes from another country." You okay with that?

A. Yes.

30 Q. Okay. "And their daughter tells them how much they can withdraw."

A. No it's other way around, they tell the

daughter how much to withdraw.

Q. Well that's what Yana was told. Okay. But she - she's made no personal comments. She hasn't added on the end of that anything like I find that disgusting. There -  
5 there's nothing there, is there?

A. Not yet.

Q. No. Okay. "Since that year the relationship has started deteriorate" - that's what the Nikityuks told her, "now it's full-blown abuse with physical attacks, threats and  
10 financial robbery."

A. Mm-hmm.

Q. "They cut off their T.V., internet and deduct money from their pension giving them a list of what they charged them for."  
15

A. Yeah, that's all not true.

Q. Yeah, you got - you got a problem with that, haven't you?

A. Yes, a big problem with that.

Q. But Yana makes no personal comments or  
20 observations about that, does she?

A. Financial robbery is her personal addition actually because during the oral examination when she has again asked what she means here by financial robbery, she says okay they cut off their T.V. It's - it's so much of control of their  
25 life, of - of course it's - it's crimes, financial robbery or something like that.

Q. But that's what - that's what she was told by the Nikityuks. Okay?

A. No Nikityuks didn't tell her about financial  
30 robbery.

Q. Okay.

A. It - it's her addition.

Pavel Danilov - Cr-ex (cont'd)

Q. So - so you say. So what's the next paragraph, "The daughter and her husband are fully responsible for the elderly couple 10 years. But now that couple said they'd like to move out and live separately. Their daughter and husband say they have nothing, no rights and they'll never move out."

A. That's ridiculous. That never has been said and - well....

Q. Well that - that's - that's...

A. No rights...

Q. ...that's what....

A. ...they have nothing and they - they'll never move out. Well it's - it's all lie, so....

Q. Okay. Well that - that - that's - that's what Yana was told. Okay.

A. So you keep saying.

Q. Okay. Next paragraph, "I'm meeting with Bev Juneau" and for the record, J-U-N-E-A-U, "tomorrow. She will help us with legal rights. But if this couple wants to apply for legal aid, can you help with the application?" Yeah?

A. Yes.

Q. So - so she's asking a lawyer for help. Yes?

A. Yes.

Q. And she's giving the lawyer the background of the information, correct?

A. Yes.

Q. Okay. "Can you help with revocation of general Power of Attorney? They want to do it A.S.A.P. Now that they couple's started to look for help, their daughter is going through their papers looking for medical records."

A. Svetlana didn't have to do something like that going through papers looking for medical records, she

always had access to all their medical records because she was accompany them to doctor appointments all the time.

Q. Next sentence, "She might want to declare them incompetent or something." Now Yana Skybin's going to say that she had a telephone discussion with your wife on the 19<sup>th</sup> of August...

A. Mm-hmm.

Q. ...when your wife telephoned her...

A. Mm-hmm.

Q. ...and basically said - and - and I'm paraphrasing, but we can look at the log to be more specific...

A. Mm-hmm.

Q. ...that the Nikityuks - let me actually look at it. I'll just....

A. Yeah - well I would suggest don't bother because all that conversation is twisted and...

Q. Well....

A. ...my wife will testify little bit different what happened.

Q. When - when I need your advice sir I'll ask for it, so I will bother. Yana's log, August the 19<sup>th</sup> and I'm quoting direct from Exhibit 3(A), Tab 1, "I received a call from Svetlana Danilova telling me that if her parents come to me asking for help with subsidized housing, she wants me to know that nothing changed in their household. They are under influence, going to YMCA and talking to other people fill their heads with ideas. They are strange and unreasonable. Svetlana and her husband built this house for four people and they are not going to make any changes." That's Yana's log entry.

A. Yeah I know.

Q. Okay.

A. And - well it's twisted. That's what I'm

saying.

Q. And then - and then she goes on in this email, "She might want to declare them incompetent or something. They are quite competent. They're attending English classes at our Centre, they made lots of friends and everyone likes them. They travel and go to events, very active people."

A. So basically this is Yana Skybin's capacity assessment of Nikityuks.

Q. No, sir.

A. That's how I understand it. She - she puts - that's why she declares them competent or capable or whatever...

Q. Right.

A. ...but the thing here is that see - they made lots of friends and everyone likes them, but Nikityuks allege that we didn't permit them to meet friends. That we limited them somehow in this.

Q. Okay. But....

A. She knew that it's all untrue.

Q. That - that there are no comments here about - that are malicious, that Yana's not saying anything personal about you, is she? She's just asking for legal help and giving the lawyer the background, correct?

A. It's very easy to figure out who that daughter is she keeps....

Q. There's nobody named in that email at this stage.

A. At this stage....

Q. Okay. Last paragraph, "What other areas of legal help can you provide in this situation of elderly abuse? Of course they want to move out, but again, where?"

A. Mm-hmm.

Q. "And how can they remain safe in the house

Pavel Danilov - Cr-ex (cont'd)

where the daughter constantly harasses them?"

A. So I would like to - well bring your attention sir to the date, it's October 4<sup>th</sup>, 2011.

Q. That's correct.

5 A. And at that point - and before that point actually, Yana knew very well that all abuse accusations are a lie because they all are based on that full-blown bubble of bruises which never existed and all this attempt to attract a lawyer to this thing, it's actually again a lie and that's  
10 considered *[indiscernible]*.

Q. So that's what you're saying?

A. Yes.

Q. Okay. Well on October the 4<sup>th</sup>, the log reveals that a bank - opened a bank account, that's what it  
15 says. So that could have only been done with the Nikityuks visiting her - being with her, correct?

A. Whatever you think.

Q. The log October the 4<sup>th</sup>....

A. I don't have here.

20 Q. Yeah you do, it's at Tab 1. You just need to flip back. So we're just - we're just placing this in time.

A. Tab - Tab 1.

Q. The very first Tab 1 - Tab A(1).

A. October the 4<sup>th</sup> you're into?

25 Q. Yes. It says, "Opened a bank account so to document - contacted Bev Juneau, legal advocate."

A. Yes.

Q. Okay. So open the bank account. That would have been when she went to the bank with the Nikityuks to open  
30 their bank account.

A. I suppose so, I have no idea about that bank account.

Pavel Danilov - Cr-ex (cont'd)

Q. But you were referring to the date, so...

A. Yes.

Q. ...so on October the 4<sup>th</sup>....

A. My refer - refer - reference to the date was  
5 just to point out that it was after August 23 - way after August  
23.

Q. So - so there is nothing in that letter that  
mentions you and there - there are no personal observations that  
are malicious.

A. In this letter, my wife is mentioned.

Q. By name?

A. Not by name.

Q. Okay.

A. No, but it's easy to figure out who she is.

Q. Okay. So - so what loss - what specific loss  
15 did you say you've had out of this....

A. I don't have to prove losses for it to be  
defamation.

Q. Do you have any evidence that this email is  
20 being sent to anybody else?

A. No.

Q. Okay. And you agree that CLC - Community  
Legal Clinic, are the Nikityuks' legal counsel?

A. Not at that point, no.

Q. They are now.

A. Now, yes.

Q. Okay.

A. But not Anthony Cubert [*sic*] and not on  
25 October the 4<sup>th</sup>.

Q. Right. Now, this is where we're gonna take  
30 some time. I'm gonna - let's go to the next page...

A. Yes.



Pavel Danilov - Cr-ex (cont'd)

Q. ...after that document of October the 4<sup>th</sup>.  
So on October the 5<sup>th</sup>, we have a release of information document  
signed by the YMCA. See that?

A. Yes.

5 Q. And the consent is for disclosure of the  
following information: my name, my situation at home and legal  
advice as to my legal rights in my situation signed by Alla  
Nikityuk, correct?

A. Yes.

10 Q. Okay. So that's what happened on that day.  
And we need to go through this?

A. No.

Q. Okay. So then on the next page, October the  
15 5<sup>th</sup> and this is chronological.

A. Next page, you mean Tab 5?

Q. Yes, next - next tab. We see an exchange of  
emails between Yana Skybin and Bev from the shelter.

A. Yes.

20 Q. And those emails relate to thanking her for  
an appointment.

A. Yes.

Q. And asking when can we meet to fill out an  
application for subsidized housing.

A. Yes.

25 Q. No malicious comments about you in that?

A. Not in this one - no.

Q. No. Okay. Next tab, which is another  
release of information.

A. Mm-hmm.

30 Q. This one signed by Valentin.

A. Yes.

Q. For releasing the same information.

Pavel Danilov - Cr-ex (cont'd)

A. Yes.

Q. Okay. Let's go to the next tab.

THE COURT: Mr. [indiscernible], continue to refer to the tabs by number just for the record.

5 MR. MAE: Oh - sorry, yes Your Honour. Sorry.

Q. The next tab being Tab number 7 of Exhibit 3(A). We see an email exchange between Anthony Cuthbert (ph) and Yana Skybin. And Yana writes on October the 6<sup>th</sup>, "I'm waiting for the office of Guardian and Trustee to call me back." And it goes on to deal with notarizing documents. Yes?

A. Yes. And it - it implies that before that she called off - office of Guardian and Tran - Trustee and I don't know actually what she told them.

Q. No you don't.

15 A. And my - my wife knows.

Q. Why your wife was there?

A. No.

Q. Okay. So your wife's guessing then?

A. No. She called the same office later.

20 Q. Okay. And then Mr. Cuthbert responds with respect to notarial copies and translation. So nothing said malicious about you in those communications?

A. Let me read it carefully.

Q. Okay. You can read it carefully.

25 A. Yes, I'm good with this one.

Q. You're good with that one?

A. Mm-hmm.

Q. Beautiful, thank you. And those emails are just furthering - assisting the Nikityuks, correct?

30 A. I wouldn't say so because again, you know what I keep saying, right?

Q. Well I know what you're saying, 'cause you

don't agree with it. So let's go to Tab - Tab 8.

A. Yes.

Q. And this is an email chain which on the second page has those same emails from the previous tab.

5 A. Mm-mm.

Q. And this email chain is between Yana Skybin and - and Anthony Cuthbert (ph). And in the October the 14<sup>th</sup> email, Yana writes, "Yesterday we met with Sue Cooper (ph) and she started the inquiry into the finances and health records on behalf of Alla and Valentin Nikityuk.

A. Well the phrase here which will make caught attention, is the situation at home is collapsed.

Q. Okay. But that - that's stating a point of fact. But there's no....

15 A. I - I - I'm not - I'm not sure why you are going through emails which don't contain defamation because all defamation par - part - particulars are provided in our claim.

Q. They - they are sir, but your claim and....

A. It - it...

20 Q. Well you're supposed to prove.

A. ...it looks like you are going, you know, through all those which don't have defamation...

Q. Sir - sir....

A. ...like as much as you can.

25 Q. Sir, your lawyer can speak for you. If she wants to raise an objection, she can. You're saying Yana was malicious. I asked you earlier on about these emails if you could point to any that's malicious...

A. Yeah - to me...

30 Q. ...so far we've seen none and we're gonna keep going.

A. ...seems like you're just wasting daylight.

Pavel Danilov - Cr-ex (cont'd)

5 THE COURT: Well if - if I can just interrupt because we're coming close to the lunch hour. Mr. Mae it seems that you're main concern is with five particular statements in the client...

MR. MAE: Yes.

THE COURT: ...you've dealt with one of them.

MR. MAE: Yes. And the others will come within this section, Your Honour. But....

10 THE COURT: Yes, I've heard. And the other emails don't form part of the claim.

MR. MAE: They - they don't, Your Honour.

15 THE COURT: Perhaps they provide a context. And I think what you're asking the witness is if he could point to anything in those other emails that's malicious or defamation.

20 MR. MAE: Well not defamation because the claim is pleaded. I'm - I'm not gonna have somebody now throw at me that they're gonna allege that something else is defamatory. But if you remember, Your Honour, based upon Justice Corkery's judgment, we're already into qualified privilege. We're already there. So they have to prove malice. And the only way, in my respectful submission that they can prove malice or - if I have to disprove it, is by going through each one of these communications to see that they're all professional, there are no personal comments given....

25 THE COURT: Would - would it save time if we concentrated on the five, first of all?

30 MR. MAE: I - I - I can do that, Your Honour. And then....

Pavel Danilov - Cr-ex (cont'd)

5 THE COURT: And then come back to the - those others that Mr. Danilov may want to suggest otherwise. And perhaps he can review those over the lunch hour because you have quite a few documents I think.

MR. MAE: That - that's a capital idea. I was just about to suggest that, Your Honour. He - he can take the post it notes and - and flag them to see if he can ascertain a malicious comment.

10 THE COURT: Because your focus is on the five that are in the pleadings.

MR. MAE: Absolutely. That - that - that's not my focus, that's the case.

THE COURT: That's what they've pleaded.

15 MR. MAE: Yes.

THE COURT: They've pleaded five and I think we should focus on those.

MR. MAE: Absolutely, Your Honour. I'm - I'm - I'm happy with that.

20 THE COURT: If Mr. Danilov wants to take us to other emails upon reflection, he looks them over over the lunch break, that will - may save some time.

25 MR. MAE: Yes. And - and - and if within that he's prepared to concede, not having flagged any of those documents with malicious comments. That they are all steps in a process, then we don't have to belabour the issue.

30 THE COURT: Those - those might be submissions for his counsel. But he can certainly look them over and draw the Court's attention to any particular ones that are - that are assistance or

Pavel Danilov - Cr-ex (cont'd)

that he wants to comment on. Is that fair, Mr. Danilov? You'll take a look at these.

5 A. My question is can - can I refer to our production because I'm not familiar with the - the layout of defendants' collection.

MR. MAE: He can refer - refer to what he wants, Your Honour. But they're all there in chronological order.

10 THE COURT: I understand that they're similarly laid out in his production.

MR. MAE: Candidly, Your Honour. I skipped through their production, I'm going to be very candid. If - if they're duplicates, fine. Just by way of explanation, the documents briefs all arrived at the same time. The plaintiffs did arrive first while we were preparing ours because there was no agreement as to the content, so there may be duplication in - in those documents. Obviously I've flipped through them, but - in mine, you know, I can - I can tell you they're all in chronological sequence.

20 THE COURT: So there's nothing there that should come as a surprise to him?

MR. MAE: No - no, Your Honour.

25 THE COURT: But he's certainly welcome to look at his own...

MR. MAE: Ab - ab - absolutely.

THE COURT: ...productions if he wishes.

30 MR. MAE: Absolutely. And I hope I don't end up with egg on my face.

THE COURT: All right. So why don't we - Mr. Mae, you sometimes use idioms which are helpful

Pavel Danilov - Cr-ex (cont'd)

to the court, but for people that are getting translated to Russian...

MR. MAE: Oh yes.

THE COURT: ...egg on face and....

5 MR. MAE: I'll say - I'll - I'll rephrase it then for the translator. I hope I do not end up regretting it.

THE COURT: All roads lead to Rome. These - these are difficult for people to understand if English is a second language.

10 MR. MAE: That - that is true, Your Honour. I apologize.

THE COURT: Absence makes the heart grow fonder.

MR. MAE: Yes.

15 THE COURT: These - these are difficult concepts in translation. They're - they're - I'm sure Mr. Danilov has no problem with them, he's been...

MR. MAE: Yes.

THE COURT: ...in Canada for many years.

20 A. Sometimes I have.

THE COURT: But it is English as a Second Language and certainly for the defendants, English is a second language, perhaps even for Ms. Skybin, I'm not sure. And so I know these roll off your tongue quite easily and we all tend to do that, but if - if you will...

25 MR. MAE: I - I appreciate that, Your Honour. I mean certainly...

THE COURT: ...recognize that.

30 MR. MAE: ...I will - will use less phrases as - as it were.

THE COURT: Okay.

Pavel Danilov - Cr-ex (cont'd)

MR. MAE: That - that's helpful. Thank you, Your Honour.

5 THE COURT: So we'll return at 2:15. That gives Mr. Danilov enough time to review the material. And we'll continue throughout this afternoon. Tuesday at four o'clock I have a meeting in the building with other stakeholders, so on Tuesday I'm going to perhaps stop just a bit before four o'clock.

10 MR. MAE: Yes. And would it be possible maybe to start a little earlier on Tuesday? I know we're starting at 9:30 now, sorry Madame Registrar and Madame Reporter and the CSO. I see them all glaring at me.

15 THE COURT: And the interpreters.

MR. MAE: And the interpreters. Would - would just even 15 minutes earlier help? It may on accumulative basis.

20 THE COURT: I think we should stick to 9:30, but we can shorten the lunch hour to try and save time there. So instead of an hour and fifteen minutes, we can take an hour or perhaps less and we can achieve some time...

MR. MAE: Thank - thank you, Your Honour.

25 THE COURT: ...as we move along.

MR. MAE: Right. As I am mindful of wanting to get to the end of this and sadly in a case of this nature where there's so many documents and twists and turns, that it - it's gonna take longer than everybody estimate.

30 THE COURT: All right. If you want to talk to Ms. Chapman about any issues too - about the



Pavel Danilov - Cr-ex (cont'd)

issues ahead of us that might shorten the proceedings, I'll certainly encourage counsel to have those discussions.

MR. MAE: Thank you, Your Honour.

THE COURT: So return at 2:15.

R E C E S S

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

THE COURT: Good afternoon. Yes, Mr. Danilov, you can return.

MS. CHAPMAN: What Mr. Danilov has with him is a copy of Exhibit 1(A).

THE COURT: 1 - 1(B).

MS. CHAPMAN: Oh sorry, volume 2 - 1(B), that he I believe tabbed over the lunch period in relation to Mr. Mae's questions.

THE COURT: All right.

MR. MAE: Q. And - and which tab numbers we....

A. One second. So let's start with Tab 1-3-9.

I just spent 10 seconds going through couple emails you already mentioned before just to - to get the full picture. So it's Tab 1-3-9 and page 8-9-0.

Q. Which is the email we looked at.

A. Yes, we already discussed.

Q. Yes.

A. And I already mentioned that the sentence I'm referring to check and see the defamatory and by a couple of reasons my issues - I will tell that in a second. The last sentence in the second paragraph which is, "Now it's a full-blown abuse with physical attacks, threats and financial robbery. They cut the T.V., internet and deduct money from

their pension giving them list of what they charged them for.”  
So this is defamation and - first of all it's a lie and Yana  
Skybin knows that. And second of all, it's here for wrong  
reason. It's not to support Nikityuks, it's to support their  
5 attempt to obtain Social Housing on priority basis.

Q. So that's what you interpret that to be.

A. Yes.

Q. And that's not a correct interpretation, sir.  
So please continue.

10 A. Then it's 8-9-1, last sentence in second  
paragraph, “The situation at home escalates but they are still  
managing to stay low and out of harm reach. It may all change  
dramatically though.”

Q. It actually says drastically. And....

15 A. Drastically - I'm sorry, yes.

Q. And for the record that's an email of October  
the 14<sup>th</sup>, 2011 from Yana Skybin to Anthony Cuthbert (ph) the  
lawyer.

20 A. Yes. And I'm saying that this is the lie,  
Yana Skybin knows that and again, the statements are here for a  
wrong reason. It's just to attract lawyers attention to the  
events which never happened.

Q. So....

A. This....

25 Q. Sir - sir, I have a question now to ask on  
that.

A. Yes.

30 Q. That's just - that sentence you referred to,  
it's just a statement of fact that has been given to Yana which  
she's passing onto the lawyer.

A. Yes.

Q. That's all it is.

Pavel Danilov - Cr-ex (cont'd)

A. I know, but you're not supposed to lie to someone else's lawyer. It's not your job.

Q. They weren't lies. So please - please continue.

5 ...OBJECTION BY MS. CHAPMAN

...SUBMISSION BY MR. MAE

THE COURT: Well you're making your comments though that it's a lie - or that it - you will have a chance to make submissions.

10 ...SUBMISSION BY MR. MAE

THE COURT: I - I understand what your - your position, you don't....

MR. MAE: Certainly, Your Honour.

MS. CHAPMAN: And I think the proper challenge would be by question.

THE COURT: Yes, it sounded more like comments rather than questions to the witness.

MR. MAE: I'll - I'll rephrase it as question then. Q. You have no evidence to suggest that's malicious, do you sir?

A. Maybe I have in some part wrong understanding of the word malicious. But it doesn't change the fact that all those statements are defamatory and some of them, you will see that they are malicious. We're - we are not finished yet. It's - what's important here is the whole picture actually and those separate emails I'm shown right now, they're just small pieces of the entire picture.

Q. Please - please continue.

A. Okay, page 8-9-1 and it's email marked number 5 and we already discussed that before the break. It says, "Hi Anthony, I am waiting for the office of Guardian and Trust - Trustee to call me back." And I'm saying that....

Pavel Danilov - Cr-ex (cont'd)

Q. Sorry, sir. Did you say 8-9-1?

A. Well 892 - I'm sorry if I misspoke - 892, line number 5. And it's email from Yana Skybin to the same Anthony Culbert [sic] from CLC. And it says, "I'm waiting for the office of Guardian and Trustee to call me back." Which pretty much proves that before that she called that office and tell them something. And I'm saying that my wife knows what that conversation was about. She will testify. Now we are on page 9-0-3.

Q. Which for the record is a letter from the Community Legal Clinic addressed to Yana Skybin.

A. Yes, it's the letter from Community Legal Clinic addressed to Yana Skybin...

Q. Dated November the 21<sup>st</sup>, 2011.

A. Yes.

Q. Yes.

A. And I would just like to attract attention to the sentence which is one, two, three, four - fourth paragraph from the bottom. And Anthony Culbert [sic] says to Yana Skybin, "Please know that I will caution Mr. and Mrs. Nikityuk about making any verbal charges that could be interpreted as slanders." It was warning from a lawyer. She was communicating before...

Q. But, sir....

A. ...that she didn't do anything about that.

Q. But....

A. And kept communicating with other lawyers.

Q. Let's look at that sentence again.

A. Mm-hmm.

Q. "Please note that I will caution Mr. and Mrs. Nikityuk about making any verbal changes"...

A. Charges.

Pavel Danilov - Cr-ex (cont'd)

Q. ..."charges that could be interpreted as slanderous."

A. Yes.

Q. So he's advising his clients, the Nikityuks.  
5 He's not advising Yana Skybin, correct?

A. No. It's letter to Yana Skybin.

Q. Well, let's read it again, "I would caution Mr. and Mrs. Nikityuk", it doesn't say and you or - or you, does it?

10 A. But it's addressed to Yana Skybin, it says - it's addressed to Yana Skybin. That's right on the top.

Q. Let's read - let's read the next paragraph then sir. Let's put it in context. It says, does it not "I'm obviously sympathetic and fully realize what we have been  
15 through. I would hate to see their problems exasperated by vindictive family members." That puts that in context, doesn't it sir?

A. Yes, it puts it in context. And the reason for that is because Yana Skybin positioned herself as a - an  
20 eyewitness of evidence which never happened. But let's not stick to that, we'll go [indiscernible]....Okay. It's page 9-0-8.

Q. Which is Tab 150.

A. Yes, it's Tab 150. I am sorry and it's page  
25 9-0-8.

Q. Oh sorry, Tab 151. I thought you said something else. I do apologize....

A. Yes, 151.

Q. Tab 151.

30 A. And this is letter from Yana Skybin to that Bev person.

Q. And which one sir, there were two on that

page?

A. Six - it's - it's marked six on the record.

Q. Yes.

A. And it says, "I just spoke with  
5 [indiscernible], phone number, fax - we faxed him the story of  
Alla and Valentin." But he doesn't not have an actual  
certificate and I would like to point attention to the fact that  
[indiscernible] was actually criminal lawyer in Toronto.

Q. But then he's a lawyer.

10 A. Yes.

Q. So we...

A. He is a lawyer.

Q. ...agree he's a lawyer?

A. Yes.

15 Q. And he's a Russian speaking lawyer?

A. About that I don't know.

Q. Okay. Well - but give - given his name, it  
would indicate that he may be Russian or of that area descent.

A. I don't know.

20 Q. Okay. But he - you would agree he's a  
lawyer?

A. I - I know that it's criminal lawyer - yes.

Q. Okay. But we agree he's a lawyer.

A. Yes.

25 Q. So what - what's malicious in this email,  
sir?

A. What's malicious is here it's actually this  
story of Alla Nikityuk which has been faxed. We - we - we will  
come to that later. It - it will be in the process.

30 Q. Well....

A. And well the fact that she....

Q. Sir, please - please let me stop you.

Pavel Danilov - Cr-ex (cont'd)

A. Yeah.

Q. You - you - you're saying about things to come, but I need to cross-examine you on these things to come. So if you know something, please say it if you can.

5 A. Well in a minute, it's - it just - I want to go in the order.

Q. Oh things to come in the emails?

A. Emails and other communications.

Q. Okay. I apologize, sir.

10 A. It's - it's all about that. It's just - in - in order I don't want to jump back and forth.

Q. Nope, that's fine. I just want to be sure that when you're saying...

A. Yes, it's communications.

15 Q. ...it's to come....

A. It's all in communications.

Q. Okay.

20 A. Yes. So it's [*indiscernible*] - Evan Swaschurf (ph) now and we know it's crim - criminal lawyer. So she keeps trying to engage Nikityuks with some lawyer and she keeps informing those lawyers with her vision on information.

Q. Let - let - let me just ask you some questions then about that, sir. How many lawyers have you had in this - these proceedings?

25 A. I'm not sure, maybe eight.

Q. You've gone through eight lawyers. And when you....

A. Oh you - you're asking about me?

30 Q. Well - yes, you. How many lawyers did you....

A. I've had three.

Q. You've had three lawyers.

Pavel Danilov - Cr-ex (cont'd)

A. Yes.

Q. And when you first contact a lawyer...

A. Yes.

5 Q. ...you give them details about the case,  
correct?

A. Some - depends - yes.

Q. Because you want to know whether the lawyer  
is able to take the case on, correct?

A. Yes, of course.

10 Q. And that's what's happening here.

A. Yes and that's what's important. Exactly.  
So those details are important and those details provided by  
Yana Skybin are very important. So it's all about that story  
which she faxed - and we'll come to that later. And there is  
15 next page 9-0-9 on the same tab. It says, "We called a couple  
of lawyers in Toronto."

Q. Yes.

A. And little bit further it's - it's actually  
release who she called, the Scherafems (ph) and Matuchenka  
20 Victor (ph), so those are couple lawyers.

Q. And again, they're contacting lawyers to  
represent the Nikityuks.

A. Yes.

Q. Okay.

25 A. In - in her own way - yes.

Q. But what's malicious about that?

A. What's malicious about that it - it's inside  
that Nikityuks story actually.

Q. Okay.

30 A. Yeah. Yeah.

Q. Now just while you are flipping through sir,  
just to deal with things in some chronological sequence. I'd



like to invite your comments on Tab 153, the police report. You just skipped past it.

A. But we are talking about communications, right?

5 Q. No we - we - okay let's - let's come back to it then.

A. Yes, sure.

Q. Let's continue the communications.

10 A. Sure. I - I actually have some comments about that.

Q. I'm sure you do sir, but let's continue with the emails first.

A. Now it's Tab 154, page 904...

Q. Which is....

15 A. ...oh 914.

Q. Oh this is an email from Ruth Miller...

A. Yes, it's email from Ruth Miller.

Q. ...to Bev at the Barrie Shelter...

A. Yes.

20 Q. ...carbon copy to Dorothy at Barrie Shelter...

A. Yes.

Q. ...and carbon copy to Yana Skybin...

A. Yes.

25 Q. ...dated November 29, 2011.

A. Yes.

Q. Okay.

A. And I'm looking at the third line in the body of the email from the top and there is sentence over there.

30 "Jocelyn (ph) says that at present there is no outside proof of abuse such as police report." And Jocelyn (ph), I believe it's Ontario Works person. That - that was a name - came up several

times. So it's - it's from Ruth Miller to Bev...

Q. Yes.

A. ...and it says, "Jocelyn - Jocelyn says that at present there is no outside proof of abuse such as police report." And you see that Yana Skybin is in cc of that email.

Q. Yeah. Okay. Well....

A. So she knew that there is no outside proof of abuse.

Q. Well everybody knows that there was no police report. So how - how is that evidence of malice?

A. Such - such as police report.

Q. How - how is that evidence of malice?

A. Because Yana Skybin knew that all abuse accusations are a lie.

Q. So you're gonna keep coming back to that same point, you're gonna say that Yana....

A. Yes and I'm to prove with some pieces - you know, to prove them in the big picture.

Q. Con - con - continue.

A. And now we are on page 915, this is Creeant [sic] report - client report to Ontario Works and I believe it's that client story she's referring to.

Q. Well - okay. So the - for the record it says, client report to OW dated November the 2<sup>nd</sup>, 2011....

A. Yes.

Q. And the first line is, "Me and my wife lived in Russia."

A. Yes - it's - it's client's story.

Q. Yes.

A. It's - it's - allegedly it's provided by Nikityuks in Russian and allegedly it was translated by Yana Skybin.

Pavel Danilov - Cr-ex (cont'd)

Q. And how - how does this point to malice?  
It's gonna be the same thing, is it? That Yana....

A. It's gonna be the same thing...

Q. Okay.

5 A. ...but it's not. So now we are on page 918.

Q. Which is the next defamatory letter.

A. Yes.

Q. So let's - tell - tell me what you have to  
say about that and I'll ask you my questions. So for the  
10 record, just so we can identify the document, this is one of the  
specific alleged - allegedly defamatory letters, Your Honour.  
It is in fact an email dated Tuesday the 6<sup>th</sup>, 2011 at 1:33 p.m.  
from Yana Skybin to Lana Domazar, D-O-M-A-Z-A-R.

15 THE COURT: Can you just give me the tab numbers  
again in the different....

MR. MAE: In - in the binder...

A. One fifty-six.

MR. MAE: ...that Mr. Danilov is looking for -  
looking at is 156, Your Honour. Q. So tell me what's malicious  
20 about that?

A. Okay. Starting from the second sentence in  
the first paragraph, "They transferred significant assets from  
Russia to daughter. The family used the funds to build a home  
in Innisfil, invest money in their private funds and business."  
25 So it sounds like we stole money. Next paragraph, "Primary it  
had the form of - of financial fraud and emotional abuse. They  
came to use with concerns" - they Nikityuks I believe, "with  
concerns over domestic violence. Later they discovered that  
their Power of Attorney that they gave to the daughter only  
30 because they did not communicate in English, has been abused  
[indiscernible] and equally in the field of finances." So the  
next paragraph down - okay it's third line from the next

paragraph, "She sent one cheque" - she it's Svetlana, "She sent one cheque through our office with arbitrary amount that her and her husband came up with to cover the basic expenses for 1.5 month. The couple had a consultation with Russian speaking  
5 criminal lawyer in Toronto" - yeah you were right, he was Russian speaking, "who said well" - that I would like to skip 'till the very end - and the three lines of the end of this paragraph, "From financial point of view, they were involved in fraud - they - they knew. And at some point the banks may  
10 investigate this issue through - or Revenue Canada." But this is not concern for the moment. So I would like to mark here this sentence about one cheque with arbitrary amount because further there will be actually a copy of that cheque with that arbitrary amount and actually have something for them to say  
15 about that. So basically - yes it's communication with the lawyer, but Yana Skybin knows very well that it's all lie and that's malice.

Q. Okay well let - now I have questions on that document now, sir.

20 A. Yes, sure.

Q. So - so we agree that the recipient of that email is a lawyer.

A. Yes.

Q. And we agree that the purpose of this email  
25 which is fairly apparent from the subject line that it's a Legal Aid application for the Nikityuks.

A. Exactly.

Q. So where - where is the malicious content?

A. Because she knows that we [indiscernible] all  
30 those accusations where she positions herself as an eyewitness. No - no lawyer would take a case. But - well she has to come up with something attractive, you know, very interesting - that's

the point.

Q. And the contents of that email reflect what Yana was advised by the Nikityuks, correct?

5 A. No. At the bottom there is her signature - Yana Skybin, Settlement Counsel, YMCA Newcomer Services. It doesn't look to me that there is something here that Nikityuks told me or anything like that. She - she positioned herself as an eyewitness of all this stuff.

10 Q. First sentence, "I have two Russian clients who are elderly sponsored permanent residents."

A. Yes.

Q. So she's making the introduction...

A. Yes.

Q. ...that she's acting for two clients.

15 A. Yeah - but...

Q. Yes.

A. ...but she doesn't even say that they told me before or something like that. She positioned herself as she saw all this stuff herself.

20 Q. And do you have any evidence....

A. Oh yeah, evidence speaks of itself.

Q. Let me finish my question please, sir. Do you have any evidence that this email was broadcasted to anybody else?

25 A. Of course it wasn't broadcasted.

Q. Perfect, thank you. So any - anything else about this alleged defamatory email?

A. About this one, no. But we can....

30 Q. So you would agree with me, would you not sir, that the tone of this email is not malicious, there are no spiteful comments, there are no personal vendettas in it about what should happen to you or your wife?

Pavel Danilov - Cr-ex (cont'd)

5 A. To me it is because it's all not true. Those accusations which are made in this email, for me, are extremely defamatory - extremely. And for my wife especially because we are talking about my wife's parents. So we can go further. Now I am on Tab 157.

Q. Which for the record is a fax dated December the 6<sup>th</sup>, 2011 to sheer - Soc - Social Housing and it's a fax from Alla and Valentin Nikityuk.

10 A. Yes - yes. I need this email as well confirmation for another one - is it just under way so I just like to attract attention to one sentence of this email and it's page 920. It's from Nikityuks, okay. The - the signature is actually looking very suspicious because of the same font and layout as Yana Skybin's signature.

15 Q. It's an electronic signature and nobody will deny that Yana Skybin...

A. Yes.

Q. ...translated to Nikityuks. So - so please continue.

20 A. "So our daughter-in-law sent a cheque as a sponsor to cover period of October 18<sup>th</sup> through November 13<sup>th</sup>, 2011. We were not in position to use these funds up until now. We just cash - cashed this cheque on December the 3<sup>rd</sup> as we have no other source of income until the end of December."

25 Q. And....

30 A. My point here is that our - that - well - Yana knows very well about Nikityuks are concealing their income and she's helping them to do that. That's the whole point of the story like - they - they're on purpose of those emails with defamation statements just to get Nikityuks into Social Assistance by legal means. It's wrong purpose and it constitutes malice.

Pavel Danilov - Cr-ex (cont'd)

Q. And....

A. In my understanding.

Q. So that's in your understanding.

A. Yes.

5 Q. But you would agree with me, there's nothing in the tone of that letter....

A. But it's - it's from Nikityuks. It's - it's not from Skybin, so....Now we're on page 158.

Q. Tab - Tab 158.

10 A. Tab - on I'm sorry, Tab 158, page 921.

Q. Which for the record is an email from Yana Skybin to Cesia, spelled C-E-S-I-A, Green dated December the 15<sup>th</sup>, 2011.

A. Yes.

15 Q. And email says, "Alla Nikityuk is a client. She asked for her pension to be deposited to her new account and did confirm with the Russian Pension Board that they received the info through fax. However, when the time - the time came it went to her daughter's account as it used to while they were

20 living with them. The Russian Board said they did not receive the fax." And the second paragraph, "She also gave them a cheque for the remainder of their September 2011 pension when they were moving out of October - going out in October. However when Alla deposited it there was a stop make payment on the

25 cheque." So this is actually deliberate messing around with two different cheques and two different events. It was another cheque which had a stop payment on it. It was that first support cheque and Yana knows very well that because she communicated about that cheque around a lot. This cheque was a

30 different cheque. It was the remainder of Alla's pension which was mistakenly - by Alla's mistake or Russian board mistake or whoever's mistake, was deposited to Svetlana's account which all

Russian pension was coming regularly before. But after that letter, Cesia you said - Green or whoever was that, she started to bug us with letters and requests to return Russian - Russian pension to Alla like it was some kind of wrong doing from our side.

Q. So I have some questions.

A. It - it was all Alla's mistake and Yana knew about that.

Q. Number one, you don't know that Yana knew about it, do you?

A. She knew because there were a lot of communications that it's another cheque was - has stop payment on it.

Q. Let - let me ask you some questions. That email Cesia Green, you - you understand and agree that Cesia Green is a lawyer?

A. Yes, sure.

Q. And she was retained to represent the Nikityuks.

A. Yes.

Q. And....

A. And we responded to her request and she was completely satisfied that it wasn't our wrong doing. But see - what - what Yana is doing? She - she deliberately twists the facts to get more attention from the lawyers.

Q. Well sir - sir with respect, you say deliberately twists the facts, but you don't have evidence of that.

A. I think this is the evidence, but - yeah no. Okay. Now it's a good one. So it's 159.

Q. And for the record, Your Honour, this is a letter on YMCA headed paper addressed "To Whom It May Concern"



and this is one of the alleged defamatory documents.

A. And it's on page 923.

THE COURT: Is this - is this a match with number three, is that where we're at?

A. Nine twenty-three.

MR. MAE: Yes. Nine - nine twenty-three and....

THE COURT: But is that defamatory statement number three from you colleague's evidence?

MR. MAE: I believe it is, Your Honour. Just check the pleading. It's actually statement number two they call it. The - which - it's - it's on page 10 of the statement of claim which is also page 10 of the trial brief.

THE COURT: I thought you said number two was page 918 - we dealt with number one and then I thought we....

MR. MAE: No, Your Honour that the - the December the 6<sup>th</sup> email, they actually called it statement number three. They came out of chronological sequence in their pleading.

THE COURT: So that it'll be number three. Now we're at number two.

MR. MAE: That's right.

THE COURT: And the date of the letter again - glad to see what we're talking about now.

A. December 20<sup>th</sup>, 2011. And I believe paragraphs of that letter, they are numbered on the left. So I'm referring to paragraph 3.

MR. MAE: Q. And sorry, sir. For the numbers on the left, those - those numbers were written by you or your wife?

A. Yes.

Pavel Danilov - Cr-ex (cont'd)

Q. Okay.

A. Yes.

Q. So the original letter is just the typed text.

5 A. Yes. Yes. So paragraph says, "I received a call from their daughter on August the 19<sup>th</sup> telling me that her parents are losing their mind by asking to live separately. She wanted to inform me that if they come to me and ask for help she want me to know there is nothing going on and that nothing  
10 changed in the house." This statement is completely twisted, it's not true. And my wife will testify what was the true statement and true conversation. Paragraph number 4, "On August 23, Alla and Valentin" - yes.

Q. No - no, you continue.

15 A. "Came for an appointment and ask me about the process of applying for subsidized housing." So they came for an appointment and asked me about the process of applying for subsidized housing. That was the true purpose of that appointment. "They shared with me that the atmosphere"....

20 Q. Sorry sir, how - how do you get to that from that sentence?

A. It's in the sentence.

Q. They came for an appointment.

25 A. And asked me about the process of applying for subsidized housing.

Q. Well that's what happened. They - they went, they had a meeting...

A. Okay.

Q. ...and they asked.

30 A. It is what it is, so I would like to go further. So, "They shared with me that the atmosphere at home is unbearable with threats, verbal and physical attacks and

constant arguments. Their daughter and son-in-law are not happy with their independence. At that time Alla and Valentin had access to a car and were driving to school and also went to places with friends on the weekends."

5 Q. All right. Let's stop there just for one second. So that sentence there, let's look at that. That's not malicious is it?

A. No, not yet.

Q. But that's setting - setting the background.

10 A. Not yet, but let me finish and....

Q. But it's not malicious.

A. Not yet.

Q. Okay.

15 A. "Alla showed me her arms and there were bruises on both arms. On the weekend their granddaughter came for a visit from Toronto and they showed her the bruises too. She had a very serious conversation with the parents and then begged Alla and Valentin to give it a try. Things should get better she said."

20 Q. Okay. So let's - let's stop, I have a question about that. So Yana Skybin is just reflecting what she was either told or believed she was told, correct?

A. No. She positions herself as an eyewitness.

Q. Well....

25 A. She says - she says, "Alla showed me her arms"...

Q. Sir, that's the first sentence.

A. ..."and there were bruises on both arms."

Q. That's the first sentence.

30 A. It's eyewitness.

Q. Okay. And she says she is an eyewitness, so there's nothing malicious in that.

Pavel Danilov - Cr-ex (cont'd)

A. It - it is because it's not true.

Q. On the last sentence, we know that Yana Skybin wasn't at your house on the weekend, don't we?

A. We know that.

5 Q. Yes. And that information there was given to her by the Nikityuks or that's what she thought they said, correct?

A. Yes. Yes.

Q. Okay.

10 A. Paragraph 5, "At this point I informed Alla and Valentin that this was a case of abuse and gave them the printouts of elderly abuse translated into Russian with Google Translate."

Q. So what's malicious about that?

15 A. It's not true. Well - it's - it's true that she gave them printouts, yes. But - see the thing is that it actually was other way around. First there were printouts, then was abuse.

20 Q. So that - that's - what evidence do you have for that?

A. You will have your evidence when you examine my daughter on Wednesday and...

Q. What evidence do you have...

A. ...all you have all evidence.

25 Q. ...to say that those - that elderly abuse leaflet was given to the Nikityuks prior to August the 23<sup>rd</sup>, 2011?

30 A. Probably wasn't. The thing is that they came to the birthday party. They told her that they wanted to live separately, preferably in the Social Housing and well she said come to appointment on August 23, I'll tell you what I can do.

Q. That - that's all speculation on your part.

Pavel Danilov - Cr-ex (cont'd)

A. Yes, of course. Sure.

Q. And it's wild speculation, isn't it sir?

A. Not really. So let's - let's go further.

5 Paragraph 6, "The couple did try four months but were back in my  
office on September 30<sup>th</sup>, 2011 saying the situation has been bad  
and they are now hiding in their rooms coming out to eat only  
when daughter and son-in-law are not around. The threats and  
yelling escalated. If the couple ignored the daughter and son-  
in-law, they would come into their rooms and continue or block  
10 the door to the bathroom in the morning when they were leaving  
for school."

Q. So let's stop there then. Let's break this  
down. So that whole paragraph is the statement of facts or  
validations, correct?

15 A. There is no - they are not facts like that.  
It - it's all made up.

Q. But there's - there's no personal comment in  
there - there's no maliciousness, is there?

20 A. No personal comments, but it's all addressed  
to the daughter and son-in-law. See it's daughter and son-in-  
law.

Q. Maybe - maybe you misunderstood when I mean  
personal comments, I mean - let - let's go back to my point of  
malice, Yana is not making any personal comments about what she  
25 would see - or what she would like to see happen to you or your  
wife, correct? There's no....

A. If - if you read that sentence for the  
context, then yeah you could say that.

Q. Okay.

30 A. But it's all in context - it's all in  
context. She positioned herself as an eyewitness of all that,  
so it - it - it gives that statement more weight and people

start to believe those and people know that she's a settlement counselor of YMCA and she - at - at the very bottom at the next page it says, Yana Skybin, Settlement Counsel, YMCA Simcoe/Muskoka Newcomer Services. It's very important person.

5 Q. And it's on YMCA headed paper as well, sir isn't it?

A. Yes.

Q. Yes.

A. Yes.

10 Q. So then - then - let's continue 'cause I'm still trying to - to find the points of malice.

A. "Their main reason for arguments and disagreement was money. The couple only had Russian pension as their source of income in Canada. And the daughter and son-in-law were telling them they have to pay out of their pension for more and more things like gas, internet or use of computer. They deducted money from their pension, they - pension because they had Valentin's daughter visit in the summer. And according to Alla's daughter, there were more groceries needed to feed another adult. The son-in-law tried to convince Valentin and Alla to purchase burial insurance out of their pension money because they are old and they are going to die. And he is not going to be responsible for their burial. The children gave the elderly couple multiple credit cards that they were opened in their names using the Power of Attorney. The couple gave them for property and health claim - when they first came to Canada. The children controlled where the pension was going and also claimed their income tax return on their behalf saying they are showing income for the elderly parents and due to this income they would never qualify for any Social Assistance or services. And they completely depend on their children. Their children have sponsored them and now have full responsibility and control

Pavel Danilov - Cr-ex (cont'd)

of their lives." See how - how she puts bad spin on good things. You can see that.

Q. Sir - sir that's your interpretation of that, sir.

5 A. Oh yes. It's my interpretation.

Q. That's your - that's your interpretation.

A. Yes. And well go further, "At - at this point I referred the couple to Barrie Women's Shelter Transitional Services and Victim Services and half a dozen interpreter." Which is not true because she acted as an eyewitness. "During the whole time until they left home and needed the support to other agencies and services."

Q. Just stop there then, sir.

A. Yeah.

15 Q. You - you do not agree therefore, that Yana Skybin was acting as an interpreter?

A. She probably tried to, but - well there were a lot of stuff about that I would suggest to....

20 Q. Well let's - let's not be shy, say it now sir.

A. Yeah she's not licenced interpreter.

Q. She speaks English?

A. I suppose so, I never spoke to her.

Q. She speak Russian?

25 A. She speaks Russian probably, but I never heard her speaking Russian. You should - well deal - deal with all those stuff with my wife because - well she knows better.

Q. But underlying your whole case is that Yana was a Russian speaking - she spoke to your parents in Russian.

30 A. In crisis situation, there - there are organizations which are supposed to provide interpreter and translator services. You must be licenced to provide those

services. It must - she must be licenced professional to do that.

Q. And....

A. And - and - the reason to do that is if - if  
5 you are licence professional, your licence probably cost you  
some money. You spent time for validation, you paid something  
and if you do something - you do something wrong, then you can  
easily lose that licence. If you don't have a licence, you -  
you have nothing to lose.

10 Q. Sir, yes or no, Yana Skybin acted as a  
translator for the Nikityuks?

A. Yes, sure.

Q. Thank you, please continue.

A. "Their daughter called me numerously,  
15 sometimes up to five, six times a day using her phone then  
Valentin's cell phone asking for information, trying to send  
threatening message to her parents, trying to find out where  
they live, accusing their friends of teaching them how to stand  
up for themselves. Often" - I'm sorry, "When I offered her to  
20 seek counselling, she refused saying she just needs to find  
them. She does not want to involve agencies."

Q. And....

A. First of all half of this is not true and -  
and another half, again, it's twisted.

25 Q. Sir, I appreciate that you're saying these  
things are not true. The - the letters were written, they say  
what they say. The issue here is the malice. So where -  
where's the malice in that?

A. Threatening message is the malice. In the  
30 situation when Svetlana's parents left like in - at 9:00 p.m.  
and then didn't return home, any reasonable person would expect  
of Svetlana looking for their parents. We - well - we - we even



Pavel Danilov - Cr-ex (cont'd)

filed a lost person report with police. And I don't know what kind of relationship Yana has with her mother, but I think that for - for Svetlana who just lost her parents, it was quite normal looking around and asking people do they know at least anything about her parents or not. And all this nonsense about sending threatening messages try - trying to find out where they live and accusing their friends of teaching them - I don't - it's malice.

Q. Well....

A. It's nonsense - it's malice.

Q. Sir, you can appreciate that we're going to hear evidence from witnesses that support that. You're aware of it aren't you?

A. Yes, sure.

Q. Okay. So please - please continue.

A. A couple students is what you're talking about. "A couple of students in our classes have reported that they have been harassed by the daughter who called them a few times a day asking for information about her parents. She threatened the students by telling them she knows their addresses and she knows they have children, pressing for release of information about the location of her parents. She wrote to our agency that her parents are not mentally capable. They can't manage on their own. She told the students she harassed over the phone that her parents are crazy, they are sick." This is hundred percent malice.

Q. Well sir, to me it looks like somebody's just reporting information. That....

A. Yeah, but if - if - at - at the moment you imagine that abuse and bruises are not true, you would agree that it's malice.

Q. But that - but that's your fundamental

starting point because everything is untrue...

A. Yes.

Q. ...it's all malicious.

A. Yes, it is. Exactly.

5 Q. Okay. So we're - we're looking at the tone of these letters. So let's continue because there's two more paragraphs.

A. Yeah, "None of us ever witnessed anything to support Svetlana's daughter's claim." I'm not sure who are  
10 those "us" she's referring to, but I'm assuming that it's a lot of people. "Alla and Valentin have been coming to classes regularly. Always seem happy. Very friendly, open people." Surprise, surprise. "They made friends with a variety of students." How about that. "They are loved by the teachers and  
15 staff and anyone that has come to work with them in the past - in the last few months. They are honest and at all time their story was consistent and proven by documentation they provided." I actually have a question. Why that documentation is not produced.

20 Q. Sir, I'm not here to answer questions.

A. Okay.

Q. You're the witness.

A. Well then it's just....

25 THE COURT: Well Mr. Danilov, are you reading a letter or are you adding your comments as you go because....

MR. MAE: That - that was a comment, Your Honour.

A. It was a comment, yes.

30 MR. MAE: And also the editorial, surprise, surprise, they were additional comments for the record.

A. Yes. And there was, I believe another one.

And last - last paragraph, "They are - they are victims in this unfortunate situation when the family that sponsored them and was supposed to provide and care for them, turned against them having used their assets to benefit themselves and have had full control and did [indiscernible]" - I don't know that word, "power over their lives." So - again, it's all - it's all just false accusations, it's not true. Yana Skybin knows that very well and she provides this support letter to Nikityuks with the only reason because there is no other proof of abuse. There is no report from - from any professional - no police report, no doctor report, no social worker report - nothing - there is nothing [sic] report from any professional. So she positions herself as that professional, but she is not. And she provides this defamatory statements in support Nikityuks to obtain illegally the Social Housing.

Q. Okay.

A. That's the malice.

Q. So let me ask my questions now then, sir because this is one of the documents you're relying upon.

A. Yes.

Q. We know that this document - or we agree that this document was sent to - to the Social Housing department, correct?

A. That I don't know. All I know that this document says, "To Whom It May Concern."

Q. Well that....

A. It may be quite a lot of people.

Q. Let's go to page 300 - sorry 922, the first page there - of that.

A. Yes, it's - it's the only - received that letter we know about, but there may be hundred of others.

Q. So this is a fax transmission, sir. It's

20<sup>th</sup> of December, 2011 from the YMCA.

A. Yes.

Q. Written by Ruth Miller.

A. Yes.

5 Q. And it's addressed to organization Social Services Division County of Simcoe.

A. Yes.

Q. Okay.

10 A. And subject is "Request for Internal Review for Valentin and Alla Nikityuk, Case Number" blah, blah, blah which pretty much means that it was about the application for Social Assistance which was - which was rejected at that point by the way because there were no proof of abuse.

Q. No it wasn't sir and we'll come on to that.

15 A. It was and then - then she started all this big business with Social Assistance - [indiscernible] all this....

Q. Sir.

A. Yes.

20 Q. Let's continue with my questions.

A. Sure.

Q. So this was sent to the County of Simcoe.

And...

A. Yes, it was to Simcoe.

25 Q. ...and - and you - you understand of course, and it's conceded that it was also supplied to Legal Aid as part of a Legal Aid application. You're aware of that, yes?

A. About that I aware. Yes.

Q. Was it sent to anybody else?

30 A. I don't know.

Q. Do you have any evidence it went to anybody else?

Pavel Danilov - Cr-ex (cont'd)

5 A. It says, "To Whom It May Concern". It may easily be published in the internet and accessed in 30 years later.

Q. Sir, when you're addressing a letter to an organization and you do not know the name of the person to which it is addressed, how do you begin the letter - Dear Sir, Dear Madame or To Whom It May Concern, correct?

10 A. Dear Sir, Madame - yes, but usually there is like to part on the letter which addresses the organization. This letter is not addressed to any specific organization.

Q. Well....

A. It was, I believe, widely circulated and we don't know where exactly.

Q. Okay, sir....

15 THE COURT: Well I think he's answered your question he doesn't know of any circulation beyond Simcoe County. He's acknowledged it was sent there.

MR. MAE: And the position of course....

20 THE COURT: He mentioned about the internet, but he's - he doesn't have anything to show us.

MR. MAE: Yes, he's speculating Your Honour.

THE COURT: So let's move on.

A. One more. Line 16 - Tab 160.

25 MR. MAE: Q. One-six - yes.

A. And page 925.

Q. Which for the record is a letter of January the 13<sup>th</sup>, 2012 addressed to Joanna - and I'm gonna kill the pronunciation....

30 A. Kozakiewicz.

Q. Thank you with that - thank you for that. And the spelling is K-O-Z-A-K-I-E-W-I-C-Z and she's a lawyer -

was a lawyer at Community Legal Clinic.

A. And if that's what the letter says, yes...

Q. Yes.

A. ...and for the record, it was letter before  
5 we started our litigation, just for the record. So the letter  
says in the second paragraph - second sentence, "Alla's daughter  
Svetlana sent a letter indicating she deposits support money for  
Alla and Valentin into joint CIBC account." So that mentions  
Svetlana's name. "Attached please" - at the - at the bottom of  
10 that paragraph, "Attached please find both correspondence from  
Svetlana" again "Alla's daughter and the withdrawal they made  
from the joint account." And third - third time in the second  
paragraph in her letter to Cesia Green, "Svetlana explains the  
payment of the cheque she issued to her mom and stepfather in  
15 October due to bill she receives from Ontario Work on their  
behalf." So basically Svetlana's name eventually was mentioned  
in some place.

Q. So number one, where - where - where is the  
malice and then there's no - no personal commentary about you or  
20 your wife.

A. In this specific letter no, but what I'm  
saying that Svetlana was easily identifiable in all those  
letters we were talking before.

Q. And....

A. And this is one point of the piece of story.

Q. And just - just for the record, the letter  
begins, "I'm writing on behalf of Alla and Valentin Nikityuk.  
I've been working with them as a second counsellor and at times  
an interpreter." And then the third paragraph, last three  
30 sentences, "They need to respond" - sorry, "They need to  
respond/appeal the decision of the overpayment letter and are  
asking for your help. Would you be able to advise what needs to

happen next?" So - so the purpose of that letter is to seek legal services.

A. Yes. In the appeal to Social Assistance [indiscernible].

5 Q. Yes.

A. She was assisting Nikityuks with - after their Social Assistance has been rejected by Ontario Works. That demonstrates the reason for those things. And there is another one, 165, page 3 - oh I'm sorry, 933.

10 Q. And for the record, it's another email from Yana - or fax from Yana Skybin to Joanna at the Legal Clinic dated April 13, 2012.

A. Yes and well there are two small things I would like to attract attention to. It's paragraph 9 and the end of it, "They requested to close them as they did not want Svetlana to manipulate money under their names." So Svetlana's name is mentioned. And paragraph 10, "I will be sending your letter from Yulia Malycheva, a student who Svetlana called and harassed in October while looking for her parents." And my understanding is that Yulia Malycheva will be witness.

20 Q. And it's correct is it not and we can go to it, but there is a letter from Julia Malycheva.

A. Yes.

25 Q. In what - you agree that there is.

A. Yeah, there was a letter. 'Till very recently, we saw only the English variant of that letter translated by Yana Skybin.

Q. But you've seen - you've seen the Russian.

A. Yes, I saw the Russian translation.

30 Q. And I think certified translation.

A. And I saw the certificate.

Q. Okay.

Pavel Danilov - Cr-ex (cont'd)

A. There are interesting differences over there.

Q. And this letter of course, April the 13<sup>th</sup>, is not one of the letters that's set out in your statement of claim that - presumably this is just dealing with issue of context?

5 A. Yes.

Q. Okay.

A. Basically it's about harassment - Yana Skybin. So - yes 166 - tab.

10 Q. And that's an email from Yana Skybin to Cristina Fernandes.

A. Yes.

Q. Dated February 26<sup>th</sup>, 2012.

A. February 28<sup>th</sup>.

15 Q. Oh - February 28<sup>th</sup>. And this is one of the defamatory emails identified in your statement of claim.

A. Yes.

Q. On page 12.

A. Yes.

20 Q. Well maybe then sir, to be fair to you, you've missed one.

A. I did leave it to later, but if I missed one please remind me later.

Q. Well I thought you're dealing with these in chronological order, sir?

25 A. No, I'm doing this with the order they come and the brief, which I'm not sure it's chronological, but - it's some kind of logical, but maybe not chronological. So continue?

Q. So this is statement number five then.

30 A. Yes, probably. Paragraph 2, "Pavel and Svetlana already found out where they live. They harassed everyone and somehow found out." That's not an issue anymore. So see everyone is quite a lot of people and when Yana Skybin



has been asked at the examination who - who the heck those everyone are, she was caught off guard and mentioned two names.

Q. So...

A. Yeah.

5 Q. ...that question, by in February the 28<sup>th</sup>, 2012, you and your wife found out where Alla and Valentin were living, correct?

A. Yes. Yes.

Q. Okay.

10 A. And we found out not by harassing everyone, we got a letter from Social Assistance Tribunal with address of Nikityuks in it.

Q. This is information that was provided to - to Yana, correct? This is information that was provided to her and she's reporting it to paralegal.

A. What information was provided to her?

Q. Well let's look at paragraph 1.

A. Information that we harassed everyone wasn't provided to Yana by Nikityuks...

20 Q. Sir...

A. ...obviously.

Q. ...sir let's - let's put this in context. Let's look at paragraph 1 first, "Alla and Valentin read the letter and adjusted a few things. They want security, so they want to negotiate and sign an agreement, not that just Svetlana and Pavel deposit \$3,000 every month, not for Pavel and Svetlana to know for more info only, they want to a two bedroom apartment and they can't do that until they are absolutely sure that they can afford to pay rent."

30 INTERPRETER: Sorry, Your Honour.

MR. MAE: Too fast?

INTERPRETER: Just repeat - no.

Pavel Danilov - Cr-ex (cont'd)

MR. MAE: Too slow?

INTERPRETER: No.

MR. MAE: To quiet?

INTERPRETER: To quiet.

5 MR. MAE: Okay. Do it again. Q. "They want to rent a two bedroom apartment and they can't do that until they are absolutely sure that they can afford to pay rent. Right now they are at a subsidized place and no one will kick them out. But a landlord will if they can't pay." So - so - so this -  
10 this email is based upon Alla and Valentin reviewing a draft letter and information is being conveyed to a paralegal representing them by Yana, correct?

A. Yes, sure.

Q. Okay.

15 A. But basically information - information she got from Alla and Valentin it's - it's all part of what - part of two is all her stuff like harassed everyone. Course that everyone she referring to Nikityuks probably even don't know. Maybe - maybe they do, I don't know.

20 Q. Sir you - you don't know.

A. No.

Q. Thank you.

A. "But they are trying to find out how much they pay for rent, et cetera" - which is actually in sponsorship  
25 agreement it's my comment "as they want to report that to CRA. No one releases this info to them and yesterday Alla and Valentin received the registered mail from [indiscernible] with all their pension receipts, medication receipts and investment statements for 2011 without any further explanation or letter  
30 attached." It was actually letter attached with explanation. "I assume they want them to declare this on their income tax return for 2011." Yes, we - my comment is yes we - we - we did

want to do that.

Q. And there's nothing...

A. But they didn't.

Q. ...but there's nothing malicious in that,  
5 Yana making that assumption.

A. Yeah there's assumption - of course there is  
nothing malicious about that - sure. "Alla and Valentin have no  
access to the investment funds. You indicated in the letter  
that they will only file their income tax - they income tax  
10 return correctly. So Pavel and Svetlana need to know that the  
investigation might occur due to the fact that they are  
withholding" - I believe "they" are Danilovs "they are  
withholding those investments and have not shared this info -  
info at the decision making stage. Ultimately, they did not  
15 involve Alla and Valentin, but rather controlled their finances,  
kept them uninformed and took advantage of their situation. No  
English and knowledge of Canadian banking system." So my saying  
here is that Yana actually knew the entire family situation  
since 2009. She was real familiar with the family, with the  
20 situation with the family, with financial arrangements - and  
Svetlana will testify about that. And all she says here - well  
she might saying that on behalf of Nikityuks, but she knows very  
well that it's not true. So...

Q. So again...

A. ...that's the point of the matter.  
25

Q. ...we're just circling back to your  
fundamental position is...

A. Yes.

Q. ...everything she said, because she  
30 apparently knew all it to be untrue, is malicious.

A. Yes.

Q. So before you flip, I - I have questions

about this.

A. Sure.

Q. So we agree, do we not, that Cristina  
Fernandes was retained to act as a paralegal providing legal  
5 services to the Nikityuk, correct?

A. Yes. Yes.

Q. And we see from this email header, it's not  
copied to anybody else...

A. Yes, it's not copied to anybody else.

10 Q. ...and you have no evidence that anybody else  
has seen this email other than within these proceedings.

A. Yes, but....

Q. And....

15 A. Fernandes Paralegal, they - they saw that  
email which is not true.

Q. And - and the purpose of this email was in  
the process of dealing with those legal services.

A. I think so.

Q. Well it's fair....

20 A. Like there - there is actually a - a bunch of  
other emails in somewhere in - in the file - correspondence  
between Yana and Cristina Fernandes I believe where Yana  
drafts....

25 Q. No this - this is the letter - this is it,  
sir. If you go back to the first paragraph, they have read the  
letter and adjusted a few things. Cristina Fernandes...

A. Yeah so....

Q. ...you will appreciate provided at draft  
letter....

30 A. So she - she drafted the letter...

Q. Yes.

A. ...and Alla and Valentin adjusted it.

Pavel Danilov - Cr-ex (cont'd)

Q. There you go, thank you sir.

A. Thank you.

Q. And what actual loss do you say that you've suffered as a consequence of this or any of the other communications you've identified so far?

A. You mean damages?

Q. Well actual loss. Can you attribute any actual loss to any of these emails?

A. I don't have to do that for defamation writing.

Q. I'll ask the question again...

A. Yeah.

Q. ...what actual loss do you say you suffered as a consequence of this or any of the - the other letters that you've identified.

A. Financial loss - or what kind of loss. There is lot of loss over here. Broken family for instance and well five years removed from our lives and - well all of this frustration and - well lot of stuff which is coming from defamation. Not everything can be expressed in dollars, you know. Life is much more complex.

Q. Okay. So - any - anything else?

A. Yes, a few things - a couple to be exact. So the next page is 936. And it says - and again it's from Yana to Cristina for record. And it's Friday, April 13<sup>th</sup>, 2012.

Q. And the subject matter is "Info from Nikityuk".

A. Yes, it's info from Nikityuks.

Q. Yes.

A. And it's - well it's - one of the document in combination of two or three and they all are here, so it's - it's fast. "Valentin received his access card from CIBC which

shows that they did not access to that account - that account until they've been told they have a joint account with the daughter where their pension was being deposited." It's just [indiscernible] - just for the record, she's referring to the joint account Valentin - Valentin and Alla Nikityuks were aware since 2005. It's the same account. But....

Q. But she's providing information to the lawyer based upon information given to her by the Nikityuks.

A. But - but she knows very well that it's a lie and I'll show you in a second. It's just to mislead the lawyers. See the purpose of this mail is to mislead the lawyer. To get the lawyer on board - to get the lawyer retained.

Q. So you're suggesting that's the case.

A. What?

Q. You're suggesting that's the purpose.

A. No, I will show you.

Q. No, sir - answer my question, you're suggesting that that's the - the reason.

A. Yes.

Q. But you have no evidence to show...

A. In a second.

Q. ...that was the intention. You have no evidence to show that was the intention, correct?

A. Well there should be some logic here. If - if she sees a document and she sees that a document prove exactly the opposite, but she tells the lawyer who has no idea what is actually happening that it's true, which is not true and she knows that very well....

Q. Sir - sir, firstly I'm gonna ask you some more questions. Number one, Yana Skybin is not an accountant, correct?

A. I have no idea. She's a lot of things - she

claims to be.

Q. And she's not a lawyer, correct?

A. I don't know. Maybe she is without a licence, but maybe she isn't.

5 Q. And in this process she is helping the Nikityuks obtain legal representation, correct?

A. I suppose so...

Q. Yes.

A. ...yes, that's maybe correct - yes.

10 Q. So....

A. So just two left. So the next one is page 945, it's I believe Tab A - or subtab A on the same tab. And this is actually that proof she's referring to, it's in new Valentin's advantage card she just got from the bank and it says, "The name, Nikityuk, Valentin. Number account holders, one." So this is access card to some new Valentin's bank account. It's not access card to - he says he lost or didn't know about and he claimed that he has joint access to - to that account just now. So it's completely about different account actually, not about that joint account and he knows that because well - well - supposedly she's not an idiot, right?

Q. Maybe she made a mistake, sir? Have you considered that - a good faith mistake?

A. To make a mistake with this simple - no, she knew very well. She assisted Nikityuk to open that account. And of course she was present there as an interpreter or translator or both or that or maybe - I don't know, next of kin or who else she was there. But she knew very well what she was doing at that appointment at Scotiabank. It's in her log actually. She opened the bank account and she had been told not to close another one because it's - it's the only way for us to support Nikityuks and they couldn't have that - that social

income at the moment. So she knew very well what that - that card was about and she definitely didn't prove - definitely didn't prove that Valentin received his access card from CIBC just now and before that he didn't have access to that joint  
5 account opened for them 2005. It's - it's completely misleading of the lawyer.

Q. So if - if she accidentally mislead the lawyer - let's just assume that you're right for one second, if she accidentally mislead the lawyer, how is that malicious if it was  
10 accidental?

A. It wasn't accidental. That's the point.

Q. So that's your - your position.

A. Yes. Yes, exactly.

Q. It was intentional.

A. And I'm done.  
15

Q. Are - are you done?

A. Yes.

THE COURT: That was page 945, is that where we are at in that discussion? That's what I wrote  
20 down, but was that correct?

MR. MAE: That page we were 936 and then Mr. Danilov took us to 945, Your Honour. Q. So there's one more defamatory statement in your statement of claim which is a letter of January 20<sup>th</sup>, 2012. You haven't addressed that yet,  
25 sir.

A. Probably it's missing in our brief, maybe it's in yours. I'm not sure.

Q. It - it's - it certainly is in my brief.

A. Well if you could find it.

Q. Lucky for you.  
30

A. Yes.

THE COURT: I see it's 3:30. We - we still have



Pavel Danilov - Cr-ex (cont'd)

the statement number four that you're turning us up to. That's - that's what you're gonna address right now.

5 MR. MAE: Yes the statement - we - we - if Your Honour's thinking about a break.

THE COURT: In the statement of claim it's...

MR. MAE: Statement....

THE COURT: ...it addresses number four.

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

10 THE COURT: You've dealt with the other ones.

MR. MAE: Yes.

THE COURT: So before taking a break, how much more time are you going to need 'cause I'm just wondering if we should call it a day at some point?

15 MR. MAE: I'm - after we get past this, Your Honour, I'm cautiously in the home stretch. I have some questions about some wrap-up matters, but I'm - I'm cautiously we - we will get this done by the time your normal close of proceedings.

THE COURT: All right.

MR. MAE: He says with his lips pursed tightly and his fingers crossed.

25 THE COURT: Well your promises...

MR. MAE: Are hollow.

THE COURT: ...you don't want to use idioms.

MR. MAE: Yes.

30 THE COURT: You confuse the parties. I'll - I'll take a break. I'd like to get this - there'd be some advantage in finishing early today, but if you can finish your cross-examination today, I

Pavel Danilov - Cr-ex (cont'd)

think that would be useful and then Monday we can deal with any re-examination that may be necessary and move on with other witnesses.

MR. MAE: Yes, Your Honour.

5 THE COURT: Sorry I should Tuesday, don't come back on Monday.

A. Mon - Mon - Monday's holiday, right?

THE COURT: Yes.

MR. MAE: Yes.

10 THE COURT: So I'm going to adjourn and hopefully when we come back, Mr. Mae, you can complete your cross-examination.

R E C E S S

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

THE COURT: Yes, Mr. Danilov, you can come back to the witness box.

MR. MAE: Q. And the - so we're just about to  
20 deal with the last defamatory letter statement number four, there's a copy of it in my document which is Exhibit 3(A), so volume 1 and it will be tab, I believe, D10.

A. Yes.

Q. You have that in front of you, Mr. Danilov?

25 A. Yes.

Q. And for the record, this is a fax on YMCA headed paper dated January the 20<sup>th</sup>, 2012 addressed to Lana Domazar, D-O-M-A-Z-A-R, who is a lawyer. You have that in front of you sir?

30 A. Yes.

Q. And this is one of the defamatory statements and we also see that there's a fax transmission slip to the same

fax number, correct?

A. Yes.

Q. Okay. So take - take me through this and tell me what's defamatory and what's malicious about it.

5 A. Mm-hmm. Okay paragraph 3 - I mean third paragraph from the top, "Their daughter, Svetlana Danilova, has filed the income tax return on their behalf and this is the first time they see the statements." She knows this is not true. At least she was well aware of the fact that Valentin  
10 invited his daughter in July - August, 2011 and she's well familiar with the procedure how to invite visitors. She invited her mother and - well she knows that if you invite someone you need to provide at least some kind of income proof. So when she says that first time they see the statements, she knows that it  
15 cannot be true if she's not, you know, like....

Q. Sir, just let me ask you a question there. This is referring to Canada Revenue Statements for 2008, 2009, 2010.

A. Yes.

20 Q. And this letter's written in 2012.

A. Yes.

Q. So please continue.

A. There should be also - it - it's 2012, like there should be 2011, right and she knows about 2012.

25 Q. Sir....

A. It cannot be first time when they see.

Q. But that's - that's your opinion, you have no evidence to support that, correct?

30 A. I have evidence to support that she knows that Valentin invited his daughter. She knows that.

Q. But you don't have evidence to support the comments you just gave.

Pavel Danilov - Cr-ex (cont'd)

A. Yeah, well very simple logic between things.

Q. Oh simple logic. Okay.

A. "According to Svetlana, Alla and Valentin invested their money in her and her husband home business." I  
5 don't know what that home business means, but probably family  
business she meant. "She reports investment income on their  
income tax return. They never received a penny from either  
return or federal/provincial benefits began issued in their  
names. The only income they had access to was their foreign  
10 pension reported under line 115 of their return." She knows  
very well that it's a lie and she makes these statements with  
the only purpose to [indiscernible] Nikityuks to illegally  
obtain Social Assistance. And well the reasons for that - that  
- there plenty of them actually and - well first of all, it's  
15 general fact that to receive a tax return you need to pay tax  
first. It's very generic and as a settlement counsel she must  
know that, otherwise she's incompetent. The only income they  
had access to was their foreign pension. She knows very well  
it's not true because she's familiar with situation of the  
20 family since 2009. And my wife will testify about that. "When  
we looked into accounts that were open in their names at the  
bank, they discovered they had investments in their names at TD  
Waterhouse. There was still some money in those account in  
October 2011. Once they left their daughter's house and moved  
25 into a subsidized housing, they went back to the TD Waterhouse,  
I was present as an interpreter and met with branch Manager,  
Mike Groulx (ph). He said they come swearing to the many money  
has been moved. They closed those accounts. They also had a  
joint chequing account where the daughter and son-in-law moved  
30 money through. That - but that account was also closed by their  
request. They did not want to have their names in accounts they  
had no access to or knowledge of." So well keeping in mind that

the entire story from the Nikityuks is not true and she knows very well about that. All this [sic] things she mentions in this paragraph it puts much intrusion in family finances.

5 Q. So - again - again, sir I'm just gonna ask you a bunch of questions and I'm assuming you're gonna give me the same answers. This - this letter, the contents you're seeing, have a [indiscernible], a background that you say Yana knew was false.

10 A. Yes, it was false and this letter made with the only purpose to repay the lawyer under false circumstances and she knows that - well those circumstances now false, that abuse legations are not true and therefore she simply misleads the lawyer. That's it.

15 Q. So - so is that it? So that's this in total? You have no proof that this fax has gone through any other third party.

A. I suppose it didn't.

Q. Yes. Okay.

A. I don't know that, but....

20 Q. And....

A. No, I don't have it.

Q. Well and I assume, perhaps it's wrong for me to assume in cross-examination, but the questions I asked you earlier on with respect to specific losses, it's - it's gonna be 25 the same.

A. Well I can add some things like reputation for instance and other stuff, but well...

Q. Well....

30 A. ...see it's all coming with defamation word, so...

Q. But - but this letter...

A. ...you do the math.

Pavel Danilov - Cr-ex (cont'd)

Q. ...sir, went to a lawyer representing the Nikityuks, correct?

A. Yes.

Q. Okay.

5 A. And well see we - we - we don't have harassment claim anymore, so I cannot say that it's harassment...

Q. Okay.

A. ...but it still misleads.

10 Q. So let's move on, perhaps my friend can actually help address this, this was something I raised in the opening, Your Honour. There's a - a negligence claim set out in the statement of claim at paragraph 56, again it's Yana Skybin and my reading of Justice Corkery's judgment is that that's been  
15 dismissed, but it still remains in the pleading.

A. My understanding is that negligence claim wasn't dismissed.

20 THE COURT: Just let Ms. Chapman deal with this issue. Mr. Mae, you could help us by if you wanna just quickly point out the appropriate paragraph in Justice Corkery's decision.

25 MR. MAE: Yeah - yeah - yes, Your Honour. It - it's in the trial brief at Tab 10. And it is at paragraphs 80 and 81, Your Honour. And - as - as I reviewed those two paragraphs Your Honour, in conjunction with paragraph 107, the candidate Yana Skybin in paragraph 80, the claims at paragraphs A and B, are not separate clauses of  
30 action. And then paragraph 81 provides that C, D, E and F are dismissed. And then we look at 107, specifically Justice Corkery spoke of the negligence claims against the YMCA, not - and

Pavel Danilov - Cr-ex (cont'd)

Yana Skybin. And....

5 THE COURT: And Yana Skybin, this gentleman has to answer this - Ms. Chapman - she prefer to consider on the weekend, if that's not appropriate. Unless you have any....

10 MS. CHAPMAN: That would be my comment because the paragraph numbering has changed from the version of the amended claim that Justice Corkery would have been referring to in this decision, so....I kinda feel on the spot to...

MR. MAE: Okay, Your Honour...

MS. CHAPMAN: ...to advise the Court if that is in fact the same paragraph.

15 MR. MAE: ...if I can - if I can assist my learned friend, paragraph 79 of Justice Corkery's judgment actually sets out exactly what was in paragraph 52 and it's identical.

20 THE COURT: So your overall position is that there's no negligence claim, so you figure this misguiding, is that your point?

25 MR. MAE: That's correct and no evidence has been read on that. So I - I'm - I just don't want to find later on, Your Honour, that some - something comes back....And of course we have another plaintiff, so I can address it then. So it may - may be for the sake of expediency, given the fact there are two plaintiffs, I'm not gonna address the issue with Mr. Danilov, I'll address it with Mrs. Danilov [sic] should the case be pursued.

30 THE COURT: All right. That's fine. That'll give Ms. Chapman a chance to consider it....And maybe she'll indicate on Tuesday whether it's a

Pavel Danilov - Cr-ex (cont'd)

live issue or not that you need to explore.

MR. MAE: Thank - thank you, Your Honour. Q.  
Just like to move and move on now. Just general question about  
your damages claim. There - there is no evidence from an  
5 accountant or actuary being provided by you in these  
proceedings, correct?

A. Account or what?

Q. An actuary. An actuary is like a - a more  
senior accountant, somebody who deals with these type of tables.  
10 You - you have no expert evidence, correct?

A. No.

Q. Okay. With respect to the lost investments  
claim, you were....

A. There were several, which one of them?

Q. Well we can deal with them all with the same  
15 question sir.

A. Okay.

Q. You've produced no evidence to show that you  
entered into any contract to purchase the stock which you claim  
20 you missed out on, correct?

A. Which one? I am back to the same question  
because there are several claims about stocks.

Q. I'll - I'll ask the question again. What  
with any of the stock that you claim you lost, you have not  
25 entered into any contract to buy that amount of stock, correct?

A. I was going to and I sent Mr. Bornmann the  
metification [sic] in advance about that. But like today I was  
going to buy this stock, but I wasn't able to because I didn't  
have money for it.

Q. But - but you have not entered into any  
30 contract - but that's time to buy the stock, correct?

THE COURT: I think that's been answered.



Pavel Danilov - Cr-ex (cont'd)

MR. MAE: Yes. Okay. Thank you, Your Honour.

Q. And all of the losses that you claim in relation to the stock are just paper losses, they're speculative, correct? You - you didn't actually lose that money?

5 A. It's - it's not that easy because let's say when I claim that I would buy CUF, the UN stock, then actually I had that stock. But not that much as I would have if I had more money. For instance....

10 Q. But - but again, you - I - I won't push it, but the evidence is there, with respect to the certificate of pending litigation...

A. Yes.

Q. ...you've never brought a motion to rescind the certificate of pending litigation, correct?

15 A. We've been self-represented at the motion to defend, Mr. Bornmann's motion for CPL and yeah - we - we didn't bring a motion to discharge it. Simply because Justice Eberhard, in her endorsement, suggested that we go for early pre-trial and well at that point motion simply didn't make any  
20 sense. But then Mr. Bormann started this delay tactic and - there we are. 'Cause we expected that early pre-trial the same year as motion for CPL and well it was supposed to be like in four months or so, not in four years.

25 Q. But - so the short answer is no you did not file a motion to rescind...

A. Yeah.

Q. ...the CPL.

30 A. If - if - if I knew that it - it's gonna be that long, yes we would bring the motion for CPL and we actually were going to with our previous lawyer.

Q. And you have never brought a motion to sell the property to pay the proceeds of sale into court, correct?

Pavel Danilov - Cr-ex (cont'd)

A. No we didn't.

Q. Okay.

A. Actually want to keep this house, I don't want to sell it, but....

5 Q. And you've been represented by several lawyers in this litigation, Mr. Timokhov?

A. No, first was NLC Lawyers, Reggie Napal (ph), then Mr. Timokhov and then Ms. Chapman.

10 Q. And can I turn you to document 31 of the damages brief which I believe is Exhibit...

A. It is [indiscernible] book....

Q. ...4 - yeah Exhibit 4.

A. What tab please?

Q. Tab 31.

15 A. Yes.

Q. For - for the record, this is a letter from NLC Lawyers dated October the 18<sup>th</sup>...

A. Yes.

20 Q. ...2012 and it's addressed to Mr. Bornmann and a copy was provided to my predecessor, Mr. Bigioni (ph).

A. Yes.

Q. And NCL Lawyers were your lawyers?

A. Yes.

25 Q. And we see from this letter if we go to the third paragraph which identifies that you divide an income from dealing with stock and he refers to stock in company American Capital Agency Group.

A. Yes.

30 Q. He says then starting at the end of the last line, "But as a result on the advice I have to give them, not to encumber the property." So you received legal advice from Mr. Napal, N-A-P-A-L, not to encumber the property.

Pavel Danilov - Cr-ex (cont'd)

A. Yes.

Q. And....

A. Not to encumber the property means that - because - because of CPL, if - if CPL was coming then please  
5 don't do with your property because probably you will have some trouble after that. So we - we - we didn't encumber the property.

Q. But you didn't bring a motion to rescind the CPL.

A. No, I did not...

Q. We've already established that sir.

A. ...no we didn't.

Q. Okay.

A. There were many - many reasons for that.

Q. And....

THE COURT: And just while we're going through it, what was the date of the CPL registration?

A. February 19<sup>th</sup> - something like that - 2013, I believe, but Mr. Bornmann knows better.

THE COURT: It may be in the Trial Record, I'm not sure.

MR. MAE: It's - I don't believe it is in the Trial Record, Your Honour. Oh it is.

MS. CHAPMAN: Oh it is. Yeah.

MR. MAE: February 19<sup>th</sup>, 2013 Your Honour. And it's at Tab - Tab 7, Your Honour. Q. So you had a falling out with Mr. Napal, didn't you?

A. What? I'm sorry.

THE COURT: I'm sorry, but should you really be talking about solicitor client issues?

MR. MAE: Actually - actually yeah - yes, Your Honour. It goes to the issue of maliciousness

Danilova v. Nikityuk et al.

5 and vindictiveness. I have a - an exhibit which I've provided to my friend which is a posting that Mr. Danilov put publically on Facebook about Mr. Napal. And it's - it's something that is important to address particularly given the case regarding the maliciousness and vindictiveness.

THE COURT: Ms. Chapman have you seen this?

10 MS. CHAPMAN: Well I - I have seen this, but the case doesn't address Mr. Danilov acting in a malicious way, so I'm not sure what the relevance is.

15 MR. MAE: I think - I think it's highly relevant. It gives the whole plaintiffs' case now against my friend based on malicious and vindictiveness. He's been through a bunch of documents not being able to identify anything and this is a prime example of what something malicious would be.

20 THE COURT: You think of a lot of examples, but this - what you're saying is this shows that he's been malicious in another situation and therefore the Court should use that as some sort of analysis.

25 MR. MAE: Absolutely, Your Honour. It - it - it sets a bench mark in my respectful submission. That - as I've already indicated, the whole defamation claim against my client relates to those issues and in - in this instance, it's appropriate because Mr. Danilov has indicated in some way and not some way....

30 A. I don't why you answer the question.

THE COURT: Just a minute, sir. Don't - you don't have to answer it yet. Mr. Mae is still

Danilova v. Nikityuk et al.

permitting his thoughts.

MR. MAE: Yes. I - I - I've actually - I just finished in the - I think it's - I would suggest it's relevant, Your Honour.

5 THE COURT: Well I'm not satisfied it is because if I could just use a criminal law analogy, because a person has a previous criminal record, we never want the jury to assume that they're the type of person that would do this sort of thing. And here we're not talking about his own maliciousness, but you to propose material that suggests he's been malicious. This is a good example. But it also turns into a solicitor and client issues between these - these parties.

10 MR. MAE: Well you - Your Honour, firstly I'm not going to ask any questions about solicitor client privilege. Secondly, the case - the counterclaim by the Nikityuks against the Danilovs is in part shrouded in vindictive behaviour, Your Honour. This shows the - the mark of the plaintiff.

15 A. I'm sorry. What's - what's being....

20 THE COURT: Don't talk until Mr. Mae is finished his thoughts.

25 MR. MAE: Yes. I - I would say this is completely different to prior convictions.

THE COURT: But how does - how does it...

MR. MAE: How does it help?

30 THE COURT: ...help the court if he's been - if your - if this letter would suggest that he's taken vindictive steps with respect to his previous counsel?

MR. MAE: It's analogous, Your Honour and if - if

Pavel Danilov - Cr-ex (cont'd)

Your Honour isn't able to be convinced by what I've already said, then I'm not gonna hand it up, Your Honour.

THE COURT: All right. I'm not convinced.

5 MR. MAE: Okay. There's a time to fold on certain things. Q. Without - without having to look at your damages brief, your hypothetical damages are based on a deposit of \$100,000. You - you based all of your figures on initial purchase of investments of \$100,000, correct?

10 A. Not entirely correct. In principle, yes.

Q. Yes. Okay.

A. But the - the thing is that....

Q. Sir, I don't need an explanation, I'm just dealing with the hundred thousand dollar figure.

15 A. Yes.

Q. In - in the test as you had a hundred thousand dollars...

A. To - to be exact, one hundred and four thousand.

20 Q. One hundred and four thousand dollars, okay. So it would stand to reason would it not, that if you'd invested to use easy math, take off the zero of \$100,000 - if you'd of invested \$10,000 you would have made profits according to your...

25 A. Proportional.

Q. ...case, proportional.

A. Yes.

Q. Yes. And did you - did you invest \$10,000?

A. No.

30 Q. No. And if we then go down to a thousand dollars - and again it would be a proportional gain.

A. No.

Pavel Danilov - Cr-ex (cont'd)

Q. You disagree?

A. The thousand dollars doesn't work.

Q. So it works at ten grand....

5 A. The - the minimum reasonable - more or less reasonable amount to invest in automatic trading software thing is around \$10,000.

Q. Okay. But - so you've never invested \$10,000?

A. No.

10 Q. And you've never had \$10,000....

THE COURT: Sorry, are you talking about this - going through damages?

MR. MAE: I'm referring Your Honour....

15 THE COURT: The actual amount that he invested prior.

MR. MAE: I'm referring to the damages claim, Your Honour. The one that comes to about seven and a half million dollars based on an investment of a hundred thousand dollars. That's in the amended damages brief.

20 THE COURT: But didn't he tell us that he didn't actually do that?

MR. MAE: That - that's right.

25 THE COURT: Hence he would have but for this situation.

MR. MAE: Absolutely, Your Honour.

THE COURT: So he's told us he didn't do that, but he would have.

30 MR. MAE: That's right. And I'm dealing with a failure to mitigate. Q. So you - you have - you didn't invest \$10,000?

A. In this specific trading software program,

Pavel Danilov - Cr-ex (cont'd)

no.

Q. Okay.

A. But I did invest in less risky strategies.

Q. And would it be fair to say that you've had  
5 \$10,000?A. Not at that point to, you know, to plan to  
invest in this kind of thing because - well at - at same time  
this litigation process started to get out of control and it was  
unpredictable how much do I need next month or month after that,  
10 so I had to keep money available for much less risky strategies.Q. So you did not then mitigate your loss by  
attempting to make an investment?

A. I did invest...

Q. Not....

15 A. ...but not in that risky strategy.

Q. But that's the risky strategy that you're  
basing your damages claim on, correct?

A. Not - not entire claim...

Q. Yes.

20 A. ...but part of it, yes.

Q. The significant part of it.

A. Yes.

Q. Okay. So in fullness I'm going to wrap-up.  
Mr. Danilov, I'm putting it to you that the only reason why you  
25 are suing the YMCA and Yana Skybin is because you perceive them  
to be a soft target with money.

A. Disagree.

Q. Disagree. I'm putting it to you that you're  
regarding this litigation as an investment in the same manner as  
30 you regard everything else as an investment.

A. Disagree.

Q. In your evidence, I believe on Tuesday - you



5 may not recall that far back, you gave evidence concerning a call from Pratt Homes saying the property was ready and you decided to keep the property as a good investment because Alla and Valentin didn't want to sell. And your evidence, you used these exact words, "Things change inside a family." Do you recall saying that?

A. Yes.

Q. That's what happened with your family, isn't it? Things changed sir.

10 A. Things change in any family, so yes it's not a surprise that they change in this family too - sure.

Q. And on that note, I can say that that's something that we agreed with, sir. And those are my questions, Your Honour.

15 THE COURT: Thank you, Mr. Mae. Ms. Chapman I presume that you would like to wait 'till Tuesday for the re-exam portion of....

MS. CHAPMAN: Yes, thank you.

20 THE COURT: And for that I'm sure that the staff and the Court thank you. So return Tuesday, we'll try and start as close to 9:30 as we can. We'll take a somewhat shorter lunch hour because I do have to leave just before four - four o'clock. And if it helps us through the week by shortening up the lunch hour a little bit, we can address that to try to see if we can make up some ground. We'll see everyone back on Tuesday, thank you.

25 ...

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

611.  
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\_20160520\_090212\_\_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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TUESDAY, MAY 24, 2016

THE COURT: Morning.

CLERK REGISTRAR: Good morning, Your Honour.

THE COURT: Counsel, when we left off on Friday we were discussing the claims left as a result of Justice Corkery's decision. Did you want to deal with those issues now?

MS. CHAPMAN: Yes, we can. So I had the opportunity to review that decision and - and that....

THE COURT: I'll pass these copies down to counsel because I've highlighted what I think are the issues that are remaining subject to comments from counsel. So if I can just go through the list and then we can make comments if you wish, counsel. Defamation appears to be still there, but malice is part - is in point a part of that acringent (ph) of Justice Corkery's decision.

MS. CHAPMAN: Right.

THE COURT: So we have defamation. Breach of contract is out. Inducing breach of contract is in and that would be in the case of - to paraphrase his words, if a third party knowingly or recklessly assists in a false claim pretending to - to induce a breach. So that aspect of number three is still there according to his decision. Number four is gone, number five is gone. Number six, negligence, that's what we've discussed on Friday. It appears that with respect to Ms. Skybin, the decision got rid of subsections C, D, E and F and he said that A and B were def - were defiant - were def - sorry were

Danilova v. Nikityuk et al.

dealt with under defamation, therefore they weren't falling under the negligence heading. That's the way I interpreted it.

5 MS. CHAPMAN: Yes. And the B would be dealt with under the inducing breaching of contract, correct. Yes. I read it as well.

10 THE COURT: And then with respect to the YMCA, negligence or potentially it could be vicarious liability for negligent supervision, so....That's how I saw he left negligence with respect to the YMCA. And number seven, conspiracy, he indicated there were two categories of conspiracies. The first purpose was to cause injury and that didn't apply in this case. Second would be conduct that's unlawful - unlawful and injury to a plaintiff was likely. So there was some aspect of conspiracy left to be determined by trial. And then he eliminated the following claims, 8 through 12, on his list. Does that sound about right?

15 MS. CHAPMAN: Okay.

20 THE COURT: Mr. Mae, Mr. Bornmann, does that about sum it up as far as you could tell?

25 MR. MAE: It certainly seems a correct summary, Your Honour. The - the questions I have of course and had on Friday - well firstly with respect to A and B with respect to Yana Skybin, whether they still actually remain as active claims or whether - because they're consumed in the other courses of action whether the doctrine of merger simply applies and Justice Corkery's de facto made that finding. And secondly, with

30

Danilova v. Nikityuk et al.

5  
respect to the negligence supervision, of course  
we have a statement of claim that sets out  
allegations. Justice Corkery's interpretation of  
what they amount to is - is a separate issue and  
of course we're - we're addressing what's  
pleaded. And what we have now is an amended  
statement of claim after that which nearly  
repeats what was in it before.

10  
THE COURT: All right. Well there's certainly  
room for submissions at the end...

MR. MAE: Yeah.

15  
THE COURT: ...I just wanted to indicate what I -  
what - what are clearly gone and what are still  
potentially still in the mix.

MR. MAE: Yes.

20  
THE COURT: I'm not trying to make any rulings on  
them at this point, but just so that we've  
identified what he suggested in his summary  
judgment.

MR. MAE: And - and sir - that's correct, Your  
Honour. Certainly as I indicated on Friday, if  
the negligence claims as pleaded are being  
adduced, I'll deal with them with Ms. Danilova  
rather than Mr. Danilov.

25  
THE COURT: Right. Well I think what Justice  
Corkery said that the negligence - sorry yes,  
you're talking about the YMCA.

MR. MAE: That - that's correct, Your Honour.  
Yes.

30  
THE COURT: All right. So are we ready for re-  
examination?

MS. CHAPMAN: Yes we are.

THE COURT: Mr. Danilov, if you'd return to the stand.

PAVEL DANILOV: RECALLED

5

RE-EXAMINATION BY MS. CHAPMAN:

Q. Mr. Danilov, I just have a few questions further to Mr. Mae's cross-examination. The first is in relation to the sponsorship agreement. My understanding is that the undertaking was signed four years prior to Nikityuks immigrating to Canada?

A. It was signed in October 2004.

Q. And is it your understanding that that agreement is still valid today?

A. Yes.

Q. Would you - did Nikityuks or the YMCA contact you at any time for support of Nikityuks?

A. Nikityuks didn't, YMCA didn't. Only Ontario Works did.

Q. And are you prepared to support Nikityuks if they were not on ODSP or living in Social Housing at this time?

A. Yes. And the only problem with that is that they don't claim my support anywhere. They don't show my cheques in CRA, they don't show my cheques in ODSP.

Q. Correct. So you're providing them some support now.

A. Yes.

Q. But you would be willing to provide them full support.

A. Yes. I would be willing to provide them full support if they show all my cheques as it's requires [sic] by law.

Q. And my last question is in relation to the joint Scotiabank account, I believe your evidence was that that account disappeared from online banking.

A. Yes. It disappeared from online banking in  
5 the beginning of October and it took me about two weeks to figure out what actually was going on. I was calling bank several times. I was speaking with several representatives in the bank. And nobody could tell me what exactly - exactly happened and that - that account was really important because I  
10 used it for transit mortgage payments to Scotiabank. We have mortgage with Scotia and I have income and other transactions in different banks - in CIBC and TD. And basically - now I recall that conversation with Valentin Nikityuk. On October the 17<sup>th</sup>, Svetlana actually went to the bank and spoke to the branch  
15 manager and when she returned home, it was in the afternoon. She told me that it was Nikityuks who closed the account. And basically I just asked Valentin back then why did you close the account and he said because. And well I was really upset with his answer. I didn't tell him anything else, but - well it was  
20 just the tip of the iceberg actually and then in two weeks later we figured that they keep closing all joint accounts and TFSA accounts and - all over the place, that's where actually I - I - I got kind of angry because he - when - when you open, let's say TFSA account with Nikityuks, it's like half day job because you  
25 go to the bank - and we did actually went to the bank all four of us because there were other special conditions for those accounts, we need trading authorization, we need Russian translation, we need everything. And we opened two accounts for them in 2009 because - well in 2009 TFSA accounts were  
30 introduced by the government for the first time and it was very beneficial for us to have - well TFSA account for all member - members of the family. And it took approximately half a day

just, you know, it's - it's a big paperwork. It's about, I don't know, 20, 30 pages and Svetlana was translating everything. It - it was big event. And well when they just went to the bank and closed it, you were not - not understanding what that account is for. Well - yeah it - it - it - it did kind of got some - well got me upset a little - but they left at that point already. That happened two weeks after they left. So we - we figured that they were closing all accounts in TD Bank, in - everywhere basically two - two weeks later after that conversation on October 17<sup>th</sup>.

MS. CHAPMAN: Those are my questions for Mr. Danilov.

THE COURT: Just one point for clarification on your last point counsel...

MS. CHAPMAN: Yes.

THE COURT: I thought Mr. Danilov said that he closed out the Tax Free Savings Accounts which essentially were with his money and I thought he told us that in-chief and now he's saying that they closed them out.

MS. CHAPMAN: No, I believe he's referring to - I don't want to put words in his mouth, but I was asking about the joint Scotiabank account.

THE COURT: But he went further.

MS. CHAPMAN: Yes, he did.

THE COURT: So sir, I'm just asking you for clarification on that question. And you told us earlier that you closed out the Tax Free Savings Accounts.

A. No - no - no, we withdrew - we withdrew funds from those accounts. Nikityuks closed them.

THE COURT: Oh I see. He withdrew the funds, but



they closed them.

A. Yes.

THE COURT: When they closed them, were there any funds in there?

A. I didn't know.

THE COURT: All right.

A. Might be a few dollars, I'm not sure.

THE COURT: Thank you for that. Thank you counsel. That completes your re-examination. You can step down, sir. Counsel, do you have another witness at this point?

MS. CHAPMAN: Yes, Svetlana Danilova.

CLERK REGISTRAR: I'll just have you stand for a moment.

SVETLANA DANILOVA: SWORN

THE COURT: Good morning. You can have a seat if you wish.

EXAMINATION IN-CHIEF BY MS. CHAPMAN:

Q. Good morning. Ms. Danilova, I just have to ask you a few questions regarding your background and education. Could you tell me about your education please?

A. I graduated from Saint Petersburg State University and I graduated from the Qualification Program that is - that is five year, full-time and a - an equivalent of Master's Degree here in Canada. My background after I immigrated included recession development. I have accounting background, also teaching background and - before immigrating to Canada in 2003, I worked in Riga, Latvia for Transport Telecommunication University in Riga, Latvia for over four -

five years, full-time position - for the last several years in the role of team lead and the team was responsible for public website of the entire university. The university was the size of the - the amount of students like 5,000. But actually to put myself through school in Russia, I took all possible jobs - night jobs and summer jobs and I did a lot from dog grooming, a chef, a cleaner - things like that, yeah.

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

A. We were transferred in 1996 - in August 1996 and - and we're working - we were both working for Transport Telecommunication Institute in Riga, Latvia but we only had permanent - we only had temp - working Visa there in Latvia. And we found information, it was - some information in the internet, we did research and we decided well - that - well - first we wanted to hire a lawyer - an immigration lawyer, but then we decided to - that we can do everything ourselves to - to put ourselves through immigration - immigration, what we did and we did it through London immigration office - that was easier than from Moscow and it was very beneficiary [sic] to live in Latvia because we did immigration. Through London office it was much faster than it would be done through the Moscow.

Q. And I understand you arrived [sic] - or arrived in Canada in 2003.

A. [Indiscernible] July 7<sup>th</sup>, 2003.

Q. And did you work when you arrived in Canada?

A. Starting from 2003? I started my own business because I have solid background in the work and I started all business as a sole proprietorship. The name of the business was internationaldatingserviceforsingles.ca. I also at some point in 2004, I believe, I started to volunteer for charitable organization, Newcomer Services - is the services to a Newcomer women. I helped them with developing and content

management of their public website utilizing my experience in -  
I reported data to CEO of the organization and I have very clear  
understanding how the charitable organization operates and what  
are their duties of the Newcomer Service - Newcomer settlement  
5 counsellor. It's very - there are duties not expanding to  
something being the representative of the Newcomers in  
organizations. After I volunteer for some time for this  
charitable organization, they offered me their contract. So I  
worked with them under contract basis, but in 2004 my mother  
10 developed really serious health problem - it was a serious  
health problem for my mom because her cancer returned. First  
she was diagnosed in 1995 and in 2004 - she had so many health -  
health problem - I probably will tell about that later because  
it's very specific topic. And at some point, I just needed  
15 money to send to my mom and I couldn't - so I - I needed money  
right away and I sent her about \$600 per month. It was very -  
it was very hard for our family at that point, so I took  
cleaning job here - and my mom knew about that actually. She  
appreciated that very much that I just went to - for emergency  
20 cleaning - cleaning - residential cleaning, I was dealing with a  
Russian cleaning company and they knew they could hire me. They  
sent me for emergency cleaning to their residents and it was -  
that job got paid. I received big gratitude from my job and I  
send money to my mom. And I was actually very happy that I  
25 could do - I could do that.

Q. And so why did you not obtain a full-time job  
at that time?

A. I actually had interviews in 2004, 2005 - I  
had interviews, but I was good - good fit for many positions.  
30 Actually my background - [indiscernible] before I immigrated to  
Canada, allowed me to find job here in Canada. I didn't - it  
didn't require any licencing or any other additional education.

But I needed to deal with the - all problems of my parents on a daily basis. I needed - I was so involved that - I very responsible person and my feeling at that time was that I couldn't commit to the full-time because people was going to  
5 rely on me and I was like on-call for my mom. I can fly to Russia any - at any time 'cause she needed me and she was really ill - very bad shape in 2004 to 2005.

Q. And so we heard evidence that you returned to Russia to assist your mother with her medical appointments, is  
10 that correct?

A. It was not a medical appointment. What do you refer to - what time? What's the period? What time period?

Q. Yes, in - in 2004, did you return to Russia?

A. I didn't return to Russia. It was 2005 - at  
15 the end of 2004 as I told the counsellor, ret - returned and when my mom went to the healthcare provider available for help to help, they told her and that she communicated to me over the phone, that they literally told her in her face. It was extremely upsetting to her that her cancer is so advanced and  
20 they've - kind of no hope and - they said - they told her that they - this kind of operation - surgery she needed, but they only do for younger women and she's too old for that. She communicated that over the phone to me that you need to do anything - you did it before for me. In 1995 actually I found a  
25 very good treatment for her. It was radiologist therapy and the doctor performed the radiology said - they told me that I healed your mom and she was okay from 1995 until 2005. So in 2005 she told you need to come because it's - you cannot do this long distance, you have to come, you have to - if you network again.  
30 That - that's what I did. I came and I actually used - really used the network over here as a professional of my age and it was a professionals working in healthcare in Russia and I found

the doctor for - actually for money. It was - I paid for a hospital bed for my mom and for surgery, for staying in the hospital - for everything. And it was - of course before I came to Russia for operation, I did preparation over the phone from  
5 Canada. So I was prepared when I came to Russia in February, March, I believe, 2005. So all arrangements was done over the phone and I arranged the surgery for my mom. I was for her dealing with the surgery all the time like when she was recovering from surgery, I was spending nights sitting on the  
10 chair by her bed because I couldn't trust even the nurses in the hospital - they - that they would be responsible in taking care of my mom. I - I took all kind of care for her for recovery of the surgery as well.

Q. And could you tell us a little bit about the  
15 surgery and we understand that you paid for that surgery? Could you explain that?

A. As I said, it was for - overall, I paid about \$10,000 not including my airfare - flew there whatever - it wasn't medical. So overall \$10,000 I spent for admittance of my  
20 mother to the hospital for her surgery, [indiscernible] an anesthesiologist - all - receptionist and - overall it was \$10,000.

Q. And do you pay this in cash? How do you pay the doctors and the receptionists?

A. I pay - this was the money - yes in cash. I  
25 paid it out of my pocket. Just cash, but previous arrangements were made even while I was communicating from Canada. So - yes I paid - I paid cash of course and to this we have - luckily we have this kind of cash because - and I have house sold  
30 [indiscernible] before we immigrated to Canada - yes. It was - I was absolutely proud and happy that they had this cash at the time.

Svetlana Danilova - in-Ch

Q. Let's move on and talk about your parents, the Nikityuks immigration to Canada. The sponsorship agreement is at Tab 24 of Exhibit 1(A). Can we look at that please?

A. Could you repeat it please?

Q. Yes. Tab 24.

A. Yes, this was a sponsorship agreement in front of me. Yes.

Q. And could you tell - could you tell the court how you came to sign this agreement?

A. Of course, we're - we were talking a lot with my mom - actually first [indiscernible] - you had 2003 when we're here. Left Russia - we came to visit my parents before we moved to Canada. So in 2003, July - or June, we came to visit my parents. And when they at the train station, when we were leaving my mom mentioned so we're - you're not gonna leave us here - you are not - you are not gonna abandon us here, it doesn't mean anything that you are moving to Canada. And she said that I hope you take us - you know, how horrible is the healthcare in Russia so it - it was a big conversation. She emphasized so many times that she is looking forward to we will take them to Canada as well. It was her understanding from the very early time and in 2004, of course, when we became eligible to bring relatives under the sponsorship agreement, of course I told that to my mom and - actually we were just waiting for this - it was like waiting period for us - very waiting period since we immigrated to Canada until my husband and enough income - enough to sponsor family members. And this happened in October of 2004. So he lent income that we could show to immigration to prove that we can support relative here in Canada. And of course it's - it's everything that's happening here, it's - I don't know - I don't have word for that actually. Because it was so mutual - it - I cannot call those things as an agreement.

We were always there for each other. It - it - [indiscernible] - so of course if they don't wanna move to Canada, my mother didn't want to put me in any kind of trouble. She knew that I was travelling a lot and of course it was a mutual decision that the family was gonna sell all their assets in Russia. They are gonna move - they - it was the conversations that of course they will - wanna leave Russia forever. And mom - my mom didn't have any doubts that I will take best care ever for her - best care possible - because she knew this and of course she told - [indiscernible] again, it was so hard we have something to sell - to provide so you - you will have money and you will be able to take care of us in different aspects including financial aspects. We - the only - what are you even talking about - that their so lucky we have something to sell - otherwise it was her understanding that Pavel didn't have enough - although the immigration Canada allowed us to bring relatives at that point and it - we were lacking in this aspect as well actually. Because by that time we didn't sell the - our assets. So it was my mom's understanding that to come to Canada they will have to sell everything in Russia and transfer everything to me in exchange - but it's very formal - what I was saying here, it's very formal words and we have to say a lot of very formal words now. At that time it was just my communications with my mom as we always did. It was communications from a daily basis. I called her every day. When we moved to Canada in July 2003, first thing I did in Canada, I was looking for a telephone booth to call my mom because she was the most important person in the world for me. And it's changed here and this [indiscernible] - this is why I'm here at this [indiscernible].

Q. So they agreed to sell the family assets in Russia?

A. It was our mutual understanding that we will

have to sell all - we will need money for their support here - yes.

Q. And you - you referred to them as family assets, why is that Ms. Danilova?

5 A. What we have back in Russia, it was an apartment, a cottage - you can call this a cottage house and a - you know, it's kind of misleading about many things here like, you know, calling Valentin a professional engineer, it sounds big - big job actually, when you are calling him a professional  
10 engineer. He is actually - the training is very similar, but the [indiscernible] back in Soviet Union and then Russia - Russia you have professional engineer, it's comparing being a shop assistant at grocery store and the shop assistant at grocery store has - had access to good food. So it's actually  
15 kind of ridiculous how it sounds to me and same is like cottage house in Russia, it's just a cabin without [indiscernible] without any [indiscernible] I would say if you can point to just water - well. So yes, they have an apartment shared with me and my daughter. They have this cottage house, however they call  
20 that. They have garage and a car.

Q. And you said that the apartment was shared with you and your daughter, could you explain that?

A. To explain that, we just need to have a look in the - into the history of this apartment, you know, because  
25 of privatization, this was - it was the best thing happened to Soviet people - the best thing the government actually did to the people from the Soviet Union and the right to acquire their ownership for the share in the apartment where people were previously allowed to live - to live lifetime. So previously in  
30 the Soviet Union and after in Russia, previously before this privatization people just had right to live lifetime in their apartment - so it's - let's say apartments. So myself, my



daughter, Valentin and Alla, all four of us had this right to live in this apartment lifetime. And it's [sic] sounds absolutely ridiculous and nonsense to me that now my mom is gonna take even this - the only right from me and especially from my daughter whom she - she loved - I don't know - to death I would say. And she's taking this only right the government give to all Soviet people and I - I was born and raised in Saint Petersburg, Russia. I was - it's - [indiscernible] I lived in Russia. Actually my - my - then my father left my mother. I was two years old and my father left. It was actually my father's property because my mom - well she went to live with him and again, this good thing that my father did for me, he left me with a place to live - to live lifetime. My mom raised me alone until she got married to Valentine; I was 15. They consolidated two places, my mom's - the place I live with my mother and Valentin's place. They consolidated this through exchange. It was the only way to do that back this time and it was actually again misleading. It was not a two bedroom apartment or one bedroom apartment, it was just an apartment with two separate rooms - two rooms across the hall, absolutely separate, equal in size. My mother lived with Valentin in one room. I lived with my daughter - I lived in separate room. I got married to Pavel. We lived together in that apartment. He came to live with me because the property he owned at that time - not owned - his parents actually give him to live, it was remote - very remote - and he lived with me. Our daughter was born in this apartment so our daughter received a share on this apartment - a sole share just - just through her bills. I - we were living in that apartment and this is actually very important, that we had an experience back in Russia living together. It was normal - again, real - it was more tight than living in a house and you refer to this - the counsellor of YMCA

referred to this house as not big, but we used to live in  
apartments of - with two rooms across the hall with one bathroom  
and one toilet - separate toilet and - a separate toilet and the  
wash bath with a sink in another room - how would you call this  
5 now? So this is why I - I - I do this statement, yes. We have  
equal shares in this apartment: myself, my daughter, Alla  
Nikityuk and Valentin Nikityuk. Their cottage house, it was  
Valentin's actually because he received it from his employee and  
he had it before he got married to my mom. But we contributed  
10 or whatever this word is - in worth to this cottage house. And  
it looked completely different after - actually my - Pavel's, my  
husband's father, did a lot of additions. He was professional  
carpenter and he did a lot of work. My husband worked on this  
additions to the cottage house as well. The garage was to -  
15 through the name of my mother. Yes they just bought it, I  
didn't have anything to this - to that garage.

Q. Could you turn to Tab 35 in Exhibit 1(A)?

It's page 200.

A. Which tab, please?

20 Q. Thirty-five, page number two hundred.

A. Yes. This is - yes, this is - this is an  
offer of passport - it's year that they had two passports back  
in Russia, one for internal use and another one for travelling.  
And this is a copy of my internal passport. And also the copy  
25 of my - a - this is a copy of my passport, right? Yes.

Q. Yes, so if you could look at page 200 in  
conjunction with page 199.

A. Yes.

30 Q. Could you tell the court when this document  
was issued?

A. The....

Q. Or registered I believe is the word they use.

Svetlana Danilova - in-Ch

5 A. The doc - it was - the passport was issued in 2002 - July 23<sup>rd</sup>, 2002. Yes. The passport was issued in July 23<sup>rd</sup>, 2002.

Q. And it appears at that time you were still registered to the apartment in Saint Petersburg?

10 A. I was always registered in that apartment in Saint Petersburg since we consolidated two apartments. Yes. And - and it was when I was 15 years old. Yes. It just - it just a document - just pass - passport there that was issued - yes.

Q. Did you ever give up your right to the apartment in Saint Petersburg?

15 A. I didn't understand why everyone was gonna decide to make me look so stupid. Yes - that's what my position here. Because do I look like an idiot here? Why would I do - just take this right to own the place where I live that all other people got from the government. So I - no - no, I never - I never did this thing like they're referring to - like the fact un-registration or something like that - no.

20 Q. And by being - being registered at the apartment, it gave you the right to stay at that apartment?

A. Oh being registered in the apartment means I have lifetime - I have right to live in this apartment lifetime, yes.

25 Q. Let's look at Tab 36, page 205 please.

A. Two-oh-five. Yes. It's the same - doc - documents of the same kind but for my - for our daughter Anastasia Danilova's.

30 Q. Yes. So this is her internal passport document?

A. Yes.

Q. And it's been translated at page 204.

Svetlana Danilova - in-Ch

A. Yes.

Q. And again, Anastasia's registered at the apartment in Saint Petersburg, correct?

A. Yes, since her birth in 1985 - yes.

5 Q. So earlier we looked at the sponsorship agreement and when the agreement was signed back in October 2004, did you know whether your parents would be coming to Canada or not?

A. Of course not. What happened in 2004, we  
10 paid - we signed this formal agreement to initiate the immigration process. And this immigration process was in two stages. One stage was here in Mississauga, so it was actually our - from our side, we gathered all documents - mostly it was our - to prove our financial situation to Immigration Canada.  
15 So we - we should have some T4 of my husband's to prove the income, that we have enough income to sponsor our relative here. We paid - was about \$1,000 for this first step. We were thinking - we checked into that - we were thinking that we will be approved, but the other stage of immigration looked much more  
20 difficult for us and involved so many steps that could be not actually [indiscernible] including that medical examination of parents. There are so many security checks involved like if a - Valentin was immigrating as a family member for my mother - as a family member of my mom, my mom was a principal - was a  
25 [indiscernible] and Valentin was a family member, but he - he had to go through all - all the same proceedings like security clearance - it was [indiscernible] as well because he - he - if you are talking him as a military man he worked for organizations and he - at some point he was not even allowed to  
30 have a passport for travelling from Russia during his career because he was working for organizations with a very, very high security clearance and he - I knew that. We said everything at

that point - no we didn't know if they can go through the immigration and the immigration would be successful for them. No, not at all. But we decided that we're - we had to do this anyway. We had to try anyway.

5 Q. And we've heard evidence that your mother, Alla Nikityuk, came to visit you in the fall of 2005.

A. Yes, this surgery performed with my mom in February, March 2005. It went well. It - I cannot even tell that it was - it was successful, but we - we assumed that it was  
10 successful in time because after the surgery my mom was very, very weak. She received one shot of chemo because the surgeon insisted that she needed chemo. And she received that chemo after I left - after - after I left, the chemo. But I was communicating with the surgeon over the telephone all the time  
15 and my mom told me that she would not survive another shot of chemo. She was very, very weak. I arranged - again, I used my networking lot and I arranged substitution for chemotherapy for her that was immunotherapy. And it - it's - it started to get better for her. She was still very, very weak, but by fall she  
20 started to actually feel better and we decided that she could even come to visit us. And it was huge for her. Her pain was year [indiscernible], but it was really - very, very happy about the results of everything. And my mom, she's - actually she's a survivor. She - she - she contributed to [indiscernible] so she  
25 - anyway, it was getting better and she came to visit in October 2005. We started talking a lot about immigration. We were in the immigration process and we were on the same page and I was so happy and she was happy to see Canada. It was like a dream come true for her. All the shopping malls, all the - everything  
30 was new for her and she was very, very happy - yes.

Q. Could you turn please to Tab 25 in Exhibit 1 (A)?

A. Which tab?

Q. Twenty-five.

A. Yes.

Q. This is CIBC account summary for a joint  
5 account between yourself and Alla Nikityuk.

A. Yes.

Q. And I understand from the evidence we've  
heard that this account was opened during her visit here to  
Canada in November of 2005?

A. Yes, the story behind that when I actually  
10 came for surgery for my mom in February, March 2005, I brought  
MasterCard and I gave her MasterCard because I needed to find  
some way to - to send her money. She needed money every month  
for medication - a lot of medication that she was taking and  
15 good food to - because since she went through so many treatments  
- cancer treatments, cancer can return anytime, it was always  
about food like or - organic food and they bought everything  
from the Farmer's Market, so I - I had to send them like 600 a  
month at the time and I brought MasterCard. Well they were  
20 using things March 2005 until my mom came to visit in October  
2005 and it was not convenient to use this MasterCard, you know  
- we - we were always talking how to do things - optimize  
things. They saw that, then they taking - then they withdrawing  
money with the MasterCard, then there's some fee involved and we  
25 were talking about that and they said oh it's so unfortunate,  
that they would rather - we would rather use this fee for  
something nice, but not to pay the fee to the bank. It's so  
unfortunate. And we decided there is another way. My mother's  
here and although she - she was not a permanent resident, but I  
30 was and we went to the bank and we opened the account. I was a  
permanent bank holder and she was a supplement - she was - she  
had a supplementary card. So we gave her the access card that

she used after she returned to Russia - yes. This is the account actually that we opened with her. She always knew about that account because they used access card to this account for withdrawal money when they were living in Russia. And as I said  
5 it was very hard for me to send this kind of money every month. So as I mentioned it was 600 a month, then - I don't remember, at some point we started to send them 200 a month because my mother still said that they need money, they cannot live without all the support and then I took all kind of job as I mentioned  
10 cleaning and everything just to send her money to my mom every month.

Q. And so when do the Nikityuks arrive in Canada? Do you recall when they arrive?

A. They arrived June 13<sup>th</sup>, 2008.

15 Q. And do you recall where you were living at that time?

A. At that time myself, my husband and our daughter, Anastasia, were renting an apartment in Etobicoke. It was two bedroom - two bedroom apartment.

20 Q. And I understand from the evidence that we've heard to date that the Nikityuks moved into that two bedroom apartment with you.

A. When they arrived - if you call this move in, I guess - so they arrived to stay with us in this two bedroom  
25 apartment. Yes.

Q. And by August of 2008, we heard about the house in Innisfil, 1490 Rankin Way. I understand Nikityuks then moved into that house, correct?

A. In August 2008? Yes, it was - purchased the  
30 house as our principal residence from Pratt Home in 2007 with a closing date in August 2008. And after the closing date finally was August 15<sup>th</sup>, I believe, 2008. Yes and it was the Nikityuks

started to live in our house that was our principal residence for the very first day of occupancy, that is August 15<sup>th</sup>, I believe, 2008. Yes. My parents, they started to live in our house.

5 Q. And where were you living during that time, August 2008?

A. As I said, we purchased this house as our principal residence and we benefitted from all - all their good things Canada offers to first time home buyers. But we still  
10 had this apartment in Etobicoke back then. And that - that apartment in Etobicoke, we rented - myself, my husband and our daughter. We continued to keep this apartment in Etobicoke and basically we spent most of the time living in this apartment in Etobicoke but coming to the Innisfil on a very regular basis.

15 My husband, together we came on weekends. But myself, I came much of them. It was - it was not enough for me to come only on weekends. I came much more often during the weekdays and - and basically I - I was living in between I would say. I was - I was living like on the road. No - no that is not correct. Of -  
20 of course it's not correct, but my impression I was travelling a lot back and forth - yes. Sometimes I was travelling just for two hours because they needed me for something that - Innisfil house, I was travelling as did something in Innisfil for like two hours and then came back to Etobicoke. It was - this is why  
25 we maybe we shared that time as a nightmare for us because it's - it was really so messy. It's not how we actually see the way to - to live and....When we were receiving a phone call from my mom saying that we have to come right away because we need to take Valentin to the emergency because of his health problems.

30 Yes. Yes.

Q. And what other things would they call you for to come to Innisfil to assist with?



Svetlana Danilova - in-Ch

A. It's - it would be a very long list if I - but of course, it's all their health. So I managed their healthcare since the date they arrived - of course. I came for - to be there for them for - to manage - to manage their  
5 healthcare. It was one thing and very extensive. Then it was a new house from very economical builder. It's been discounted - discounted that Pratt Home used available deposit structure, but everything comes with a price actually. And the house as it was closing date was in August, but there are so many issues and -  
10 but the builder - the builder didn't mind to fix my mistakes, but they came to the house again and again to fix things. And dealing with this was - actually it was during the first year of occupancy of a new home and it was a lot of work. I needed to provide with all the grocery shopping of course. I need to  
15 stock the fridge. Luckily my mom is very good in cooking and in taking care of her, they are very good in that - hygiene, it's nothing to - ever needed to explain to them as she's very - so she's very good in all of that - everything about personal care. I would refer to those things as personal care like laundry.  
20 Valentin, it's always was his duty, even back in Russia, he was always very good with vacuuming and he did vacuuming - it - it was his duty in the house. He was happy with the vacuum cleaner we bought for him here. And basically it was not even one vacuum cleaner, it was three vacuum cleaners. At - at first it  
25 was two for main floor and second floor, but when we finished the basement we bought a third vacuum cleaner for the basement. So yes.

Q. And then at some point you and Mr. Danilov also move into the house at Rankin Way.

A. In June 2009, we moved from [indiscernible] -  
30 yes, to live - to live - to live all together as a family of four in an Innisfil house - yes.

Svetlana Danilova - in-Ch

Q. And how was that living together in the Rankin house?

A. Normal. How - it - it was normal. Every family - if you're referring - if the counsellor's referring a lot - who, what - met or said of what, you know, I think it's - it's every family - it's most important to respect that the [indiscernible] of each member of the family. We are not perfect. None of us is perfect - of course, but as I said we had experience - previous experience from Russia living together. It was - everything was like normal, functioning family. I would characterize this like that.

Q. And tell us about the Nikityuks use of the home. I understand they each had their own bedroom.

A. This was the main agreement always that my mom and Valentin they - they request was always to have two separate rooms. Even when we are - rented an apartment for them in Etobicoke, it was first arrangements about their accommodation here in Canada. Although it's - it is - it's called one bedroom apartment, but my parents didn't see this as a one - like one room apartment, they considered this apartment still being two room apartment, just separate rooms. When my mom could sleep in, how you call this living room, but it was intention. They would never sleep in one room. They actually used to live - to occupy both rooms back in Saint Petersburg because I left Russia in 1996. So since 1996 they were living in separate rooms. They slept in separate - I do not want to go in details of thoughts like I'm going. Implying something personal here, but it is what it is. They used - they used two different rooms for sleeping needs I would say so. And in this apartment in Innisfil, they have two separate bedrooms on the second floor. The other bedroom is en suite, how you call it here, in - en suite - that means they use a separate - that we

occupy, it has a separate bathroom - full bathroom, toilet - full bathroom, how you call it here?

Q. A master suite.

A. Master suite. Walk-in closet and it's very  
5 separate from their rooms. It's like - because the hall - there  
- there is a door - then there is another hall with an entrance  
to the walk-in closet, then there is entrance to master - to en  
suite bathroom and then there is a room. So it's very separate  
from their rooms. And it was quite enough room for a family of  
10 four. All the neighbours have same layout in the house and they  
have three - three children living in this house. Sometimes the  
children - a big dog, cats and so - children of different ages.  
Four people - adults live in this house, it was more than enough  
and everything understood that. It was like - it was a very  
15 good level of accommodation for our family. Nobody would  
question that at that point. Now, I'm hearing so different  
things from the counsellor of YMCA and - but they have different  
[indiscernible] I believe - completely differences of course and  
it's very nature that they have differences and that's....

20 Q. Other than their bedrooms, what other rooms  
did the Nikityuks use in the home?

A. Other than the bedroom, there is a very big -  
not very big, but there is a loft in the size of the room and it  
has a window. Normally families can use it for as a playing  
25 area for the children. Can put the desk with a computer on this  
loft. We even had an option with the builder to make this loft  
a sep - separate bedroom, but we didn't go for that, we decided  
it's nice open area for the house. So it - it was a loft there  
that we used as an office since we moved to - to the house. But  
30 the area on the main floor, it's an area - you called it a  
living room, the - the whole - when you're entering the house,  
it's pretty big. Then the kitchen is normal size, you can - not

on the [*indiscernible*] there in the kitchen. There is also at night....This - this called the common area for the family. They used all this and after we finished the basement, they could use the basement whichever they want to do there. Of course back yard - the fenced back yard. They put gazebo so we had a very big deck. They used all areas I would say, except of our - our master's bedroom.

MS. CHAPMAN: Would this be a good time for a break, Your Honour.

THE COURT: Yes, we can take our morning break now and come back in about 15 minutes.

## R E C E S S

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

THE COURT: Ms. Danilova, could you return to the stand?

CLERK REGISTRAR: Would you return, Ms. Danilova?

MS. CHAPMAN: Q. If you recall before the break, we were talking about living together at the Innisfil house and I understand that you spent time together - you spent time with your parents while living there?

A. When we moved in to live together, it was - we - we're all together. First of all we didn't spend time.

Q. Yeah, social time.

A. If we go to visit our friends, they're always our friends so they - they invited - in Innisfil, they didn't know anyone from the beginning. We introduced them to all - all our friends because they're normally won't visit our friends - we have friends living in Mississauga, in Toronto and they always took - I don't even like this word, took them with us. So we went together to visit our friends. Our friends came to

visit us and we all - all four of us were all - were always present. When our friends came to visit the family, of course we're have - we shared meals or we have the same [indiscernible]. Mostly I cooked. Sometimes - my mom mostly  
5 cooked for special occasions. They - when our daughter came to visit or our friends came 'cause she - she's - she is actually good with everyday cooking as well, but she likes to bake - she did it when I was taking them for 14 hours, showing them around, they - as an example they liked Cookstown Mall - outlet mall  
10 very much and after I introduced this to them, they started to go on their own to this Cookstown Mall. They liked to buy clothes. They actually really enjoy buying clothes or shoes, shopping for clothes and shoes. And they did it out by themselves, sometimes with me, sometimes my mom needed my  
15 opinion about something she wanted to buy. So absolutely normal family relationship in the family. Yes.

Q. Could you turn to Tab 88 please of Exhibit 1(A)? If you could turn to page 488.

A. Yes. Mm-hmm.

20 Q. Could you tell us about these pictures on page 488 please?

A. This is exactly what I was talking about. This is our friends; they live - they live in Mississauga [indiscernible] and Kerr. Margarita (ph) and Yugini Brylouka  
25 (ph) came to visit us in Innisfil house. This is a picture of myself with our daughter here, Alla and Valentin in the kitchen, my parents, Margarita (ph) and Yugini (ph) - actually we came to visit Margarita (ph) and Yugini (ph) on four or five - many times at their place, they live in Mississauga. We came to  
30 visit them when their mother of Margarita (ph) visited on [indiscernible] and Kerr. So my parents communicated with the mother of Margarita (ph) lately - later; the mother of Margarita

immigrated and she was interested in communicating with my mom very much. I - I didn't know they didn't communicated with you now - with her now, probably. But we have actually a lot in common. Many of our friends also brought parents under the sponsorship immigration - yes. We have a lot of common - with our friends. And the picture, number eight, it's the same visit. So we went to Innisfil Beach Park and then we shared meal together and on the picture number eight, there is our daughter as well. It was very common for our family to have friends over. It was - it was mostly our friends at that time and my parents they get acquainted with many of our friends.

Q. And on page 489 please, picture 10.

A. Yes, this is New Year Eve off [sic] - December 31<sup>st</sup>, 2008. New Year Eve when family - we exchanged presents always, so this is that occasion where Valentin and Alla receiving presents. Actually this is a pile of presents New Year Eve and they are picking up presents for them and they're excited, they're surprised and it's normal things in the family. Yes.

Q. I understand from the evidence we heard that the Nikityuks had access to a computer.

A. Valentin had his own computer, it's desk - desktop - big computer and he had this computer in his room. We bought the computer desk as he had computer in his room. Yes.

Q. And what would he use the computer for?

A. Computer games including for emails as well - for checking emails as well. And he played some games.

Q. Could you turn to Tab 91, it's also in Exhibit 1(A)?

A. Mm-hmm.

Q. And starting at page 573, there are some email correspondence between Valentin and some others - just a

moment. Could you turn to page 575?

A. Yes, I'm on page 575.

Q. And this appears to be an email that Valentin sent to Slava (ph). Who's Slava (ph)?

5 A. Slava (ph) is a brother of Valentin still in Russia. He lives in Russia. He doesn't speak to us actually any longer because of all of the bad things Valentin told to him. We used to be good friends - I used to be good friends with him.

10 Q. And so Valentin corresponded with his brother Slava (ph) and do you recall what this email was about?

A. Give me a sec [sic] just to refresh.

Q. Sure.

15 A. This, as I can see, it just about their life here and some home things. Valentin communicated to - on March 27 - on March 27 we went to the festival of maple syrup. We had good time there with - with pancakes filled with maple syrup. It was delicious. That was Valentin via he communicated a lot with friends, family back in Russia. They always responded to  
20 him. Emails from Russia were read out loud for entire family. He - Valentin just shared about the life here in Canada with friends and relatives back in Russia. Also, there is some business here. This Slava (ph) as for your website, the kids don't need it. They have enough on their plate for now. Pavel  
25 is employed by a silent company with Sveta (ph) working from home. Sveta (ph) it's short form Svetlana. They turned their basement into office - so here Slava (ph) offered us to participate in his business. This is what I got from this email. What are you called - at some point, Slava (ph) offered  
30 all of us, including me, Valentin and Alla, to participate in his business and he wanted to expand his business from Russia. He wanted to expand his business to Canada to send some medical

supplies in Canada - this kinda things like [indiscernible] funerals or things like that. And Valentin and my mother said we don't even know how to tell him in polite way that we do not need it and he is referring to this business of Slava (ph).

5 Here is - and Valentin is saying that we don't need anything. The kids in this email, it's reference to us with Pavel. The kids don't need it - Slava (ph) as for your website, the kids don't need it. They have enough on their plates for now to attend to. Regarding us, it's in the email continue. Me and  
10 Alla, we are not in need of anything. We are not planning to make any commitments, so let's drop the issue. This Slava (ph) he was very involved because he was so desperate in - in extending of this - his business and this is what this is about - yes.

15 Q. And just for the record, the heading of that email correspondence is on page 574. So that email looks sent from Valentin Nikityuk on Monday, April 4<sup>th</sup>, 2011.

A. Yes that's right. They header is on previous page 574. The email was sent from - from Valentin Nikityuk to  
20 Nikityuk, Olga (ph) - Nikityuk, Olga (ph) is the daughter or so they - daughter of the Slava (ph), the niece of Valentin. It's the same thing. You see, Nikityuk, Olga (ph) receive an email for her father. This is quite normal - normal in the families and family members use the same emails. That's some kind of  
25 normal - normal thing I believe.

Q. Would Valentin type out his own email response?

A. Yes. As a matter of fact he did. He typed - he typed. Yes, he could type. Yes.

30 Q. I understand from the evidence we heard that Nikityuks had the use of a Honda Civic.

A. Yes they did.



Svetlana Danilova - in-Ch

Q. A leased car, correct?

A. Yes, Honda Civic 2009 was leased for the name of my husband. I believe I was on the lease as well, but I'm not - I am not sure at the moment.

5 Q. And who would drive that car usually?

A. Valentin.

Q. And is it true that you would travel in the vehicle with them - with Valentin and Alla?

10 A. There - there were some occasions where I - I - you mean I?

Q. Yes.

A. Yes, I - I was travelling with them. I can give you an example. They - okay they wanted to see the horse race in Innisfil. They asked me to go with them, I went to this horse race track in Innisfil - was one of occasion - yes there were occasions when I was travelling with them in their seat of passenger - yes, I would say - yes.

15 Q. And were there concerns about Valentin's driving?

20 A. I wouldn't call this concerns. You know, he came to Canada and he kept referring to his 50 years of driving experience and as a matter of fact, he failed his first G4 test here. He got very upset. He asked me why, he didn't understand. He - he honestly didn't understand how could this happen. This was the thing. The problem was he didn't check the blind spot. It was kind of problem for him because he had his own habits from Russia from 50 years of driving experience. We had to book lesson - book lessons for him. So he was struggling - yeah I would - I would call this struggling. But he passed second test and wrote his G4 licence. He was quite all right. He was a little bit cautious about going to highways, he would prefer to take streets other than highways.

But with time it - it improved - improved with him. So it was not bad. There was some occasions when it was with the previous car actually, not with Honda Civic because Honda Civic had automatic transmission. But before Honda Civic we had the manual transmission - car with manual transmission and he rejected to use the higher gear on this car that we noticed - even our friends on several occasions when we were travelling with them to Innisfil Beach Park. It was actually that [indiscernible] - we saw pictures with Avronika (ph) before and he was really expressing his - Jenny (ph) and Avronika (ph) expressing this to Valentin - what - why - it's a good thing and here - he had that conversation with Valentin. But concerns about driving, maybe you need to be more specific what do you mean - what do you mean concerns about driving other than those I can recall?

Q. Did you speak to him about using his mirrors?

A. Of course all the time. We had conversations with - we have conversations and he referring to the - back mirror that he can see everything from back mirror. It was - it was quite a conversation - yes. Yeah.

Q. I'd like to talk now about Nikityuks' pensions while living in Canada. Could you turn to Exhibit 2 - sorry, Exhibit 1(B), Tab 119 please?

A. Yes.

Q. And on page 732 we have an email between Svetlana Danilova and a Russian Consulate dated Sunday, January 30<sup>th</sup>, 2011.

A. Yes.

Q. Can you tell us about this email please?

A. I - I - yes. In this email from myself to Russian Consulate in Toronto. Email is dated January 30<sup>th</sup>, 2011 and the subject is "Reply to the Request for a Schedule for an

Appointment”.

Q. What was the appointment with the Russian Consulate for?

A. In January 2011, Valentin approached me saying that he needs to make a Power of Attorney to our relative back in Russia. He said that he needs to appoint some - our relative back in Russia to be his Power of Attorney for the specific operation with his bank account that is still in Russia. It was a big surprise for me at that - in January 2011 because I thought that all the accounts closed in Russia and he didn't have any business with any bank accounts in Russia. He asked me to find out how to notarize the Power of Attorney in - in Russian Consulate in Toronto so he could notarize the Power of Attorney and send it to the relative in Russia who gonna manage that bank account of his. He also needed me to draft this Power of Attorney to do - to do research through the Russian Consulate website to find the form for this Power of - of Attorney. That's what I did. I typed for this Power of Attorney for him and it was for the name of Margarita Alexiava (ph). So I prepared the draft of this Power of Attorney and Valentin notarized this in Russian Consulate, send it to Margarita Alexiava (ph). At this point, we're thinking out that he's still receiving the dividends from his former employee. This is - his former employee is somewhere in Design Institute in Saint Petersburg, Russia and that he is receiving the dividends from his former employee. I told him that since he - since he didn't tell us before, we have to adjust all previous tax returns accordingly. I didn't know what kind of income is this, but I told him that it's still his foreign income and it should be claimed for Canada - Canada Revenue Agency in his tax return. That's what I told him. But he said that it's - it is - he - he said to me at that point, but you see it's good thing

to have - it - it. At that time his daughter Ilyana Nikityuk (ph), was in the process of application for her Visa - visiting Visa to Canada. And he said, see it's good - good time to have. I can - Ilyana (ph) can take this money and use it for her own  
5 need - for her needs. Yes. I - I oppose.

Q. So in addition to his Russian pension, Valentin also had dividends that were payable to him?

A. Yeah. It - I believe it's even in emails with his daughter indicating that at the same period of time -  
10 at this period of time, he sent email to his daughter, it should be translated into English from Russian in our brief, where he told his - his daughter that he can - that Margarita (ph) will withdraw funds and Margarita Alexiava (ph) who is a Power of Attorney of this account can withdraw funds in the amount you  
15 need for all your needs of Visa - Visa application in Russia. It maybe even here - yes it may be over here.

Q. Would it be at Tab 117, Ms. Danilova?

A. Yes.

Q. So email one appears to be an email from  
20 Valentin Nikityuk to Ilyana Nikityuk (ph).

A. Yes. This is exactly what I actually meant. This is the email from Valentin Nikityuk to his daughter Nikityuk, Ilyana (ph) dated May 25<sup>th</sup>, 2011 and email said, "We will call Olga (ph) and she will give you the necessary amount  
25 of money. Her mother will withdraw the money from my account. Submit the documents faster." The documents referred to in this email is documents for Visa application - for application for Visa. "The money from my account is dividend from former employer of Valentin. Her mother - her mother will withdraw -  
30 her mother" - it's Margarita Alexiava (ph) appointed by Valentin, Power of Attorney on his account. So this is exactly what I meant actually - yes.

Svetlana Danilova - in-Ch

Q. And if you could also turn to Tab 120, page 735 we have an email from Ilyana (ph) Nikityuk to yourself, Svetlana@webprofit.ca, dated Thursday, August 11<sup>th</sup>, 2011. And could you tell us about this email please?

5 A. This email was sent to me from Valentin's daughter shortly after she came back to Russia after she visited us in July, August 2011. "Hi Sveta, I have successfully arrived. Thanks a lot for nice tickets in Paris and so on." So the arrangements were - the arrangement was that I bought  
10 tickets online and Valentin reimbursed from his pension. He covered all the visit of his daughter from his pension. This was in the arrangement. Even from the money he still had in Russia for her Visa application and then for her air tickets and for all the staying, food and entertainment. Actually I - we  
15 have witnesses who's gonna be witnesses here - our friends who came to visit our family during the staying of Valentin's daughter and Valentin shared with our witnesses now, our friends, Olha Krylova and Alex Krylov. Valentin shared and he was very proud that he paid for air tickets for Ilyana (ph) and  
20 for her entire stay here in - in Canada for her visit. Also, here "P.S.", it says, "By the way, on the last day Valentin Endraivedge (ph)" - Valentin Endraivedge (ph) it's actually Russian - in Russia we have two names, the second name's coming from your father name. Endraivedge (ph)'s referring to - it's  
25 called - they refer to people in Russia in two names. So the daughter's saying in her email, "By the way on the last day Valentin Endraivedge, was as usual, he was screaming all the way and I lost my patience and told him that if he wanted completely to ruin my impression of him, that was right - what that was his  
30 right. After that he was angrily silent and even said bye to me between his teeth." Actually visit of his daughter, I need probably to qualify a little bit. She [sic] never had any

relationship with his two twin daughters - never, he'd just send support and maybe call them on their birthdays for their entire lives. Maybe he and Ilyana (ph) shared with me when she was here she [sic] went with a cake to visit them and that's it.

5 That made them very uncomfortable because they always had their own arrangements for their birthday and they needed to deal with him coming with a cake and but - they lived in the same city, in Saint Petersburg - they lived in Saint Petersburg. They were never - the daughters of Valentin, he was never for them and  
10 they were never for him. And then he had surgeries and everything. Basically the right thing to say here didn't have any relationship with his daughters. But prior to immigration to Canada, they arranged for meeting with his daughters. And he started to communicate with one of them because the other one  
15 not even comfortable talking to him based on all the previous history.

THE COURT: Yes, Mr. Bornmann.

...OBJECTION BY MR. BORNMANN

A. That's what....

20 THE COURT: Just a minute, just a minute. I'll hear from Mr. Bornmann. Yes.

...OBJECTION BY MR. BORNMANN

25 THE COURT: I think it probably goes a little further than we need to hear at this point unless Ms. Chapman thinks it need be pursued. I think your point is that he paid for this visit through his pension and some dividends in a Russian bank account, is that the point?

MS. CHAPMAN: That's the point. Yes. Thank you.

30 THE COURT: Okay. We don't need to hear background information...

MS. CHAPMAN: No, we can...

Svetlana Danilova - in-Ch

THE COURT: ...about the relationship.

MS. CHAPMAN: ...we can move on. Q. So if we could turn to Exhibit 1(A) at Tab 89, page 508.

A. I'm sorry, could you please repeat?

5 Q. Yes, Tab 89, page 508. Now we already spent some time on these photos, but just to confirm, Ms. Danilova...

A. Yes.

Q. ...picture 47 at the bottom of page 508, this is a picture of Alla and Valentin's daughter?

10 A. That's right.

Q. And the photographs that follow under this tab, are those pictures are taken while the daughter is visiting Valentin here in Canada, correct?

15 A. That's right. These [sic] picture is taken at YMCA Recreational Complex of Innisfil.

Q. And did you spend some time with Lana [sic] when she was here?

A. Ilyana (ph) - Ilyana (ph) - yeah...

Q. Ilyana (ph).

20 A. ...Ilyana's the name of the daughter. Yes of course we spend some time. We have the same background, graduated from the same university. We have a lot in common, but it was the first time I saw her.

Q. And were there any discussions about the Nikityuks residing with you in Innisfil?

A. Of course she was - a lot - a lot - she was just - I don't know how to put it, pleased how we made all the arrangements to live together and everything.

30 THE COURT: We're just going into hearsay again. I think that's why you're rising, sir.

MR. BORNMANN: Yes, Your Honour.

THE COURT: Ms. Chapman, unless she's going to be

Svetlana Danilova - in-Ch

a witness, what she thought about the whole thing is not helpful to the court. It's hearsay. But what this witness observed, may be some assistance, I don't know.

5 MS. CHAPMAN: Q. Okay. We'll move on to Exhibit 1(B) please, Tab 121.

A. Yes. Yes.

Q. This appears to be an Agreement of Purchase and Sale between Danilovas and Pratt Homes.

10 A. That's right. This is the Agreement of Purchase and Sale between myself and my husband, Pavel Danilov and Pratt Home for purchasing house in Innisfil and again dated May 24<sup>th</sup>, 2009 - or something.

Q. Sorry...

15 A. No - no.

Q. ...I believe you're mistaken.

A. Yes, sorry. Wrong page.

Q. The property appears to be Unit 141 at 7 Sydenham Wells.

20 A. Sorry this is an agreement between myself and my husband dated May 24<sup>th</sup>, 2009 for purchasing a condo in Barrie - yes.

Q. And who were you purchasing the condo in Barrie for?

25 A. We wanted to buy this condo for - it would be condo purchased on our names, but we wanted parents to live in this condo. This condo was very close to Royal Victoria Hospital and at this time we - we were thinking that we can manage with parents living in this condo separately from us.

30 Q. It is suggested that the condo was in fact purchased for your daughter, Anastasia. Is that true?

A. Absolutely not.



Svetlana Danilova - in-Ch  
Ruling - Mulligan, J.

Q. So we also have heard that the contract for this condo was - sorry that the contract for the condo was given up and the condo was not....

...OBJECTION BY MR. BORNMANN

5 THE COURT: Well I don't think there's any dispute that it was given up because we've already heard that evidence. I know there are some issues in dispute, but we know that the condo was not purchased, we've already heard that evidence. The reasons though may be important and that's perhaps what we need to hear from this witness, so we don't want to lead on that issue. Is that your point?

MR. BORNMANN: Yes, Your Honour.

15 THE COURT: But the essential points are not in dispute. There was an agreement signed...

MR. BORNMANN: Yes, Your Honour.

THE COURT: ...and the agreement was terminated.

MR. BORNMANN: Yes, Your Honour.

20 THE COURT: There was a small - small deposit, we know that.

MR. BORNMANN: Yes, Your Honour.

R U L I N G

25 MULLIGAN, J. (Orally):

30 So Ms. Chapman, I think what we are looking for is - I think you can lead on those fundamental points that we know about, but if there are other issues that are important, then I would like to hear from the witness.

MS. CHAPMAN: Of course. Okay. Q. Ms.

Svetlana Danilova - in-Ch

Danilova, could you tell the court why the contract was terminated?

A. The contract was terminated to buy this condo in full 2009, I believe, I cannot tell specific date of termination. As parents started to go to YMCA English classes in 2009 - August 2009 - September - September - they started to go to English classes September 2009, they were so overwhelmed with all this English classes and they didn't understand anything, but it was one thing they kind of understood at this point - this is my understanding, that no way for them to learn English in anyways probably this - this was their impression when they started with the classes. And besides the - a lot of emails, I believe, from that time. My communication with Yana Skybin and even those email - emails reflect in the situation that there are so many medical appointments at that point, they were dealing - parents were dealing with - as I mentioned and it's all over here that I were managing all their healthcare at that time. There are so many surgeries needed to be done and I - if you don't mind I can even refer to emails on what I'm talking about. There are e - emails. I believe it should be - yes, in A - Exhibit A - yes in first binder. Anyway, yes - my statement I can tell without referring to any emails maybe - I can - I will refer to those email later in this context. But I can tell that my mom just said that no, it's impossible, we couldn't live separately from you. That so many things going around with medical needs and English. They didn't feel that they can live separately at that point. And we found - we started to think how to terminate the agreement. We found some technicality - error - error hole in the agreement and we - we - errors in the agreement and we - we - technic - errors in the agreement and we terminated this - this - this very small fee - it was about \$100 I believe.

Svetlana Danilova - in-Ch

Q. Let's move on now to....

THE COURT: Just while I'm doing this...

MS. CHAPMAN: Sure.

THE COURT: ...I just want to get again the date of termination. I believe it's in this document toward the end, page 767, October 31<sup>st</sup> of 2009, does that sound correct counsel?

MS. CHAPMAN: Yes, it does.

THE COURT: All right. Thank you.

MS. CHAPMAN: Thank you. Q. Could you tell the court how the YMCA came to be involved with your family?

A. At the end of summer 2009 - yes it was - shortly after we moved into live in Innisfil full-time together with parents, we started to think how to arrange some English training for parents. Actually this need to learn English was raised even when they - they were living in Russia and was about to immigrate to Canada. I was talking to my mom at this time and we were even considering some options in Russia with English classes for them, but it turned out to - to be extremely expensive, just private lessons would be available or - so at this point it didn't go anywhere. So we told them - we clearly told them and they are educated - quite educated people and they understood that after they moved to Canada, of course they will need to learn language of the country. They have this clear understanding. And of course this rised [sic] again, we were living together at the - we were thinking about living together for one period of time so we were kind of settled at the certain place and I started to look for English classes for them in the area. What I discovered was the English classes in Brantford, I believe it also was YMCA classes and in Barrie. I communicated to Brantford English classes, they explained me everything. It was first I communicated to Brantford and then I called the

number I found on the YMCA Simcoe/Muskoka public website. I called this number in reference to the English classes and it was Yana Skybin that said - [indiscernible] also the - would have also - and I had conversation with her about the English classes provided at their location - Newcomer Service - Services - YMCA Simcoe/Muskoka Newcomer Services. I was - it was surprise for me of course that Yana spoke Russian and I even think that it would be natural at - yes we proceed in Russian - we actually talked in Russian. She said that it's - she just explained me in details about what kind of English classes YMCA Simcoe/Muskoka Newcomer Services providing. She said that it's five hours every weekday, five days a week from 9:00 to 2:00, I believe - slight difference. The classes are free of charge for people who qualify. Also the assessment of no English knowledge is required before classes - before enrollment in this classes. Basically she explained me everything in details and she also said that she lives in the area - in Barrie, particular she said that she lives in Barrie. And she said that she can even be of some transportation help for my parents, but it - it was not important - it was not important at that time because when I was looking for English classes we were relying on our transportation as Valentin had a car. She said that she could meet with parents in Innisfil Beach - in Innisfil Library that is close to their home - they could even walk to that library to meet with her. When she said that she could assist them with their assessment and assessment is in York Region as I remember - [indiscernible] she mentioned York Region, it was York Region and she said that she could go to an assessment with them. After this conversation was pretty for everyone's satisfaction, she was - she was pleased she was talking with Russian speaking - with someone who were Russian speaking. I shared with her that at the first word that I'm looking for ESL classes for my

parents who are elderly, that they - I indicated when they came to Canada. I indicated that we live together as a family of four. So I shared quite a lot with her because we were talking about enroll - I was talking about enrolment of my parents. And  
5 it's kind of both ways, you know, when person opening up and she opened up a lot from her side even in this first conversation with me. She told that Canada is so great, there are so many programs available for people in Canada and she is very grateful to Canada and she has three children and she told me the age of  
10 the children, I believe it was their little daughter was close to one and a half and then her son, recall five and older daughter was seven or something close to that. And I remember the names of her children and she said that all of them - with [indiscernible] but Canada is so great that all their programs  
15 avail - available for her children here give her actually hope for everything and this is way literally how she started to introduce herself. She said I'm a mom with three children with Autism and husband ran away. And she told me at the first conversation with me. And things started to be very actually  
20 friendly since because she shared that she liked to read a lot, I shared that - oh we have library, old fashioned books - I - I said that we have DVDs and a - a lot of stuff she actually never asked me for any books, but I shared that with her that I would  
- would be more than happy if I can put those Russian books in  
25 use here because basically they were not used much since they were brought. More like decoration in the house. So this was the first conversation with Yana - yes.

Q. And do you have further conversations with Yana Skybin?

30 A. As I mentioned, things got very friendly with her from the very first conversation over the telephone. Yes. And there are so many emails concerning that - proving that.

5 But those emails are just the tip of the iceberg. There were so many telephone conversations over the phone - or she called me, I called her. Not as a close friend, I wouldn't call her my close friend, but things were friendly. She always knew me as a nice person. I knew her as a nice person. She was really nice to me and she had the level of - I knew and when I later - actually had where she was spoke English, I admired how she speak English, it's a big deal actually when person succeed here and can speak the language of the country. So I - I liked Yana lot - so everything was very friendly. Yes.

10 Q. So let's look at some of those emails. At Exhibit 1(A), Tab 65 - actually there's two tabs of emails between Ms. Danilova and Ms. Skybin, on 64 and 65. And it appears at Tab 65, the emails have been translated from Russian.

15 A. Yes.

Q. And would those emails have been sent between you and Ms. Skybin over - it appears to be her personal email address, page 418.

20 A. Yes, this is a translation - English translation of - yes communication between myself and Yana Skybin. Originally those emails were in Russian. I was using her personal email - email Yana@Skybin.net - Skybin.net is actually domain name of her ex-husband, [indiscernible] Skybin. You know, I - actually I know everything about Yana. I know - she shared everything, the names of her children, the name of her ex-husband and - was a lot of personal stuff. How her ex-husband was employed and - a lot - and yes Skybin.net is domain name she used - yes for her personal email correspondence.

25 Q. And then at Tab 64 we have additional email correspondence between Ms. Danilova and Yana Skybin.

30 A. Yes.

Q. And these emails appear to be through the

YMCA.

A. Yes.

Q. And....

A. Although there is the first - Svetlana dobriy  
5 den (ph) - dobriy den (ph) it's in Russian, good day. The email  
- first email on page 403 - 403, this is email - this is the  
first email Yana Skybin ever wrote me. The email dated August  
5<sup>th</sup>, 2009 confidentiality agreement. The text of this email is,  
"Svetlana dobriy den (ph)" - dobriy den (ph) is Russian - it's  
10 translated into English, good day - Svetlana good day. "I was  
on vacation and now I'm back to work. I wanted to tell you that  
it was a pleasure to connect with you. I spoke to the Barrie  
Community Health Centre, they don't know if anyone would speak  
Russian and most of their services offer around workshops those  
15 involve speaking English." It's just she told me during my  
other first conversation that she was gonna think about some  
Russian - Russian speaking in the community with whom parents  
could communicate and this sentence referred to this. "I did  
ask at our office about all the clients who speak Russian. He  
20 was very supportive from the first conversation with her about  
finding Russian speaking people in the community." - and this is  
referring to that. And the most important in this email is the  
last paragraph, "May I ask you to print off the confidentiality  
agreement for parents and read it with them and ask them to sign  
25 and bring to their appointment on the 19<sup>th</sup>. I did not want to  
overwhelm them when I met them as I gave them a lot of info that  
day; it's our standard for which I need to add to their files."  
So this paragraph is referring to the fact that Yana Skybin met  
with my parents in Innisfil Library as was arranged with her  
30 during my first conversation with her. And after she met with  
my parents in Innisfil Library, he [sic] send this email to me  
and it's - it - in this appointment with my parents in Innisfil

Svetlana Danilova - in-Ch  
Ruling - Mulligan, J.

Library, first appointment with my parents, she made an arrangement with them to go to the appointment - she's referring to the appointment. And this appointment is for assessment of their knowledge of English on 19<sup>th</sup> - August 19<sup>th</sup>. So she made arrangements with my parents to go to an appointment with them for their English assessment on August 19<sup>th</sup>. Following English email as I read already, "I did not want to overwhelm them when I met them as I gave them a lot of info that day." So even during that appointment in Innisfil Beach - Innisfil Library, Yana thought they - she could overwhelm elderly with information. What - what kind of information she provided to....

...OBJECTION BY MR. MAE

R U L I N G

MULLIGAN, J. (Orally):

Yes, we will have a chance to hear from that witness later and she is subject to cross-examination. So the witness should speak to her own knowledge.

A. But more important than what I'm trying to actually say here, Yana Skybin from the first moment asking me may I ask - may I ask you to print off the confidentiality agreement. So she was unable or - I don't know, she didn't - again I'm going - again - but the fact is that she asked me to assist parents from the first moment even with printing out the specific YMCA forms to view it with parents to make sure they sign it and - she was speaking the same language of - with them. But it was how we said the things from the first appointment, she was mostly - she was basically dealing with me all the time since the first appointment. And there are so many proof of



that and....

Q. So let's have a look at email number five, it's on page 404.

A. Yes.

5 Q. And that's an email from Yana Skybin to Ms. Danilova on Tuesday, August 27<sup>th</sup>, 2009. And do you recall what this email was about?

A. Email number five - email from Yana Skybin to me dated August 27<sup>th</sup>, 2009. She's - subject "Lawyer

10 [Indiscernible]". She is referring to the conversation with me in this email, "Hi Svetlana. I was happy to speak to you today. I did get some info for you." So appears to this email there

was a conversation over the phone. I believe I called Yana. It's - it's just kinda from this email. I was happy to speak to

15 you today. I called her and asked for the information about lawyers in the area because I was looking for a lawyer to - to

do the Power of Attorney and legal wills for our - the family. Yes and this is the references she send me in this regard - a -

about the lawyers in the area who can help with lawyer - with

20 wills and Power of Attorneys - yes. I shared - I shared with her everything as I mentioned since that very friendly - I

explained to her that we wanted to do the Power of Attorneys - yes English is what this about.

25 Q. And so were there wills and Powers of Attorney prepared?

A. Actually we wanted - for everyone in the family, we wanted to do Power - my husband gave me Power of

Attorney, I gave him - we wanted to do everything because it was right thing to do in the family. And what we actually did, we

30 made Power of Attorney assignment for each of us. We wanted to go all together and wills, same thing, all four of us. We have

Power of Attorney made at the same time. My husband to me, I to

him and both of them. Yes. That what I was looking for at that time. It was the right thing to do in the family, actually - yeah especially with parents and they were going to the English classes every day and I - no I don't think I shared. Does this  
5 come through information with Yana at this point I just asked her for the information about lawyers. I expressed that we want to do Power of Attorneys and wills and in fam - in the family.

Q. Could you turn now to Tab 41 in Exhibit 1(A)?

A. I'm sorry. Could you repeat please?

10 Q. Yes, Tab 41. It's page 232.

A. Four-one?

Q. Yes.

A. [Indiscernible]. Okay. Mm-hmm.

15 Q. And at Tab 42 - so it appears at Tab 41, we have the Power of Attorney for Valentin Nikityuk.

A. Yes.

Q. And at Tab 42, Powers of Attorney for Alla Nikityuk?

A. Yes. That's right.

20 Q. And do you recall when these Powers of Attorney were prepared?

A. When?

Q. When.

25 A. It - I remember - of course that it was fall 2009. I'm just trying to figure out the exact date.

Q. If you look at Tab 41...

A. Mm-hmm.

Q. ...page 235.

30 A. Yeah. It's the 15<sup>th</sup> day of - I'm not sure what....

Q. It's actually - it's clearer on page 239...

A. Mm-hmm.

Svetlana Danilova - in-Ch

Q. ...the date.

A. Mm-hmm.

Q. If I can....

A. September.

5 Q. Yes.

A. I'm sorry. It - yes - September 15<sup>th</sup>, 2009.

Yes. We - we went to an appointment at law firm all together - four of us, to do what I mentioned - yes.

10 Q. And do you recall who prepared the actual documents?

A. Yeah, it was - everything was done at the - yes law - law firm - yes.

15 Q. And you sat in on that meeting, could you tell me about - could you tell me about how Nikityuks came to sign the Power of Attorneys?

A. Yes. This is actually interesting thing that I wouldn't believe ever that Valentin forgot that he went as he actually put it in his transcript that he forgot or whatever - this appointment, it couldn't be forgotten because finally we  
20 decided that we need to go to North York - North York - North York is a part of Toronto where Russian speaking people live and there are so many services for Russian speaking people there. And we found this firm - law firm, it was dealing with, I wouldn't say mostly with Russian people, but there are so many  
25 Russian speaking, working there and it - they do this on a regular basis for people who not comfortable with English. This is why we decided to do this way, not to deal with Barrie and interpretation, it seemed to be very complicated. And I made an appointment, I found such firm in North York. I made an  
30 appointment for certain day, it was decided that Pavel - the appointment was for like 5:00 p.m. or something, it was decided that Pavel would - will come from his work and we were supposed

to drive from - Valentin would be driving from Innisfil with me and my mom. So it's easy, of course everyone's taking 400 to drive to North of Toronto, but Valentin, as I mentioned, was not that comfortable taking highways and he looked into map - he didn't realize at this point that it's a - in the map you can see the straight street like Young Street and he knew that - and I got him address around this was on Young Street - it should be even here maybe and he said I - I can see that Young Street go directly to this office. We need to go - I was trying to explain it was gonna be busy with lights and it could take half of a day to travel, but he insisted and we - he did it. And so I assume it was very memorable because it took several - it was a long drive. Very memorable - yes. But as I mentioned, it as a law firm with many Russian speaking employees there - yes.

Q. And so who met with the lawyer? Did you meet with the lawyer?

A. We were all together sitting - yes at the appointment, all four of us - all four of us.

Q. And the documents that we have here at Tabs 41 and 42 are in English. So how did the Nikityuks come to understand - or did they understand as far as you were aware, these documents?

A. As I mentioned, this specific law firm has experience with - you can - still you can tell this is kind of specialization of this law firm to deal with people who do not speak English. And they do this on a regular basis. They took care of everything and that's how it was done. I can - maybe I don't even remember this details, but as I mentioned, everything was taken care of. We even travelled to - for this to be done in the most legal way - in the most right way. We always wanted to do things in the right way. This was our - actually - what we were doing here and why I'm here. But this is my opinion,

I'm sorry.

Q. Okay. Let's go back to the emails between yourself and Yana Skybin which are at Tab 64.

A. Yes.

5 Q. And email number seven, marked in handwriting as number seven on page 404...

A. Yes.

Q. ...it actually appears to be an email between yourself and Ruth Miller.

10 A. Email number...

Q. Seven.

A. ...seven from the Tab 64, this email is for Ruth Miller, Settlement Counsellor of YMCA Newcomer Services of Simcoe/Muskoka to myself. It was sent on September 1<sup>st</sup>, 2009

15 with the subject "A Lesson [*Indiscernible*] for our Parents."

And email says, "Svetlana, Yana Skybin asked me if I knew any older Russian people that your parents could meet and talk with.

I talked with a former student and find today about your

parents. She's similar in age and was already - lady - she

20 would be glad to talk with your parents and gave me her

telephone number to pass on to them when they come to school

next week. I told Yana today about my own plans dealing with -

to talk with your parents. She gave me your email address and

so I will give you her name and telephone number as well as try

25 to talk with your parents next week when they come to school.

Her name is Emma Tatratova (ph) and her telephone number

is....Best wishes" and the signature, it's formal signature of

Ruth Miller, Settlement Counsellor of YMCA Simcoe/Muskoka with

her office telephone and extension number and fax number. Yes.

30 Q. And so who had made the inquiry about having some Russian speaking friends for your parents? Do you recall?

A. It was none [*sic*] of specific - it was

absolutely natural thing - good thing to do for my parents, everyone was always looking for someone Russian speaking so they would communicate and it - this email just telling that I was communicating freely with myself - I was communicating very  
5 freely with YMCA of Simcoe/Muskoka Newcomer Services simply [indiscernible]. Nikityuks' English teacher, her name's Jennifer (ph) she communicated with me all the time. I stopped by and she expressed how - what she's feeling, how the Nikityuks doing - parents doing there. I communicated with Ruth Miller, I  
10 communicated with Susan Green a lot. At some point it was an issue when my parents - we were talking that at some - at some time I need this car for my needs as well because I - I have my own needs also actually. It was always in the picture of this family as well. We were talking about my doctor's appointment,  
15 that my - that is during the day and I had a meeting with Susan Green and I just expressed these needs because we are share - sharing this car. And Susan Green, I was asking her would it be a problem if parents missed some days because of that - because I needed the car. And Susan Green suggested that if it's - you  
20 come to that, that transportation through that course could be arranged with parents if - if such - such [indiscernible]. So I might - sometimes even Valentin drove to the classes with me, then I might take the car and go for my - take the car to use the car for my needs. It was all - also that possibility how we  
25 did it. So we tried to do everything - to be for each other always. Trying - trying to resolve things and in this regard, I have to deal with YMCA of - YMCA Newcomer Services and they [sic] employees to discuss needs of the family.

Q. Let's now look at email number 18 which is on  
30 page 408. And this appears to be an email between - from you, Ms. Danilova to Yana Skybin on September 28<sup>th</sup>, 2009.

A. I'm sorry, what number of...

Svetlana Danilova - in-Ch

Q. Yes.

A. ...email?

Q. Page 408 and it's email marked number 18.

A. This is email from myself sent to Yana  
5 Skybin, dated September 28<sup>th</sup>, subject the reply to email with  
the subject "Thank You Again". Yes, this was what I was  
referring before, why actually we cancelled this Honda because  
it's indicating here, my parents - "Hello Yana, My parents just  
travelling to keep attending their classes since new doctors'  
10 appointments appear almost every day." That was the situation  
when we cancelled this Honda. It was - it - it - it's exact  
situation. With new doctors' appointments appear almost every  
day. There - there are two of them - two - my mom and Valentin.  
So may appointment come by. "Of course this is a good for them  
15 to have all this done" - medical test I mean - "Of course this  
is good for them to have all tests done and that they can see  
specialist. I'm even surprised how many of them need to be  
seen. Been so busy, they cannot think about anything else right  
now. Anyway, we really appreciate the support and my parents  
20 send [*indiscernible*] to - to service Svetlana." And it was in  
respond [*sic*] to previous email from Yana Skybin to me dated  
same date actually, but it was sent at 12:29 p.m. - previous  
email number 17. So original email was sent from Yana to me,  
it's email number - number 17, dated September 28<sup>th</sup>, but 12:29.  
25 And Yana was asking if my - your mom coming in soon and your  
stepfather in woodworking and something - so it was respond to  
her email. She contacted me first and I - she - she put me in  
the position to respond in this way. But not - not to put me in  
the position in the wrong way, just I'm explaining that it was  
30 my respond [*sic*] to her email - yes.

Q. And how about email number 20, which is on  
the next page 409? The email is from Svetlana Danilova to Yana

Skybin dated October 3<sup>rd</sup>, 2009.

A. This is email from - email from myself to Yana Skybin with subject "Appointment on Tuesday for Alla and Valentin" dated October 3<sup>rd</sup>, 2009. It's indicating that Yana was - just "Hello Yana, I'm writing to thank you for being in touch with my parents and to say that my mom is happy. She can discuss all their needs with you." We are so close - it's now my comment now. In this same email, "I am really appreciate - I - I really appreciate you were trying to make arrangements about my stepfather's next appointment at Royal Victoria Hospital on Tuesday." And about that appointment, we do want - so it's - about the communications with Yana Skybin about the family needs and as I mentioned before, those emails are just the tip of the iceberg. I have so many phone conversations with her about everything and as I mentioned, I shared everything and she shared everything about her children. I shared the same about our daughter - absolutely everything. She - she knew the same about me as I knew about her.

Q. And email number 22, the heading is at the bottom of page 409. It's an email from Yana Skybin to Svetlana Danilova dated October 8<sup>th</sup>, 2009. And you'll see the body of the email is on page 410.

A. The email number 22, Tab 64 from Yana Skybin dated October 8<sup>th</sup>, 2009 with the subject "Appointment for Valentin." And here, there's everything about "Sveta, I looked up my schedule" - Sveta is short for Svetlana, used among friends but doesn't matter that much, "Sveta, I looked up my schedule, my kids have an appointment at the optometrist that day at 4:00 p.m." You see very specific information - "my kids have an appointment at the optometrist that day at 4:00 p.m. I'm sorry, but I won't be able to come in October. Please let me know if your parents need help in the future. I will check



my schedule and if I can, I'll definitely come. I also want to make plans with you to meet on Sunday, not this Sunday, but maybe another Sunday you have free to go to the Ukrainian Church and then go to the German [indiscernible] not far - far from the church for a cup of coffee and a German pastry. Could you please give me some dates? Look forward to meeting you in person." The signature is actually Yana Skybin, [indiscernible] Settlement - Settlement Counsellor. She shared with me at that point that she is [indiscernible] settlement counsellor that did not guarantee her position. It's not full-time position, so it - that she also shared with me. Doesn't matter that much although....

Q. Okay. And in that paragraph - pardon me, email number 23, it appears to be your response later that day on October 8<sup>th</sup>, 2009.

A. Email 23 of 6 - Tab 20 - 64 is from myself to Yana Skybin dated October 8<sup>th</sup>, 2009 "Appointment for Valentin". "Dear Yana, First I would like to thank you very much for everything and please do not worry about the next appointment. I would love to go to the church with you, hopefully we will be able to make it next Sunday. Just send me a time and where we gonna meet. I'm looking forward to meet with you. Sincerely, Svetlana."

Q. And then just to follow through, email number 24 dated October 13<sup>th</sup>, 2009 to Svetlana Danilova from Yana Skybin and you'll see the body is on page 411.

A. Yes, I can - email 24 from Yana Skybin to Svetlana - to me, sent October 13<sup>th</sup>, 2009, subject "Appointment for Valentin" - actually reply to the email with the subject "Appointment for Valentin". "Dear Sveta, It was nice to hear from you. I am available to go to the Ukrainian Church this Sunday. The service starts at 9:30 a.m. I believe. The address

is 19 Parkside Drive, Barrie" - it's downtown. "There is lovely German coffee just two minutes away where we can sit down and have a dessert and talk" - and talk. "The service is in English, I just wanted to warn you." That I would understand she - she probably didn't hear me spoke - speaking English by that point. Yes.

Q. And so did you attend church with Ms. Skybin?

A. Yes - yes, it was arranged through emails.

It was first time I met her in person. We met in church and it was my first time in this church as well. It's very cozy church in the downtown area of Ukrainian and Russian community gathers together. It's very important point of meeting for the community. We met in this church, it was - yeah and after - in the afternoon we went to some café - yes so we had coffee and again, we had long conversations. I was kind of happy to have some time to myself with a friend as I considered Yana at that point, talking and the conversation was so nice. Again, we shared everything both ways. She was talking about the divorce she was going through at that point, about her husband - very specific personal stuff. Yes, I think that like that.

MS. CHAPMAN: Your Honour, I think this might be a good time to break if that pleases the court.

THE COURT: Just one question for clarification, counsel. It may be I've heard this or maybe I will hear it, but given that the Nikityuks moved up in August of '08 - moved to Innisfil, so when did they start the English as Second Language classes?

MS. CHAPMAN: Q. I believe it was the following summer, but Ms. Danilova, would you like to clarify that point?

A. They started to go to English classes of September 2009. But the previous arrangements when they first

met with Yana was in August 2009.

MS. CHAPMAN: Yep.

A. Yes.

THE COURT: And that seems to be when the communication starts between the plaintiffs and Ms. Skybin in August.

MS. CHAPMAN: Yes.

THE COURT: August dates you're giving me as 2009, not 2008.

MS. CHAPMAN: That's correct.

THE COURT: Just want to get the timelines in order. All right. That's fine. I will break 'till two o'clock and we'll come back. And as I told counsel, I have to leave a little before four to get to another meeting, so we will press on until just before four o'clock.

R E C E S S

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

THE COURT: Ms. Danilova would you return to the stand please?

MS. CHAPMAN: Q. Ms. Danilova, if you recalled before lunch we were speaking about your corresponding with Ms. Yana Skybin. Let's move on and talk about Nikityuks and their involvement with the YMCA. So we understand, I believe the evidence is that they took English classes through the YMCA.

A. That's right.

Q. And could you tell us about those classes, when they were, how frequently they attended?

A. That's what Yana explained me during this conversation over the telephone with her August 2009. So it was

conversation between me and Yana that she explained me that the English classes take place in Barrie, it's a five days a week - weekdays, five hours a day with a break for lunch. Nine to two. [Indiscernible] they are free of charge for people who - who qualified - and my parents will qualified [sic]. I explain - explain who they are to her during the - that first conversation with her. I explained that they came under the sponsorship agreement with me. And basically those terms I agreed and proceed - I told her okay I would like to proceed with those terms. Yes, that's what - that were the terms. I agreed with Yana Skybin during the first conversation with her. Yes.

Q. And did the Nikityuks work on their English while at home?

A. The - as I recall they had homework almost every day. They had some notes from the classes - yes I did. I mean - yes they - they had homework - yes.

Q. Did you work with them on that homework?

A. My mom sometimes ask me about something. Valentin sometimes asked for - for something. Valentin was not that much interested in the homework, but my mom was trying her best and spent a lot of time at night - yes she asked me to explain something - it - yeah again during our normal communication in the family. It was a part of the normal communication in the family at that time they attended English classes. Yes, that's right. I would say so.

Q. So we've been talking about the summer and fall of 2009, what about throughout 2010? Did they continue to attend those English classes at the YMCA?

A. Yes, they did.

Q. And then into the early part of 2011, were they still involved in the English classes at the YMCA?

A. Yes they did. They - they were going to the

best of my knowledge, they were going to the English classes from September 2009 to the day they left, that is October 17<sup>th</sup>, 2011. They were attending English classes.

Q. And at some point in 2011, the topic of Social Housing comes up. Could you tell me what you recall from the initial discussion - discussion regarding Social Housing?

A. It started in the beginning of 2011. My mom started the - to tell me on different occasions that they met someone from Russian community who live - who the family living in Social Housing and they're starting to talk about that with different people - different people - actually - yes, she became - once she got this knowledge about Social Housing, she became very interested in that topic. Yes. And she was just - from the beginning it was just general conversations about Social Housing. She was telling the - she knows people living in Social Housing. I didn't react that much. There are many things going on in Canada. It's how it started. But in time, my mom started to tell - to apply the situation with Social Housing to our family situation. And that - I was trying to explain her what is a Social Housing about. I even did some additional research through the internet to obtain the eligibility criteria to know what I'm talking about with my mom. And I was trying to tell her what the Social Housing about in general. I was trying to explain who was getting Social Housing here. It should be eligibility criteria for that. I was talking to her in very plain language, not like I am even saying now. But at first it was like that. Later it was going into like April and May and my mom started - starting to tell a different - okay - yes, you know everything about Social Housing - yes I can get, but - but you know what, people saying things like it's just 200 per month, doesn't that save - that - doesn't that sound so attractive to you as well? I explained her again

that it's not about our family. It's people pay that little because they - they are poor, they do not have income to pay for them. But mom re - referred that I - I don't know - somehow people doing that, it doesn't mean they are poor. I've seen  
5 those people, they didn't look poor to me at all. And since you are being so many mistakes, you paid like how much like 1,400 for that Etobicoke apartment - people can pay 200. It - it should be done somehow, it's just need to think about that. And wait - she was - she was getting more specific. She was  
10 referring again to this that you're doing so many mistakes and you know, it says even you - you - know things in general, but you know, things - nothing is a hundred percent, it's her actually saying - and somehow - sometimes you can do things that you think you cannot do - something like that. And you know,  
15 we're going to YMCA and there - Yana Skybin who - who is helping all Russians in every aspects, sometimes when people couldn't do without her - and Yana Skybin is a real specialist, this is - is her position. She is helping Newcomers and you know how many Newcomers going through YMCA Newcomer Services and - my mom said  
20 I - you would know Russian - Russian speaking people not that many of them, but all of them referring to Yana Skybin as a very knowledgeable specialist. She helped so many people and you made so many mistakes and that became the topic of my mom - the conversation with me. She started to convince me that I should  
25 - I should listen to Yana too.

Q. And so how many conversations?

A. It was just going on and on when we - we always share every day. We always share everything - shared  
30 everything and whatever you talk, Social Housing topic came up in context with something that like, you know, those people they are so great. They worked as doctors in Russia and you know they are living in Social Housing. So Social Housing again and

again in the context - in different context. And in reference to Yana Skybin, more and more [indiscernible] into summer. So that - now you should reconsider probably because it's YMCA Newcomer Services, it's for Newcomers. It's services you didn't  
5 know about, it's not the area of your expertise. You are not a Newcomer settlement counsellor. You're mathematician. How could you know? What you find in the internet is just general information and things like that. Yes.

10 Q. Pardon me, did you have discussions with Valentin about Social Housing as well?

A. At that point I would say no. I would say no, but my mom - my mom always - no I would say no. Another thing is that while telling to my mom that Social Housing is not a plan to situation in our family, I - I actually indicated to  
15 her even in several conversation - several occasions that if you're still thinking about that, it - it should be against the law. It couldn't be done in a legal way. You don't need to do something illegal here if you are - so I - I was telling her just things like that.

20 Q. Could we turn to Tab 65 of Exhibit 1(A) please? And it's page 421.

A. Yes.

Q. And more specifically, it's marked as email number 15...

25 A. Mm-hmm.

Q. ...email 15...

A. Yes.

Q. ...Yana Skybin and Svetlana Danilova dated June 28<sup>th</sup>, 2011.

30 A. Yes. Email number 15, email from Yana Skybin to myself sent Tuesday, June 28<sup>th</sup>, 2011, subject "Wednesday". "Sveta, The weather is mixed. I together with [indiscernible]

decided to meet at my place for lunch. Can you be there at  
around 12? Afterwards you could go to YMCA and meet the school.  
My address follows" and the address. "We want to see you" - and  
the address I guess I can "8 - 86 Russell Hill Drive, Barrie -  
5 meet Bay Point and Young. We want to see you so much. Yana."  
Yes, I remember what is this email about exactly. My mom  
started to be more and more specific about Yana. As I continued  
to tell her that, you know, what you are asking me here is  
basically to break the law. You cannot - normal - any legal way  
10 to obtain Social Housing for you. Besides, there is a long  
waiting list and even with this waiting - waiting list as I was  
telling to my mom, she said, you know what, it's not - it's not  
your problem. You know this - what my mom was telling me. It's  
Yana will explain you everything. But we are not independent  
15 here and we need some preparation from your side. Then it will  
not be your problem. You need to talk to specialist - the  
specialist is Yana here and you need to meet with her and she  
will tell her - tell you. It's not - even waiting list is not  
your problem. I just need a little bit of preparation from your  
20 side. And this is the point. Then I said no for the first time  
probably in this huge topic, it's - it's big actually - where  
you live, it's a big - right? It's compared with health - it's  
big arrangements in your life where you are gonna live or how  
you do things. And at this point in regard to Social Housing  
25 obtaining in legal way somehow with the help of settlement  
counsellor of YMCA who knows things that I do not know, I said  
no to my mom. And I didn't go for that meeting with Yana. She  
- my mom said to me go to Yana's, speak to her and then Yana  
approached me with this meeting. I didn't go. And this -  
30 actually, this way about surrounding this email.

Q. So did you and your mother speak about Social  
Housing after that conversation?



Svetlana Danilova - in-Ch

5 A. After that conversation my mom is insisted that I just go to make application to Social Housing with her. She said okay, you do not wanna talk to smart people, you - all I - I'm asking of you, I cannot do this myself. I do not know English and I'm asking you just to go and fill out the application for Social Housing. And we will see what we will - let's - she - let's give it a try. And just fill out application for us at Social Housing. I said no again. I said no I'm not gonna do that. And to - to - so I explained why so many times and I'm just - said - said no again.

10 Q. And did you ever assist Nikityuks with filling out a Social Housing application?

A. No.

15 Q. Let's now turn to the weekend of August 20<sup>th</sup>. What do you recall from that weekend?

A. This was the weekend when my daughter with her fiancé came to visit. This weekend was remarkable because we set up the gazebo and that was - was purchased a kit from Costco - from the same weekend I remember that my mom and Valentin went to the birthday party to Yana's place. And my mom said that she ever think about this upcoming birthday party with Yana. She shared that they were gonna go to that party with Yana and after they came from that birthday, she shared what even Yana served at that birthday, so she was very open what was at that - that birthday. I even remember what Yana served if it's - it made sense, I don't - exactly - because we - later we served the same to our friends. We just tried an idea. She served potatoes wrapped in bacon and we never served - did it before and just so - we were communicating - absolutely - perfectly in the family during the - that weekend. Besides, they were so inspired on - all - all the family with upcoming wedding of our daughter, so we were all so happy that our

daughter is gonna get married soon. There was - there no  
specific arrangements about a wedding day at that point, but we  
were thinking about dresses with my mom and about the taste of  
Pavel daughter's wedding at - it was - for me 2011 was the  
5 happiest year of - in my life actually. I was with wings  
because I - my daughter found the guy that we liked, both I and  
my husband, and we were looking forward to attend our daughter's  
wedding as they were planning their wedding in Toronto first.  
It was - you'll be Civil ceremony and then they will get - they  
10 - they're planning the wedding in Germany as a church wedding  
that we all - all of us were kind of happy about what's going on  
in our family. Yep.

Q. And Mr. Danilov gave evidence about  
Anastasia, your daughter and Niklas, who was her fiancé at the  
15 time, also being at your home that weekend.

A. Yes. As - as usual, it was a usual - the  
usual - they came on Friday, they - and they stayed Saturday and  
left Sunday night.

Q. And we also heard evidence about some  
20 discussions that were going on in the kitchen on Sunday, August  
22<sup>nd</sup> between yourself and your mother, Alla. Do you recall  
those discussions?

A. Yes. Valentin also participated I believe.  
There was a discussion - it was - I don't know how to call this  
25 a discussion because it was same thing about Social Housing.  
And just because my daughter was there as well, my mom just kind  
of took this opportunity to talk about this Social Housing in  
the presence of our daughter thinking maybe Anastasia will be a  
- or - or will tell her something new or - and it - but we all  
30 were telling that no, it's absolutely not applicable to our  
family. And it's - the Social Housing is for poor and we are  
succeeded - we are kind of succeed - we are so grateful to

Canada that we are okay. And even - at some point I believe I -  
I said to my mother you have - you - you just think that you  
have the same level of living that IT professional has here in  
Canada, because we live in the same house, all four of us -  
5 Pavel was IT professional. But we share the same food, the same  
- the same furniture, the same house. It's good level of  
living. It's - the Social Housing is for poor and we are not  
stealing from homeless. Yes, that's what - yes as you can call  
this discussion, but not - she was persistent and asking the  
10 same and the same, but we were patient always saying that we are  
not this kind of people and it's not a situation and we need to  
break the law.

Q. But did your mother express a desire to  
leave? That she wanted to move out of your home?

15 A. In 2011, it was only about Social Housing.  
It - it just her point was that we made a lot of mistakes from  
your point of view and there are people who know - who know  
things much better than us. And who can help - who can even cut  
- cut their waiting list because they are old, they cannot wait  
20 like five more years. She knew that it might take five years to  
wait on the waiting list. But - and if she was asking for my  
cooperation of some sort and she was referring of that  
cooperation to - actually to cut the waiting list and this is  
mostly what I referring as breaking the law that I didn't want  
25 to do - I didn't want cooperation. She was telling those words.

Q. Did she explain to you what she meant by  
cooperation?

30 A. Not exactly, but you know, it was in the air  
- air actually always in the Russian speaking community and  
things like that - in Russian speaking community there this idea  
that, you know, what's the abuse? What's this abuse? Nobody  
goes to jail. Big deal. You - you say something abusing you,

you go somewhere shelter, it was even known in Russian community that you might need to live for some time in shelter, but the result is you end up in Social Housing and you are start paying \$200 per month for accommodation living in Social Housing.

5 Q. Was there disagreement? What - was it just ongoing discussion? Can you elaborate in terms of the discussions surrounding Social Housing on that specific day - on Sunday, August 22<sup>nd</sup>, 2011?

10 A. To be honest, I don't really remember the specifics because it was - you know, it was conversation like going circles. And we didn't even pay - sometimes, you know, it was just we were so patient and saying mother, I told you already how - you see where we are and where Social Housing is - things like that. And I don't even remember. It - it couldn't  
15 be something new on that weekend of August 20<sup>th</sup>. It was the same again and again. You made mistakes, Yana is a specialist. That's it - yes, I would say so.

Q. Were you angry?

20 A. Like I'm talking now, how can - can I be angry? I understood - I understood - what I understood that what she saw there in context of Social Housing, she saw \$200 per month and accommodation, very comparable for what they have back in Soviet Union maybe. That no - no big deal. Social - it was - everything was social in Soviet Union and - besides this  
25 kind of cooperation, I - I - just indicated that we are not cooperating in any - in any way in - in context and - so I'd also - I already told you that my answer to all of that would be no in any way. I made up my mind and I told you no back in June when Yana asked me to meet with her. And there - I was just  
30 keep referring to that I already said no, I'm not gonna do anything and you will not convince me to do anything for you. I'm sorry but I - in this situation I - I should say no. It's

illegal. It's against the law. I am not going this way.

Q. And where were you when this discussion was taking place, do you recall what room of the house you were in?

A. Weekend of August 20<sup>th</sup>? It was in living room with living connected to the kitchen. Yes, main floor - it was on the main floor.

Q. And did you become physical with your mother?

A. Not at all.

Q. Did you put your hands on your mother?

A. No. Never. Never.

Q. Have you ever put your hands on your mother?

A. Of course - of course not. Never.

Q. And the Nikityuks also alleged that Mr. Danilov threw dishes at the wall.

A. Never happened.

Q. Did he throw any dishes at the wall on Sunday, August 22<sup>nd</sup>, 2011?

A. It's - it's - it never happened - not on August - never happened.

Q. And what about the glass? It's alleged that he threw a glass at Valentin's feet.

A. Never happened. Everything just made up. It's a story of imitation of their abuse. I - I was supposed to - maybe - probably to participate in all this [sic] stories, but I rejected so how they - but it's gonna be - the next is gonna be my opinion and I don't wanna actually express my opinion here.

Q. And did you believe your - that the Nikityuks were not happy living with you in Innisfil?

A. Absolutely not. They were happy. Absolutely happy. How - if - they were happy, but if even they had something about - some idea about living separately, they didn't

express this idea to me at the - in 2011 because they were completely occupied by this idea of Social Housing. And in - this is actually the point, if they expressed any ideas about separate living, we might think about that. We might - as we  
5 always there for each other and if they felt somehow uncomfortable in certain situation living in - in the house with us, you know, we could pick up this idea and think about maybe a - upgrading our house, maybe purchasing the house with separate - I know - separate entrances maybe. It could be a possibility  
10 because things were improving with our finances as - they just with the Social Housing, they were, I think obsessed with this idea.

Q. So we've also heard evidence about the Nikityuks having a doctor's appointment the following day on  
15 Monday, August 23<sup>rd</sup>. Did you attend that doctor's appointment with them?

A. Monday - yes - yes they had an appointment - I didn't remember exact date, but that date came from the emails. There were emails - he emailed here indicating this set  
20 appointment and this is why. Yes, it's the 23<sup>rd</sup> - Monday...

Q. But do you recall any specifics...

A. ...the 23<sup>rd</sup>.

Q. ...from that doctor's appointment?

A. It - normally, every three months they have a  
25 doctor's appointment with Dr. Mossman (ph), their family physician and Dr. Mossman (ph) is a ge - geri - geriatrics specialist that is why they had their check-up every three months. And that was check-up appointment for them. Yes that regular, routine appointment.

30 Q. If we can turn now to Exhibit 1(B), Tab 137, page 839.

A. Yes.

Svetlana Danilova - in-Ch

Q. Are you there Ms. Danilova?

A. Yes.

Q. Okay. And just for the court record, these are the YMCA log of Yana Skybin dated August 19<sup>th</sup>, 2011 to July 5<sup>th</sup>, 2012. And they've been addressed earlier in Mr. Danilov's examination and cross.

A. I'm sorry, I was confused actually with the date of the doctor's appointment. Because you referred to the date of the doctor's appointment as August 23<sup>rd</sup> - previous - your previous question...

Q. Yes.

A. ...this is why I was confused.

Q. Okay, sorry.

A. Doctor - doctor's appointment was August 22<sup>nd</sup>, that was Monday. August 23<sup>rd</sup> is Tuesday.

Q. Oh my apologies. So the Sunday that we were talking about, would that have been Sunday, August 21<sup>st</sup>, 2011?

A. That's right.

Q. Okay. I - I apologize. That's my fault. I had the wrong date. So then Monday would be August 22<sup>nd</sup>?

A. That's right. That's why I was confused with the date of the appointment.

Q. My apologies. So I would like to have a look at Ms. Skybin's entry for September 30<sup>th</sup>, 2011. And at the first line, she alleges that things have got - gotten, she says gotten worse and peace did not last. Do you know what Ms. Skybin means by that statement? Were things worse at home than what they were alleged to have been?

A. No - this whole story is - it's - it's just made up story. This is why I - I'm experiencing difficulties actually answering this question because it's all like worst thing to - what worse from what? Because, you know, if you can

see here - there - you know, this - this is - I understand that it was written as alleged abuse, but it says for example, "Svetlana warned them" - parents as I can see here in this - Skybin's log dated September 30<sup>th</sup>. In this log in the middle,  
5 "Svetlana warned them that there is just enough food in the fridge and if they need anything else, they should buy it themselves." This is the sentence. What's - what's wrong with that? "Svetlana warned them" - what's wrong with that? "There is just enough food in the fridge and if they need anything else  
10 they should buy it themselves." Is it good or bad or - for me - for any reasonable and person with capacity - normal capacity, it's a good thing I - I addressed it - it says that there is enough food in the fridge and if they need anything else, they should buy it themselves. But she put - around - she put  
15 something like that as bad thing. And then she's putting [indiscernible] and even more bad things like daughter yells at the mother, [indiscernible] - so all this is just - I don't know. If it says it's got worse then - she - she had to write this worse from some - something previous to that that Alla  
20 abuses - so - so they - it's actually they made - made up everything.

Q. So between August 21<sup>st</sup>, 2011 and this entry by Ms. Skybin on September 30<sup>th</sup>, 2011, were there ongoing discussions about Social Housing? What was happening in the  
25 house between yourselves and Nikityuks? Or do you recall?

A. They started to go to YMCA classes in September again - new - new year again. And they - it fall - it fall in Canada - fall is so, you know, the weather is the most pleasant in Canada and they were even not that much around in  
30 our home. They went on so many trips; every weekend they somewhere in a trip. Then they started to go to Barrie for walk a lot. Previously they mostly went to the Innisfil Beach Park



that close to home, but starting from September 2011 they started to go to Barrie even for a walk going to Lakeshore and they were going to Barrie for so many events like meeting with the mayor of the Barrie. They have pictures - showed us pictures and - so they were very, very active during this time I would say.

Q. And did they express that they would - were going to be leaving the home?

A. During that time? No they - they started actually even babysitting for some - it was [indiscernible]. My mom was telling me that there is a student at YMCA, Lika Severin (ph) and they wanted to help her with her children and even stayed overnight in her home babysitting her children. They also helped with children to Yulia Malycheva worked - as they said that Yulia Malycheva had - wanted to start working and even wanted to start her own business in cleaning and she had small - little daughter. My mom helped her with her daughter. That's what my mom told - told me. They were very active in the community and they were very popular in the community like they knew everyone in the Russian speaking - yeah.

Q. So would you say it was pretty uneventful? Do you recall any specific conversations with your mom or Valentin?

A. Very routine.

Q. It sounds as though they were busy.

A. All - all - all the regular routine. We had friends in September and that's one of - friends - a couple and one - Kouzminova - Larissa Kouzminova gonna be our other witness, just telling that everything was absolutely normal - normal in September when they came to visit. They will - I remember what was in fall, we went to visit our other friends in Mississauga and we went all together, four of us - we have so -

no - everything routine, actually as - as usual.

Q. So let's talk now about October 17<sup>th</sup>, 2011.  
What do you recall from this day?

5 A. October 17<sup>th</sup>, 2011 - the whole day? From the  
morning?

Q. Well....

A. I'm sorry.

Q. I mean we've heard evidence that this is the  
day the Nikityuks decide to leave the home.

10 A. Yes. That day around nine o'clock Nikityuks  
left the home - yes. And what happened, I - we were trying to  
discover what happened to our Scotiabank joint account with  
them. And they didn't - from start of October then in October -  
around October 15<sup>th</sup> our account just disappeared from online  
15 banking. We were trying to find out what was going on. On  
October 17<sup>th</sup>, I actually had a chance to go to the local branch  
and local branch in Innisfil - and asked the teller what  
happened to our account. She said account was closed and when  
she referred me to the branch manager, he was in his office and  
20 I actually - we actually - our family had something special  
relation - not special relationship, but I'll explain. When we  
move to Innisfil, we transferred our mortgage to that branch in  
Innisfil and then we had an appointment with branch manager in  
Innisfil because we were looking for better deal for our  
25 mortgage. We had open mortgage at that time and we negotiated a  
very special interest rate for [indiscernible] line of credit  
with the branch manager because of our excellent credit history.  
And he - I would say he remembered me personally and my husband,  
and then I came to his office saying, "I'm sorry but I - I need  
30 to talk to you and I cannot find out why my account was closed."  
It was very unpleasant conversation, you know, this topic why my  
account was closed. And he said okay - and I - he actually did

- we called a favour - he accessed the internal data - internal system of the Scotiabank and he showed me on the screen that the account was closed by Alla Nikityuk and Valentin Nikityuk. He showed me on the screen that the account was closed on October 5<sup>th</sup>. So this is how I found out that the account was closed. That - that's what it is - what it is, but it was so unpleasant why I didn't know that my parents closed it - that account and I was asking Scotiabank again and again. It makes me - it put me in so uncomfortable position in front of branch manager. But it is what it was. And then I came home. Of course it was - I thought somehow I communicated - parents were home from classes; they have dinner and then I told them I found finally why - why you closing account? They didn't say much to me, but I remember Pavel did asked [sic] Valentin, why you close that account? He said "because". After that, I hear - they just went to their rooms and then they went for a walk around the block and then they came back from that walk. Sometimes they were in their room for sometimes and then I was coming from outside, entering the front door and I saw them coming down from - downstairs with bags packed and I remember there were towels seeing from their bags. That's what I remembered. And they said - I was asking what's - what's going on - what's - where - where are you going? And they said, you know what, we are leaving. We are not gonna live with you anymore - walked away. So it was obvious that they - they're leaving - leaving - leaving for like forever leaving. I said why and my mom said that it's kind of better or for worse, that's what she said in her words. It's for better or for worse, but we do not need you any longer for anything. Now - not for doctor's appointment, not for anything. We have very powerful people and this thing Valentin repeated so many times. They were saying that - that they have very powerful people behind them. That from now on, I'm gonna take full care

of themselves - of them. And the - they just were very persistent so no way to stop them from that. They obviously were leaving and they had bags packed and the issue was this key, then Pavel came out and was that conversation about taking  
5 a car. That Pavel asked for our keys to return because we - I also said that - you do not have - you do not have any insurance because back - before we explained them that we have this insurance on the car - on part - Valentin's driving this car on Pavel's insurance and in case they would be living separately,  
10 we explained that. Valentin would be on - will need his own insurance. And so we - yes we didn't want - want them to take the car. Then Valentin - act - actually in this context about powerful people, Valentin showed their cell phone like with buttons - some button and he said, you know what, I - I - I'm  
15 pressing this button and you are in trouble. Actually he said this in Russian. I would like to - exactly the - the exact translation, but I would translate it, this Russian word - word between in trouble and unpleasant this - flavour. And at the same time he dropped the cell phone that he always were - was  
20 wearing with - to Alla feet - to the floor. And this is actually very - how they left and that's what I remember.

Q. And was that all the conversation you recall? Did your mother say anything to you directly?

A. When they - when they left, they - they left  
25 and they were going down the road. And actually even that - that they were leaving down the road at 9:00 p.m. I don't know, it's everything. There is no trees and neighbours probably could see that and my mom, she was yelling - she yelled or screamed and this word I don't - I'm not sure how you - in  
30 Russian, of course nobody understood, but she yelled that I'm not your mother in - because I - I was still staying in the - at the front door looking at them and in some hope they maybe

change their mind. I was looking at them going down the street and she just yelled this kind of things to me. Yes. I'm not your mother anymore.

Q. Did you ask them where they were going?

5 A. I couldn't ask them. She was in the distance, I couldn't ask anything - or you mean before or - no I didn't ask.

Q. Did Nikityuks tell you where they were going?

A. No, they didn't.

10 Q. And we've heard evidence that you were concerned about where they were going or where they might be staying. Did you contact anyone after they left the home on October 17<sup>th</sup>?

A. Next day, first thing I called YMCA  
15 receptionist and asked if they came to English classes. And they didn't. I put a few - at first I put a few - maybe they are staying with some friends, they had so many friends and if they came to the English classes, maybe they okay, they just doing something - arrangements with their lives. I don't know.

20 It might be different arrangements. They - if they wanted to live independently, they even can - not live at home and rent an apartment. But it would - wasn't - was not be ill - illegal at least. Right. We could even manage things like that, but - okay sorry. At the first - I didn't know where they went. On  
25 October 18<sup>th</sup>, I called YMCA there - the receptionist said that they were not at the classes. I tried to call Yana so many times - yes, left her messages. At some point she picked up and I had very small conversation with her over the phone. She just said to me that I can - I can tell your parents that you are  
30 looking for them when I meet them. And then she said that I - I can give you references in the community where you can find help in your mental state and with your perfect English it will not

Svetlana Danilova - in-Ch

be a problem for you. That's what - literally what she told me.

Q. And did you call anyone else looking for Nikityuks?

A. Oh of course. After they didn't come to the  
5 classes on October 17<sup>th</sup>, I started to call - I started to look -  
to look for them everywhere. I called an emergency - I remember  
and if - if they were registered in the emergency and I called  
all the numbers I could find in their list of Rogers calls and  
everywhere. I called - I called people searching for them.  
10 Yes. It was the day after they left, October 18<sup>th</sup> and when -  
and then the next day, October 19<sup>th</sup>, I called YMCA  
[indiscernible] again they didn't come to the classes again.  
Then I got really stressed - distressed because no - nobody knew  
where they were. We were thinking about going to police at  
15 night October 19<sup>th</sup> if we still not - did not have any  
information about them. And when I was calling Russian speaking  
people actually I was thinking that I will need, if I go to the  
police to report them as missing person, I - it would be good to  
have the contacts of the people who might know anything about  
20 them or two whom our parents can call to provide those contact  
to the police so police can contact someone it's - to ask about  
where parents can be. Yes. Sometimes I asked people if they  
would be comfortable talking to the police, not even - not even  
comfortable - comfortable is not the right word, if they can -  
25 just can because not all Russian can speak English. Especially  
those Russian speaking parents who knew - it was the students of  
the English classes and not all - not all - mostly all of them  
cannot communicate English - in English over the phone and I was  
trying to find someone with whom police can communicate about  
30 parents. And eventually I found this person and then we  
reported to the - them to the police as missing person. It was  
- we went to the South Simcoe Police in Innisfil in the evening

of October 19<sup>th</sup>, reported them to the police and constable took this investigation. He asked me at some point to provide him with a contact information - contacts - telephone numbers of the Russian speaking who might know anything - something about the parents to whom he can communicate and maybe find out more details that I couldn't find out while I was searching. It was a part of their normal police investigation to call people who might know anything. And if I can proceed with this, so then constable took this investigation over in the evening of October 19<sup>th</sup>. He have this investigation actually was complete, received a call during the night - the night of October 20<sup>th</sup>, so it's - we reported them in the evening of October 19<sup>th</sup> and received a call from the police - from constable at night October 20<sup>th</sup> and constable said the he is closing this case based on that he contacted Marina Tulov (ph), I provided him with her contact as a Russian speaking who is free that - free in English and he contacted her. And this Marina Tulov (ph) she said that she knew that parents how say it - and sound - house - how you - this is a right expression for that - how he told me - found them housesitting.

Q. Safe and sound?

A. Safe and sound - yes. Yes, literally what he told me. This is enough to close this investigation. This was enough to close this investigation of a missing person. Yes.

MS. CHAPMAN: Your Honour, is this a good time to take a break?

THE COURT: All right. We'll take a break and then we'll return in about 15 minutes.

R E C E S S

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

Svetlana Danilova - in-Ch

THE COURT: Yes, shall we continue?

MS. CHAPMAN: Yes, thank you. Q. Ms. Danilova, so we're gonna turn now to October 24<sup>th</sup>, 2011 and we've already heard evidence that this is the day that your parents, the  
5 Nikityuks, returned to the home to collect some of their personal belongings.

A. That's right.

Q. So what do you recall regarding that day?

A. In the morning of October 24<sup>th</sup>, 2011, I heard  
10 knocking on my front door - policeman was knocking very loudly on the front door saying, police, open up, police, open up, police. And I came to the door and four police - constable asking what he - what he say - he says - so I - what - what I saw, right - what I saw?

15 Q. And what he said to you, you can elaborate on.

A. So there was a police constable saying that there is Alla and Valentin or something along there - I - I - I actually, I don't remember the exact wording, I was so shocked.

20 I opened the door and I believe I let him in. I am not even sure because I was so under - so distressed of that - at the police knocking to the door, I believe I let them in and he represented Dorothy as a social worker with him. Then he represented muscle - he referred to two guys as muscles for  
25 moving - moving. I recognized those two guys - one YMCA student from English classes and I even remembered his name

[indiscernible] Philipson (ph) because my mother showed him on the many pictures from the YMCA and on the - on the pictures from their parties of Yana Skybin. And another person was in  
30 the vehicle, she was also a YMCA student. And the other guy, police referred to as muscles was Ilyana Lavreka's (ph) son, Nikita Lavreka (ph). There was another guy, truck drive. So



Svetlana Danilova - in-Ch

5 police asked if they can enter the house because parents need assistance in moving. I - I didn't confront him somehow, but I called my husband, asked what they are saying - there is a police car - they do - my husband said whatever they want to take, let them take whatever they want and that's it. So they started taking - they had boxes with them, so they have a truck, boxes - they started packing and they were taking the whole day. The police constable was - was sitting mostly on the bench in the hall front - front hall - foyer - front foyer. That

10 Dorothy, that policeman referred as a social worker, specifically he said, Dorothy, Social Worker, she was with my mom all the time upstairs and you know, [indiscernible] was helping with carrying as well and truck driver, Victor (ph) he was doing nothing of - the whole time they were helping just

15 packing. But at some point I was in the garage and he approached me and he said, you know, you have so beautiful home. If - if you need anything renovation [sic], I'm in renovation business and he gave me his telephone number - his cell number just because he - it was his - his business. And he also told

20 me that it's so - he was Russian speaking - he was Russian speaking. Actually, all of the people were Russian speaking except Dorothy, referred as the - as the social worker. Well this Victor (ph), truck driver also told me, you know what, it's so bad to....

25 THE COURT: Nope. Excuse me...

MR. MAE: Yes.

THE COURT: ...we're getting into hearsay again.

MS. CHAPMAN: Yes - yeah.

30 THE COURT: If your client can start going in a direction, I would appreciate if you just help her in...

MS. CHAPMAN: Sure.

Svetlana Danilova - in-Ch

THE COURT: ...refocus her because...

MS. CHAPMAN: Okay.

THE COURT: ...sometimes she goes on with a long story and may not even be responding to your questions sometimes.

MS. CHAPMAN: Thank you.

THE COURT: I don't think it's relevant as to what the truck driver said.

MS. CHAPMAN: Of course.

A. And I - I'm - I'm sorry, but it's important because he said that it's...

THE COURT: No.

A. ...so bad how I treat my mother.

THE COURT: I'm instructing you not to tell us what the truck driver said to you unless he's going to give evidence later at this trial. And your counsel will ask you questions where you can give answers. Don't - don't go on and answer if I've already indicated you shouldn't be telling us that. Do you understand?

A. Yes, certainly.

THE COURT: All right.

MS. CHAPMAN: Q. You - you stated that you believed everyone was Russian speaking, but was the police officer Russian speaking as well?

A. No - no - sorry. Police officer was not Russian speaking. Only in Ilyana Lavreka (ph), [indiscernible] Philipson (ph), Nikita Lavreka (ph) and Victor (ph), truck driver, Russian speaking people.

MR. MAE: Your Honour, forgive me for rising, but I'm looking at Madame Reporter and we're all having some trouble with the names. I - I picked

Svetlana Danilova - in-Ch

up Victor (ph), but I never picked up the other names and I don't think Madame Reporter did either.

5 THE COURT: You're talking about the name of the social worker perhaps?

MR. MAE: I - I've got - I've got the social worker, Dorothy. But I was just wondering if Ms. Danilova could say the other names a little slower so that we could try to at least get them phonetically.

10 THE COURT: All right. I'm just wondering how relevant all this is because I think the point that you're making is that they - her parents came and packed and got their stuff out.

15 MS. CHAPMAN: Yes.

THE COURT: Is there more detail that we need to hear about this particular event?

MS. CHAPMAN: Other than Dorothy, which I'll ask Ms. Danilova about now.

20 THE COURT: Because I think there's more context here than we possibly need if....

MS. CHAPMAN: There - definitely there is. Yes.

THE COURT: So Dorothy, is that the social worker?

25 MS. CHAPMAN: Well she advised Ms. Danilova that she was a social worker. Q. In fact what is Ms. - her last name I believe is Archer - Dorothy Archer.

A. At first constable introduced Dorothy - Dorothy to me just Dorothy, a social worker. That's how  
30 constable introduced....

Q. Right. But who do you know her as now? Do you know her full name?

Svetlana Danilova - in-Ch

A. Now I know Dorothy Archer.

Q. And do you know what organization Ms. Archer was from?

A. I later discovered that Dorothy Archer is not a social worker because she does not have licence of social worker and not registered with college - Ontario College of Social Workers and Social Support Workers.

THE COURT: I think the question....

MS. CHAPMAN: Q. But who did she work for?

A. She works as a coordinator for Transition - Transitional Housing Program for shelter - Barrie Shelter for Women and Children.

Q. Okay. And did you speak with Alla, your mother, or Valentin during this move on October 24<sup>th</sup>?

A. Not a word. Not a word - did I - I didn't speak to anyone - except Victor (ph) - except the driver, Victor (ph).

Q. Okay. So let's now turn to Exhibit 1(A), Tab 67 please.

A. No, I'm sorry. I was actually not right. No I was - no I was talking - it's not - it's not right thing to say that I didn't speak to anyone. I spoke - no I spoke - because when they left, there was some conversation when they were leaving all those people. Then they packed and then they were leaving. There was conversation that Dorothy told me that she will get back to me in a couple of days and she will provide help I need in the situation - Dorothy as a social - as....

Q. Dorothy Archer.

A. Dorothy told me - yes. And then there was some conversation about the documents because there was something - Valentin told there are documents for you, I said okay put them somewhere. That was it when they were leaving. I

- I had some words with people, yes. It's not fair to say that I didn't speak to anyone. But during moving I didn't speak to any - anyone - yeah.

5 Q. And that was the extent of the conversation then?

A. Yes.

Q. So let's look at Tab 67 in Exhibit 1(A).

A. Yes.

10 Q. And this is a letter - it appears to be a letter that you wrote, Ms. Danilova, to YMCA Canada.

A. Actually which tab?

Q. Tab 67, it's page 439.

A. Oh 67, I'm sorry. Sixty-seven. Yes, this is a letter I wrote - mm-hmm.

15 Q. Now the date on - on page 440 is October 26, 2011. Is that the date that you sent the letter?

A. Yes, same day I sent this letter.

Q. Okay. And so why did you write to YMCA Canada?

20 A. This is what I was trying to tell why I send this letter to YMCA Canada. First - first of all, this conversation with driver, it's actually important if I can tell. Truck driver during moving on October 24<sup>th</sup>.

25 Q. Yeah. We're not going to hear that evidence for the reasons stated.

A. Oh okay.

Q. Okay.

A. Okay.

Q. So....

30 A. Mm-hmm.

Q. Give us your explanation why...

A. Explanation...

Svetlana Danilova - in-Ch

Q. ...as you wrote to the YMCA....

A. ...another - another - then another explanation that - after parents left, it was obvious for me that YMCA involved in that because of this conversation with my mother about Yana Skybin who can help. It was absolutely  
5 obvious for me at that point that I - I have to write this letter to YMCA. The involvement of YMCA was absolutely obvious for me at this point. And this is why I wrote this letter.

Q. Okay. What does - what does the letter  
10 state? Why would you write this letter? Why would you want to advise YMCA Canada of this situation?

A. I tried to explain every aspect in this letter - I - I just wanted to give all the facts to YMCA. I know about my parents, the arrangements with the parents and  
15 what happened and - I just wanted to indicate my position in this case and what I was relying - I was thinking that my position should be heard here. It's - it's I - I thought that it's even more important for YMCA than for me to know my position because I was - considered myself as a YMCA client in -  
20 if they were assisting parents the same way they should be responsible to me in the situation. That's what I thought.

Q. And more specifically in paragraph 5, at line 2, could you read that statement?

A. "As a result of what has been described  
25 above, starting from about last summer, my parents have been putting us on a distance saying that they wanted to be independent and live separately from us. They have started to use the words, they should have never been applied to the relationship in our family like violence, abuse and aggression.  
30 That someone seem to be putting into their mouth." Even that?

Q. Yes.

A. Because after they moved out I also received

a call from Emma Tatrova (ph) - [indiscernible]. And Emma Tatrova (ph) told that - what - what happened to your family. They are - Alla called her and said that....

Q. Ms....

MR. MAE: Your Honour.

A. This is....

MS. CHAPMAN: We're heading down the same path.

THE COURT: All right. I think you're reading that paragraph the lawyer wanted you to read and you stopped halfway through it and started talking. Did you want her to read more on that - that sentence?

MS. CHAPMAN: Yes. Just to the end of that sentence. So I believe....

A. "That someone seemed to be putting into their mouth as it's the only way they can apply for a Government Social Assistance without taking in consideration our opinion as sponsors. We have a dozen of witnesses like mutual family friends, colleagues, neighbours or family physician who would testify under the oath that nothing even close to that could happen in our family ever. Basically they were taught by somebody in YMCA what to write to the officials that someone did a good job in doing that as they have been taught very well."

Q. And so had the issue or the - the use of the word abuse come up in discussion with Nikityuks?

A. Yes, like I mentioned before. They - when they were referring to this - to the Yana as a specialist and - these contacts that I do not need to worry about long waiting list. I was told by my mom that it's Yana who would take - who would teach me how to do this and as I - we said before this - even my mom told this what abuse - abuse that's - actually there is no exact translation in Russian for this word. And she was

referred - it said so on something not that important and nobody goes to jail. That's was referred as Yana can teach how to deal with this waiting list.

5 Q. So at the time that you write this letter, are you aware that the Nikityuks are alleging you abuse them?

A. At this point, yes - that what I was gonna tell that - that [indiscernible] and told that they communicated this to Taksova (ph) that it is violence in the house and....

10 Q. Okay. We're not going to talk about that telephone call. But on page 440, the next page, in the last paragraph first sentence and I quote you write, "We are asking to clarify the position of YMCA regarding this situation."

A. Yes. We are asking - this was the purpose of this letter. We are asking to qualify the position of YMCA  
15 regarding this situation. "Based on your response, we will decide who is responsible in turning my parents [indiscernible] so far away from their family putting all of us into position where family is destroyed and drawn into financial trouble." And it is October 26<sup>th</sup>, 2011 - we are talking about financial  
20 trouble. So we reviewed the right to proceed with legal action and this letter was never responded.

Q. So you also - it appears on page 439, that you copied this letter to YMCA Newcomer Services in Barrie.

A. I sent this letter by registered mail to  
25 three - to three destinations: one, YMCA Canada, it's the 1867 Young Street, Suite 601, Toronto, Ontario M4S 1Y5; the other destination, YMCA Newcomer Services, 320 Bayfield Street, Unit 63A, Bayfield Mall, Barrie, Ontario L4M 3C1; and another  
30 destination was YMCA Simcoe/Muskoka Association offices, 22 Grove Street West, Barrie, Ontario L4M 1M7.

Q. And did any of those YMCA offices respond to this letter?



Svetlana Danilova - in-Ch

5 A. None. I have never received any respond to this letter.

Q. If you can turn now to Tab 68, the next tab please?

A. Yes.

Q. Mr. Danilov addressed this letter in his evidence. Do you have your own recollection regarding this letter or is this from Mr. Danilov directly?

10 A. No, we did it together. We did it together, basically. That was the right thing to do as considered at this point that we had to send support to parents somehow and we sent the support for them through YMCA because we didn't know any other address of them to send support to.

15 Q. And for the record, this is a letter from Pavel Danilov to Susan Green, Director at YMCA Simcoe/Muskoka.

A. Yes, that's right.

THE COURT: Sorry, what tab are we at?

MS. CHAPMAN: Tab 68.

20 THE COURT: Oh you're into several pages of it. It starts out the CRA - is this the one? It starts out with a CRA authorization?

A. Yes, it's it.

MS. CHAPMAN: Yes. Q. And....

25 THE COURT: So you're referring to the cheque - or sorry the letter to...

MS. CHAPMAN: The letter.

THE COURT: ...Ms. Green. All right.

30 MS. CHAPMAN: Q. And the next correspondence at Tab 71 please.

A. Yes.

Q. And for the record, this is a letter again written to Susan Green, Director of YMCA Simcoe/Muskoka dated

Svetlana Danilova - in-Ch

December 15<sup>th</sup>, 2011. And this letter was prepared by you, Ms. Danilova?

A. That's write.

Q. And this letter encloses a void cheque.

5 A. That's right.

Q. And again, I believe the letter addresses that this is for support purposes for Nikityuks.

A. That's right. I put it in my letter. "I do not have any information about their current address and that is why I'm asking you for assistance in regard of the sponsorship agreement that my mother, Alla Nikityuk and her husband, Valentin Nikityuk had signed with me before they came to Canada in June 2008" - I mean "came to Canada in June 2008. And my husband, Pavel Danilov, was a co-signer. My mother and Valentin have recently closed accounts - all accounts" - I meant joint accounts with them, "except one at CIBC. We do not want them to close this CIBC account as well because this is the only way for us left to support them. We have trusted the support money to this account already and we will do that in the future on the first day of every month. Besides, this is an account where their Russian pension comes every three months. We would really appreciate if you advise them so that you have a chance. The one cheque for this CIBC account is attached so they can take it and go to the bank. Even if they forgot everything and lost their bank cards, they still can go to the bank and ask for new access cards to replace the ones they lost."

Q. And did Ms. Green respond to this letter?

A. No. But in this case, we didn't expect - expect any response from her. It just was for information because it was the only way to provide the information about our support. We didn't expect this Ms. Green to report to this - to respond to this letter, I would say. No.

Svetlana Danilova - in-Ch

Q. And did you believe you were making every effort to provide financial support to Nikityuks during that time?

A. Absolutely. It's always been our point, even if they left by some - some reason - doesn't matter. Let's - it doesn't matter, they - what the reason was, we always wanted to support them and we were trying to do this by all means.

Q. Okay so let's look now at Tab 72. It starts on page 447. And again for the record, this is a letter from Mr. and Ms. Danilova to the Ministry of Community and Social Services November 10<sup>th</sup>, 2011. And we don't need you to read the letter Ms. Danilova, but do you recall writing this letter?

A. Yes, I do - of course.

Q. And it appears that you're writing to the Welfare Fraud Hotline in relation to the Nikityuks.

A. Yes, that's right.

Q. And in summary, would you say that you're advising them that you are willing to continue to support Nikityuks?

MR. MAE: Your Honour.

THE COURT: Is that - is that a leading question?

MS. CHAPMAN: Sorry.

MR. MAE: I think it might all be, Your Honour. But that's your decision.

THE COURT: You asked a few questions counsel which invite...

MS. CHAPMAN: I understand. I'm - I'm trying to keep...

THE COURT: ...the answer that....

MS. CHAPMAN: ...the witness from having to read the entire letter.

THE COURT: All right.

Svetlana Danilova - in-Ch

MS. CHAPMAN: Q. Could you tell us, instead of reading this Ms. Danilova, what you're stating in this letter?

A. Yes, it was the right thing to do because I discovered that they received Social Assistance and I - I didn't want them to receive Social Assistance and I just decided that it was my responsibility to provide the information that they consider income at least with this kind of information and there - a lot of other information saying that they obtained Social Assistance not being eligible for that. And I always wanted to support them.

Q. And then at Tab 73, we have email correspondence which - or pardon me, with the same department it appears of the Ministry of Community and Social Services.

A. This is be - because I did this short report by all possible means. I did it over the telephone speaking to the agent, through email and sent a letter by mail. It - it was done by three ways. This is just a report confirming that I - I did it through email as well.

Q. And then at Tab 75...

A. Yes.

Q. ...this is a copy of the - it's just the faxed coversheet for the letter that you had sent to the Ministry of Community....

A. Yes. It seems to be a coversheet, but I can tell that by that time we probably provided with - the Ministry with proof of other support.

Q. And - so then at Tab 76...

A. Yeah.

Q. ...which is page 456, we have a letter from the County of Simcoe Ontario Works.

A. I - I'm sorry. I - I should - actually this letter on Tab 75 - previous question...

Svetlana Danilova - in-Ch

Q. Yes.

A. ...a letter four pages - it might also - but it's answering for the request from the Tab 73 - very - very request 73 asking for the following information is required to -  
5 in order to initiate an investigation of alleged welfare fraud. We also provided this kind of information, first and last name and....

Q. Yes. Okay.

THE COURT: Counsel, I see it's almost four  
10 o'clock and I think you're at Tab 76...

MS. CHAPMAN: Yes.

THE COURT: ...which is the letter from the County Simcoe and I assume you may want to spend a bit of time on that. So perhaps we should  
15 resume tomorrow morning and then - do you need a bit more time with this witness, do you think?

MS. CHAPMAN: I do - a little more time.

Shouldn't take too much longer.

THE COURT: Or was it tomorrow that you had other  
20 witnesses coming?

MS. CHAPMAN: Yes, we do.

THE COURT: And those are the witnesses who filed affidavits.

MS. CHAPMAN: They have. And I - I haven't  
25 spoken with my friend, Mr. Bornmann, but I spoke with Mr. Mae briefly, my intention was to file those affidavits and allow counsel to cross-examine on them because they are affidavits that were previously filed on the motion for summary  
30 judgment.

THE COURT: Yes.

MS. CHAPMAN: I think it would save the court

Danilova v. Nikityuk et al.

some time tomorrow. I'm not sure how my friends feel about that position.

5 MR. MAE: Your - Your Honour, my - my position and I've not consulted with Mr. Bornmann yet, so - maybe you may hear something different after I've made my submission. My - my knee jerk reaction Your Honour, is I want to hear the evidence in-chief from the witnesses rather than their affidavits, because if I simply cross-

10 examine them on the content of their affidavit, I'm leaving myself exposed to matters being raised in re-examination that have not been considered. So I'd like to hear firsthand out of the witnesses' mouths what that evidence is.

15 Even if they read out their affidavits and maybe that sounds somewhat asinine, but I don't want to find after the event that we - that the evidence is not that which is contained in the affidavits.

20 THE COURT: Well what if they're asked to adopt the affidavit and if there's anything further they want to tell the court in-chief?

25 MR. MAE: I would have no problem with that per - per say if - if that's the - that's the way it's gonna go down. But I - see I simply don't want to move along to cross-examination without hearing what they have to say for themselves.

THE COURT: Is that fair, Ms. Chapman? They adopt the affidavits that they filed and...

MS. CHAPMAN: That's fair.

30 THE COURT: ...if there's anything further to be added....

MS. CHAPMAN: I think that - I really I'm just

Danilova v. Nikityuk et al.

trying to use the best case of what Rule 20 intended.

5 THE COURT: Right. And the affidavits aren't very long in any event. They seem to basically deal with one particular event.

MS. CHAPMAN: Exactly.

THE COURT: Large - in large measure. Mr. Bornmann?

10 MR. BORNMANN: Your Honour, this is all news to me.

THE COURT: Mm-hmm.

MR. BORNMANN: With your permission, I would like the evening to consider the matter because the affidavits do touch on a number of issues and perhaps we can discuss amongst counsel and....

15 THE COURT: All right. We'll - we'll formulate a plan tomorrow after you've given it some more consideration and perhaps talk to your - your friends.

20 MR. BORNMANN: Thank you, Your Honour.

THE COURT: Is there any urgency in hearing their evidence tomorrow, is that the case or - like in - are we - I'm wondering if we're not gonna do cross-examination of this witness until these other witnesses have given evidence?

25 MS. CHAPMAN: Yes, there is some urgency. I'm not sure when their travel plans to return home are, whether it's Thursday or Friday later this week. I do know it's a weekday because the - the cost is less. So the plan was to have these two witnesses tomorrow.

30 THE COURT: Initially we thought we'd be taking

Danilova v. Nikityuk et al.

them out of order in any event...

MS. CHAPMAN: We did.

THE COURT: ...because the plan was that the plaintiffs' case would be finished. So...

5

MS. CHAPMAN: Yes.

THE COURT: ...counsel for the defence, is that acceptable if we hear from these two witnesses before the cross-examination of...

MR. MAE: Certainly.

10

THE COURT: ...Ms. Danilova?

MR. MAE: I personally don't have any issues, but my friend does.

15

THE COURT: I - I can't predict how long you'd be in cross-examination, but - with - of this witness, but with Mr. Danilov it was quite lengthy.

MR. MAE: Yep it - it was, Your Honour and I suspect that I may be lengthy with this witness as well.

20

THE COURT: So I don't want - I don't want to use up the week with this witness if these - if these other people are here and ready to testify.

MR. MAE: I'll - that's - that's why I have no problem with them jumping in, Your Honour.

25

THE COURT: All right. So....

MR. MAE: I'm good if my friend is.

30

THE COURT: Well we can discuss that again for tomorrow morning, but it makes sense to me because I think you expressed a - the desire to cross-examine these witnesses and they've made efforts to be here. So I don't think we should miss that opportunity even though it may be



Danilova v. Nikityuk et al.

slightly out of order.

5 MR. MAE: Yes. Your Honour - and while we're -  
we're on the subject, this is just an advance  
warning. We've heard today that one of our  
witnesses who's under subpoena was at - perhaps  
under the impression she was going to be giving  
her evidence this week and she's not available  
next week. But the way this is moving, I don't  
10 think it's gonna be a concern because I suspect  
that we're going to be coming back anyway. But  
I'll find out more about that hopefully by  
tomorrow...

THE COURT: All right.

MR. MAE: ...and I'll advise the court.

15 THE COURT: When - when you say coming back, I  
think you mean at another sittings [sic].

MR. MAE: That's correct, Your Honour. That -  
that's what it's looking like to me.

20 THE COURT: All right. Well I will adjourn 'till  
tomorrow at 9:30 and we'll continue these  
discussions.

...

25  
M A T T E R A D J O U R N E D

30

707.  
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\_20160524\_085911\_\_10\_MULLIGG.dcr, which has been certified in Form 1.

15

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
L. Burch

(Signature of authorized person)

20

\*This does not apply to the Rulings which have been judicially edited.

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## Danilova v. Nikityuk et al.

MAY 25, 2016:

THE COURT: Good morning.

MR. BORNMANN: Good morning Your Honour.

THE COURT: Yes, counsel, where are we at this morning? Mr. Bornmann?

MR. BORNMANN: Yes, Your Honour, I've conferred with my friends and my understanding is that the - Mr. and Mrs. Caspers are in town until Monday but there is some need for them to present their evidence today. The concern of Nikityuks is that Ms. Danilova complete her examination in-chief before we do - take any other steps in the proceeding Your Honour. So what's been agreed between counsel is that my friend will complete her examination of Ms. Danilova at which point the affidavits of Mr. and Mrs. Casper would be put in as they are and that we proceed directly to cross-examination on those affidavits and it is our expectation that will be able to wrap that up today Your Honour.

THE COURT: All right. That's - if it is to your agreement, are you ready to proceed...

MS. CHAPMAN: Yes, it is.

THE COURT: ...with the examination in-chief, do you expect that will take...

MS. CHAPMAN: I'm hoping maybe an hour to so and then we can move on with the rest of the day.

THE COURT: All right. So if you would have your client return to the box.

MS. CHAPMAN: Yes, Ms. Danilova.

Svetlana Danilova - in-Ch (cont'd)

SVETLANA DANILOVA: Reminded of Oath

EXAMINATION IN-CHIEF BY MS. CHAPMAN:

5 Q. Ms. Danilova, you recall we were about to  
look at tab 76 of Exhibit 1A?

A. Yes.

10 Q. Page 4, 5, 6 and it is a letter to yourself  
and Pavel Danilov from Crystal Hilton with the County of  
Simcoe, Ontario Works dated November 29, 2011. And could you  
please read just paragraph 3 from that letter?

A. Please be advised that the Citizenship and  
Immigration Canada has been notified that you are not  
fulfilling your sponsorship obligations.

15 Q. And was that a concern for you?

A. Of course.

Q. And did you follow up on this letter, did you  
respond to Ontario Works?

20 A. Yes I personally went to Ontario Works at  
some point. It's the Bayfield office, it's Ontario Works  
office on Bayfield Street, same office in this - the office  
was in the same building with social housing and I personally  
indicated that we wanted to repay all the money that Nikityuks  
received, we were willing to support them. I brought the  
25 sponsorship agreement with me, I made a copy and I indicated  
that on many occasions and explained everything about the  
cheques that we were trying to send them and that they have a  
bank account and they have known about this account for a long  
time, since 2005 and we were willing to send the support to  
the bank account.

30 Q. Okay let's turn to tab 77 now please.

A. Yes.

Svetlana Danilova - in-Ch (cont'd)

Q. And we have a further letter from County of Simcoe Ontario Works to yourself and Mr. Danilov, dated December 15, 2011.

A. Yes.

5 Q. And it appears this letter sets out the amounts that Valentin and Alla had received to date.

A. To date of December 15, 2011, yes that is how I understand that letter.

10 Q. And could you read the fourth line of that letter, it's the fourth paragraph sorry. It starts, therefore.

A. Therefore you will be responsible to repay in the full amount of social assistance issued.

15 Q. And if we could turn to tab 78, we have a letter from yourself, Ms. Danilova to Ms. Hilton at the County of Simcoe, Ontario Works dated December 15, 2011 and was this letter in response to the letter at tab 77?

20 A. This appears so for me right now, as I am looking at this letter I do not remember all steps I took at that time because it was a lot of steps. If you willing to hear that I can try to recall but it appears to me that this letter dated - normally I responded to the same date, if I receive anything coming from Ontario Works in this case, I responded the same day. I tried to do so, I always date the letter the same date I sent out the letter just to account  
25 everything, record everything easier. So yes I sent, I wrote this letter December 15 and based on my normal habits I sent this letter out on the same date.

30 Q. And could you read the second last paragraph of that letter, it starts with we?

A. We are concerned that they have taken neither of the support money we trusted, nor my mom's pension that

Svetlana Danilova - in-Ch (cont'd)

5 came on December 7<sup>th</sup>. Also they have recently closed all joint  
accounts in other banks. We do not want them to close this  
account as well because we do not know their address and this  
is the only way for us left to support them. We would really  
appreciate if you would write them so, when you have a chance.  
The void cheque for this CIBC account is attached so they can  
take it and go to the bank even if they forgot everything and  
lost the bank cards they still can go to the bank with their  
I.D.'s to use this account and this is the account I was  
10 talking about, it's account in CIBC that was open in 2005,  
shared with my mom, when my mom was here as a visitor. I  
opened this account, I was the primary account holder, I added  
my mom as supplementary account holder because she didn't have  
permanent residence at that point. They - when they came to  
15 Canada we went to the same branch, all together, my mom and  
Valentin and we added Valentin at that point and my mom showed  
her permanent residency proof and so after they came to Canada  
in June 2008 this account became shared between the three of  
us on the basis on anyone can sign. We were absolutely equal  
20 on that account.

Q. So let's have a look at the statements from  
that account, those are at tab 63 of Exhibit 1A that you have  
in front of you.

A. Yes.

25 Q. And so this is the account that you say you  
provided the void cheque for.

A. That's right. This is the account I  
described.

30 Q. And if we could also look at tab 54, we have  
a CIBC letter addressed to Alla Nikityuk. It appears to  
enclose a pin number.

Svetlana Danilova - in-Ch (cont'd)

A. That's right.

Q. But - sorry, was your evidence was that you weren't certain whether they knew those pins?

A. This Exhibit, tab 54, the document just shows that my mom received the access card with her own pin.

Q. Right.

A. That's basically what it says.

Q. And tab 55, it appears to be the - a similar CIBC letter addressed to Valentin Nikityuk.

A. Yes that's right. That what I was talking about, after they came to Canada and received - after they landed in June 2008, all three of us went to the bank to make official that this account became shared with three of us. And that what those two tabs are saying.

Q. And so did they have debit cards for these accounts?

A. Yes, of course.

Q. So if we could go now to tab 79.

A. Yes.

Q. And this appears to be a letter from you, again to Crystal Hilton, this one is dated December 29<sup>th</sup>, 2011.

THE COURT: Sorry, what tab are we at now?

MS. CHAPMAN: Yes, 79. Q. And again, Ms. Hilton is with the Ontario Works Department of the County of Simcoe.

A. I am at Crystal Hilton at Ontario Works, she was their support worker at the time. Sorry, not support - case worker on - Crystal Hilton is Ontario Work Case Worker and I met her at the Ontario Works office on Bayfield Street as Nikityuks' case worker.

Q. And could you read paragraph two of your letter please?

Svetlana Danilova - in-Ch (cont'd)

5 A. As I stated before we never stopped to provide money to support.

Q. Sorry Ms. Danilova, the paragraph above that.

5 A. Recently their lawyer contacted us demanding my mother's Russian pension. We have to provide the lawyer as well with a void cheque indicating the account where the Russian pension came is joint. On December 20<sup>th</sup>, 2011 they withdrew \$871.82 from the account and therefore the fact that they have access to their money including support funds now confirmed.

10 Q. And on page 462 there appears to be a copy of the CIBC account details for that date, December 20<sup>th</sup>, 2011 and is that the transaction that you are referring to in your letter?

15 A. That's right.

20 Q. And next to tab 80 please. And again we have a letter from yourself, Ms. Danilova to the County of Simcoe Social Services as well as the Building Management at 1 Blake Street, and this letter is dated January 6<sup>th</sup>, 2012. Could you read for the court, paragraph 2 of your letter please?

25 A. I have recently discovered that my mother and her husband have been residing in subsidized housing apartment in Barrie at 1 Blake Street, Barrie Ontario and based on her sponsorship agreement I'm asking you to provide me with the breakdown of their monthly rental payment and how exactly the monthly due is calculated. As actual guarantor for all of their needs I need the information for financial planning.

30 Q. And so what did you intended by writing this letter to the management at Blake Street?

A. I still wanted to provide them and send them money on a monthly basis to cover all of their needs and the



Svetlana Danilova - in-Ch (cont'd)

amount they are paying for accommodation would be - would definitely be very important in their determining of their monthly support.

Q. And now to tab 82 please.

A. Yes.

Q. And we have a letter from Ms. Danilova to Tim Robertson, appears to be Ontario Works, and this letter is dated January 18<sup>th</sup>, 2012. And do you recall writing to Mr. Robertson?

A. Yes we received a quote from Tim Robertson, I believe even both of us was talking over the phone with him. He indicated - he represented - sorry, he introduced himself as an Ontario Work representative handling their matter from their side of Ontario Works and then matter was related to the Nikityuks' application to Ontario Works. He was talking to us trying to find out all of the information related to this issue and this fax was sent to him after that conversation with him.

Q. And could you read for the court your first sentence in paragraph 3 of your letter please.

A. Support funds are being transferred to this account since their arrival to Canada in 2008 on a regular basis, never stopped and we do not intend to stop to support them, in capital letters. Do no intend to stop the support fund. As their sponsors we managed all their income and expenses until October 17<sup>th</sup>, 2011 and tried to explain all financial related stuff to them uncountable number of times but they never paid attention, forgot things, lost access and credit cards etc. We completely understand though that in their seventies these things can be difficult to do and remember.

Svetlana Danilova - in-Ch (cont'd)

Q. And then at paragraph - pardon me, tab 83.

A. Yes.

Q. We have a further letter and I say further because this one is dated January 24<sup>th</sup>, 2012 from yourself and Mr. Danilov to Tim Robertson.

A. Yes I believe - I do not recall the exact, actual events - the exact events if he called again or we called him. I just - I can see that we sent the letter in response to some request, like we always did.

Q. Yes so if you can read paragraph 2 of that letter please.

A. Based on current circumstances we have determined the amount of monthly support as \$1,022.00 to be trusted to Alla and Valentin's CIBC account which we have already indicated but by sending you a void cheque we are intending to transfer this support on the first day of each month.

Q. And if we look at page 472 at that same tab, 83, we have the CIBC account details and did you transfer \$1,022.00 in January of 2012?

A. Yes we did.

Q. Was that in one payment or two?

A. It was done, at this time I remember that the Nikityuks actually what they were doing, at some point, they used the other draft of the account, the other draft was of \$2,000.00 and this is how they created some mess in the account so we should have managed this situation then they withdrew - so we are talking about.

Q. It appears that there is an internet transfer, January 3<sup>rd</sup>, 2012 for \$430.00, would that have been transferred by yourself or Mr. Danilov?

Svetlana Danilova - in-Ch (cont'd)

A. It appeared that they withdrew \$1,700.00 - they just withdrew all the funds, everything on the account and they probably took overdraft.

5 Q. Ms. Danilova, may I assist you, if you go back to page 471 and read paragraph 3 of your letter.

A. Oh. This is - for the month of January we transferred \$430.00 on January 3<sup>rd</sup>, 2012 and the rest of \$592.00 on January 23, 2012. That comes to \$1,022.00 in total. The next transfer due is February 1<sup>st</sup>, 2012 in the amount of \$1,022.00 accordingly. I'm sorry, yes - I - right now I do not remember details how we did those transfers. Yes, it appears so.

10 Q. And do you recall whether you continued to make those transfers to Nikityuks?

A. Yes of course.

15 Q. And finally at tab 84, we have a letter signed by yourself and Mr. Danilov addressed to Mr. Robertson at Ontario Works County of Simcoe.

A. Yes.

20 Q. This letter is dated April 12, 2012 and so could you please read paragraph 2 of that letter?

A. Based on current circumstances we have determined the amount of monthly support as \$1,022.00 to be transferred to Alla and Valentin's CIBC account, which we have already indicated by sending you a void cheque. We are intending to transport this support on the first day of each month. Yes, and the following paragraph explaining how we did it. Yes, that's right.

30 Q. So I just have a few more questions, you can put the Exhibit aside for now. I want to ask you a few questions regarding the impact of this claim and this action.

Svetlana Danilova - in-Ch (cont'd)

Are you able to sponsor other family members to come to Canada?

A. No.

Q. And do you have any interest in sponsoring other family members?

A. I have my biological father still living in Russia, yes I do. I have an interest in sponsoring another family member.

Q. And we've heard evidence that this matter has impacted your family financially, could you talk a little bit about that?

A. Of course I indicated this fact in my first letter I sent to YMCA and the letter was dated October 26, 2011. There is a clear paragraph saying that this situation, this YMCA appeared to be involved puts the family in financial trouble and it was October 26, 2011 for which letter I didn't receive any response. And since that time where we allow, it's May 2016, almost five years, it's just ongoing trouble after trouble. All our intentions to develop our own business absolutely destroyed. All the business destroyed because we are - didn't have any money and of course any business needs money to be successfully operating. There are so many aspects of that including family destroyed absolutely, YMCA did a great job here, my mother turned, absolutely turned against the family even emotionally she is - I can see and everything. Even in relationship to our daughter and this is - visitation is just horrible. All aspects starting from financial, emotional, family destroyed, reputation - absolutely ruined in the community not just in Barrie, not only amongst the Russian speaking people but the actually Barrie community and the reputation is unrepairable here. It cannot be repaired in any

Svetlana Danilova - in-Ch (cont'd)

5 means at this point. Reputation ruined in all - actually in the many banks here, in social services, Immigration Canada. Now the social services do not talk to us, we are abusers and this - like this stamp on my - I don't know, on me, I consider this like a stamp on me as a mother abuser. I am a mother abuser everywhere and this is why actually I am here. I am not a - it has never happened, never ever happened, anything what I was accused in.

10 Q. With regards to the damage you say have been caused to your relationships, could you tell us a little bit about friendships or other family members and how those relationships are today?

15 A. I can give you for instance, as I said when parents arrived we took them to, to introduce them to all of friends we have. We took them to the family - actually this is a very important family of friends for us, the family of Alex Trabokov (ph) who found the first job for my husband here and they also have their mother immigrated from Ukraine living with them and after my parents left, my mother continued to communicate to, you know - their mother living with them.  
20 After that I received a call from Rena Radinomova (ph) and she said that I did horrible things...

25 MR. MAE: Your Honour, we - I don't need to say where we're going with this. I'm not sure that this witness is going to be called so.

30 THE COURT: All right, we don't need to hear what someone else told you unless they are going to be giving evidence in this trial. I think the issue was your own feeling about damage to your relationships. Your own thoughts or ideas, not what somebody else said.

Svetlana Danilova - in-Ch (cont'd)

Anastasia Caspers - in-Ch

5 A. All the things that was said - were said about me that I took what didn't belong to me, all of those things, my reputation is ruined completely.

MS. CHAPMAN: Q. And do you still have a relationship with those friends?

A. With some didn't because they didn't - they do not talk to me.

10 Q. Those are my questions for Ms. Danilova, thank you.

THE COURT: You can step down for now. We will begin your cross-examination after we've dealt with the next two witnesses. I'm going to brief adjournment to get another bench book and at that time you can get the witnesses ready.

15 MS. CHAPMAN: Yes.

THE COURT: In whichever order you prefer, so I will return in about five minutes.

20 RECESS TAKEN

UPON RESUMING

THE COURT: Ms. Chapman are you ready to proceed with your next witness?

25 MS. CHAPMAN: Yes, we are. Anastasia Caspers.

ANASTASIA CASPERS: (AFFIRMED)

EXAMINATION IN-CHIEF BY MS. CHAPMAN:

30 Q. Your Honour, if I'm not mistaken we're going to have the witness read her affidavit on to the record.

THE COURT: I don't think we - I think the policy

outlined this morning that they would continue with cross-examination, the affidavits having been filed.

MS. CHAPMAN: Yes.

THE COURT: I think that was the procedure but if you want to ask them if they adopt and update the affidavit, that's fine.

MS. CHAPMAN: Okay.

THE COURT: If that's - I think the agreement was that it was - we would just proceed to cross-examination.

MR. BORNMANN: That's correct Your Honour. The evidence will be in as set out in the affidavit and proceed directly to the cross-examination.

THE COURT: All right. So.

MR. MAE: However, Your Honour, you did say one thing which I think is fairly fundamental, not only should the witness adopt the affidavit but if there is any update, I think we should hear that.

THE COURT: All right, so I will let Ms. Chapman go through that issue with this witness.

MR. MAE: Thank you Your Honour.

MS. CHAPMAN: Yes. Q. For the record, the affidavit of Anastasia Danilova is Exhibit 6. And to confirm, Ms. Caspers, Danilova is your maiden name?

A. Danilova is my maiden, yes. Caspers is my married name.

Q. And do you recall this affidavit?

A. Yes, I wrote this affidavit.

Q. And do you recall swearing this affidavit,

the date of the affidavit is located on page 4.

A. Yes.

Q. It appears to be sworn in Toronto on May 1, 2013?

A. Yes.

Q. And have you had an opportunity to review the affidavit?

A. I have reviewed the affidavit.

Q. And is there anything that you would like add to the evidence you have provided by affidavit?

A. No, there is nothing anything I need to add or change. The only thing that is just a statement of 5, my age and where I work, I can update that information, that's not current but my statements and that data beyond that, I do not need to change and I agree to.

Q. Okay.

THE COURT: All right, I don't think we need an update on those issues.

MS. CHAPMAN: No I don't thing so.

THE COURT: Mr. Bornmann do you wish to go first?

MR. BORNMANN: Thank you.

CROSS-EXAMINATION MR. BORNMANN:

Q. Good morning Mrs. Caspers, my name is Eric Bornmann, I'm the lawyer for Alla Nikityuk and Valentin Nikityuk.

A. Good morning.

Q. And my understanding is that you reside in Germany now, correct?

A. Yes I live in Germany.

Q. Ms. Caspers, if I can direct your attention



to paragraph 10 please.

A. Yes.

Q. The affidavit it reads, during the weekend of April 20<sup>th</sup> to 21<sup>st</sup>, my husband Nicholas Caspers and I made a regular trip to visit my parents, which on average we take once a month, correct?

A. Yes.

Q. And you would agree that your first hand knowledge as to events in the house in Innisfil are limited to those visits, correct?

A. Of what's happening in the house, observing in person, yes of course. I of course can see what happens in the house when I'm there. I heard about it also, I occasionally talked to my parents on the phone and at that point I also communicated with my grandparents over the phone.

Q. Correct. However, in terms of events that you personally witnessed at the house, those would have been limited to the occasions in which you visited, correct?

A. Okay, yes.

Q. And on average is it fair to say that your visits were one to two day durations?

A. It was a regular trip, basically once a month we would come on Friday night and leave on Sunday, so it was two nights, three days that we would be there.

Q. If I can take you all the way to paragraph 15 please and I'm just going to read the paragraph here, during one of my returns to the house, and I just for the court's benefit we are not speaking of the weekend in question August 20<sup>th</sup> to 21<sup>st</sup>, 2011 - during one of my returns to the house I found my mother and grandmother having a discussion about social housing in the kitchen. During this discussion my

mother was explaining to my grandmother why she and Valentin do no qualify for social housing, primarily because they are under the sponsorship agreement and have a high personal income. Do you believe - so you believe that the Nikityuks had  
5 a high personal income at that time?

A. I believe that the income and the money that they had access to for their living situation was sufficient that they would not qualify for the social housing. That there was no need in social housing.

10 Q. And did you understand that the Nikityuks had access to that money?

A. Yes.

Q. Would it come as a surprise to you if I told you that the Nikityuks did not have control over more than  
15 \$600.00 a month?

A. No that's not a surprise, they had access to the money, to live. And also they had money that were receiving from Russia.

20 Q. But I want to go back to this word, high personal income, is the \$600.00 a month of income they had access to, was that your understanding of their high personal income or was it more than that?

25 A. I think the intent here was not to say that, however you define an income, the intent was here that their living situation and the quality of living at the hand, would not qualify them for social housing.

30 Q. And what was your source of your information about the Nikityuks' income at that time? I take it you were not checking their bank accounts personally?

A. No I was not checking their bank account. It was the impression that I had when I visited. I do not know

exactly how much money they were getting, I do not know exactly what they were getting but I know how they lived in the house and I know the clothes they wore, the food they ate, the access to the car that they had. From there I can imply  
5 that the income was sufficient or that it was high enough not to qualify for social housing.

Q. I just want to carry on where we left off, I joined the conversation and also started explaining to my grandmother the situation with social housing and how they do  
10 not meet the requirements. I suggested that they should have a discussion about alternative options for living independently which do not include social housing. Did you know of any other efforts by the Nikityuks to - I'm just going to use your words, are you aware of any alternative options for living  
15 independently that were pursued by the Nikityuks at that time?

A. I know that previously my parents and during all of this time, my parents were very open to getting an alternative solution, like, getting a condo and later in my affidavit I state one of those examples. So an alternative  
20 that I would have had in mind, and what I had in mind here while writing it, is that they could discuss with my parents if they could live separately in a condo.

Q. And were there any other examples that you recall of the Nikityuks pursuing alternate options for living  
25 independently. Were your parents supporting - sorry let me rephrase that, so you indicated that one example of your parents' openness to alternate independent living was the separate condo and we will come back to that in a moment, were there any other examples, are there any other examples that  
30 you recall?

A. No.

Q. Having, now just carrying on this idea of alternative options for living independently, which do not include social housing, did you know that Alla and Valentin had on a number of occasions spent the day in consultation with your parents looking for rental apartments in and around Barrie and on each one of those occasions, after they would return home at the end of the evening, your parents would advise that on reflection, no we cannot proceed with renting you a separate apartment.

A. I actually do recall that that has happened but I don't know the details of those conversations but this is possible that, yeah, yep.

Q. I just want to continue reading on, moments later my step-grandfather joined the conversation, he shortly switched to a high and aggressive tone, stating that my parents do not let him and Alla live independently, specifically do not allow to apply for social housing and that this leads to a lot of fights in the house and makes life miserable. Would you agree that this was a sign that Mr. Nikityuk was deeply unhappy with life in the house?

A. I think at that point when the conversations get to this discussions, because the conversation about social housing will go on, I think before I witnessed this conversation, there was tension in the house because the discussions did not have a resolution but until that day I did not see or did I not hear any specific complaints about the living situation in the house.

Q. Okay.

THE COURT: Excuse Mr. Bornmann, is Mr. Caspers in the courtroom?

MS. CHAPMAN: No I don't believe so.

MR. BORNMANN: No.

THE COURT: All right, I just wanted to make sure. Thank you.

5 A. I do want to - sorry, I do want to emphasize here that the tension during that conversation was mainly due to the topic of conversation and that was the social housing and the whole argument was - was not about living separately it was about living in the social housing.

10 MR. BORNMANN: Q. Yes, but I put to you that the core of the matter is the Nikityuks' desire at that time to live independently, do you agree that that's probably in fact the case?

15 A. I understand they desire to live independently and I agree that they, by that point maybe wanted to live independently but I do now know of any specific complains before that point, why they would want to live independently.

20 Q. Okay. And I note here that you write, I kept emphasizing during this argument and later during the day when talking to my grandmother that to make the living situation better, an open discussion about living separately should take place between them and my parents but not in the context of social housing. Right?

25 A. Yes.

Q. So my understanding is that you're attempting to play peace maker here and identified that living independent is an issue that there needed to be an open discussion about right?

30 A. Yes and I fully, generally support and understand if someone - if there are two families living in the same house and it is up to them to decide whether the

situation makes sense or not and then they should have an open discussion about. And again, the problem that I had during this - well not the problem but the conflict in this context was really that the conversation was not open, it was not that all options were put on the table, for example even that you brought up the possibility of rental apartment, possibility of buying a condo. In comparison to having an option of living in social housing, that was not presented. It was only always about social housings and that was the difficulty, was that discussion that you could not go beyond it.

Q. Okay. Ms. Caspers, I would like to turn to the issue of the bruises, you would agree with me that if your grandmother had sustained bruising in her shoulder, upper arm area that you may not have seen those bruises unless she chose to show them to you, correct?

A. I think I would have seen the bruises if they were there because, I can understand that you may be wearing different clothing that could conceal the bruises but I'm pretty sure on that day I was close enough to them and it was actually hot outside so everybody was very minimal clothing that would see the bruises if it would be up to the point of a tank top because I pretty sure on that day my grandmother was wearing a tank top.

Q. And, okay, you would agree with me however that bruises don't necessarily show up right away when you sustain a bruise.

A. Sure, I don't have a medical expertise but.

Q. Did you - let me draw your attention to paragraph 18 on the second page and I will just read it, the social housing discussion with my grandmother and step-grandfather on Sunday, August 21<sup>st</sup> was the first time I heard

my grandmother or step-grandfather talking about living independently and the emphasis was on the social housing option. So this is August 21<sup>st</sup>. However, my parents had been considering buying a separate condo for Alla and Valentin to live in before that. For example, on July 25<sup>th</sup>, 2009 I visited my parent's model condo as one of the potential options for buying. It's true though that when you first went to see that condo it was going to be for you originally wasn't it?

A. No, that's not true at all. That was never for me.

Q. So can you help - help me understand what's going on here because in August you're saying you're hearing for the first time about the parents wanting to live independently but a number of months ago, over two years ago, your parents were looking at a condo for the Nikityuks.

A. Okay, the situation was that this was the first time I heard this as being openly - as a discussion, that there was some sort of conflict and they expressed actively the desire to live independently. However, as a common-sense, like I mentioned, family can decide to live independently and it was - it was an option and one of those options it would be to get another condo, but they never - the condo was never for me. It was only for the purpose of potential living them independently. Like I said, it's always an option in a family to live independently. It doesn't have anything to do whether anybody expresses a desire or not. In the first part I stated that was the first time I heard them actively say and also resulting in conflicting discussion, that they want to live independently.

Q. Your grandmother is going to testify that this condo was going to be - was being purchased for you, that

your parents wanted you to return to Barrie and live in the Barrie area and when you said no, she begged your parents - she asked your parents to let her and Valentin take the condominium and then your parents said no.

5           A. Okay so, again, I state this for absolutely for any record, all records, I never intended to live in Barrie, first of all. Second of all, this condo was never planned to be purchased for me, I never had any desire to live in Barrie, I never lived in Barrie, never wanted to live in  
10 Barrie. Never had any claims on that condo, I saw that condo, my parents showed me the condo and it was always a condo where my grandparents would live in. I would never have lived in that condo, I never planned to.

          Q. Well you would agree that it is a little odd  
15 if the Nikityuks are interested in living independently it would be a little odd to buy a condominium that is two years away from completion, wouldn't you agree?

          A. This is exactly why it was considered as an option because when that condo would be built that option  
20 would be there, to live independently. If anybody wanted to live in that condo. I never wanted to live in that condo. So it was the obvious choice that my grandparents could live in that condo when it was built, why not.

          Q. And it is a little odd that for an elderly  
25 couple your parents would have selected a two floor condominium?

          A. The house right now also has two floors and there were never any problems with that.

          Q. And your grandmother is going to testify  
30 that, while what you just said a moment ago may in fact be correct, that you had no interest in living Barrie, your



parents were certainly very interested in having you live in  
Barrie, isn't that right?

A. No. I don't understand why my parents would  
be interested in me living in Barrie. Other than some sort of  
5 parental connection but there was never any substance, it  
never made any sense for me to live in Barrie. In my  
specialization there are no jobs in Barrie for me to live at  
and I'm pretty sure my parents would understand that. From a  
career perspective, from a professional perspective and from  
10 an educational perspective it would never make any sense for  
me to live in Barrie. I would not think that my parents would  
have any intentions for me to live there.

Q. I think - one final question, I see that the  
affidavit was sworn on May, 2013 which was just shy of two  
15 years after the events in question happened, correct?

A. Yes.

Q. And, so the source of your information, you  
indicated that you parents were considering buying a separate  
condo for Alla and Valentin to live in, your - who - what was  
20 the source of your information that you write, however, my  
parents have been considering a separate condo for Alla and  
Valentin before that, how do you know that?

A. Sorry for which date?

Q. Sorry, take you back to paragraph 18.

A. So that's back on 18, so yeah.

Q. August 21...

A. My parents would be the source of that  
information.

Q. Okay and the Nikityuks did not attend with  
30 you on July 25<sup>th</sup> did they, when you went to the condo centre?

A. No.

Q. Okay. Those are my questions Your Honour.

THE COURT: Thank you Mr. Mae do you have any questions?

MR. MAE: I do Your Honour, yes.

CROSS-EXAMINATION MR. MAE:

Q. Mrs. Caspers...

THE COURT: Perhaps you should indicate who your clients are.

MR. MAE: Oh certainly Your Honour. Q. I am for the YMCA and Yana Skybin.

A. Okay.

Q. You would agree with me that family conflicts are never pleasant?

A. Sorry?

Q. You would agree with me that family conflicts are never pleasant?

A. Yes I would agree with you.

Q. And you're in a pretty awkward position, aren't you, in between the middle of your parents and your grandparents.

A. Yes.

Q. When did you arrive in Canada to give evidence, did you arrive yesterday?

A. Yes we arrived yesterday.

Q. And then who picked you up at the air port?

A. Actually we rented a car, so we drove ourselves.

Q. And so where are you staying?

A. We're staying at my parents.

Q. And have your parents told you about this

court case?

A. Yes of course.

Q. And have they told you about what has been happening in the court case up until to date?

5 A. At a very high level that my dad had his time last week and my mom had the time yesterday and this week.

Q. And did they tell you about the cross-examination process, what evidence was provided to the court?

10 A. No they just told us that there was a cross-examination.

Q. And you're aware, of course, in these proceedings that your parents are suing your grandmother and grandfather for a lot of money.

A. Yeah, okay, yeah.

15 Q. Well you say okay as if it's a question.

A. Yes.

Q. So you are aware that your parents are suing your grandparents.

A. Yes.

20 Q. Tell me about the relationship with your grandmother before these events, were you close?

A. My relationship.

Q. Yes.

A. Before which events, be specific.

25 Q. Before your grandparents left the house, you were close with them?

30 A. I think it was a good relationship, I wouldn't say I was extremely close. Mostly because we lived apart through most of my adult sort of say, years. But it was a good relationship.

Q. And, if I'm not mistaken, before you came to

Canada you lived with your grandmother and Valentin for some period of time.

A. Yes.

5 Q. When was the last time you actually spoke with your grandmother and Valentin?

A. As of today.

Q. Today you spoke with them?

A. No, as of today?

Q. As of today, yes.

10 A. It was more than a year ago because the last time I spoke I was still in Canada. So I have not spoken to them since I moved to Germany.

Q. So when did you move to Germany, just to give us some idea.

15 A. Okay I moved to Germany in December, last year, so December 2014.

Q. So you've spoken with them since they left the house.

A. Yes.

20 Q. In your view, is your grandmother a dishonest person?

25 A. Not generally, however, since this whole thing started, I - I cannot say that for sure because we are here in this case and I believe what my parents are saying is true and by definition, because there are a lot of statements made against what my parents are saying then I must assume this is not true, and I believe that's not true.

30 Q. And so what you're saying then basically is you're choosing to believe your parents rather than your grandmother.

A. It's not just a choice that is not grounded

upon anything, it's a choice that is grounded of my own observation and my own experiences. I believe my parents and I trust my parents but also because I think I have enough understanding and recollection of the events to be pretty sure  
5 that my parents say it truth.

Q. And it would be fair to say that you love your parents absolutely.

A. I love my parents; I don't know what absolutely means.

10 Q. You would do anything for them.

A. It's a very generic statement and I wouldn't necessarily agree to that.

Q. Well you've flown half way around the world to give evidence in this case.

15 A. Yes because it is important and I wanted to make sure that my opinion is well represented and I can express everything I wrote in the affidavit and this is.

Q. So your opinion. What about Valentin, were you close to Valentin, your grandfather - well he's your step-grandfather to be precise.

A. I was probably less close to him as to my grandmother but it was again, before this whole thing started, I think a good relationship.

25 Q. Now paragraph 6 of your affidavit, you speak about the - your time at university and the finance arrangements, were you parents ever supporting you through university, did they ever pay any tuition or give you allowance?

30 A. My parents only paid for the tuition in the first year but after the first year - that was basically the first year in Canada I lived with them and they paid the first

year of tuition. After the first year in university I did not have any support from my parents. I could support myself.

Q. So when you say the first year in Canada, that would have been 2004 then?

5 A. Yes basically the school year because it is in the context of university tuition, the school year of starting from 2003 September and then the school year after that. And so that tuition was paid by my parents. After that though I was fully supported through OSAP and like I state  
10 here, other sources of income but there was no dependency on my parents.

Q. So just to put things in context, so when you - when you came to Canada in 2003/2004 you would have been - that was your first year of university.

15 A. That was the first year of Canadian university. I can mention when I lived with my grandparents in Russia, I actually completed first year of university in Russia.

Q. So what age would you have been?

20 A. What, sorry?

Q. What age would you have been?

A. So I was 17 when I moved to Canada.

Q. And when you were living with your  
25 grandparents in Russia was that at the time when your parents were also living in the same apartment or were they living in Latvia at that time?

A. No, no my parents were living in Latvia, I was living with my grandparents in their apartment in Russia.

30 Q. And generally speaking, how would you have described the relationship between your father and Valentin while they were in Russia, was it a close relationship or?

Anastasia Caspers - Cr-ex (by Mr. Mae)

5 A. I'm not sure what you define as close relationship, it wasn't like they were calling each other every day. I think it was a normal/average relationship of what is - the family tie, a husband of a mother in-law. It was not particularly close; they were not best friends but I'm not aware of anything else.

Q. So they would have their ups and downs, they would have their disputes, their disagreements.

10 A. Like in any family, I guess that's a fair statement. But family would come together for holiday's, birthday's, you would call for birthday, like I don't know - like a very standard amount of interaction. Nobody was avoiding anybody but it wasn't best friendship.

15 Q. So, exactly, so - so basically the relationship can be cordial and then there could be dispute, it's just the natural relationships between people. Would you agree with that?

20 A. Yes. Of course relationships can be different and that relationship was - I would call it normal in the context of family ties of the fact again, that we lived in different countries, there were phone calls, there were visits but there wasn't anything to stand out.

25 Q. Your affidavit, you indicated earlier on that you wrote it, what do you mean by that, did you physically write out this affidavit?

A. Okay I typed it.

Q. You typed it.

A. I typed it, yes.

30 Q. So this was your wording.

A. This is completely my wording, I typed the whole thing from the beginning to the end.

Anastasia Caspers - Cr-ex (by Mr. Mae)

Q. And there fore you typed your husband's affidavit as well.

A. No my husband typed his own.

Q. He typed his own.

A. Yes.

Q. Okay. Why was the affidavit sworn in 2013? Why was it prepared in 2013?

A. The reason the affidavit was prepared is that my - my father actually asked me to prepare in response to the letter that is the appendix to that affidavit and the - that was brought up to my shortly before this was signed.

Q. Okay. So let's look at paragraph 1 of your affidavit. You swore, I'm making this affidavit in support of the legal action of my parents against the YMCA and Yana Skybin.

A. Okay.

Q. No mention of your grandparents in that first paragraph.

A. No.

Q. Why not?

A. I think because it was presented to me as a response to the letter from Yana and in that context it appeared to me that it was just against the YMCA and Yana, it was just the context.

Q. But so you were aware at that time that your parents were suing your grandparents?

A. I don't remember; I may not be aware at that time.

Q. Before your grandparents left the house in October 2011, did you have any discussions with them about financial matters?



Anastasia Caspers - Cr-ex (by Mr. Mae)

A. No, not well - not concrete enough that I could recall. Like it wasn't, no.

Q. So just to ask the question in a different way, did you have any discussions with your grandparents concerning the financial arrangements between them and your parents?

A. Okay. I was not at that point very into details of where the money came from, what accounts and what kind of access they had, so I was not in those discussions at that level of detail.

Q. And were you aware that at some point in 2008 that all of your grandparent's money that they had sent from Russia had been lost in the stock market?

A. I think it's not a fair statement of...

Q. Well, well please answer the question, it's not a question of whether it is fair, counsel can object. Were you aware that they money your grandparents sent over was lost in the stock market, yes or no?

A. I don't think that's a yes or no question, I'm sorry.

Q. Well it is a yes or no question with respect. Were you aware in 2008...

A. I'm aware that the money was lost in the stock money. I am aware that the grandparents brought money to Canada but there is - which exact money was lost in the stock market, I don't think anybody can say but it is true that there was a recession in 2008. My parent's business was heavily tied to the stock market, of course, and therefore they had losses in their business with respect to the money that was invested in that business and some of the money that was invested in the business was the money that my

grandparents brought. But also that money, it's the same money that is used for the business, for the stock market, buying food, for paying the house etcetera, so I cannot answer your question yes or not, this is where I'm coming from.

5 Q. So when did you become aware that all the money was lost.

A. Again I cannot - I'm sorry I cannot answer that question because I don't think that is a...

10 Q. Forget about the definition, let's just focus on the words, the money. When did you become aware that the money was lost?

A. I think it's a gradual process as the recession hit. So I don't have an awareness of exact date when the money was lost but I know that over the course of 2008 and  
15 2009 when the general financial situation and the stock market was low, I know that the money was lost during that period of time but I do not have a knowledge of the date, exact amount of money, which money it was and I don't think anybody could actually say that.

20 Q. Correct me if I'm wrong, you're a financial analyst, you work for BMO?

A. I worked for BMO when I lived in Canada.

Q. Yes.

A. And I was in credit risk management, yes.

25 Q. So would it come as a surprise to you that the money, let's just use the words the money, was all lost over a period of days?

A. I think it's possible that most of the money could be lost over the period of days but again, I don't know  
30 the date.

Q. Okay.

Anastasia Caspers - Cr-ex (by Mr. Mae)

A. And still I don't think it's all money lost at the same time.

Q. Well let's just - let's just - you don't think it was all lost at the same time.

5 A. I don't think so.

Q. Okay.

A. But again, I don't know the date or the amount of money.

10 Q. Did you have any discussions with your grandparents at any time before 2011 about the money being lost?

A. With my grandparents.

Q. Yes.

A. I don't think so.

15 Q. Okay.

A. I don't remember.

Q. Okay. Presumably you would have been aware that the loss of the money caused financial hardship to your parents, were you aware of that?

20 A. I don't know again, what you define as financial hardship because it can be a very broad term.

Q. Well, okay.

25 A. I do not think my parents lived in poverty but they could not run, for example, the business and some of the money that was put in the business was lost.

Q. Well let's put it into some context.

A. Okay.

30 Q. There was about \$200,000.00 to \$250,000.00 that was lost. I - that would have been an extreme loss based upon your family's finances.

A. Okay. That is a significant amount of money

but if it is invested in business and house, house is there, business is there but it is not potentially as active as it could have been if this money wouldn't have been lost, of course. But it's not like they lived in poverty or had nothing to buy food on. I think that's the hardship question.

Q. Well maybe then we're getting stuck in terms as opposed to concepts. \$250,000.00 was a lot of money to your family correct?

A. Yes.

Q. And the loss of \$250,000.00 would be significant?

A. Yes.

Q. Okay. And that's the reason why they all ended up living under one roof at Rankin Way, do you recall that?

A. Okay I don't know if it was the reason, I think it was a decision at a point that financially it would make sense. Of course there was a high financial reason to live under one roof.

Q. And when your parents moved into Rankin Way, I understand from the two affidavits that you first went there in 2009 with your husband to introduce your husband to them, so my question is, did you go to the house before that - before September 2009?

A. I made visits to the house to look at the house.

Q. I mean to visit family.

A. Yes to visit family, I went there yes. It is the same concept as approximately once a month or so, I made those trips rather regularly.

Q. So it was basically weekends.

Anastasia Caspers - Cr-ex (by Mr. Mae)

5 A. Yeah basically weekends, on average once a month.

Q. Okay and you were still in school at that time.

A. Yeah.

Q. Or university sorry.

A. University, yes.

10 Q. And while you were there, were you doing any of your - your own studies, any - were you studying while you were at the house at the weekend or was it all relaxation?

A. Probably both and depending on the weekend.

Q. And you - you remember the basement, the office in the basement?

A. Yeah.

15 Q. That was all set up by your father, the network, the computer network.

A. Yes it was, yes.

Q. And your father described himself as being referred to as a computer guy.

20 A. Yeah he did have a lot of computers so to say, they were set up in the basement as an office and to support the business.

25 Q. And did you work when you were doing your studies, were you working in the basement or in the office or did you work...

30 A. Actually, well most often - there is a bedroom in the basement, so the bedroom would be in the basement. But the studies, if I would do the studies I would do them either upstairs or in the - on the first floor, on the ground floor.

Q. And you said your father had a lot of

computers, what was it like a desk top, laptop in that basement?

A. Both.

Q. Both.

A. More than one.

Q. Yeah, printer?

A. Yes.

Q. Scanner?

A. Yes.

Q. And when you were at the house did you see or hear any arguments, any of the arguments - I believe you said you didn't in your evidence in-chief I just want to make sure I understood it correctly. So there were no arguments or disputes in the family while you were there?

A. Nothing that is major or beyond family discussions but no there was, again, I'm sorry but it again comes down to how you define an argument, nothing major that would go outside of normal family life.

Q. And at paragraph 9 of your affidavit you reference that you'd heard of Yana Skybin from your grandmother and step-grandfather, "when they lived with my parents the spoke of her as their friend." So, that was basically during normal family conversations.

A. Yeah it would be in the context of, at that time they were taking English classes, they were hanging out with this family, it was general or something just casual.

Q. And they never said anything about Yana Skybin that made you concerned?

A. Sorry?

Q. Did they say anything about their relationship with Yana that made you concerned?

Anastasia Caspers - Cr-ex (by Mr. Mae)

A. To be honest I never had real discussions with them about Yana, I heard her name mentioned as, like as a friend as I say here.

5 Q. Okay. Now I just want to take you to the weekend, incidentally in paragraph 10 of your affidavit you refer to the weekend of April 20<sup>th</sup>, but I would suggest to you that that's obviously a mistake because at paragraph 11 you're referring to August, so we'll just put that down as a typo.

10 A. No I think here it actually means that that was the weekend where my dad showed me the affidavit - no not the affidavit, but the letter of Yana and shortly after that then I wrote the affidavit in response to that and that was signed then.

15 Q. No I think that is a mistake in your affidavit, if you look at paragraph 10, you say "during the weekend of April 20<sup>th</sup>, 21<sup>st</sup>, my husband and I had made regular trips".

20 A. Yeah and this is when my father showed me the letter from Yana, as of December right, that's the letter that then I'm then writing my affidavit.

Q. Oh well there is no year.

A. There is no year and that could be misleading.

25 Q. Yes.

A. But I - I believe or at least I think that - I believe, the intent of this paragraph is to say that that was when my dad showed me the letter of Yana.

Q. Right, okay.

A. That's the appendix.

30 Q. Okay so the weekend you're referring to when you visited was indeed the August weekend.

Anastasia Caspers - Cr-ex (by Mr. Mae)

A. Okay.

Q. Okay. And you say at paragraph 14 of your affidavit that "on Saturday my grandmother and step-father left for a birthday celebration with their friends and I did not have a lot of interaction with them on that day." So why was that - were they in their room or?

A. Actually so we - this was the whole weekend, we were actually mostly outside building a gazebo and they were leaving, I actually think it's Yana's birthday, that they were going to that night and they left in the afternoon. I'm actually not sure where they were in the house because I was outside most of the day.

Q. And at paragraph 15 you refer to the discussion that you walked in on between your grandmother and your mother. When you joined that discussion, was it a heated discussion, was it already an argument?

A. When I - basically I was again outside most of the time and then I walked in, I went back to the house, the discussion was - it wasn't like people were just saying, let me rephrase it, it wasn't - it was an argument because my mom was trying to present the case about why social housing is not an option and my grandmother was pushing for the, no social housing is something that we want to go for.

Q. So it was already an argument.

A. It was already an argument.

Q. Okay and you joined in as a peace maker I believe.

A. I think that's fair to say, yes.

Q. And you seem to have some knowledge at that time about the social housing system, how did you gain that knowledge?



Anastasia Caspers - Cr-ex (by Mr. Mae)

5 A. Well I - okay, my knowledge was more like  
common sense knowledge and that - it wasn't that I  
investigated it, actually during the conversation I also  
learned from my mother when she was making her arguments but  
also just the whole concept of social housing and the  
sponsorship, I knew at that point that under the sponsorship  
you shouldn't be asking for social assistance. You are  
dependent on the sponsor and if the sponsor can provide for  
you the you don't need to search for social housing and in my  
10 understanding, you need to be in financial need to go for  
social housing.

Q. So basically it was a little bit of common  
knowledge and what your mother was saying.

A. Yes, okay.

15 Q. Did your grandmother, during that discussion,  
express why she wanted to live independently?

A. To be financial independent and to be  
independent and not to live with - that's the thing about that  
discussion, it was not very structured. It was really about,  
20 we want to live in the social housing by all means possible  
and we will get that and this is why it was so difficult  
discussion. And I say in the end that the outcome of the  
discussion is that my grandparents were still wanting to live  
in social housing and they didn't want to compare any other  
25 options. It was really about living in social housing.

Q. They - but they - the subject of why did not  
come up, is that what you're saying?

A. It was not discussed at that depth other  
than, well, they wanted to be independent. The statement was  
30 them was, it always about independence and I actually believe  
that the reason they might not have wanted to live in the

condo that was still paid from my parents is because it is also not independent. In my understanding where my grandparents were coming from about the social housing is that this is a solution that really allows them to get their own source of money and be completely independent from my parents. But it wasn't why...

Q. But why was never discussed with you in the room.

A. Why was not discussed.

Q. Okay. And you continued to say in your affidavit that Valentin joined moments later and he shortly switched the a high and aggressive tone. What do you mean by that?

A. It was very confrontational. It was basically right up front, I think he came from upstairs, it was 'are we not allowed to - we are not allowed to do what we want and we need to live - we want to live in social housing and your parents don't let us live in social housing.' And it was right away, like, it wasn't, oh what are you guys talking here about, it was I want to live in social housing and I'm not allowed to.

Q. So Valentin said, your parents won't allow us to do what we want, that's what I understood you just said.

A. My parents would not allow them to live in social housing.

Q. But I think you actually said, my parents won't allow them to do what they want.

A. Live in social housing.

Q. And so this high and aggressive tone, is it unusual for Valentin to get to that stage, have you seen him at that level before?

Anastasia Caspers - Cr-ex (by Mr. Mae)

5 A. Yeah that was not the first time that I would see an argument and that my grandfather would be in.

Q. And who - that wasn't the first time.

A. That wasn't the first.

10 Q. Okay so, what about the other arguments you would have seen then, who would they have been with?

A. So they - it would be with my parents because that's the only people I saw my grandparents interact with, okay.

15 Q. And in terms of high and aggressive tone, because again these are your words, I'm trying to understand, so was he screaming, yelling?

A. At that - in this discussion, yes.

20 Q. Yes. Was he gesturing, were his arms flailing around?

A. Yes.

25 Q. And how was your mother reacting to that, did she take it up a notch, was she shouting back?

A. Of course at that point the discussion became a little bit more at higher tones. And it was - it was difficult to resolve it, like I mentioned many times, it was not a very structured discussion. It was very - two sides trying to present - express their points and there was no other way but to go to higher tones.

30 Q. So as I understand that and I'm not trying to put words into your mouth but, conversation, somebody starts shouting, somebody shouts in response and it escalates, is that a fair assessment? Everybody was trying to make their point loud - loudly?

A. At the end that conversation was - okay, not in the end but there were points in that conversation that

everybody was trying to make their point loud.

Q. And you say in your affidavit in reference to Valentin at paragraph 15, I will read out the whole sentence if I may, to make it easier, "moments later my step-  
5 grandfather joined the conversation. He shortly switched to a high and aggressive tone stating that my parents do not let him and Alla live separately. Specifically, do not allow to apply for social housing and this leads to a lot of fights in the house and makes his life miserable." So he actually said  
10 his life was miserable, is that correct? Am I reading your affidavit correctly?

A. So I'm not quoting here and I also cannot recall exact words but the not being allowed to live in social housing and all the discussions that were - my understanding  
15 of that, that because there was so many discussions going about the social housing and living independently that, yeah, this was, you know, getting more and more often that they were talking about the social housing. I'm sure that that was not the first time that my grandparents and my parents talked  
20 about the social housing but I was not witness to those other discussions.

Q. Okay. But before you here, makes his life miserable, I know it is not in quotations but when you swore this Affidavit...

A. Yeah.

Q. ...you're understanding would be that...

A. I was understanding that because there was so many discussions about the social housing that it was not easy to live in the same house because you argue all the time,  
30 fundamentally disagree about whether you should live in social housing or not, is from my experience, because I was part of

one of those conversations, this was, like I said many times, it was not a very structured discussion and I can totally understand how it could be difficult because you live always discussing the same point all and over again and you  
5 fundamentally disagree.

Q. But going back to the word miserable, do you recall whether the word miserable was used?

A. First of all it would be in Russian, so it's difficult.

10 Q. Oh.

A. I do not know what I - like I said, I do not remember what exact words were used. The discussion was in Russian.

Q. Okay.

15 A. The translation is my best interpretation to the English.

Q. Fair enough, I will accept that. And we've already discussed that you were trying to calm things down, but before we get there, was there any discussion about any  
20 physical assaults or any...

A. At that point, no.

Q. No, okay. Was it discussed at any other point?

A. After this whole case started, yes.

25 Q. Oh after the case started but not at that time.

A. Not at this time.

30 Q. So you tried to calm things down and - so how did the - the discussion end, because you have this heated argument as I understand it and your Affidavit says at paragraph 15, I kept emphasizing during the argument and later

during the day when talking to my Grandmother, to make the living situation better. An open discussion about living separately should take place between them and my parents but not in the context of social housing. So...

5 INTERPRETER: I'm sorry Your Honour. Can you read that again?

MR. BORNMANN: Can I read it again, oh certainly.

THE COURT: For the interpreter, yes.

10 MR. BORNMANN: Q. Moments later my grandparents - oh sorry, wrong line. My grandmother - I've lost my line, I do apologize. Got it - I kept emphasizing during this argument and later during the day when talking to my grandmother that to make the living situation better an open discussion about living separately should take place between them and my  
15 parents but not in the context of social housing. So going back to the argument, it was in the kitchen?

A. Yes it was in the kitchen.

Q. And the kitchen window opens out into the backyard, the garden?

20 A. Yeah but it would be closed because of the air conditioning and the heat outside.

Q. So how did the - the actual interaction, that argument end at that point?

25 A. So it was - we were basically throughout the whole discussion sitting at the table in the kitchen. I don't know who sat at which spot but it was my grandmother, my mother and me and my grandfather was actually standing because he joined later and he was just standing. The end of this was basically, it was still about the social housing, I did try -  
30 like you see here, I was trying to make the point that this discussion could have been better or should be continued in a

more global context of just living independently because at that point, yes of course it was clear that they - my grandparents wanted to live independently and they were exploring social housing at the option and I don't remember exactly how it ended, it could be that everybody just left, I probably went back outside because actually I was just briefly going into the house and I got stuck in the kitchen in this discussion and I think I went back outside. I don't know what happened - well I think like, no, I'm pretty sure my grandparents just went upstairs and my maybe went outside with us.

Q. But then, as I read your Affidavit you then spoke to your grandmother later in the day as well.

A. Yes.

Q. And did she reveal anything to you at that time about life at Rankin Way?

A. To be honest I don't remember that conversation in details, it could be that she gave me more details and again, at that time it was pretty clear that they wanted to live separate but there was nothing that caught my attention that would really justify that urgently they need to live separately, it was.

Q. So would it be fair to say that during the discussions with your grandmother or while you were at the kitchen table that you were reassuring your grandparents to give things a try or that's how they would have understood it, that you were trying to tell them that things would get better.

A. So I think it was still in the context of, you should continue this discussion about living separately, until then you live together because well, there is not a lot

of, like I don't know, you can live in hotel or you continue living together until you can come up with some alternative solution and the intent that I had to end that conversation and to kind of hope that they would continue is really just  
5 have an open discussion with my parents about all options. But I did not get the feeling that that was to be all misunderstood because that was always - even if I would have said that it would still be coming back to the social housing so I did not feel like whatever I was trying to say in that  
10 conversation was really, like, yeah understood or followed through.

Q. You gave evidence earlier on with respect to the condo in Barrie, what was your understanding of the reason why the purchase of the aim of purchasing was withdrawn.

15 A. So I know that my parents had gone actually quite far with the condo, I actually believe that they put, even the like initial deposit for it so they were, would make me believe that they were quite determine to get that condo. I do think it went through because I think around that time my  
20 grandparents were actually quite sick and they needed some support in the house and I don't know if that was the reason they didn't want to move out because my mom needed to pay a lot of attention and take care of them, take them to the  
25 doctors, make doctor appointments and things like that. And it was always one of the reasons why living independently maybe was not the best option, at least in the context of talking to my parents, that my grandparents actually needed a lot of support.

30 Q. And when you say that, according to your parents, your grandparents needed a lot of support, what was the context of that, in what manner, what support?



Anastasia Caspers - Cr-ex (by Mr. Mae)

A. In the medical context, going to the doctors, again helping out, probably cooking and shopping and preparing food.

5 Q. And did you have any discussions with your parents prior to your grandparents leaving about your grandparent's capabilities, about their abilities to deal with things?

10 A. I think the language was always a question, I think to this day do not speak fluent English, so there was occasional understanding at least that its - it could be difficult if they don't speak the language to live completely independently. So that was one.

15 Q. Did your parents say anything negative about your grandparent's abilities to look after themselves? I will ask it in another way, I will ask it in a fair way.

A. Sorry.

Q. Did they express any concerns about your grandparent's state of mental health, about their competency?

20 A. The only thing that I can think of, but this is after all the court, all this case started and it was more like really understanding the substance of the case, understanding the impacts of social housing, it was - it was a lot of like, I had conversations with my parents on whether they understand what social housing actually is but it was  
25 after this case started. Do they understand that actually my parents are still paying for the social - like, and things like that. It was really about understanding.

30 Q. So what about your grandparent's ability to do things around the house such as use the TV or the appliances, any discussions about that?

A. I think it's - well discussions, it could be

that switching from English channels or like to get some Russian program like, funny remote discussions that happened but it wasn't like, it was just the household discussions of why doesn't the remote work or something like that, it wasn't anything major.

Q. But, so there were not discussions there about your grandparent's inability to use cell phones, the washer/dryer, the coffee maker?

A. There could have been some humorous discussions of when things don't work, nothing that I can recall specifically but I just can imagine that, it's just a household situation of this doesn't work, have you tried this.

Q. Just moving on to paragraph 19 of your Affidavit, the first part of the Affidavit you refer to your grandmother and step-grandfather telling you stories about their English classes at the YMCA, their friends and trips to festivals, et cetera. The second part of the Affidavit, the last sentence says, "they had all they needed, including full usage of a second car, their own credit cards, bank accounts, access to stores and cultural events." Am I understanding that that last sentence, the source of that information was from your parents or from your grandparents?

A. It was from - it was from both. Also from me being there, the times as we discussed, quite regular on weekends.

Q. But you had no specific details of any of those at the time?

A. There were a couple stories that my grandparents shared with me, if they would have taken these boat tours and they...

Q. Sorry, not the boat tours, about the

finances.

A. About the finances, no I did not have details on that.

5 Q. I'm going to suggest to you that on August 20, that weekend, you were aware of the physical altercation that had occurred between your mother and your grandmother, what do you have to say about that?

A. No, I was not aware of - no.

10 Q. I'm going to suggest to you that you're in an awkward position and you're embarrassed because if you reveal that you were aware of that discussion you would be angering your mother who sat in the court.

A. No that has nothing to do with that, absolutely nothing. I am standing here because I truly believe 15 there was no abuse, there is not justification for any of this and this is why I made this trip from Germany because none of this happened. There is no abuse on that day and I'm pretty we would be aware of this.

20 Q. Well you say all that, you're pretty sure but you're a scientist by background, you can't say positively can you because you weren't there.

A. I can say positively that nobody showed me the bruises from the day if I read Yana's statement and I'm sure that if there would be bruises on the arms I would have 25 seen them.

Q. But you can't say that there was not altercation, can you, because you weren't there when it happened. You can't say with absolute certainty because you weren't there.

30 A. Yeah but I truly believe there was no altercation, not with my parents and my grandparents and this

situation, I do not think there was a physical interaction.

Q. So you're suggesting that your grandmother has made all of this up?

A. Yes.

Q. And your...

A. I think that was made up, the whole bruise and the whole physical abuse was made up.

Q. You think?

A. Yes.

Q. Okay no further questions Your Honour.

THE COURT: Ms. Chapman any re-examination?

MS. CHAPMAN: No I do not, thank you.

THE COURT: Ms. Caspers you're excused, I just remind you to not discuss your evidence with any witnesses that follow or any participants in the case, do you understand?

A. Yes, thank you. Can I stay in the courtroom?

THE COURT: I don't see any reason why not; you've finished your testimony. So we will adjourn for a morning break and come back in about 15 minutes.

RECESS TAKEN

UPON RESUMING

THE COURT: Ms. Chapman?

MS. CHAPMAN: Yes, our next witness is Jan Niklas Caspers.

JAN NIKLAS CASPERS: Sworn

THE COURT: Good morning have a seat if you would like.

JAN CASPERS: Good morning.

EXAMINATION IN-CHIEF BY MS. CHAPMAN:

5 Q. If we could provide the witness with Exhibit  
7, thank you. Have you had an opportunity to review that  
document Mr. Caspers?

A. Yes I did.

Q. And do you recall swearing that document on  
10 or about May 1, 2013?

A. I do.

Q. Is there anything stated in that Affidavit  
that you would like to correct?

A. No.

Q. Okay those are my questions.

15 THE COURT: Thank you, Mr. Bornmann, do you have  
some questions?

MR. BORNMMANN: Yes Your Honour.

CROSS-EXAMINATION BY MR. BORNMMANN:

20 Q. Hello Mr. Casper, my name is Eric Bornmann,  
I'm the lawyer for Alla and Valentin Nikityuk. You indicate in  
your Affidavit that you do not speak Russian, right?

A. That's correct, I'm learning a little bit  
25 since then but at the time I didn't speak a single word of  
Russian.

Q. Or understand Russian.

A. Yes that's correct.

Q. So any conversations that you had with Alla  
30 Nikityuk or Valentin Nikityuk would have been have been  
between, you would have to use Svetlana, Anastasia or Pavel as  
an interpreter, is that right?

A. That's correct. There have been occasion when I was alone with them but we were not really able to communicate verbally.

5 Q. And I understand that in the period of time that you were visiting Innisfil, September - September 2009 until August 2011, when the events in question occurred, you were visiting about once a month, is that right?

A. That's about right, yes, about once a month.

10 Q. And...

A. Yes about once a month.

Q. And you would typically arrive on a Friday and leave on a Sunday?

15 A. We would arrive sometimes on Friday, sometimes on Saturday, typically leave on the Sunday or on the weekend, yes.

Q. And you would agree that your first hand knowledge of events in the house in Innisfil would be limited to those visits, correct?

20 A. That's correct, yes. I mean, my wife talked to Svetlana and Pavel regularly on the phone, sometimes I talked to them so I had some knowledge from that but mainly my information was during the visits, yes.

25 Q. But in terms of the events that you observed personally it would be limited to visits right?

A. Yes, personally I would only observe while I was there, yes.

30 Q. And I would like to take your attention, or draw your attention to paragraph six of your Affidavit and I'm just going to read it here and paragraph seven, "despite the language barrier, I don't speak Russian, Alla and Valentin don't speak English, Alla Nikityuk was interested and asked

questions would get translated by Anastasia or Svetlana. On the other hand, Valentin seemed rather unhappy about the occasional English at the dinner table. This first impression strengthened after further visits which happened on average  
5 monthly. Valentin showed no interest in me or in general family activities such as dinner. He often expected to be catered for and if he was not the centre of attention quickly lost interested and went to his room or started watching Russian television in a noise level that it was hard for other  
10 to continue their conversation." So I suggest to you Ms. Caspers that these all were signs that Mr. Nikityuk was deeply unhappy with life at the house, wouldn't you agree?

A. No I would definitely not agree. To me it seemed just he was not interested in me personally or he was  
15 not interested in people who would not communicate to him directly and give attention to him but it didn't seem to me that he was unhappy, was what he was generally catered for.

Q. And at paragraph eight, you indicate, "Alla and Valentin always had their needs taken care of" but as you  
20 agree previously you were not there very often, your observations are limited to those occasions in which you visited, correct?

A. Yes of course, I can only state what I was -  
25 when I was visiting, yes. But there was always food there and I saw them often going to the fridge and taking food out and there was always a full fridge, yes.

Q. And you indicated at paragraph 9 that you never - you never, ever observed abuse in front of me, nor any signs of abuse and then if you drop down to paragraph 11,  
30 during the whole time Anastasia never mentioned any bruises and I did not notice any. You would agree however that if the

bruises, if there were - if Alla Nikityuk in fact had sustained bruises on that weekend, is the allegation in this case, that you may not have seen them unless she or somebody else showed them to you, right?

5 A. Which weekend are you exactly referring to, the August 20, 21?

Q. That's correct.

A. Well on that weekend, I mean I was there and Alla Nikityuk, as far as I remember, she was wearing a tank  
10 top and so I would have seen these bruises on the arms and I definitely did not see any bruises there.

Q. But you would agree that if physical altercation had taken place but the bruises had not begun to present then of course you wouldn't have seen those bruises,  
15 right?

A. I guess so, yes.

Q. Those are my questions Your Honour.

THE COURT: Thank you, Mr. Mae?

20 CROSS-EXAMINATION BY MR. MAE:

Q. Yes Your Honour, Mr. Caspers, my name is Andrew Mae and I represent the YMCA and Yana Skybin. So I gather that you arrived back in Canada last night?

A. Yes, that's correct.

25 Q. And your staying at Rankin Way?

A. Yes, that's correct.

Q. And have you had any discussions of - I presume that Mr. and Mrs. Danilov have told you about these court proceedings.  
30

A. To some limit, I haven't talked to them on the phone recently, I talked to them a couple of months ago



but I haven't actually had to call or phone calls with them in the last few days or weeks.

Q. What about last night, was there discussion about this court case last night?

5 A. I mean, when I talked to it was with Pavel, it was limited to the importance of our statements and setting some dates straight.

Q. So he gave you some information.

10 A. No, no it was just a discussion. We were trying to remember like when we moved out and these things and when we moved into together and these things.

Q. And nothing is being said about what has been happening in these proceedings.

A. Not to me.

15 Q. Okay are you aware that in these proceedings that Mr. and Mrs. Danilov are suing the Nikityuks as well as the YMCA?

A. Yes.

20 Q. The Affidavit that you swore back in 2013, can you tell me how that was prepared?

A. My wife told me that there was a letter stating things that were not true about events happening, especially in this August 20, 21 weekend so that she was going to prepare this - an Affidavit by herself so I offered her  
25 that if there is any support I can give that I would be happy to state any facts that I observed truthfully.

Q. So who prepared this Affidavit, did you prepare it yourself or did your wife prepare it or?

A. I prepared it.

30 Q. Okay. At paragraph one of your Affidavit you swore, I'm making this Affidavit in support of the legal

action of Svetlana Danilova and Pavel Danilov against the YMCA and Yana Skybin, there is no mention in there of the Nikityuks, can you explain why?

A. I'm not sure.

5 Q. Were you aware at that time that the Danilov's were suing the Nikityuks for money?

A. You mean in 2013?

Q. Yes.

10 A. I think so but I'm not 100% certain, I would not swear on this.

Q. So as I understand it, you first went to Rankin Way in September, 2009?

A. That's correct, yes.

15 Q. And over the period of time that you were at Rankin Way were you shown around the house, were you given a house tour?

A. Yes.

Q. And do you recall the basement office?

20 A. I believe in September 2009 there was no basement office. In September 2009 the basement was still under - partially under construction and the first - I don't know exactly when the basement was done but at the beginning - we were staying in the basement.

25 Q. And - but you - in the office you saw all of the rows of binders with information in them?

A. There - what was in the office which I believe was upstairs, yes there were as in any office, there were a number of binders with stuff in it, yes. I never looked into those binders.

30 Q. No and I wasn't going to ask you that I was just recalling. So originally the office was upstairs and then

moved into the basement.

A. Yes.

Q. And did - I understand your background is in computers or you - you're a computer...

5 A. I have a diploma, a general degree which is a combination of a Bachelor and Masters in physics and I have a PHD in electrical engineering.

Q. So you're certainly well versed then in at least knowing what a computer is.

10 A. Yes I know what a computer is.

Q. I'm sure you know more than me. So when you're at the property at Rankin Way, do you recall any of the computer equipment that was there.

A. Not any specific details.

15 Q. Okay but you - you recall there being laptops, desktops?

A. Yes there were a number of desktops and laptops.

20 Q. And all the usually peripherals, printer, scanner.

A. Yes, yes.

Q. And would that have been up in the bedroom as well as - were they upstairs and then moved downstairs, do you recall?

25 A. I believe so, yes.

Q. Thank you. At paragraph eight of your Affidavit.

A. Yes.

30 Q. You swore, there was always food available, they had nice bedrooms upstairs, which I assume that you say you observed yourself.

Jan Niklas Caspers - Cr-ex (by Mr. Mae)

A. Yes, I was in them, yes, at times.

Q. And you also say, and Pavel subscribed to a number of Russian cable TV stations for them despite the large cost associated with it for him, what was the source of your information for that?

A. The price, I mean, at some point - I never subscribed to cable while I was living in Canada but I looked at the prices and I saw that foreign channels typically have a large price. So there was information from that of course, I saw the Russian TV channels on TV. In addition, Pavel had mentioned that to me, that the main reason he subscribed to them was because of them and I noticed that at sometime after they moved out the Russian TV channels were not subscribed to anymore.

Q. So you - you don't know when the Russian TV channels were unsubscribed?

A. Not exactly, no. But they were definitely still there whenever the Nikityuks were living there.

Q. At paragraph 9 of your Affidavit Mr. Caspers, you say, during all of these visits, up until Alla and Valentin moved out, I never ever observed abuse in front of me nor any signs of abuse. That's fairly specific, do you recall family arguments taking place?

A. There were discussions, yes.

Q. And they would have all been in Russian?

A. Yes.

Q. And so the - whatever information was given to you about what was said over the course of the argument was essentially translated to you.

A. Yes.

Q. But you do recall that there were arguments

between the Danilovs and Nikityuks while you were there.

A. There were discussions between them and there were also discussions between Pavel and Svetlana with each other, with Nikityuks with them, so it wasn't always clear  
5 that it was one side against the other.

Q. But when you use the word discussions, I'm using the word arguments.

A. I understand.

Q. So let's - I just want to make it clear  
10 because you - you turn it to discussions, there were arguments as in there were disagreements between them, so far as you were aware.

A. So if you define argument as a difference of opinion, yes then there were arguments.

15 Q. Yes. And were they heated, were they - was there shouting?

A. Voices were sometimes raised, yes. But not more than an average discussion that I have observed in any family.

20 Q. And you actually say at paragraph 10 of your Affidavit, you're referring to the - the argument or discussion on the weekend of August 20, that the level of emotions was well within a normal family argument. So let's deal with that, you were outside?

25 A. That's correct, most of the time, yes.

Q. And you couldn't hear what was going on.

A. Well it wasn't like I was very far away, it was - there was glass in between, yes.

30 Q. Yes. So you could see what was happening.

A. Yes.

Q. And how do you know or how did you know at

the time that it was, I will use the word argument specifically because you say, it became emotional, so let's ask about that first, what do you mean when you say which occasionally became emotional?

5                   A. Well I did enter once and a while to get some water or go to toilet, so then I could observe it also directly in contact and I saw that people were emotional there, it wasn't a very relaxed atmosphere, something you could notice without being necessarily understanding every  
10 word.

                  Q. Okay so when you say people being emotional, specifically who was emotional?

                  A. Everybody who was at the room at the time.

                  Q. So that would have been your wife.

15                   A. Yes.

                  Q. Alla Nikityuk.

                  A. Yes.

                  Q. Valentin Nikityuk.

                  A. Yes.

20                   Q. And Svetlana Danilova.

                  A. Yes, sometimes Pavel would be there with me coming in to get water too but he wasn't necessarily emotional, no.

                  Q. And who long, over what period of time do you  
25 say this discussion took place?

                  A. To be honest I'm not sure, it might have been an hour, might have been two, might have been half an hour, something in that time frame.

                  Q. So it was sufficient enough for you to have  
30 gone in a couple of times to get water and use the bathroom.

                  A. Yes.

Jan Niklas Caspers - Cr-ex (by Mr. Mae)

Q. And when you physically are in the kitchen, you describe people as emotional, were people yelling?

A. I believe at some point somebody might have used - louder, yes.

5 Q. And do you recall who?

A. It might have been Valentin, it might have been Svetlana, might have been Alla, I'm not 100% sure.

Q. You mentioned earlier on, my friend asked you about your observations of Valentin?

10 A. Yes.

Q. When he went to his room, so you say, and watched the Russian television at a noise level that made it hard to continue a conversation, tell me a little bit more about that, what - did that cause any friction?

15 A. Me personally, it caused some discomfort, yes.

Q. Yes but did it cause any friction between the Danilov's and Mr. Nikityuk, was anything said to him, turn it down, were there any responses.

20 A. I believe I asked my wife once or twice if she could ask him to turn it not as loud but I don't remember Svetlana or Pavel becoming - yelling at him or anything.

Q. Okay. The, I apologize for jumping around.

A. No problem.

25 Q. The argument that you saw - you witnessed while you were at the property that weekend, do you recall whether that was the Saturday or the Sunday?

A. I think it was the Sunday but I'm not 100% sure.

30 Q. Thank you and in terms of the emotion, was any body in tears, do you recall seeing anybody crying?

Jan Niklas Caspers - Cr-ex (by Mr. Mae)

A. I think Svetlana might have at some point but I'm not sure.

Q. What about Alla, did she seem upset, was she crying?

5 A. Upset yes, I don't remember if she cried, I don't think so.

Q. And in terms of what you saw when you were outside, if you saw through the window, did you see body language, did you see people in - expressing themselves using their arms or in a confrontational manner?

A. I did not see any arms raised, no.

Q. And as I understand it, your wife's involvement in that discussion was to try to calm everybody down.

15 A. I believe so, yes.

Q. And you say at paragraph 10 that, and I quote "as far as I understood, the discussion seemed to be focused on the topics that Alla and Valentin wanted to move into social housing", so who did you learn that from, was that from your wife?

A. Yes.

Q. Do you recall if there was any discussion at the time as to why they wanted to move into social housing?

A. No.

25 Q. Okay. Just one moment Your Honour. Those are my questions Your Honour, thank you Mr. Caspers.

THE COURT: Thank you Mr. Mae. Ms. Chapman is there any re-examination?

30 MS. CHAPMAN: No I don't have any questions, thank you.

THE COURT: Thank you Mr. Caspers, you may step



5  
down, you're excused but I just caution you not  
to talk to any other witnesses about your  
testimony, thank you. So counsel I believe we're  
in position to return to the cross-examination  
of Ms. Danilova.

10  
MR. BORNMANN: Your Honour, with the court's  
permission, perhaps we can take lunch a little  
bit earlier today and rather than start now and  
have to break it off shortly into the - into the  
cross-examination.

15  
THE COURT: All right, I suggest that therefore  
we come back at 1:30 to begin the cross-  
examination, it is quarter after 12 now, is  
that?

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

THE COURT: All right, so we will adjourn until  
1:30, thank you.

RECESS TAKEN

UPON RESUMING

20  
THE COURT: Okay we're ready for cross-  
examination?

25  
MR. MAE: Yes, Your Honour, Mr. Bornmann is going  
to deal with the cross-examination but I'm just  
brining to the court's attention that as a  
consequence of some evidence yesterday regarding  
an email from June 28, my client has provided me  
with some Russian emails leading up to that  
email to put it into context, I provided a copy  
30  
to my friend. I will be putting it up later on  
when I deal with my cross-examination. They are

5 in Russian, we have no certified translation so with the court's indulgence, I would be asking for one of the Ministry interpreters to do a sight translation of the emails for the court purpose, if that is acceptable to the court.

THE COURT: Have they had a chance to read them over in advance?

10 MR. MAE: They haven't yet, I haven't provided them yet without speaking with Your Honour. My friend has been provided with a copy and she's had the opportunity to speak with her client about the email.

THE COURT: Are you satisfied with that Ms. Chapman?

15 MS. CHAPMAN: I am, yes.

THE COURT: All right.

MR. MAE: Thank you Your Honour.

20 THE COURT: I guess we will come to it later but you mine as well provide it to one of the interpreters to review in advance, just to speed up the process.

MR. MAE: I will do that and we probably won't get to it until tomorrow.

25 THE COURT: Oh all right then, it could be done later in the day then.

MR. MAE: Thank you Your Honour.

THE COURT: All right so we are ready to call back Ms. Danilova, oh, just a moment.

30 MR. BORNMANN: Your Honour, just before we commence this cross-examination, the Nikityuks have another tab to Exhibit 2B Your Honour.

Svetlana Danilova - Cr-ex (by Mr. Bornmann)

THE COURT: All right.

MR. BORNMANN: Tab 44 and I will hand that up.  
It's the second red book.

THE COURT: All right. Ms. Danilova would you  
like to come back please to the witness box.

SVETLANA DANILOVA: Reminded of Oath

CROSS-EXAMINATION BY MR. BORNMANN (cont'd):

Q. Ms. Danilova, you lived with Pavel, Alla and  
Valentine when you were first married, correct?

A. Yes.

Q. And that was in 1983 wasn't it?

A. We got married August 26, 1983. Pavel Danilov  
was my only husband in forever and since that date we got  
married we rented - we rented for some time...

Q. Ms. Danilova...

A. ...yes but then our daughter was born, we  
moved to be with Alla.

Q. Sorry Ms. Danilova, so just very quickly, you  
got married to Pavel Danilov in 1983, correct?

A. Yes, that's correct.

Q. And at that time you, Pavel, your mother and  
Valentin lived together in St. Petersburg, correct?

A. Yes it is both correct.

Q. Yeah and so you were 20 years old at that  
time?

A. Yes.

Q. And Pavel, he was 19 wasn't he?

A. Right.

Q. So you were just starting off, correct?

A. Right.

Q. And you obviously needed a place to stay and Alla and Valentin provided one, right?

A. It was - no that's not right. They didn't provide anything; I have a room in their apartment that was always my room. I was even able to, you know, separate that apartment to make it like a room apartment, there is such thing as a room apartment in St. Petersburg in Russia. When people, different families, live in their rooms in their apartment, I could do this but we lived together as a family. I had right to live with my husband and my daughter was there and they just did.

Q. Okay Ms. Danilov, but you were 19 at the time and you got married and Alla and Valentin were okay with you and Pavel living in that apartment, correct?

A. It's not that they - they were nothing to do with, it was my decision, I could bring my husband to live in my room.

Q. Okay and after Anastasia was born you continued to live together in that apartment until 1988, right?

A. That's right.

Q. And you testified that Alla was very close to Anastasia, Alla loved her very much, right?

A. Yes, this is true.

Q. And while you lived together Alla helped you with childcare, helped you take care of Anastasia didn't she?

A. I wouldn't say so, she had fulltime job, I was staying with the baby and I was doing everything around the house. We have the same fridge, near the kitchen so I cooked for entire family, my mom, Valentin, they came from work, they have dinner prepared, what my mom did, she did

grocery shopping I would say, they did some grocery shopping that would be - it was easier for her because after work she would just come to the grocery store to pick up groceries. I did everything like cleaning and things like that because they  
5 spent all their weekends at the cottage house and I was responsible for the household.

Q. Alla Nikityuk is going to testify that she helped quite a bit, as much as she could and that in fact was the truth, right?

10 A. It is true because she could babysit evenings, sometimes it was all mutual, yes she helped as a baby if the baby was sick or something, she was a great support to me, of course.

Q. And a moment ago you said that you'd make  
15 dinner and then Alla and Valentin would come home and there would be dinner, is that right?

A. Yes this is how it was, my mom could cook as well but mostly I cooked during the day, yes.

Q. But my understanding, Ms. Danilova, is a  
20 little different, my understanding is that during the 80's Valentin was often away on business for 45 days at a time, he'd do one week back in St. Petersburg and then he would be away for 45 days, that is in fact correct, right?

25 A. Yes that sounds similar, I don't remember specifically how long he was on his business, I don't remember but yeah it was something like that, yes.

Q. And Ms. Danilova, I want to go back to something you said about Mr. Nikityuk and his work, you compared his job to that as a shop assistant, do you remember  
30 that?

A. What I said that then you are saying

professional engineer, in Russia, literally engineer, the position of engineer means - doesn't sounds like when you tell people that you're in position of professional engineer, it's not the same as it sounds here. What it means here, the salary  
5 for the professional engineer might be compared to the shop assistant, that's what I meant.

Q. But you would agree that Mr. Valentin Nikityuk helped design submarines, including nuclear submarines during the time of the cold war, that's correct?

10 A. Yes he went to that - to that business - trip, not - it's literally business trip because they bought a car at that time and he was in debt for that car and he had to pay out the debt for his car and they borrowed from my mom's brother and he assisted them with buying this car so his  
15 employment and actually the family didn't see that much of his money because it went to the car.

Q. Okay Ms. Danilova, my question was, did he design submarines and what happened with the car, I'm not sure that that answers that question, you agree with me do you not  
20 that...

A. I - I was trying to tell you why - what was the reason he took those business trips because he was desperate, he had to do something, his salary of the professional engineer was not enough to pay off all the debt  
25 for his car.

Q. Okay and you would agree that Mr. Nikityuk was given a cottage by his employer, correct?

A. His previous employer, not this submarine design some - I believe it was previous employer. He received,  
30 kind of, piece of land, there is some structure, like a shed and he did his best - well you know, I wouldn't swear, maybe

he bought this piece of land, I wouldn't swear on that.

Q. Okay.

A. I actually do not have - it was before even my mom was married to him, how he got this cottage, I wouldn't  
5 say.

Q. But you would agree with me that it is disrespectful to comment comparing Valentin's job to that of a shopkeeper, it would be - it is a disrespectful thing to say about someone who helped raise you from age 15 wouldn't you  
10 agree?

A. You know what, it was the reason for us, why we left Russia because in Russia too many things are disrespectful in relationship to their citizenship. This was the reason why we left Russia and it was how it was, how I  
15 explained. To pay off the debt for the car you had to do something beyond your regular employment as a professional engineer, this is exactly the point.

Q. I want you to think about to 1988, 1989, you and isn't correct that at that time you, Pavel and Anastasia  
20 move out of the St. Petersburg apartment with the Nikityuks and you get your own apartment, is that right?

A. No, that's not right.

Q. You didn't not move out of the Valentin - you did not move out of the Nikityuks' apartment in 1988 or '89  
25 and get your own apartment in St. Petersburg?

A. Half of your statement is right and the other half is not right so I cannot answer your question because its half and half.

Q. Okay so when did you move out of the  
30 Nikityuks' apartment?

A. At some point I moved out of there, this

apartment with my daughter to live with my husband at his place.

Q. And I put to you that that was some time in 1988 or '89.

5 A. 19?

Q. 1988 or 1989.

A. '89 - 90, yeah, sounds - sounds familiar, yes.

10 Q. Okay and Pavel had been living in that apartment too until that time, he'd been living with you and the Nikityuks correct?

A. Say again?

Q. Pavel lived with you, Anastasia, Alla and Valentin until you moved out in 1989 or thereabouts.

15 A. Yes we were living at that apartment with our parents.

Q. So you would have been around 25 or 26 when you moved out, right?

A. Sounds right.

20 Q. And when you moved into the new apartment in St. Petersburg, Alla continued to come over and help out with Anastasia, is that right?

A. First of all it was not a new apartment, what do you mean new apartment?

25 Q. The apartment you moved to.

A. New for me.

Q. Yes.

THE COURT: New to them but it wasn't new.

A. Yes.

30 MR. BORNMAN: Q. Right.

A. No, it's not right. I would - if I can



elaborate this from my point of view.

Q. Well I will simply put to you and you can tell me whether you agree or disagree...

A. It was...

5 THE COURT: Well just wait for his question and then you can answer.

MR. BORNMANN: Q. Alla will testify that even after you moved into this other place in St. Petersburg, she would come over and help out with Anastasia whenever she  
10 could, isn't that the truth?

A. No that is not correct. I can elaborate and explain why, because that place my husband owned, it was exactly what I meant before, it was an apartment with two rooms, we live in one room and it was very tight actually, we  
15 live in one room and there was another family actually, it was a single elderly - living in the other room so it was a - it doesn't make sense actually from the reasonable person to think that my mom would come to that place because it was pretty tight compared with where they lived, in that apartment  
20 and my mom she helped but mostly I drove my daughter to that apartment, their apartment.

Q. So she helped...

A. And we also spent quite a lot of time when my daughter was growing at their summer house, summer cottage.  
25

Q. You, Alla and Anastasia would spend summers together at the cottage, right?

A. That's right.

Q. And Pavel was working very hard at this time?

A. Yes, that's right.  
30

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

A. Yes, that's right.

Q. And while you were away from St. Petersburg, you and Alla stayed in touch by telephone?

A. Always.

5 Q. And in 2003 you and Pavel sent Anastasia to go and live with Alla and Valentin in St. Petersburg while she attended university right?

10 A. It was again, a mutual decision in the family of course and we covered everything, we support completely and parents were very happy then, actually they enjoyed more money then they normally had. It was good for everyone.

15 Q. All of these events that I described, you living with Alla and Valentin, Alla helping with Anastasia, keeping in touch by telephone, the summer cottage, these were all instances of family helping family, this was all positive, correct?

A. Exactly, that is what I mean. We were always there for each other, yes it is both my house I would say so.

20 Q. So it must have been very difficult for you to find out that Alla was ill in 2005.

A. She got sick first in 1995, she first was, I'm not sure about the year absolutely, around I would say 1995, she was diagnosed with cancer.

25 Q. Well let's talk about...

A. It was very difficult for me, it was just heartbreaking, not difficult, it was awful.

Q. And the same the second time, right?

A. Yes.

30 Q. And naturally as your only daughter, you wanted to be with Alla at that time, right?

A. 2005?

Q. So the second time you're in Canada, it was only natural that you as her only daughter would want to be at Alla - you would want to be with Alla when she was sick, right?

5 A. Yes, of course it was natural but I also had a lot of obligations in Canada at that point and it will be, like you know, the same from one side it was very natural for me to be with my mother and from the other side I have a lot of obligations in Canada to my family, to built my career in  
10 Canada, to settle in Canada because we were newcomers at that time, of course its, you know, it's always - nothing, it's always what you want and what you can afford and its - this is life.

Q. Yeah so you made a lot of sacrifices, you  
15 took jobs as a cleaner, you spent part of your savings, you did all of this right?

A. I never called those sacrifices, it was my life.

Q. Okay and I put to you that this was all very  
20 admirable Ms. Danilova, all things that a good daughter would do. What you did is what people in good families do, right?

A. I did what I thought was the right thing to do from my point of view. I don't know about other people, I know, I think its within the understanding of normal people.

25 Q. And Alla will testify that she - she appreciated your visit Ms. Danilova, she really did appreciate your visit but she didn't ask you to make that visit, isn't that in fact the truth?

30 A. I don't know - I actually talked about that, do I need to repeat all of this, I actually testified about that already and now I have to repeat, I can repeat but does

it make sense?

Q. Your mother will testify that she, while she appreciated your visit she didn't ask you to make that visit, do you agree with that statement?

5 A. No I do not.

Q. Alla felt she could manage, that Valentin would help her, isn't that true?

A. Valentin was absolutely helpless, absolutely. He - he was always, you know what, my mom kind of put him  
10 aside for, in many circumstances in life, like even in the circumstances in regard of his diagnosis, medical diagnosis. She never told him his real diagnosis, when she was diagnosed by cancer, she has this thing that less, no better sleep in context with Valentin. He never was involved in like talking  
15 to the doctors or here - he never was involved with anything like that. He put - accompanied my mom to doctors appointment or somewhere he could be as a role as a companion but never participated in any discussions with the doctors, never ever. I was - when I was living in St. Petersburg I was there for  
20 them, for both - Valentin was always shy talking to his doctor, I was talking to his doctor. In Russia, of course sometimes he hears, that's not true to say, he had some discussions but final - finally I have to go to the doctor, talk to him and my mom took care talking to the doctor so  
25 Valentin didn't find out his real diagnosis otherwise he can get upset and it will kill him, so things like that. This is how - this is how it all was from perspective.

Q. And Alla Nikityuk will testify that these discussions with the doctor, all of the work that you did, the  
30 trip to St. Petersburg, the medicine, that you did a lot for her during that time Ms. Danilova and you would agree with

that?

A. I did everything; they couldn't do - I did everything that what they could not do themselves.

5 Q. But really Ms. Danilova, you're not claiming all of this, this is really not a part of your claim that your mom and step-dad now owe you all of this money for the work you did is it?

10 A. It is very complicated, I would never - I wouldn't answer this direct - I do not have direct answer to this question. It is very complicated issue at this point.

Q. But this is not really part of the money you're claiming is it, all of this good work that you did?

15 A. As I said it is complicated, you know our claim and our claim says, it depends if they are claim - if they actually claim, I believe four or five hundred thousand dollars and in their rent then they claim \$500,000.00 from me or and in the event my mom turned against me completely, I would claim for this money, yes.

20 Q. But so this is, this is all now a debt that your mother owes you correct?

A. I'm sorry.

Q. So all the money that was spent helping her during this time, this is now a debt correct?

A. Debt?

25 Q. A debt to you?

30 A. It was always, in the event that they are claiming \$500,000.00 from me, yes because when I also testified that already, in 2004 when we signed the sponsorship agreement with my mom, it was a mutual understanding that all the money spent during for the immigration process for - from 2004 until they live in Russia, all those monies would be

subtracted from their amount of proceeding with...

Q. All this work you did for your mom - all of what you did for your mom Ms. Danilova, it doesn't sound like a loan, does it?

5 A. All I did to my mother doesn't sound as a loan, it was not a loan.

Q. Okay.

10 A. But it was a mutual agreement between us and it was never disputed until this litigation initiated and in the event where we are now where they claim half of a million from me, of course this is part of my claim.

15 Q. Before we leave Russia, I want to talk about the family property, that is mentioned in your testimony, let's perhaps start with the garage, we heard testimony from your husband saying that neither he nor you have any ownership in the garage, that the Nikityuks owned the garage in Russia, right?

A. This is correct.

20 Q. Okay so we can just - and you're not claiming any interest in the sale proceeds from the garage, correct?

25 A. Again, about what I am claiming, it's, you know what I'm saying, I would consider those questions like tricky because the agreement was that my mother sending me - so my mother sending me all the money from the proceeding, all the money they receive from the proceeding of selling of property in Russia in the exchange of lifetime support and personal care for her. This was an agreement as I understood and my mom understood in 2004, in 2008 when she did this transfer, I didn't even know she put gift there but it doesn't  
30 change anything because she understood completely the purpose of this transfer and she understood completely what was going

on and it is common things to do, she heard a lot about things like that from her friends in Russia and when at some point in life her - some is quite general, common thing.

5 Q. Well this is not intended to be a tricky question, you've made a very specific claim about the apartment that is separate, that is separate from the money and so there is many claims out there that you've made and one of the claims is that you own a piece - you owned a piece of the apartment, so when we think about that claim you have in 10 the apartment, we can agree in the interest of moving on here, you're not making a similar claim about the garage, you're not...

A. You are not right.

Q. ...saying that you owned part of the garage.

15 A. You are night right about things...

Q. Did you own a part of the garage?

A. No.

20 THE COURT: I'm sorry, Mr. Bornmann, she already said she had no claim of ownership in the garage, I think what she said though is her issue is about money that was transferred but she did tell us that she had no claim of ownership so that is distinct from the apartment.

25 MR. BORNMANN: Q. Thank you Your Honour. And with respect to the cottage, you personally are not asserting any ownership interest in Valentin Nikityuk's cottage, right?

30 A. If you're talking about ownership, again it is a - formally it is not my cottage, it didn't belong to me just formally speaking but as a - between family members I heard so many times from Valentin, when Pavel's father was

helping he just spent his vacation days, weeks - vacation weeks at that cottage house working on additional, to built additions to that cottage house so the family would be more comfortable in that cottage house. Valentin personally and I  
5 heard this so many times, that he told that everything will - will be inherited by Pavel anyway, inherited by myself, my other family, so it was that kind of understanding.

Q. But Valentin is still alive, correct?

A. Yeah but it was - yes, I'm just trying to be  
10 absolutely clear what we mean. No ownership at all.

Q. And about the car, you're not claiming any ownership interest in the car.

A. No.

Q. Okay, thank you. And you would agree about  
15 the apartment, that at the time it was sold, you were not registered as an owner of that apartment correct?

A. Apparently not, that was a surprise for me.

Q. The only registered owners were Valentin Nikityuk and All Nikityuk, correct?

A. This is correct.

Q. And now, you testified well before privatization, when you married Pavel in 1983, you were registered at Alla and Valentin's apartment, correct?

A. Always been, always been.

Q. Back in...

A. Since I was 15 years old.

Q. Okay and when Pavel moved in, he was never registered at this apartment.

A. No.

Q. Pavel was registered at his parent's place  
30 right?



5 A. Yes. Parent's place and after - his parents they gave him a share in their property. Yes, literally, his parents gave Pavel a share from the family property.

Q. His parents gave that to him, correct?

A. Yes, yes.

Q. And in 1985 when Anastasia was born, she to was registered at Alla and Valentin's apartment, correct?

A. That's right.

10 Q. But it also true that when you, Pavel and Anastasia moved out in 1989, the three of you Pavel, yourself, Anastasia were registered at Pavel's apartment, correct?

A. No we were still registered at that apartment, with parents but we were living at Pavel's place for some time.

15 Q. Well the Nikityuks will testify that when you and Anastasia registered at Pavel's apartment in '89 or whenever it was, you both had to deregister from Alla and Valentin's apartment.

20 A. About what they are going to testify, okay they are going to give their testimony but can I - what can I do with this, what is this to do with me, I'm trying to be honest answering my questions here, I suppose that is what I have to do here, what they have testified is their testimony.

25 Q. But you would agree that you couldn't be permanently registered in more than one address at that time, correct?

A. No, permanent, no.

30 Q. You could only be permanently registered at one address right?

A. Yes.

Q. The Nikityuks will also testify that it is

when you moved to Latvia in 1996, that's when you and Anastasia were registered once again at their apartment but this time it being post-privatization, you were registered without rights of ownership, correct?

5 A. Since I left - first of all, I do not understand why I need to know what they are going to testify, I will probably be not even present here because it's going to very painful for me and I don't want to be present. I - I understand and this is why I'm here that they are going  
10 testify a lot of things that are not true and very painful to me and so what is it do with me, their testifying.

THE COURT: Perhaps I can help; it is important that the lawyer puts to you what they might testify so you can respond to it now.

15 A. Oh.

THE COURT: Because you won't have a chance later. It is a matter of fairness to you, if they are going to say something you ought to know about it now and then you can give your  
20 answer because you wont' be able to testify later, whether or not you are here to listen to them, this is your opportunity to respond to what he says they will say. They may not say that or maybe somewhat different but he is going  
25 to put something to you and you can respond to it as you wish.

A. Oh okay, sorry I - thank you for this clarification, so what was the question?

30 MR. BORNMANN: Q. Okay when you moved to Latvia in 1996, you were re-registered at Alla and Valentin's apartment.

A. No I did not.

Q. And Anastasia was also re-registered at your apartment in 1996 when you moved to Latvia.

5 A. As I said, I was always registered with this same apartment.

Q. But you agree that you were registered without rights of ownership, correct?

10 A. When I left, at the moment I left Russia, yes I was registered, what do you mean, I didn't exercise this right for ownership at some point, this is not correct that I was registered without the right to ownership, this is absolutely not true. Absolutely false statement.

15 Q. But I believe you have testified already that you admit that when the apartment was sold you were not registered with rights to ownership, correct?

THE COURT: Well she told us that it was a surprise to her.

MR. BORNMANN: Q. Yes.

20 A. I believe I answered this question already, yes.

Q. I - just...

25 THE COURT: I thought she said when you asked her earlier that that was a surprise to her when they sold it and she then became aware, I guess, that she wasn't registered, is that how I understood your evidence?

30 A. Exactly because when I left Russia, I left Power of Attorney for my mom and I was as I said, we were always there for each other and I trusted her completely and my trust and I believe that she would do everything that was supposed to do - that she was supposed to do for me and my

daughter, yes.

MR. BORNMMANN: Q. But just for clarify sake and I think we have the answer here but I don't need - we don't need to put the ownership certificate or the sales agreement in front of you, you admit that at the time the apartment was sold you were not registered as an owner.

A. But it was a surprise for me.

Q. But it was a surprise, okay. And you would agree that there are benefits to being registered at an address even without rights of ownership, even if you don't live there?

A. I didn't...

Q. I'm talking about the registration process and you were registered, it was a surprise you say, but you were registered without rights of ownership and so my question is that you would agree that there are benefits to you to be registered at an address even if you don't live there.

A. I'm sorry I'm completely lost to be honest, maybe ask me more the expression, I'm lost with all this registered and registered, I think I answered all the questions with those things about my position with this apartment.

Q. Okay well let's just move on, perhaps we can come back...

THE COURT: Well we've heard what the benefits were, why don't you just put that to her.

MR. BORNMMANN: Thank you Your Honour, I will do that.

THE COURT: It came in earlier evidence which would have heard.

MR. BORNMMANN: Q. You would agree that being

registered, even without rights of ownership would make it easier for you to come and go from Russia, would it not?

A. It's nothing to do for me to come - this registration at the apartment, nothing.

5 Q. And you would agree that being registered at an address in Russia would make it easier for you to access government services in Russia, correct?

A. When we left Russia I forgot about the Russian government citizens at the very point, in 1996, I'm  
10 not even going to claim Russian pension and my husband is not going to claim Russian pension. Also we have something but to receive this Russian pension we can, you know, we should put our life on hold for like three months for all the paperwork and everything, this was the reason why I didn't go to Russia  
15 to do this same that my parents do this registration of the share in the apartment because it would take forever and I didn't have so much time to stay in Russia and go through this amount of paperwork. So better not to ask me about the government services that I was - I would be rely on, no.

20 Q. But both you and Anastasia agreed to be deregistered from the apartment before it was sold, correct?

A. Yes.

Q. And you do not have any document that shows you were promised any money in exchange for deregistering,  
25 correct?

A. Was always trust to my mother, she had power of attorney, she had all the authorizations, all the authorizations, she always had full authorizations from me because I never dealt with Russian services and its just make  
30 me, you know, sick even thinking about that.

Q. So there was trust but no documents showing

it?

A. No.

Q. Okay. And in fact the Nikityuks will testify that no promise was made to you or Anastasia in exchange for  
5 deregistering you from the apartment, correct?

A. It was, again, the same agreement that my mother was going to give all the money from all the proceedings they have to me in exchange for her care and support for her lifetime, for her and for her husband, for  
10 Valentin.

Q. You would agree however, that if you had refused to deregister in 2008, Alla and Valentin could have gone to court in Russia to have you deregistered, correct?

A. Exactly, I didn't see coming. The word court  
15 in any situation of our family, the word court would never ever come to my mind or something, it was complete trust, from both sides.

Q. But you would agree that given that neither your nor Anastasia had any ownership rights and given that you  
20 didn't live in Russia, it would not have been very difficult to have you deregistered from the apartment, right?

A. Oh it was very difficult. It was, yes, they have to go through the court but again, Russia court, it would take forever, probably not in their lifetime.  
25

Q. Okay and one final question, I will put to you the Nikityuks will testify that neither your nor Anastasia have any claim, interest or other entitlement to the Nikityuks' apartment or the sale proceeds from any of the Nikityuks' Russian property, isn't that the truth?  
30

A. I understand what you're saying but it's not the truth.

Q. Okay. Ms. Danilova, can I direct you to this Sponsorship Agreement, this is in Exhibit 2A, tab 1.

A. Yes.

5 Q. And as you know the court has heard some testimony already about this document.

A. Yes.

Q. I want you to think back to 2004, at that time you knew that the sponsorship application process would take a long time, right, years?

10 A. Yes that's right.

Q. And you thought, at the time, it would make sense to start the process right away because it would take a long time, right?

15 A. Can you elaborate right away? Can you elaborate?

Q. Oh can I elaborate. So when you, back in 2004, you thought this application process is going to take a very long time.

A. That's right.

20 Q. So it should be started right away, there is no point in delaying the start of that process, you wanted to get it started right?

25 A. That's what my mom got me to do because Valentin was absolutely desperate about his healthcare in Russia and she was in the same position and yes they begged us to start this during our last visit to them in St. Petersburg, shortly before we left Latvia to move to Canada.

Q. And they both asked you, is that correct?

30 A. I mostly communicated to my mom but Valentin was very much onboard and because he was very proud in front of his brother and his brother a lot abroad as we told, he

actually - a lot aboard and Valentin was very proud in front of his brother that he would go to Canada to live.

Q. But in 2004 there was not guarantee that the Nikityuks would be approved, correct?

5 A. That's right.

Q. And as well, there was no certainty that the Nikityuks even if they were approved would want to come, correct?

10 A. I would say so, yes because they could decide at the last minute that they are not coming, yes and then we would have lost all the money we paid for the immigration and for everything, yes that would be, yeah.

Q. At that point you realize, they could decide they didn't want to come at any point.

15 A. Yes.

Q. And I think you mentioned this already but you and Alla discussed this often by telephone?

A. Discuss what?

20 Q. The sponsorship process, immigrating to Canada, lots of general conversations about coming to Canada.

A. What is a general conversation, I was so busy for general conversation, you know.

25 Q. You and Alla talked about immigration, the possibility of immigration by telephone?

A. At what year?

Q. In 2004?

30 A. No we were not - I wouldn't say we were talking a lot about general - that's not right to say, no. It was decided kind of, as I said, when they were living in Russia during the - during our visit to St. Petersburg before we left Latvia to live permanently in Canada it was decided



that it was literally what my mom told that you are not going to abandon us here because we are going to die here, you know, this was the conversation.

5 Q. And after that you didn't talk about immigrating to Canada by telephone very much?

A. Not very much, I just explain to my mom that first it should - we should obtain the permission of Canada, from Canadian government, the permission that we can sponsor them. To obtain this kind of permission we can show the  
10 Canadian government that we have enough - we have enough of income to sponsor relative here in Canada and I explained to my mom that - I was explaining those things to her, that we need to - I don't remember the exact amount, let's say \$40,000.00, we need to show \$40,000.00 income and it is how it  
15 worked, as soon as - if you earned this kind of income in Canada and can show, to demonstrate this kind of income to Immigration Canada, you're allowed to start the application for immigration of your relative. For in our situation it took about a year for Pavel to earn this kind of income to  
20 demonstrate that he earned this kind of income, I was explaining my mom this kind of thing but it wasn't like every day, she understood. We were waiting for this point for when we could start, yes.

25 Q. And though you and Alla were talking in these conversations, you would have to check back with Pavel because he - it was his income that you were relying on, correct?

A. Yes, it was - of course but even it was just formal procedure, we're talking here about formal procedure. It was mutual understanding that although being just the  
30 formal requirement when you can sponsor your relative, it's not the case when my mom would come to live with us, with

Valentin on this kind of salary. So it just, one thing is a formal requirement, the other thing is the agreement in the families and how family saw this immigration would work for our family.

5 Q. Now the understanding between you and your mom at this point, would it be accurate to say you were going to start the formal process, as you called it.

A. Yes.

10 Q. And you'd figure out how to finance life in Canada later when the Nikityuks were approved.

A. No, that's not true and that's not correct. After, actually, we were allowed to sponsor them, this is the conversations started about how in reality we are going to support them here when they come and we explained actually  
15 that it's the commitment for 10 years' at least formal commitment but we always were talking about lifetime because for us, 10 years was, you know, it's the same thing as \$40,000.00, it's a formal requirement of the Canadian immigration but we were talking about our family and our  
20 commitment for lifetime, of course 10 years' security just to - and also lifetime and then it was conversation not with me but with my husband, because he was mostly the provider and it was a conversation, direct conversation first over the phone in 2004 before my husband signed this agreement with my mom  
25 but it was his actually conversation with my mom, that he personally said that, you know what we have, we have assets we will sell and of course we are not relying on you solely and so I think my husband, it should be his testimony because...

30 Q. Well we heard from your husband and you tell me if you agree with this characterization but from what I understand the Nikityuks faced almost an ultimatum of sorts,

you could either give us all your money when you come or we the Danilovs will not sponsor your immigration, correct?

A. Exactly - that signature cost that money to put this straight you can say so, that the signature cost that  
5 \$260,000.00, it was the price for the signature.

Q. Okay now it won't be a big surprise to you, having sat through your husband's cross-examination that the Nikityuks will testify that in 2004 they made no decisions or promises about either immigrating to Canada or how they would  
10 financially support themselves in Canada and I put to you that that is actually the truth.

A. This is your opinion or - we are very responsible, myself and my husband, my husband would have never put his signature. When he put his signature it meant  
15 something for him, he understood that this is a very important document, sponsorship agreement, it's not just an agreement between myself, my husband concerned and all Nikityuk, it's three-way agreement. You know we're educated people, it's a very serious thing, it's an agreement between Immigration  
20 Canada involved, there - basically this is Canada behind this agreement and 10 years' commitment and just to resort to - we were going to become the Canadian citizens in the future, we knew how actually to proceed with the Canadian citizenship and we were thinking about things like that. We were - our  
25 intention always to be very loyal Canadian citizens, we came to Canada we started to research all the laws or whatever was related to our activity. We did everything ourselves starting from - so what I'm trying to say, its October 2004, my husband been employed for almost 1 year, we were so grateful actually  
30 to Canada already and we had to do something very serious actually before he put - it says there are laws about social

assistance here, very scary laws. We knew, you know, that there is a so common thing that people just come into Canada and the immigration, they are making some attempts to find a job and welfare is quite an option for them and sometime  
5 people is not pretty comfortable being on welfare so we knew what social assistance mean. What we didn't want in 2004 is to - our family to be associated with social assistance of any kind, we can't just swear to the Canada government that we will not in this position, this is why the signature cost  
10 \$260,000.00. Quite a - not a - like big money for a 10-year commitment.

Q. Ms. Danilov, the - I'm glad that you mentioned that you researched the law on this point because at any point between 2004 and 2008, you and your husband could  
15 simply had withdrawn this sponsorship application, isn't that right, you were binding yourself to anything, you could back out at any time and that's the law Ms. Danilov.

A. When you're - actually when you mention it now I recall something like that but...

20 Q. Thank you.

A. ...at that moment I do not recall exactly but when you're mentioning now, yes I - it's coming to my mind, it was something like that. That the application can be withdrawn but I'm not certain about the exact point and it doesn't  
25 matter anything actually because we were not intending to do things like that and this is why it was not important for me, I didn't remember - I do no remember this conditions at the moment because that condition was not important to me.

30 Q. Yes Ms. Danilov, you just provided the court with a very extended explanation of the significance of this decision back in 2004, signing the sponsorship agreement, but

I put to you that you could have withdrawn that sponsorship application at any time up until Canada's final decision to grant...

A. It was not our intention.

Q. ...a permanent resident visa.

A. My answer would be, it was not our intention and I don't even remember the specific of this condition at this moment because it was not important for me, it was not ever our intention to withdraw the application. That I remember for sure.

Q. Okay and I put to you again that neither Alla nor Valentin made any specific promises about their money back in 2004, correct?

A. Which money?

Q. Their money. They did make - they didn't promise you any money in 2004, you can disagree.

A. The agreement was that if, if they decide to enter Canada, you know there is common sense behind that, the agreement was if they decide to enter or will be allowed to enter, first we need receive before they enter, we need to receive this money on my account, in my full possession so we secure this situation for 10 years' commitment, this was an agreement. They - there was an option that they just stay in Russia then they live in that apartment and their cottage house, that's it. We just took losses, I don't know - yes, it would be our losses you can say so, the money we spent for immigration, the money I spent for my mom's surgery and things like that so we saw this as an option. But in this case they just stay in Russia, you know, two options, probably I am clear - I believe I am clear.

Q. Ms. Danilov, I put to you the only statement

that was made that could border on some promise of some sort at that time was that you stood to inherit everything when the Nikityuks died, our clients - my clients will testify that they did in fact, they may have in fact said back then that if they pass away, you know, once they pass away you stood to inherit what they owned but that was after they died Ms. Danilova.

A. Inheritance, you're taking about an inherit something.

Q. Yes.

A. That, you know, I don't even know how to put it. I am so experienced in life, you know, I went through a lot, the last thing I would rely on would be inheritance because Valentin has two daughters, as I said, it was not important, he didn't have relationship but whatever, he has two daughters and inheritance, inheritance is the last thing that would come to my mind, would cross my mind, I'm too responsible to make decisions based on the future inheritance, it's ridiculous.

Q. But you would agree Ms. Danilov that even as late as 2007 when the Nikityuks are here in Canada visiting, even in 2007, they were undecided about whether they would immigrate, isn't that right?

A. This is correct, that is exactly how I put it. They had two options to stay in Russia with all those money and cottage houses and garages and I accept all my losses or they transfer their proceedings of all those cottages and garages to my name.

Q. Right.

A. For the fulltime - for the full care and support for their lifetime, yes.

Q. But you provided a verbal offer in 2004 and your evidence is that you had not, that offer had not been accepted in 2007, correct?

A. I'm sorry.

5 Q. Your testimony is that you made a verbal offer to the Nikityuks in 2004, give us everything and we will sponsor you to Canada, that's your testimony.

A. It's not verbal, this was a signed agreement, it was not this - this agreement was signed only because its  
10 because associated with that money.

Q. But you would agree with me that this arrangement is not set out in the sponsorship contract, correct?

A. Of course not and it was mutual understanding  
15 of the family.

Q. A verbal mutual understanding, correct?

A. Yes in the family and everyone trusted.

Q. But the Nikityuks still hadn't said yes in 2007, had they?

A. Yes to what?

Q. To the proposition that they have to give you all their money in order to come to Canada.

A. I - I can't make it easier because what I am insisting here on, that they did it, they did it, they  
25 transferred money to my account and they came to live in Canada under the sponsorship agreement with me. I'm just trying to make your life easier here, I'm relying on the fact, to the fact that happened because they picked up, they choose the option.

30 Q. Ms. Danilov, do you remember testifying under oath in 2014?

A. You mean...

Q. At the Examinations for Discovery.

A. Yes, yes.

5 Q. Perhaps I could turn the court to the transcript of Mr. and Mrs. Danilova at page 104.

THE COURT: Do you want that in front of the witness, would that help, if she has it.

A. 104.

MR. BORNMMANN: Yes, Your Honour.

10 THE COURT: All right.

A. Okay, yes I have.

MR. BORNMMANN: Q. And on page 104, starting at line 11, there is question 439.

A. Yes.

15 Q. And it's in the middle of an exchange but...

A. Yes.

Q. ...and so the question, it was a question fragment, the Danilovs and the Nikityuks and then the response is, "yes all the family, yes the family except my daughter because she was a student at the moment and she was going to a separate house." And then here is where we get to this part of your testimony Ms. Danilova, "except Valentin because to Valentin everything Alla communicated with Valentin, we communicated everything with Alla." Mr. Danilov, "yes", Ms. 20 Danilova, "and she communicated everything to Valentin, it was her responsibility or whatever you call it to communicate with Valentin, everything in the right way". Mr. Danilov, "responsibility or" and then Ms. Danilov, "whatever you call it." And then we go to page 105, line 124, Mr. Danilov, 30 "whatever you call it and the thing is that never once we immigrated to Canada in 2003, I personally never spoke with



Valentin and I think Svetlana didn't either, we, Svetlana spoke with Alla and Valentin was Alla's member of the family who was going with her to Canada and he didn't decide anything." Ms. Danilova, "there was no his signature." Mr. 5 Danilov, "first", Ms. Danilova. "anywhere", Mr. Danilov, "first condition from his side he stays in Russia" and then this is the part, Ms. Danilova, "and it was an option, as a matter of fact it was an option for Valentin to stay in Russia because during the conversation with my mom, when they came 10 together in October 2007, my mom communicated to me that Valentin is kind of making his decision, where, where he is coming to Canada or not, this is why he came to see whether he likes it here in Canada or not and in case he is not coming she was even considering an option to sell his, her share of 15 the apartment, to sell my share of the apartment and leave him in Russia." Correct?

A. Yes, everything is true.

Q. And that's all true. So in 2007, the Nikityuks have not agreed to the proposition that they are 20 going to give you all your money in return for coming to Canada and you still have the right to withdraw your sponsorship application at any time, correct?

A. No, I, not at any time. As I mentioned to you, we would not even go for that withdrawal of application. 25 As I mentioned to you that we did research about the law in association with what we were doing and I don't know, maybe we were not right but I don't remember even this condition about - you keep referring to this condition to cancel the application. At this point I don't remember this option, maybe 30 - I don't know even what to say, we didn't consider this as an option, withdrawal.

Q. Well I think...

A. I didn't feel that you can withdrawal with -  
but with money, you cannot refund the money or you can  
withdraw at the very early stage, I remember there are two  
5 stages as I mentioned. First stage is approval of financial  
eligibility of the sponsor, we paid \$1,000.00 for that, here  
in Mississauga, office in Mississauga decided if you have  
financial eligibility to sponsor a family member and the  
second stage is in Moscow, it was in Moscow for them, then you  
10 send all the applications with the support documentations and  
then you go through the security check and medical examination  
and you pay at the end or you - I honestly don't remember the  
exact process but if you keep referring for the withdrawal of  
application, it was not...

15 Q. Ms. Danilova I recognize you're not a lawyer  
and this is not a legal debate...

A. Yes.

Q. ...but just in fairness to you, I will put to  
you and then we can move on that there is a regulation, called  
20 the *Immigration and Refugee Protection Regulations* and there  
is a provision in that regulation called the withdrawal of  
sponsorship application and there is a subsection numbered 119  
that states a decision shall not be made on an application for  
permanent resident visa by a member of a family class if the  
25 sponsor withdraws their sponsorship application in respect of  
that member. That means, Ms. Danilova, that right up until the  
point where Canada makes a final decision on an application  
for a permanent resident visa, the sponsor can withdraw the  
application.

30 A. But as a matter of fact, I told you more. I  
told you that we were ready to accept losses, I told you

literally in my words, we were ready to accept our losses in the form of the money we paid for immigration if parents decided not to go to Canada, stay in Russia in all those - all the apartments, garages and cottage, not to go to Canada and we will continue to live in Canada without them in this case. It would be - would probably be easier for us as it is turning out now, it's not probably, I'm sure it would be easier for us and to - we didn't but they choose this option to go to Canada and they actually followed all this agreement. They transferred money, I received this money in my account, whatever my mom put that, she put it as a gift because it is how she saw this money, actually the agreement was that just that give this money to me so it would be to my account without them or something, to transfer money to my account in my full possession and give me the full power I would say so here, how to use this money but they transfer me that I will put this money into use for their - in their best interest for their, actually but of course in the connection with the entire family situation in Canada. So this money secured the sponsorship agreement.

Q. Okay.

A. They only came after. I even - I believe I bought the ticket for them after they transferred this money but maybe it's not that important because now everything is important it - I trusted them that they send this money, they sold everything.

Q. Your Honour, I must confess to having lost track of our start time because of the delay, are we...

THE COURT: It's probably a good time to take a break, I think we actually started at around 2:00 by the time we got back into court. So

we're taking the afternoon break now, we can return and continue with cross-examination.

MR. BORNMANN: Thank you.

5 RECESS TAKEN

UPON RESUMING

THE COURT: Yes, Ms. Danilova would you please return.

10 MR. BORNMANN: Q. Ms. Danilova, let me give you - I want to put to you the case, your daughter and her husband, excuse me, I want to put to you the case your mother and her husband, your step-father are making out against you. Yesterday when you became your examination in-chief, you  
15 indicated, when you were talking about the sponsorship agreement you said, your mother was the most important person in the world for you and that is why you are here but Ms. Danilova I put to you that you are here for an all together different set of reasons, you're here because you promised the  
20 Nikityuks a life, a life here in Canada as described in that email Pavel Danilov sent to the Nikityuks on July - on January 27, 2008. And I put to you that was an email in which Pavel Danilov, your husband, assured them that there was a risk free investment providing a 10% annual return, isn't that right.  
25 That was an email in which it was clear that they were to live separately and I put to you that's in fact what that email said didn't it, and you can agree or disagree.

A. It's more complex then agree and disagree.

30 Q. And I put to your mother, Alla, told you that that was what they wanted, they wanted a risk free investment and based on that they would go ahead and sell their Russian

property, isn't that right.

A. From my point view, no that is absolutely not right. You're asking if this statement is right or what their claiming.

5 Q. You can disagree whether - you can say whether you agree or disagree with this, I put to you that Alla Nikityuk and Valentin Nikityuk entrusted you with their life savings, the sum of what they accumulated in their lifetimes and the sent it to you by wire transfer, isn't that  
10 right, that's what happened.

A. That's not right because - there are words, small words that twisted the fact and that makes it not right from my opinion.

15 Q. And I put to you that you broke the promise that you made by taking part of their savings and investing it in the stock market using a prototype software that you and Pavel had developed and which Pavel said lost most of that money within days, within months of the time in which it was given to you.

20 A. Disagree.

Q. And I put to you that you took another part of that money and you bought a house in your and Pavel's names and you told your mom that the house was actually in Valentin's name.

25 A. Disagree.

30 Q. And I put to you that when your mother and Valentin were unhappy living with you and Pavel and they are adults and they are capable of choosing where and how they live, you told them they had to live with you and that was because their living with you helped to pay for your lifestyle, your nice house, your nice furniture, your cars

because of the alleged loan agreement that you had them sign a year after they got here, isn't that what happened Ms. Danilov?

A. I disagree.

5 Q. And you refused to listen to your mother when she told you that she did not want to live with you and Pavel.

A. I disagree.

10 Q. And when you left, when they left, when the Nikityuks moved out you tried to harm them further by making false allegation of fraud against them, against your mother and Valentin by reporting them to Ontario Works and writing to social housing, that happened didn't it?

A. I disagree with the statement you just made.

15 Q. And then you stopped providing them support, right?

A. I disagree with the statement you just made.

Q. And when that didn't work, you sued them, correct?

20 A. I sued them, that's correct but the other side is not.

Q. And much of - and much of all of this is also why you were found in breach of your sponsorship agreement, correct?

A. My - say again?

25 Q. Your failure to support the Nikityuks that's why you were found to breach your sponsorship commitment to Canada right, because you failed to support the Nikityuks'.

A. Disagree.

30 Q. Okay well let's talk about the agreement that the Nikityuks made, you would agree and perhaps it would help if you turned to Exhibit 2A, tab 3, this is the January 27,

2008 email.

A. Could you please repeat.

Q. It is tab 3 Ms. Danilova.

A. Yes.

Q. You know this email right?

A. Yes I had a chance to review it.

Q. Please.

A. Yes.

Q. Oh you've had a chance to review it, okay.

And you would agree with me that on page one we have a living scenario in Canada, right?

A. Page one?

Q. It's page one Ms. Danilova.

A. It's an English translation, what actually - this - what kind of document, what is it, I don't understand what is it.

Q. This is an English translation of the email your husband sent the Nikityuks on January 27, 2008.

A. How would you say this is email.

THE COURT: Just to remind, I know you've looked at this before but can you just give me the tab again.

MR. BORNMANN: Sorry, it's in the red book at tab 2A, or sorry tab 3, Exhibit 2A, tab 3. So it is the first red book Your Honour, tab 3.

THE COURT: Thank you.

MR. BORNMANN: Q. Your husband testified that this is an English translation of an email sent to the Nikityuks, he indicated that there was a subject line in English that said Canada calculation but otherwise the contents as translated reflect the Russian email sent to the

Nikityuks, correct?

A. I don't remember what my husband testified and do I need rely on what my husband testified. You're just pushing me to rely on what my husband testify.

5 Q. Ms. Danilov, you would agree that this an English translation of the email that was sent to Alla and Valentin Nikityuk on January 27, 2008, correct?

10 A. Actually when I said that - you, I'm sorry you are kind of misleading me here because you said that, you're referring to email of January something, what you said.

Q. January 27, 2008.

15 A. I remember there was email but this document in tab 3, I cannot identify that its that email because I cannot see that this is email. I see the text here and maybe it is different text, I don't know. It's - what I can see here there is the last page.

20 MS. CHAPMAN: If I can assist Your Honour, in Exhibit 1A, tab 30, there is an additional copy with this email with the heading. Albeit this version is only in Russian but it might assist Ms. Danilova in recognizing the document.

25 THE COURT: All right, why don't you put that in front of her sir, so that she can look at that at the same time.

MS. CHAPMAN: Tab 30.

A. It is in our production, tab 30, right?

MS. CHAPMAN: Yes.

30 MR. BORNMAN: Q. It is the same document Ms. Danilova. This is not helping the court here.

THE COURT: All right why don't you ask her a question now that she's got it in front of her



and break it down into small bites if that is of more assistance to her.

MR. BORNMANN: Yes, Your Honour, thank you. Q.

Ms. Danilova, you would agree that the email sets out a living  
5 scenario in Canada, correct?

A. Yes.

Q. And if you look at the line, the entry that says brought capital \$200,000.00, 10% growth, it's the fourth  
line down.

10 A. I have to refer to English translation, in your production and Russian version in our production right.

THE COURT: No you can just look at your own, if that's...

15 A. We do not have translation. We have only Russian. And they have translation in tab 3.

MR. BORNMANN: Q. The Russian version of the email is behind the English translation - the certified English translation Ms. Danilova as well.

A. But in our production it is only Russian.

20 Q. Okay.

A. But there are headers, there is headers of the email. So we need to combine two productions to understand what is going on.

25 Q. The information I want to refer you to Ms. Danilova is not in the headers. There is a line, it's the fourth line of the body of the email that reads, brought capital \$200,000.00 and that refers to a scenario where the Nikityuks would bring \$200,000.00 to Canada, correct?

30 A. Nikityuk brought capital, it is not an exact, actually terminology. It's brought - the purpose of this email, mostly...

Q. Ms. Danilova...

A. Yes.

Q. We can be on this document a very long time if we don't work together.

A. Oh okay.

Q. I'm asking you a very specific question, the - does and you can say no but the amount brought capital \$200,000.00 refers to a scenario, in the future where the Nikityuks would bring \$200,000.00 to Canada, correct, the hypothetical scenario.

A. Hypothetical scenario of \$200,000.00 because it was previous conversations that I would use my share from the apartment from the whole proceedings and it comes to \$200,000.00 instead of \$250,000.00, yes.

Q. Okay and the 10% growth refers to the idea that there would be 10% interest paid on that brought capital, correct?

A. Not to - not exactly correct, we mostly - it's a calculation how much their life in Canada costs and then its but yes, it comes to something around 10% of the capital. That is - that looks like pretty acceptable, like, as an investment like, first comes their cost of living in Canada and we count this amount of \$24,920.00 that is about 10% of the capital and the whole - the whole thing become quite acceptable as an investment - as an investment scenario.

Q. And you would agree that there is - that this scenario includes, would include money for renting a one-bedroom apartment, correct?

A. Exactly the point, yes at that point we were talking about parents living in the same building in Etobicoke renting an apartment but everything changed, this scenario

stopped working for everyone. Everything actually changed at the moment parents agreed to live in a house.

Q. Okay well...

A. Because...

5 Q. ...let's talk about what the agreement - let's talk about what this document meant when it was sent in 2008 and we have here also food and small things, \$500.00, correct?

10 A. Everything is, I think, from the point, you look at it quickly and you would agree with everything, it's quite reasonable.

Q. So you would agree the car lease, the car insurance, the gasoline, the foreign TV, internet.

15 A. Yeah but a car lease, of course we meant that the car will be leased in our names, you know, parents actually they - they received a lot here in Canada, they came to our perfect credit history that they enjoyed, like car lease. Just came to my mind as I look at this position as a car lease, \$250.00, it's based on our perfect - you know, this  
20 is why this is - this very tricky actually thing to look at each position and that we promise Nikityuks, we couldn't promise Valentin that he can lease a car to his name when he come to Canada for \$250.00 a month. He comes to Canada, he doesn't have any credit history at all, he - nobody will lease  
25 any car to him but we explained to him that when you come you will use our perfect credit history, you will be enjoying driving a new car here, you will get insurance for a car, ask him, what is his insurance - what is the insurance for the car he is driving now, ask him. And here as we put car insurance  
30 pretty high, \$250.00, it's high but when he came he enjoyed our insurance. So it's - the purpose of this email, you know,

its nothing said in here but it's just the demonstration, it's a calculation, what does a life in Canada cost but we explain things that they are not going to be newcomers here as we were. We came and we work hard to maintain our credit history so we are going to the branch, as I said yesterday, we were going to the Innisfil branch across the street and we got an appointment with the branch manager immediately and we go to...

THE COURT: Sorry, you're going way off the question...

A. Oh sorry.

THE COURT: ...that he asked you and he's just talking about this email that was sent to your mother before they came and now you're talking about events that occurred when they were here.

A. I'm sorry, I was actually, this car lease amount as \$300.00 but Valentin separately couldn't have this amount.

MR. BORNMANN: Q. Okay well we will come - so there are conditions that...

A. Conditions.

Q. ...aren't set out in the email that you believe were in effect.

A. Beyond to this email and there are so many conditions.

Q. And we've heard of many of these conditions and we're going to come back to a number of them but I want to be very clear with you Ms. Danilova that the Nikityuks viewed this as a promise, a promise of what they would get in Canada if they came and I put to you that you thought it was a promise too, correct?

A. It is a real reflection of real situation.

Q. No it's more than that Ms. Danilova, isn't it, it's a promise. You were promising this life in Canada to the Nikityuks right?

5 A. Yeah, you know I would say so. What we didn't give them from these promises, yes it was a promise.

Q. Well...

A. And point me on any position that they didn't have. I insist that we promise and we kept those promises, yes  
10 this is my answer.

Q. Well and I want to be a little more specific, Ms. Danilova, because there are legal implications to this but this was a promise that you made the Nikityuks, they bring this capital, this is what they get, that life, that's the  
15 life you were promising them, correct?

A. Correct, very correct.

Q. And that life that you promise in the email, that's what they wanted, right, and they accepted that promise right?

20 A. Yes but we went far beyond those promises because there is - the paragraph or how - in this about in this, about buying the house or something like that, we said that we - you - number five, you could consider house but then we need to invest something.

25 Q. Okay let's get to number five in a second. Ms. Danilova, you remember you discussed this email on the telephone with Alla, did you not?

A. After - there were so many conversations, not just this email, there were many conversations with my mom. I  
30 was explaining how much is that, how much is that, yes. After that email was kind of familiar before the previous

conversation. Yes, I had a conversation with my mom before that email and after.

Q. But you had a conversation with your mom and she said that she liked the life that you promised in the email, correct?

A. Correct.

Q. And she said, and I believe you've testified to this previously that with both hands, you said, with both hands we - they want the life like that, that is what she told me, correct?

A. Correct.

Q. And I put to you, Ms. Danilova, that you have not delivered on that promise, you have not provided them with rent for a one-bedroom apartment, food and small things, car lease, car insurance, gasoline, phone, TV and internet. You - you are not - you have not provided them - you have provided the Nikityuks with these.

A. Or about living in a house, it says in eight, in three or four years we might be able to afford a house only because how we saw that at the moment this email was wrote, it says in number eight, in three or four years we might - in three or four years but they accepted to live in a house right away. It says in email, so they got more than we promised them. We promised them a house in three or four years but they received the house - to live in a house immediately. And after they agreed to live in a house, this is actually - stopped working or whatever I can name it.

Q. Well we will get to the house Ms. Danilova but...

A. This is a very important thing because it's logic right, we are reasonable people here right. And there is

straight logic, if you go to number eight, in three or four years we might be able to afford a house, especially in the current economic situation in Canada improves and investment will produce more revenue. Then we might think of what kind of house it could be.

Q. Well before - let's - before we get to that paragraph Ms. Danilova, you would agree with me that the email obviously contains more than just a description of what the Nikityuks' life in Canada would be, like an apartment, a car, et cetera. It also contains options for investing the Nikityuks brought capital right?

A. But it was up to us how to do this because you remember the initial agreement was they give money to me and after they give money to me, literally transferring the money to my account for - right.

Q. Yeah that...

A. It was the previous agreement.

Q. The verbal agreement, that's history now, we're talking about an email that you sent the Nikityuks promising a life in Canada and I put to you that this promise of what life in Canada looks like, it - it also talks about options for investing the Nikityuks' money, correct?

A. It says comment, a comment - the body of email is here about life in Canada and that comes to 10% of the - which is very reasonable and doable and everything. This is the body of the email and below is a comment, comment about how their money can be invested, right. What comment, it says a lot of retired people say they - it is kind of, again, indication or what kind of - general statements it was email between family members not any agreement or whatever you are calling or offer how you are calling at this point. It was not

an offer, if it would be an offer it would be, you know, they would still be in Russia.

Q. Well Ms. Danilova, you just testified and it is not the first time you've testified that this was a promise and this was a promise that was accepted by the Nikityuks.

A. You know, I'm very - I am responsible person, even I promise my mother full support for lifetime. I feel like it is my responsibility to explain what I mean and what we were trying to do in this email.

Q. I'm unclear with respect to your testimony, now perhaps we can turn to your testimony back in 2014 again and this is the - you remember testifying back in 2014 under oath.

A. I was testifying under oath, yes, definitely.

Q. And on, if I can direct your attention to page 122.

A. Yes.

Q. Lines - it starts at line 18.

A. Yes.

Q. And the question, it's question 507, "okay my next question is for Svetlana, do you remember discussing this email on the telephone?" Answer, "Pavel sent this email and then I had a conversation with my mom and she said they liked everything in this email, they liked the life we promised them in this email..."

A. I answered...

Q. "...and they with both hands, we - they want the life like that, that is what she told me."

A. Yeah, I remember, absolutely I - yes I agree with everything, I remember this testimony, yes.

Q. And the Nikityuks will testify that it was in



reliance of that promise that they transferred the money to you, that they trusted you with the money to generate income for their support.

5 A. As I said, all you're asking me, emails and everything, it doesn't matter at this point because as I said, they transfer money to me, they come into Canada to live with us, they didn't they are staying Russia. That is plain and easy. All those it is kind of favour for them to, you know, it's really kind of, I would consider this email not an offer  
10 but a favour for them to explain how much cost this, how much cost that. The agreement was that there are two options, they keep everything that they have and they stay in Russia, with their cottages, garages, cars, apartments or the other option, they sell everything, they transfer money to my account, they  
15 come to me and we are living together here, they are secured for 10 years of the sponsorship agreement and would be with the family, we respect each other. When they came in October 2007, I told my mom and we should probably - it doesn't matter who was asking who at this point, I told her that we can end  
20 up in three-bedroom apartment, so us living in two-bedroom apartment, I told her that three-bedroom apartment and us living together as a family of four with at least two bathrooms might be an option in Canada for them because people getting laid off all the time here. The security here is a  
25 very blurry thing.

Q. All right.

A. So people receive their pink slips and let go. That what I mean by October 2007 and I communicated that  
30 in, verbally to my mom, that was an agreement.

Q. Okay.

A. That we are family, we are - we can manage

things together.

Q. You would agree though, Ms. Danilova, that the amount of - the money, we will call it the brought capital, the brought capital was the product of a lifetime of work, a lifetime of work by both Alla and Valentin, correct?

A. Absolutely disagree. It was a not a lifetime of work, this apartment was not a lifetime of work, this apartment was just given to citizenship as a gift, as I mentioned before this was the only good thing the Russian government ever done to the Russian citizens. This is why I'm actually expressed my frustration that there are - they have taken it away from me and my daughter, the only good thing the government ever done to the citizens. It was not their lifetime of work.

Q. So the Nikityuks will testify that they considered the investment options set out in this email Ms. Danilova and Alla Nikityuk will testify that having been given these options and perhaps I can just turn your attention to comment number two, so I'm looking at comment number two and Alla Nikityuk will testify that given the options that they believed were reflected in these comments, Alla Nikityuk will testify they made a decision about which option they wanted and they decided to pick the risk free investment with a 10% return.

A. It says, as I refer to the body of the email, it says brought capital, 10% growth, it says and everything because what calculated here an annual cost of living in Canada, pretty much compared to 10% of brought capital and this as secure investment, risk free option, this is in the reference of what we actually did that it secured with my husband's full-time salary that was \$87,000.00 at that period

of time.

Q. And Alla Nikityuk will testify that she told you not only that this was the life that she wanted in the email, the life promised to them in the email but they also  
5 wanted the risk free investment option Ms. Danilov.

A. As I said, we offered them risk free investment options because they always received everything, despite of the hesitation as you refer the money was lost but it was not actually lost, it was invested in the business and  
10 so it is different.

Q. But you've not provided them with a risk free investment either did you?

A. We provided them because they didn't even notice that kind of difficulties or whatever it is called. So  
15 we had had losses...

Q. The losing the \$200,000.00

A. ...in our business but it is again, different story, I can explain, it actually was not - it was losses in the business but it was manageable losses.

Q. All right well we can - we're going to talk about the trading a little later, I'd like to turn your attention to paragraph four Ms. Danilova, and I'm going to read it aloud, comment four, renting a flat in St. Petersburg is almost the same 4% a year but it comes with a bunch of  
25 problems such as how to send the money to Canada or what will happen to the flat if you rent it to somebody. Now Ms. Danilova, we have heard, time and time again from you and your husband that the Nikityuks had to send you their money, they had to liquidate everything and sent you their money but here  
30 you would agree, this talks about renting out the flat in St. Petersburg doesn't it?

A. Yeah because that - that apartment would still exist but any one agreed that this option is impossible to manage.

Q. But if this...

5 A. Everything would be not under control, again, because of the situation in the - it was considered at some point, it was considered because and then all those circumstances surrounding renting of the apartment, this would provide income for Nikityuks partially, right, it would  
10 provide and it would take the pressure from us and this is the situation we were supposed to manage, again, it would be us who would be renting out this apartment and at the end everyone just rejected because it didn't make sense, it would be too complicated.

15 Q. But you would agree that there was no final decision made about selling the apartment at this time, right?

A. Exactly, no as I said it was still negotiation until that point that they transferred the money to my account, until that point they could stay in Russia or  
20 consider any options like rent an apartment, we could negotiate, maybe we can even come to this agreement, this renting apartment. You - the timeline, you can follow the timeline, it's January - it's before apartment, yes they sold that option.

25 Q. But to be clear, we're talking about sending that money to Canada, so we're talking about the Nikityuks being over here.

A. Yeah.

Q. And renting out their flat over there.

30 A. Exactly, exactly my point, it's ridiculous.

Q. But this was still on the table when this

email was sent.

A. On the table as in email between family members, yes. We negotiate, this is the point, we always negotiated things between each other and then YMCA got  
5 involved, it stopped the family from this process.

Q. Ms. Danilova, I would like us to move to paragraph six because again the court has heard time and time again in you and your husband - your and your husband's testimony that the Nikityuks didn't have a choice in the  
10 matter, it was either - it was the ultimatum, you give it to us or you don't come but here in comment six, we talk about in case - in case when you get more than 10% you will have money for something pleasant like a trip to the seaside for example or you can reinvent the difference and therefore increase the  
15 capital and accordingly your gain on it, and again, this is up to you as the money is yours.

A. Exactly, at that point the money was theirs, this is my point, I keep saying that to you, they had that option to keep all the money and all their garages, this  
20 cottage houses and apartments.

Q. Well I'm not - I would put to you Ms. Danilova that that interpretation you've just provided of comment six is not correct.

A. Comment six, they - exactly what I'm telling  
25 you now, that they had more then they moved to different houses as they had much more than 10% of this \$200,000.00, they had much more and that exactly, you will have money for something pleasant like a trip, they had so many trips and we actually finance the trips too, all over Canada, they went to  
30 Ottawa, to Montreal, to Quebec mountains, I have never been there, honestly, they've been everywhere and this is exactly,

paragraph six.

Q. And let's move on to paragraph seven, comment seven and it reads, in this option you are financially independent, which means that you and we have different money bags and kitchens. Now your mother will testify that she understood that to mean, separate money bags means separate accounts, separate wallets, financially independent from the Danilovs and she will testify that different kitchens means different place to live.

A. I'm sorry, you're missing again, in this option it says, in this option, it's in reference to the option and the option starts from number five, you can consider house but then we need to invest 20/25 interest as we together calculated before, such an investment has a higher risk, so it's in the reference to the option, to the specific option, right, not to that just 10%. There is actually - it's an ongoing discussion.

Q. But you would agree Ms. Danilova, that at some point the court will make a decision as to what exactly, well the many different scenarios and characterizations of the Nikityuks' money, a decision will be made and as you pointed out earlier, the house - a house entered the picture at some point but in this event as you said, comment five, you're still financially independent, this means you have different money bags and kitchens, correct?

A. But in this option.

Q. The house option.

A. Yes.

Q. Right, thank you.

A. But it's again, we cannot afford the house kind of though, it's not clear that we can afford the house at

5 this point but they asked us for a house that we wanted to sell, we wanted to sell so they changed actually our intention in regard of this house, we changed this and we went for this option, we couldn't consider - we're not that comfortable with that option but we went for that to have a better life for them here and everything went well I would say. Everything was very, very well here. Our family was a little model for all of our friends.

10 Q. Ms. Danilova, you would agree that while on the one hand, you say, you didn't sell the house because Nikityuks asked you not to, on the other hand, you didn't let them move out into their own apartment when they wanted to a number of years later, correct?

15 A. This is absolutely not correct. You have so twisted everything. I disagree with them to move social housing.

Q. So...

20 A. Because that stopped me from considering all other options, this is my point, this is why I'm here. I disagreed to break the law.

25 Q. And last question about this email Ms. Danilova, in block letters at the bottom it says, think it over make up your mind. You would agree with me that the Nikityuks were going to make a choice based on this email, correct?

30 A. Exactly as I told you, like first time today, I'm sorry, they have two options, they had to make a choice, yes, stay in Russia or come to Canada. They had two choices, what they have and first option, we just go through this and we would be, you know, you honestly think that we would be in the worst position, two of us, if they didn't come with their

money. You honestly think that we needed their money,  
\$260,000.00.

THE COURT: Well this is not your opportunity to  
ask him questions.

A. I'm sorry, I'm sorry.

THE COURT: You can think about those in your  
mind but this is his opportunity to ask you  
questions so he is not required to answer your  
questions.

MR. BORNMANN: Q. I put to you Ms. Danilova that  
that is not - that was not the choice the Nikityuks had, the  
choice the Nikityuks had before them was set out in the four,  
in this document. This document set out the choice the  
Nikityuks had and based on the life promised and their choice  
to invest risk free for 10%, based on that choice, that  
promise you made, they accepted that promise and they sent you  
their money, that's what happened Ms. Danilova.

A. And this is your position, I understand.

Q. And following that telephone conversation you  
told us about, where the Nikityuks accepted with both hands,  
the life you had promised in the email, it's true that  
Nikityuks in face wire transferred you some, \$260,000.00 US,  
correct?

A. Yes.

Q. Over - and it was done in four installments,  
correct?

A. Yes.

Q. And this went to your account at the TD Bank,  
correct?

A. Shared with my husband.

Q. Shared with Pavel and the money was



transferred from there to your Interactive Brokers account correct?

A. Not all - not all money. What I need to look into the payments I do not remember.

5 Q. Some of it was though, correct?

A. This is correct.

Q. A significant portion of it was transferred.

A. Correct.

10 Q. Right and this - this money was the brought capital in the email, correct?

A. Brought capital in email is \$200,000.00.

Q. Right.

A. If you - it literally - in the email, brought capital, it says \$200,000.00.

15 Q. But the sent you \$260,000.00 plus US, correct, that's what was transferred to you, yes.

A. Around, yes.

Q. Okay and the Nikityuks put - they wrote present on the wire transfer form in Russia, correct?

20 A. That document was concealed for over four years...

Q. You only found out about it.

A. ...I haven't had a chance to see this document prior to the commence of the trial.

25 Q. You didn't see it until a few months ago, correct?

A. This is - I actually saw those documents and other agreements about apartments and everything in their possession, it was in their files, like documents from Russia, I have never went through those documents because I received  
30 their money, what would be the point for me to go through

their Russian documents.

Q. You didn't think it was a gift when it came though did you?

A. I knew that this is the money sent to my  
5 account in exchange of my - so I'm providing lifetime care and  
lifetime financial support for my mom to cover for all their  
living expenses and this money will never intended to return  
back, this was an agreement and it sounds - so gift is how my  
mom saw that. So she put it as a gift as I now can see. The  
10 money that...

Q. The money wasn't meant for a gift for you though was it?

A. Literally, I believe the definition of the  
gift is the money that is not supposed to be returned ever and  
15 it's in compliance with the definition of the money I returned  
from my mother, this money will not - was not supposed to be  
returned back ever.

Q. The Nikityuks will testify that they - they  
wrote present on the wire transfer document in order to avoid  
20 paying fees or taxes. The - now you have the money in Canada,  
you have - the Nikityuks transfer you the money and it is true  
that you and your husband lost about \$200,000.00 of that, of  
the money entrusted to you in the stock market, correct?

A. Literally, this is correct but literally I  
25 would say this statement is correct but again, it is more  
complex, the money if you are start any business you have to  
invest money in the business first and you not expecting any  
return on your investment for the next maybe several - for the  
next several years, it depends on the business. First you  
30 always invest and then you put your money into work and then  
you - the money start working for you, if you are lucky and

successful in your business.

Q. Well let's very quickly talk about what this money did though, so within months of you getting it, right, it - the majority of it was lost in a matter of days, correct,  
5 it was a very short period of time.

A. This is correct, yes. But it is actually nothing, we are so open here, we had to, you know, if you even provided the documents about wire transfer and how this money actually - how my - it was literally a gift, you probably  
10 didn't have this kind of information from us because this money was given to me and it was on my discretion how to use this money and it was actually, the know how of my business how to use this money but you intentionally concealed this evidence. It is a crucial evidence; you would have never  
15 obtained C.P.L. probably if you provided this evidence during this C.P.L. motion. We insisted you provided this in your motion, before the C.P.L. motion but judge that we have, didn't exam any evidence.

THE COURT: I think you're commenting on other  
20 legal proceedings and perhaps you're arguing with the lawyer as opposed to answering his questions. Your legal arguments can come from your counsel at the end of the day.

A. I am sorry but my point here that this wire  
25 transfer slip is a crucial evidence and it's only because you didn't provide this crucial evidence in the beginning of the proceeding. You were successful at the motion and the judge ordered to open accounting...

THE COURT: I'm gong to interrupt you there  
30 because you're going through the same conversation I just addressed with you and it is

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late in the day and perhaps we should leave a few questions for Mr. Bornmann to deal with tomorrow. We can pursue this issue further and you can think it over, over night but this is not the opportunity to discuss a previous judges' decisions on the material that was before her at the time. I think his questions about the stock market will be continued tomorrow if that's the theme that he's dealing with, Mr. Bornmann, do you have - you can step down now by the way, until tomorrow, thank you. Mr. Bornmann, do you have an idea of your time lines for tomorrow, I don't know how far along you are as to where you expect to be or where you are going.

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25  
MR. BORNMANN: The, unfortunately, the timelines very much contingent on the length of the answers to the questions Your Honour. Give what we've heard today I would be - I would be concerned about making any commitments to less than a day in the usual course, I would anticipate being finished before lunch Your Honour. However, at the pace we are proceeding now I anticipate it would be later afternoon at the earliest.

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THE COURT: Mr. Mae, I will pose the same question to you, is Mr. Bornmann leaving any areas that you need to ask about?

MR. MAE: So far he has not covered anything that I intended to deal with, obviously I don't know what is coming and I have my cross-examination

5 prepared of course but things may be said  
tomorrow, things may have been said today that  
which swap some things in my mind so I - I can't  
give any indication yet how long I will be but I  
would certainly hope to be finished this week.

THE COURT: All right I have - Ms. Chapman do you  
have any other witness for the Plaintiffs' side.

10 MS. CHAPMAN: We do, we have a couple other  
witnesses that should be very short Your Honour,  
very specific issues. I don't suspect I will be  
very long with them but at this point I don't  
think I would be looking to call them until  
Monday, maybe Tuesday morning.

15 THE COURT: All right. I have a chance, or I've  
been asked to do a pretrial on another case that  
is coming up for trial on Friday, I could do it  
early in the morning or I could stop this case  
early in the afternoon and do it on the Friday  
afternoon, I know we've already lost a lot of  
20 time and it seems that can't be avoided and it  
seems inevitable for this to go beyond this  
sittings so I don't want to cause a loss of time  
for this matter if it could be avoid but does  
counsel have any views about whether we could  
25 stop early Friday or whether I should do it in  
the morning and start a bit later, this pretrial  
may take half an hour to an hour I gather.

MR. MAE: I have no problem with that Your  
Honour. I'm in your hands.

30 THE COURT: Any comments from Mr. Bornmann or Ms.  
Chapman as far as, I realize this has been a

couple of long weeks for the Plaintiffs' they have both been giving evidence for a long period of time and obviously it will continue tomorrow and beyond that.

5 MS. CHAPMAN: Yes, and my hope is that we will be finished with Ms. Danilova by Friday so that I could maybe have some discussions with them over the weekend. So my preference would be to have that pretrial in the afternoon if we could try and get through the cross-examination, the balance of it Friday morning but again, whatever works for your schedule.

10 THE COURT: I was going to say I'd like to do it in the afternoon but I don't want to, I can't predict where the cross-examination would be finished and I'd have to make a commitment to this other file in advance.

15 MR. MAE: Your Honour, I'm in your hands and whatever you decide, if my examination is interrupted I have no problem with that. Sometimes of course while you're doing a cross-examination you have your list of questions ahead an interruption is actually quite good because it gives you the ability to excise your future questions.

20 THE COURT: All right well perhaps I will do this in the afternoon then on Friday and we will break at 1:00 and with the hope that the cross-examination is complete or near complete and obviously Mr. Mae if you can avoid duplication of issues that are covered already by Mr.

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Bornmann or with the previous witness then that may help to speed things up.

5 MR. MAE: That would certainly be the intent and of course I try to predict that at the outset by asking whether the evidence will be same to which I was told is not fair, so I'm forced into that corner. Your Honour, while I'm on my feet and my friend mentioned about witnesses, one of my witnesses who is subject to the witness exclusion order is Fiona Cascognette or the 10 YMCA, she has put it in perhaps crass terms is the person that signs my cheque and she is the person that I report to, she has purposely not been in court because of, primarily because of 15 other commitments but I could have quite easily had her here as the representative of the YMCA and I canvassed with my friend during the lunch time the ability as to whether the witness exclusion order could be lifted in respect of 20 Ms. Cascognette because as we're going over to another sitting I need to report to somebody, she's' not the highest person at the YMCA but I can't keep her out of the loop as it were and it's going to put me in an awkward situation for 25 that six month period.

THE COURT: Is she a witness potentially?

MR. MAE: She will be a witness Your Honour, yes.

THE COURT: Ms. Chapman, any issues there, this is the instructing individual I guess and also a 30 potential witness, is there any...

MS. CHAPMAN: There is no issues, I mean I see

5 her as being a representative of a party, the  
YMCA and so I - as Mr. Mae said, she has every  
right to sit here if she was available to do so,  
so I don't have a concern. I think the  
discussion really is around, you know, knowing  
that it looks like we're going to be finishing  
this sometime on the next sittings to try and  
make that time period that we will be off from  
10 the trial easy for everyone to deal with their  
clients during that time.

15 THE COURT: All right so it sounds like there no  
concern about an exception to this witness and  
since we're talking about the time period  
between now and the next sittings, at any point  
in the trial I usually suggest to the parties  
they consider a mid trial conference, I haven't  
done that here because we have finished the  
evidence that I don't think it will be that  
20 useful at this point but given that we're going  
to over for a period of six-months I think a  
pre-trial or mid-trial I should say with the  
lawyers and perhaps the parties and a judge that  
can attend to that matter may assist the parties  
and if not settling it, perhaps reducing some  
25 aspects of the case when it does continue. So  
that's an option you can discuss to see if your  
amenable to that and that would be on a  
different day, I'm not trying to suggest to be  
squeezed in during the three-weeks but given  
30 that it is going over for six-months, if a half  
a day could be provided at some other time that



is suitable for three counsel, I will leave that for you to think about. Otherwise things are just at a stand still for six-months. So with that in mind we will adjourn until tomorrow morning and we will break a bit early on Friday.

...WHEREUPON THESE PROCEEDINGS WERE ADJOURNED

835.  
Certification

FORM 2

Certificate of Transcript  
Evidence Act, Subsection 5(2)

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, Barrie, Ontario, taken from Recording No. 3811-01-20160525-085503 which has been certified in Form 1.

, 2017

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