

SUPERIOR COURT OF JUSTICE

B E T W E E N:

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SVETLANA DANILOVA and PAVEL DANILOV  
Plaintiffs  
(Defendants by Counterclaim)

- and -

10

ALLA NIKITYUK and VALENTIN NIKITYUK  
Defendants  
(Plaintiffs by Counterclaim)

- and -

15

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

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

BEFORE THE HONOURABLE JUSTICE G. MULLIGAN  
on June 1, 2, 3 and 9, 2016 at BARRIE, Ontario

VOLUME IV

25

APPEARANCES:

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

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Legend	
[sic]	- indicates preceding word has been reproduced verbatim and is not a transcription error.
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WEDNESDAY, JUNE 1, 2016

5 THE COURT: Just one issue counsel, this afternoon  
at two-fifteen I have an assignment court in this  
courtroom, it won't take very long, but what I  
suggest is that we just proceed this morning to  
one-thirty before we take our lunch break, and if  
it's appropriate, we'll take two breaks during the  
morning to make that work, and then I'd ask you to  
return at two-thirty and we'll continue on to the  
10 afternoon as usual. Does that work?

MR. BORNMANN: That's fine.

THE COURT: So I understand there's a new reporter  
- sorry, interpreter today?

MR. BORNMANN: Yes, Your Honour.

15 THE COURT: Should that person be sworn or  
affirmed?

MR. BORNMANN: Good morning.

CLERK REGISTRAR: Please state your name for the  
record.

20 LEON KAIBANOV: First name Leon, L-E-O-N, last  
name Kaibanov, K-A-I-B-A-N-O-V.

CLERK REGISTRAR: Do you wish to swear to tell the  
truth on the Bible or to affirm?

LEON KAIBANOV: Affirm.

25 CLERK REGISTRAR: Do you affirm - what language  
would you translate?

LEON KAIBANOV: Russian.

CLERK REGISTRAR: Okay.

30 LEON KAIBANOV: INTERPRETER AFFIRMED - Russian/English

THE COURT: Thank you sir, just about ready to  
recall your witness?

Alla Nikityuk - in-Ch (cont'd)

MR. BORNMANN: I am, Your Honour.

THE COURT: Okay, thank you. Would you just return, please?

MR. BORNMANN: May I use the lectern?

THE COURT: Yes.

CLERK REGISTRAR: The witness is still under oath?

LEON KAIBANOV: Yes, do you mind?

CLERK REGISTRAR: Witness, you're still under oath.

ALLA NIKITYUK: RECALLED

(Testifying through interpreter - Russian/English)

THE COURT: Are we ready to continue?

MR. BORNMANN: Yes Your Honour, thank you.

THE COURT: Sir, I'm going to ask you to use the separate microphone, which will assist the reporter to keep track of things. So hopefully that works. If there's any difficulty, let us know.

EXAMINATION IN-CHIEF CONTINUED BY MR. BORNMANN:

Q. Morning, Mrs. Nikityuk. Yesterday, we were talking about life at the house on Rankin.

THE INTERPRETER: An address please? Rankin?

Q. Rankin. And you told the Court that you made an appointment with Yana Skybin to talk about the bad situation?

A. Yes.

Q. I wanna - I wanna ask you some questions about Yana Skybin.

THE INTERPRETER: Yana's husband?

MR. BORNMANN: Yana Skybin. Your Honour, could I perhaps propose that we start off with the other

interpreter so this interpreter gets an opportunity to immerse himself in the factual matrix?

5 THE COURT: Yes, yes, it's nearly done and he doesn't know the names that we've been conversing. Maybe that would be good.

MR. BORNMANN: Thank you. So....

10 THE COURT: Yes, so he listens for what about the - understand the witness, and where - where you're going with your questions.

MR. BORNMANN: The facts of the events, and it'll be easier for him. Yeah.

IRINA FILIPPOVA: INTERPRETER RECALLED - Russian/English

15 MR. BORNMANN: Q. How did you first meet Yana Skybin?

A. This meeting was arranged by Svetlana.

Q. Do you remember when that was?

20 THE INTERPRETER: When?

Q. Do you remember when that was?

A. It was in August of 2009.

Q. And what was Yana Skybin's role? Why did you meet her?

25 A. She had put us in the school where we would study English language.

Q. And what was the name of that school?

A. YMCA.

Q. And what was Yana's role at the YMCA?

30 A. She introduced herself as a employee of the school that she helps newcomers, people who arrive to Canada, and helps this whole issue that questions that they ask.

Q. And did you attend this school?

A. Yes.

Q. How often would you attend the school?

A. We had health issues, we had all kind of appointments and examinations. We would attend the school all the time except the days where when we had appointments.

Q. And what - what would happen at the school?

A. School was a very pleasant atmosphere. They would meet Russian-speaking people. This fact would ease our presence in Canada.

Q. What type of activities were organized by the school?

A. This school not only taught English language, but also as with Canada, we would visit museums and would go for field trips.

Q. What languages did Yana Skybin speak?

A. She only speak Russian and English.

Q. And what was the significance of Yana's ability to speak Russian?

A. Yana was the only representative of the school Russian-speaking person.

Q. Let's quickly talk about the English language training. How long did you take English classes?

A. We would take classes for more than two years, but we missed a lot. We skipped a lot.

Q. And when did you stop taking classes?

A. We stopped attending the classes when Valentin required severe, very complex surgery in Hamilton.

Q. Was that before or after you left the house?

A. It was after we left the house.

Q. And I understand around that time you became a Canadian citizen, yes?

A. Yes, we got the citizenship.

Q. And how much English did you learn? How is your English now?

A. On everyday level, kinda manage. When it comes to specialized events, we need a interpreter's assistance.

5 Q. Can you read basic English at the grocery store?

A. Yes.

10 Q. I want to ask more questions about the relationship with Yana Skybin. I want you to think back to when you were living in the house with the Danilovs. How did the relationship with Yana Skybin develop? Can you describe that for the Court please?

15 A. Mainly there was some issues about school, and when they needed something else, they would turn to her and she would help us.

Q. What do you mean by when you need something else?

A. Some - some don't convince me the - when a citizenship - yeah, we have some Russians that dream this life.

20 Q. And how would you describe Yana at that time?

A. A very responsive person, very understanding. She's trying to meet people - people's needs and she'll work - she's a irreplaceable person, and still like that.

25 Q. Replaceable or irreplaceable?

A. Irreplaceable.

Q. And how is your relationship with Yana?

A. Good.

30 Q. And what kind of information would Yana give you?

A. We would get summons by mail, and wouldn't understand some words. She would consult - there was some medical documents, letters.



Q. What else?

A. In any case, when we needed assistance related to English language, we always turned to her.

Q. Did Yana ever give you any referrals?

5 A. She consulted us. She would refer us to somewhere - I don't understand. She would help us with writing a letter.

Q. Did Yana ever recommend other service providers to you?

10 A. What do you mean by other services? I don't understand.

Q. When you asked - when you asked Yana questions, or asked her for help, did she always do all the help herself? Or did she send you to other people that would help you?

15 A. We had a lot of issues that related to our financial problems, and we would turn to her all the time. They are writing letters to Ontario Works, ODSP, then we would write letters about the grant. She would connect with them and ask when they - get the - might get the response.

Q. And who initiated this? These letters, you or her?

A. It was coming from us that we needed to solve some issues.

25 Q. Did you ever meet Yana's mother?

A. Yes.

Q. Can you tell the Court about that?

A. We - they came to see me to wish happy birthday to me. Since then, when every time I'd visit Canada, they always come to see us.

30 Q. And how old is Yana's mother?

A. She's younger than I am, about 8 years, so

something around 70 years old.

Q. Did you ever go to Yana's birthday?

A. Yes.

5 Q. And who else - who else was - who else was at that birthday?

A. Us, and Yana's friends she has.

Q. And did you ever do any social trips with Yana?

A. Yes.

10 Q. What kind of trips did you do?

A. We didn't have a car, and of course when they invite, we would always make accompany.

Q. And did you attend Yana's wedding?

A. We went to congratulate her.

15 Q. Did Yana ever say anything negative or nasty, insulting about the Danilovs?

A. Never.

20 Q. I want to go back to an event that happened at the house. Yesterday, you told the Court about a time when Svetlana shook you. Can you please tell the Court what happened that day?

A. That day, nothing special happened that day. We just arrived downstairs at the address. There was some conversation, I can't recall what it was about, but something  
25 she didn't like. She said a phrase like it's not your house, you don't have anything of yours in it. I was rushed to try and leave, but at this moment, unexpectedly, she attacked me.

Q. Can you describe the attack, please?

30 A. She was two hands in the area - shoulders area, it was so unexpected. She was - she was standing a distance from me, and then she ran to us. And after that, she kinda detached herself from me and lied down on the floor, and

she had a - I was puzzled.

Q. When you mean - what do you mean by lied down on the floor?

A. She lied down, and she came back to her senses, and she got up. I saw that she was back to herself and we left. We didn't discuss anything. We wouldn't argue, we just left.

Q. When you say lied down, do you mean she fainted, or she got down and took a nap?

A. No, she lied down.

Q. But she passed out?

A. Some moment, was really short time. It reminded me first time, and first time already told you it was about the account.

Q. This was the driving event?

A. Yes, yes, something like that.

Q. There's a bit of a translation issue. When you say lied down, do you mean she became unconscious?

A. She kinda lied down in a calm way.

Q. After you left, do you remember where you went?

A. I can't remember, I can't even recollect. I just - we were dressing at the entrance.

Q. How did you react at the time?

A. I was in shock, of course.

Q. Were you worried about Svetlana?

A. Yes, I had grounds to be worried.

Q. And did you call the police?

A. No.

Q. Why not?

A. I did not have my phone. She's my daughter and I didn't want any troubles.

Q. Did you suffer any injury in this event?

A. No, and in any case, only in the several days  
- the fingerprints.

Q. What do you mean by fingerprints?

5 A. It's always - it was from the fingers.

Valentin told me, Alla, what is it you have? And I looked at  
them....

Q. And?

10 A. And then it was kinda marks from her finger  
present.

Q. And you said they did not show up right away?

A. Not right away, after a few days.

Q. Do you remember how many days?

A. No, I can't remember.

15 Q. Where were these bruises?

A. They were here, pointing at the right  
shoulder, here at the shoulder and right here. She grabbed me  
and shook me, like that.

Q. Did you tell the doctor about these bruises?

20 A. No.

Q. Why not?

A. I didn't have any purpose to show it to a  
doctor. First I didn't want any troubles.

Q. What kind of trouble were you worried about?

25 A. Simply this event was part of what happened  
during the life with them. We had to decide something.

Q. But what trouble were you worried about that  
prevented you from talking to the doctor?

30 A. I didn't think about that - that moment, I  
just had only one thought. We can't live like that, we can't.  
It's impossible. We can't live like that, I had a thought only  
time with Svet is like between now, broken heart place between

us and her husband.

Q. Were you worried for your personal safety?

A. We were worried about that we, as people, can't control their emotions.

5 Q. Did you take pictures of the bruises?

A. No, we didn't do that.

Q. Why not?

A. It didn't come to my mind.

10 Q. Do you remember showing the bruises, or talking about bruises to anybody else?

A. We were stressed together. They could see looking at me that some major things happening. They know about that day. We has close friends and they knew about that.

Q. Do you remember when this happened?

15 A. It was in August, Friday morning. That's what I remember. 19<sup>th</sup>.

Q. Do you have a - you have a specific recollection of the date?

20 A. It happened on Friday, on Saturday we went to Yana's birthday, that's how I connected it.

Q. Yesterday, you talked about an incident where Pavel threw something? Can you - do you remember that?

A. Yes.

25 Q. Could you tell the Court what happened? The events leading up to that?

30 A. We were sitting at the table about Valentin, Pavel, Svetlana, and I, and was some unhappiness kind of expressed. Valentin expressed his thought, that I will get a pension and he'll receive pension, he'll go back to Russia, and I will - sorry, here the interpreter has to make some explanations because this is specific charm, Russian charm. It's kind of like - and I will be homeless. Pavel grabbed the

plate - nearby plate, and threw at the wall.

Q. Do - did the plate cause any damage when it hit the wall?

A. Yes, this - we took a picture.

5 Q. Can I direct your attention to Exhibit 2(a), Tab 10? So that's the red book, first volume, Tab 10. This is the photo.

A. Yes.

10 Q. There are three pictures at this tab. Do you recognize these pictures?

A. This is the mark from when he threw.

Q. Sorry, who's he?

A. When Pavel threw the plate to the wall.

Q. And who took these pictures?

15 A. Valentin.

Q. And who was present when that happened?

A. Nobody, only four of us.

Q. You, Valentin, and....

A. Pavel, Svetlana, Valentin, and myself.

20 Q. And do you remember when this happened?

A. No, I can't remember.

Q. Do you remember if it was before or after the shaking?

A. No, it was before.

25 Q. And by shaking, I mean Svetlana shaking you.

A. Yes, yes it was before. This happened before.

Q. Did Pavel ever throw anything else?

30 A. Yeah, yes, it's when he left the table, walking down the living room, can't remember where it was, he got the glass and threw it, and said, next step is going to your head. He was - he was going to rage.

Q. And where did he throw the glass?

A. On the floor to Valentin's feet.

Q. Do you remember what caused him to throw the glass?

5 A. It was kind of continuation of what was before - wait, glass....

Q. So that all happened at the same time?

A. Yes, in the middle with me.

Q. And do you remember? How did you react?

10 A. I - I rushed to take Valentin away. As soon I started to clean up all of the glass on the floor, and then took Valentin away.

Q. And where'd you go?

A. I took him to the room of his home.

Q. And how did you feel?

15 A. Dead.

Q. Can you elaborate?

A. Al was telling us that we can't live together.

Q. So if you couldn't live together, did you take any steps to live somewhere else?

20 A. Yes.

Q. Could you describe that to the Court please?

A. Svetlana told one wonderful day, that they're building up a condo for all us to see, and she offered to go and see.

25 Q. Okay. The condo, was that around the time of the attacks or was it before?

A. It was before, just in time - tried a relationship, we had to live somehow in one house. Communicate and....

30 Q. Okay, so the condo was well before, right?

A. Yes, it was.

Q. Okay, could you tell the Court about the

condo, please? How did the condo come - how did the condo become part of the conversation?

A. We went and looked at this - saw this condo, and we liked it, and soon they started to talk about that they gonna reject this condo because Asa doesn't want to live in  
5 Barrie. I would like to clarify that we didn't have any conversations with Asa on this topic. And when she - she said that they refuse to have this condo, I ask a - I started to ask you - very much, to leave this condo for us. However, Svetlana  
10 - Svetlana refused to discuss this subject.

Q. Why did you ask Svetlana to keep the condo for you?

A. I realize that there was an opportunity for us to have a separate home.

15 Q. And why was that important? You had a house.

A. As it turned out, we didn't have a good relationship. I believe it's not good relationship, and people have lunch and then we wait for opportunity to have lunch too. Take a chance to eat.

20 Q. So had you talked with Svetlana about living separately at this time?

A. Yes, I was talking.

Q. Did you talk about any other independent living options?

25 A. When they got some tension from our questions, one wonderful day they told us go and look for apartment for yourself. During the day, we would go and look out for an apartment. By the night, we get all together in the house, and hear no apartment for you. It happened a few times like that.

30 Q. Did they tell you anything else about living separately?

A. They were telling us that they don't have a



right to live separately. It was referred to the fact that you don't know English, that sick, and we are nobody without them.

Q. I want you to think about when you came back to the house, and the Danilovs said no, we're not renting. Did they say why?

A. We were explained that without them, we wouldn't survive, that we are sick, and we don't know English.

Q. Anything else? And who is saying this to you?

A. I don't believe that we can live separately. Sven and Pavel.

Q. Now the Court's heard that at some point, social housing becomes part of the conversation. Can you tell the Court how that came to be?

A. When we were attending the school, we had a lot of classes and friends. All kind of conversations, who lives where, what conditions. When they went to birthday party - Pavel friend's birthday party, they live in Toronto in social housing, and we got interested in how it looks like, how we can get into waiting list. And so we were informed in regards to this question. We didn't live isolated, we already had acquaintances and friends.

Q. Did you find out about social housing before you met Yana, or after you met Yana?

A. We didn't - we didn't know anything about social housing before we met Yana. It was our question that - with Yana at all, we didn't talk to Yana about that. Maybe ask that social housing, we also asked for the same way, not nothing specific. We received this information from the Yana's.

Q. Was Yana at the birthday party in Toronto where you learned about social housing?

A. It was in Barrie. These people that live in social housing in Toronto, they would come to Barrie. Yana is

not related to these people in any way at all.

Q. Did you talk about social housing after you heard about it from the people at the birthday party? Did you talk about social housing with Svetlana?

5 A. Yes, I was talking, I was telling her please help us to fill out the application. I was telling her direct us. Here I received all kinds of rude answers. I received all kinds of rude answers, and raised our tone. She started to explain to me that we don't have any right for social housing.  
10 I couldn't understand how come we not having social housing. We have a high income. It was somehow - we were connecting the reason, it was full manipulation of our lives. We couldn't decide anything.

Q. The conversation with Svetlana about social housing, did you talk to her first about social housing? Before  
15 the rental apartments, or after the rental apartments?

A. Conversation about the social housing was like one of the opportunities to live separately.

Q. And did you - did that conversation - the  
20 Court wants to know about timing. You remember how we talked about you looking for an apartment? Did it happen before, after, or at the same time?

A. It's possible that it happened when they started to say go for an apartment, then decide to talk about  
25 social housing. They refuse us in this as well.

Q. Do you remember when the social housing and rental apartment conversations were happening, or do you not remember exactly?

A. When they told us that we can't be in the  
30 social housing, then they offered us a rental apartment.

Q. And then - so what happened after they offer you the rental apartment?

A. We started to look for one. We didn't find some, and then started to discuss this questions. And they say no, no, you won't have any apartment. You can't afford to have a house and...

5 Q. And a?

A. ...and the apartment.

Q. So you told the Court that you turned to Yana for help? Did you tell Yana about the situation at home>?

A. Yes.

10 Q. What did you tell her?

A. We asked her for help, to help us with social housing, yeah. To connect us with people who worked with discussion.

15 Q. Do you remember what you told her about life in the house?

A. We explained to her that we cannot live like that.

Q. Did you tell her the reasons why you can't live like that?

20 A. Yes, we told her about the situation that happened to us the last time.

Q. What situation?

A. When Svet attacked me.

Q. Did you tell Yana about any other bad events?

25 A. Yes, Yana knew about the previous last, but you told her everything.

Q. The Court wants to know which - what events did you tell her about?

30 A. About the plate, and the glass, and about his speeches that we have only two years to live because we have cancers, both of us. Oh, when he was swearing at me and slamming the door of my room, when he - how he offer us vary

insurance for Russian pension. We told Yana everything.

Q. Was what you told Yana the truth?

A. Yes.

5 Q. Do you remember when you first went to Yana  
for help?

A. No, I can't remember that.

Q. Do you remember what year?

10 A. Well, we started to leave in 2009, and 2011 we  
left in October. During this period, two years and three months  
of obligation.

Q. So you went to Yana first sometime during that  
period?

A. Yeah, yeah.

15 Q. What did Yana say when you told her about  
this?

A. We told that somehow everything was settled  
down, and we are hoping for that, and that we are trying not to  
blow up - blow that up, but after all these things, we realize  
we can't be like that. We can't - simply we can't live like  
20 that.

Q. And what did Yana suggest?

A. She suggested - she found out where we should  
turn to. She called the inspector, and after that we worked  
with an inspector.

25 Q. Who's the inspector? What organization?

A. It was connected to social housing.

Q. Did you - when you were meeting with Yana, did  
you ask her questions?

A. What kind of questions?

30 Q. The Court wants to know what happened at these  
meetings. Were you asking questions?

A. Yeah, they asked for her advice on should we

do, and that how to write a letter.

Q. And what did Yana do in response to your question?

A. We needed to write a letter, and wrote it, and  
5 ask her to translate it.

Q. What else?

A. This is not enough.

Q. Did Yana refer you to any other organizations?  
We heard about social service - social housing, so she referred  
10 you to the inspector at social housing? Did she refer you to  
any other organizations?

A. Yes, our financial support. Ontario Works,  
ODSP. Yes, we were asking these questions. They were asking  
her these questions and she was helping us.

15 Q. Did you give Yana permission to tell your  
story to other organizations?

A. Yes.

Q. And who made decisions about what to do? You,  
Yana, or mutual?

20 A. No, we were making decisions. We ask her to  
help, to help with documents to meet these people.

Q. And what was Yana's job? What did you think -  
what did you think Yana's job was at that time?

A. She was doing - she had to do, to help people  
25 that are in need of help regarding the document question where  
to go.

Q. What type of people was she supposed to help?

A. We were studying English as people who - just  
- not only, anybody who was trying to help.

30 Q. Before you went to Yana for help, I want to  
talk about before you asked for help. Did you think - did you  
think that Yana knew about the financial situation at the house?

5 A. For me, it was news here at the court. I didn't know anything about - I was never about her relationship with Sveta, I didn't know anything about it. Yana never talked to me about this topic and Svet never talk about that in the house.

Q. So it was news before Svetlana and Pavel's testimony?

A. Yes, I found out a lot of things in court.

10 Q. What about the money? Did you think - did you think Yana knew about the money before you asked for help?

A. No. What - what money?

Q. The money you brought from Russia.

A. No, we didn't talk about that.

15 Q. When you asked Yana for help, you've testified you shared everything.

A. They shared that for us, they live back to living in their house without relatives, and that we want to have separate room.

20 Q. And did you tell them about the money situation then?

A. We just were worried how we're gonna leave. This question worried about our financials and how we should be in this situation.

25 Q. I wanna turn you to Exhibit 1(b), Tab 183, this is a printout of the Canada Revenue Agency Assessments.

THE INTERPRETER: Sorry, 100?

Q. One-eighty-three.

THE COURT: Sorry Mr. Bornmann, did you call it an assessment? Did you call it an assessment?

30 MR. BORNMANN: Sorry, authorization.

MR. BORNMANN: Q. This document in English shows Yana Skybin appointed as a representative of the Nikityuks to

the Canada Revenue Agency. Do you - and apologies to all, if I could direct your attention now to Exhibit 3(a), which is the green book, and it's the first of the green books. You have to turn to the big "B" tab first, and then to Tab 11. This is an authorization, a form to authorize or cancel a representative to the Canada Revenue Agency in favour of Yana Skybin. And Mrs. Nikityuk, on the second page, can you confirm that that's your signature?

A. Yes.

Q. And - apologies - and apologies to the Court, we will now go to yet another exhibit book, Exhibit 2(a), which is the first of the red books. Now if we could turn to page 213. That's Exhibit 2(a), Tab 22, page 213, this is an application for Ontario Works as set out in a submission to the Social Benefits Tribunal. Now, on the application form Mrs. Nikityuk, for Ontario Works, you listed Yana Skybin as next of kin? Yes?

A. Yes.

Q. Can you explain to the Court why you did that?

A. We didn't know English, and she was our helper in this language.

Q. So why did you put that there?

A. We turned to - we just simply needed to leave and turn for help.

Q. Sorry, I didn't understand your first answer. So, the question - you may have explained it, but I didn't hear it. So, explain why Yana Skybin is the next of kin.

A. When we left, we needed some financial side of our life, and we turned to social - Ontario Works for help.

Q. But you said you put Yana Skybin's name down because?

A. As a representative. We're so in the issues

and through her with Ontario Works.

Q. So you put her down as next of kin because you were using her as a representative?

A. Yes.

5 Q. What did you think next of kin means?

A. There were some questions for us. They would call her and she would tell us how to read.

Q. Does it mean anything else?

A. Nothing else.

10 Q. Okay, did you ever pay Yana Skybin for her help?

A. No.

Q. Did Yana ever ask for money for her help?

A. Never.

15 Q. Have you promised Yana anything in the future for her help?

A. No.

Q. Now, you testified that you went to Yana's birthday? Did you bring any birthday gift?

20 A. Yes.

Q. What?

A. Something that would from a China, I can't remember, vase?

Q. Anything else?

25 A. No.

Q. Was there a gift card?

A. There was occasions we would collect as a group collectively, that's how - they never gave a card.

Q. What there a gift card at Yana's birthday?

30 A. No, no gift card, no.

Q. Did you ever contribute to a communal gift card?



A. Yes, that happened. It was a share, it was - here to understand they bought the gift card to collect the money and then buy a gift, yes, that's how we do.

5 Q. Do you remember Yana Skybin sending you a thank you email for the birthday gift?

A. Yes, yes.

Q. Do you remember Yana thanking you for the precious gift?

10 A. A precious gift, I don't know, we could collect all together and give it as a gift. Our chair was there.

Q. Was this - this is the share and vase, or are you remembering now that there was a gift card?

A. I don't know about the gift card.

15 Q. Do you remember Yana saying thank you for the precious gift?

A. Appreciates it - all collector, our share was \$20.

20 Q. And what is precious - did you talk to Yana about the bruises?

A. Yes, they were talking.

Q. Do you remember....

MR. MAE: Sorry Your Honour, I missed the final few words, they were too quiet.

25 A. Yes, we were talking.

MR MAE: Thank you.

MR. BORNMANN: Q. Do you remember - do you remember that event?

30 A. Yes, yes I remember that we were talking about bruises.

Q. Can you tell the Court about that day?

A. About what day? About the appointment or the

day that it happened?

Q. What - the appointment.

A. Yes, yes, we asked for help to help us to  
leave the house. We were talking about the bruises - about the  
5 rent incident.

Q. How were you feeling at this time?

A. Bad.

Q. Can you be a little more elaborate?

A. It was very hard in a moral way, what has  
10 happened....

Q. And where was the appointment?

A. The school.

Q. And who was the appointment with?

A. With Yana.

Q. And do you remember if Yana suggested calling  
15 the police or not?

A. No, I don't remember that.

Q. When you went to see - when you went to the  
appointment, was it shortly after - with - was it shortly after  
20 the attack?

A. No, it wasn't shortly. No, it wasn't shortly.

Q. Was it days, weeks, months?

A. A few days went by.

Q. Do you remember the discussion with Yana?

A. I remember how we told her, and we were  
25 talking about that, and we expressed that though that we would  
like to leave the house.

Q. Do you remember - do you remember what Yana  
said?

A. Yana said that this is a bad case.

Q. What else?

A. And we asked her to connect us - we asked her  
30

to connect us with people who deals with social housing.

Q. What else do you remember? This was a meeting, and the Court's very interested. If you don't remember, you don't remember. But the Court's interested in what you do remember.

A. I don't remember, yes, I don't remember. Whatever I said is what I remember.

Q. Did you tell - you said you told other people about the bruises, other friends? Can you name some of the friends you told?

A. Yes I told my close friends.

Q. Who?

A. Yulia Malycheva. Yana, we told her....

Q. Did you tell an Irina Flemming?

A. Yes, yes, they're our friends.

Q. Did you tell other people?

A. I can't remember.

Q. Did you tell Anastasia about the attack?

A. It was about a day over when we went to Yana's birthday, and I want to say it was in Innisfil.

Q. Did you tell her? Did you tell Anastasia about the attack?

A. Yes. About the attack, yes.

Q. What did Anastasia say?

A. She was telling me all the time the same ways is your mother did. All the time, what do you need - what do you need for social housing? Everything was revolving around that.

Q. But what about the bru - the attack? What about the bruises?

A. She didn't discuss - discussion with me.

Q. So you told her?

Alla Nikityuk - in-Ch (cont'd)

A. Yes, I told her.

Q. And she didn't say anything?

A. She didn't want to discuss it in - to get involved into....

5 MR. BORNMANN: Your Honour, perhaps we could - I apologize to the Court, I wanted to get that....

THE COURT: We will take our first morning break and come back in about 15 minutes.

CLERK REGISTRAR: All rise.

10

R E C E S S

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

CLERK REGISTRAR: Court resumes, please be seated.

15

You are still under oath.

LEON KAIBANOV: INTERPRETER RECALLED - Russian/English

MR. BORNMANN: Q. I wanna ask you some questions about October 2011. I wanna ask you some questions about bank accounts. The Court's heard that in and around October 4<sup>th</sup>, 2011 you closed a bank account. You closed a bank account.

20

A. Yes.

Q. And I believe that was a bank account at Scotiabank, yes? Why?

25

A. Well, we did not want - we didn't wish our last names to be on the accounts that we did not use, that they're not using.

Q. What do you mean by you did not use?

A. Myself and Valentin.

30

Q. And what do you mean by you and Valentin did not use these accounts?

A. I did not use - we were not using, and we did

not use those accounts.

Q. Who was using them?

A. Well, Pavel perhaps, and Svetlana, I think so because they had power of - Power of Attorney.

5 Q. So, the Court also heard about a bank account closed in and around October 17<sup>th</sup>, 2011. Svetlana has testified that she found out from the bank manager that you and Valentin closed the account. Do you remember that?

A. Yes, I do remember, yes.

10 Q. And do you recall speaking with Svetlana - do you or your - do you recall speaking with Svetlana or Pavel about that account closing?

A. Yes, they were very upset, angry.

15 Q. And that - do you remember what day you had that conversation?

A. No, I don't remember.

Q. Now the Court has heard that October 17<sup>th</sup> is the day you first left the house? October 17<sup>th</sup>, 2011?

A. Yes.

20 Q. In relation to that day, do you remember when you talked to Svetlana and Pavel about the closed bank account?

A. Yes, yes, that conversation took place on that very day. That I remember. In - in high tones, in raised tones.

25 Q. Can you describe what you mean by high tones, please? Explain to the Court what happened.

A. They went angry, I quote, "Why have you closed the account?" And we did close that account. We do not wish to be there.

30 Q. You said high tones? What....

A. Yes, that was an unpleasant conversation.

Very much unpleasant.

Q. Can you be a little more descriptive?

A. Well, after that conversation, we then go stroll, and we had decided to leave. After the stroll, we came back. We had returned back, we collected all the most important  
5 belongings, and we had decided to leave.

Q. Now, the Court has also heard about a discussion regarding life insurance. Do you remember having that conversation about life insurance with Pavel on October 17<sup>th</sup>, 2011?

10 A. Yes, that I remember.

Q. What do you remember?

A. Well, Pavel has asked us to go down into his office, and we went down and he started talking about that. I quote, "I want you to do a funeral insurance for you. Either  
15 funeral or burial insurance for you out of your Russian pension." Those are his exact words. I have buried my own parents and I'm not going to bury you.

Q. Was this conversation with you, with Valentin, or with both of you?

20 A. With both of us, myself and Valentin.

Q. And what was your reaction?

A. Horrible.

Q. You need to explain more.

A. Well, I thought what kind of a person may be  
25 saying such - such words.

Q. Anything else?

A. No, nothing else, we simply left and that was  
it.

Q. What time was it when you left the house?

30 A. The time was ten o'clock in the evening, and it was raining, and we went to the exit. At that time, Sveta has come down, and she realized - she noticed that we have a

bag, and she started asking, where are you going? Pavel went down, and we said that we're leaving from the house. But, we had the keys from the car taken, and they told us to give back the keys. Well, of the put the key - we put the keys on the floor - not on the floor, we threw the keys onto the table, or onto the desk. By that time, we did have our own phone number. Well, at that time, we did have our own phone, or telephone, the telephone that we have received for Pavel, that telephone we have also put onto the table. We were trying to exit from the door, but Sveta kind of was trying - trying not to let us out. Valentin had a special device, a security device pushing at each you and me, and may be calling the police, or might have called the police. Sveta was trying to take out of his hands, that device, but Valentin has put it back away from her, and Pavel has said, let them leave, let them go. They will be coming - crawling anyway. And we left. Sveta was running after us, crying mama, or mother, what are you doing? Come back. I told her anywhere you will be - I will be there. And we left.

Q. And what happened next?

A. We called Irina Flemming. We asked her to come over and to drive us - to take us to the shelter - to a shelter. Time was well past 10 in the evening. She asked us to wait a little. She came over with her husband, accompanied by her husband, and they drove us - they took us to the shelter.

Q. How long did you wait for Irina to pick you up?

A. Some 30 minutes.

Q. And what belonging had you - what belonging did you take with you?

A. Well, we literally had a couple of towels, toothbrushes just for the first couple of days, for the initial period.

Alla Nikityuk - in-Ch (cont'd)

Q. Anything else?

A. At the shelter, arrival into the shelter - now, they at the shelter, they got supplies because usually what they have is one person coming. In our case, two people, the whole family had shown up. So, they had to divide us between  
5 male and female sections. But, they did not do that. They would not separate between us. Instead, they called the social services and we've been accommodated in a hotel for 24 hours, and then they started to decide what to do with us next.

10 Q. I just want to stay on October 17<sup>th</sup>, 2011. Was there an incident involving your room and Svetlana that day?

A. Well, I do not recall whether it happened on that very day or not, but if not, it was on the very eve of that day, just prior to that date. We left for school, and forgot  
15 there's something. I do not remember what did I forget, but we have unexpectedly returned back. We had keys from the house, and we opened the door, and we entered into the house as usual. I run down into my room, I open the door, and I see Sveta or Svetlana sitting Turkish style on the floor. She pulled out  
20 everything, and she was searching between the papers, between the documents. She was looking for something that - well, not necessarily documents, but some kind of medical papers. Something related to that. She was searching for something in my papers, I do not recall, I do not remember what exactly. She  
25 realized that she was discovered, she was caught at the stop. She got up, and she left. Yes, such an episode - such an episode has taken place.

Q. So, the shelter you went to, this is the Barrie Women's and Children's Shelter?

30 A. No, no, it was meant for both male and female, and we did not notice any children there.

Q. Okay, who was the person at the shelter you



were working with?

A. They needed to start calling, doing the phones, and they were dealing directly with social services. So, I cannot give you any specific name, because everything has  
5 been decided over the phone. Kept prior to that, Mesh tried to approach those who've already spoken with an inspector, so that some kind of a file on us, some kind of an information on us.

Q. Do you remember the name of the inspector?

A. No, no, no. Oh, an inspector that - Bet?

10 Q. Bet?

A. Bet? I forgot his name, it was very short and starting with a letter "B", like Bet. Something like that.

Q. Okay. Do you remember somebody named Dorothy Archer? Dorothy Archer?

15 A. Yes, yes, I remember.

Q. Who is Dorothy Archer?

A. Well, it was my understanding that she also was from the social services.

Q. And what did she do?

20 A. She was helping us, she was assisting us while we were taking out our belongings. She was present with us.

Q. Was that the first time you met her?

A. No, no, that was not the first time. The first time, I saw her at school. She would come over in the  
25 school.

Q. And what would she do at the school?

A. Well, we were trying to obtain social housing. We were trying to apply for social housing, and at the time, that was the time when we were dealing with her - started  
30 dealing with her. She was the one who questioned us, who asked us questions.

Q. And who organized the meeting with Dorothy

Archer?

A. With we were at Yana's, with regards to meeting from the house, she called. She made a phone call, and Dorothy came over - has come over.

5 Q. And what kind of questions did Dorothy ask you?

A. Well, we have written an application. We written an application on her name describing what has happened to us - what happened to us, and she was aware of everything  
10 that has taken place in our house.

Q. Do you know who Bev Juneau is?

THE INTERPRETER: Bev, and the last name?

Q. Bev Juneau.

A. Oh, yeah, she's an inspector as well. When I  
15 was trying to tell you the name, that is the person who I was trying to recall.

Q. And where does she work?

A. Also at the social housing.

Q. And how does Ben Juneau fit into this story?

A. Well, she's been always called when things  
20 like ours have taken place.

Q. What do you - what did you talk to Bev Juneau about?

A. Of the same story, what has happened in our  
25 house.

Q. Do you remember when you first met Bev Juneau?

A. No, I can't recall that.

Q. And what did Bev Juneau do?

A. They have been preparing, filling out some  
30 papers, and they've been putting down whatever I was telling.

Q. What about Kim Clark, do you remember Kim  
Clark?

5 A. Yes, from offices if I'm not mistaken. I do not remember, was it related or had something to do with Ontario Works?

Q. Do you remember an escape plan?

THE INTERPRETER: Escape plan?

Q. Yes. Escape...

THE INTERPRETER: I know what an estate is...

Q. ...escape. Escape...

THE INTERPRETER: ...oh escape...

10 Q. ...like escape.

THE INTERPRETER: ...okay, good.

Q. Do you remember Support Link?

15 A. I am aware. I do know that people from other services have been involved, but what particular services, that I can't say.

Q. Okay, do you remember the device that Valentin had? The emergency device?

20 A. Yes, there was a lady there. She was asking us as well, and she - she gave that very device, that same device.

Q. Do you remember what her name was?

A. No, I don't know.

25 Q. Could I direct your attention to Exhibit 1(b), Tab 138? Untitled document. Do you recognize this document?

A. Yes.

Q. What's this document?

30 A. Well, as giving Power of Attorney - well, I would call it the Power of Attorney between myself and Valentin, one to another.

Q. Is this page 100? This 889? Sorry, are we on the right - we're Tab 138?

THE INTERPRETER: No, this is something different.

Alla Nikityuk - in-Ch (cont'd)

Q. Do you remember this document, or are you - do you remember this document or no?

A. No, I do not. I do not remember.

5 Q. Okay, okay, we'll move on. Did you get social housing?

A. At the present time, yes, we are residing in a social housing.

Q. In 2011, did you get social housing in 2011?

A. Yes, yes.

10 Q. Where did you live?

A. Present address, 1 Black.

Q. And you mentioned that one of the agencies Yana referred you to was Ontario Works, correct?

A. Yes.

15 Q. And do you remember - did you make an application for Ontario Works?

A. Yes.

Q. Did Yana help you with that application?

A. Yes.

20 Q. And how did she help?

A. Well, she was a source of a representative. She was a - through her, were they able to contact the Ontario Works. Communicate with Ontario Works, and we have given our consent. We have given to help our consent, our permission to act in that role.

25 Q. During this time, did you tell your friends about what was going on?

A. The friends have been aware, yes.

30 Q. Did they know about the situation at the house?

A. Yes.

Q. What about other people at the school, did

they know what was going on at the house?

A. No, the other people did not know, only the closer one, or the closest one.

5 Q. Did you - how many friends did you have at that time?

A. Well, well, that time, same friends we have today had been back then.

Q. Do you - is it one, two, a few, many?

10 A. Well, many acquaintances, but few close friends.

Q. Who are some of your closer friends?

A. We have a couple. Emma and Stal, S-T-A-L, husband and wife. Yulia Malycheva, Iryna - Iryna. Those are the closest.

15 Q. And did they know about the bad stuff at the house?

A. Yes, they knew.

Q. Today, I want to talk about today. What's your relationship with Yana Skybin today?

20 A. Friendly.

Q. Are you still involved with the YMCA?

A. Well, we're not presently attending at the school, but some people - well, some people above mentioned people, we are still friendly.

25 Q. And do they go to the school?

A. No, they're not going to school. Not by now.

Q. And do you see Yana at social events still?

A. Yes, yes.

30 Q. After you moved out of the house, did you have any health problems?

A. Yes.

Q. What kind of problems?

A. Big problems with Valentin. He had a surgery, very complicated surgery.

Q. And did you - and how's he doing now?

A. Normal.

5 Q. What about you?

A. Well, I have a Russian-speaking family doctor, and I'm under his supervision, under his control with regards to any issue.

Q. Now did you have any surgeries?

10 A. Here in Canada, no. But in Russia, back in 2005, yes.

Q. And how do you - and are you managing okay with the healthcare system? Here in Canada?

A. Yes, managing. Normal.

15 Q. And you haven't been using Svetlana and Pavel for assistance since you left the house, have you?

A. No, never.

Q. So, it's been four and a half years since you left the house, right?

20 A. Yes.

Q. How do you manage in that time?

A. We manage, yes.

Q. And what's your present housing situation?

25 A. We reside in social housing. We receive financial assistance from ODSP. ODSP.

Q. Do you get any other - do you have any other income?

30 A. We receive Russian pension, pension from Russia, and at the present time, the amount basis from our sponsors \$150.

Q. And the....

A. As well, and I have mentioned about that at

some point. We do have an account back in Russia. Now, we have an agreement of with regards to taxes, taxes related to that account, and after we withdraw money from our account in Russia, and after we transfer money in that account into our Canadian  
5 account, we immediately declare those money for the taxation purposes. No, that account I may describe the situation, the status of that account at the present time. \$2,750 in 6 years, \$2,750 in 6 years, and we have vigilantly engaged amount as our ready declaration of colour and taxation declaration. We have  
10 declared that money for - to the social services, services related to our apartment, our housing. Now, as a result of that money which we declared, our rent went up, and out of that amount of money, we also bought an old car, 10 years old vehicle. Now, our computer has broken. Now, after the above  
15 mentioned amount, we've collected \$700 - Now, in addition to \$2,750, we have collected another \$700. Now, we have received those \$700, and we bought a new computer for ourselves. Again, once again, we have declared \$700 to those Revenue Canada and social housing services.

20 Q. I want to clarify. The \$2,700 in Russia, these were the dividends for Valentin's company?

A. Yes.

Q. And that amount represented six years of dividends?

25 A. Six years.

Q. And what's the monthly amount that dividend pays? In average, what's the Canadian dollar value on a monthly basis, on average?

A. Approximately 70 - \$70, but I may be a little  
30 bit mistaken. Valentin knows better about those things...

Q. Okay, Valentin....

A. ...so you ask him when he's testifying.

Alla Nikityuk - in-Ch (cont'd)

Q. The apartment you live in, how many bedrooms?

A. One bedroom.

Q. Do you live by yourself or do you live with other people?

5 A. Just two of us, myself and Valentin.

Q. I'd like to turn your attention to Exhibit 2(b), Tab 42. This is the red book. And if you turn to page 560. Alla, this is a fax from ODSP.

THE WITNESS: Fax?

10 Q. Yes, from ODSP to Mary Pham, my colleague. And on the second page, at the - it's page 560, so the - yep, this one here.

THE INTERPRETER: Five-sixty?

15 Q. Yeah. At the top of the page, it says, "Amount of assistance issued to Valentin and Alla Nikityuk." ODSP says that this is the amount of money they have paid to you and Valentin. Would you - does this appear to be correct?

A. Yeah, well, yes, maybe but - yes. For what period of time?

20 Q. Ever. All - the period of time.

A. Starting April of this year?

Q. It's from November 2011 to April 2016. You don't disagree with this document?

A. No, I do not disagree.

25 Q. Thank you. Would you move back in with the Danilovs if the option was available?

A. No, no.

Q. Why not?

30 A. Well, we do not step into that same bad water twice.

MR. BORNMANN: Your Honour, I think those are my questions, but if I could beg your indulgence for



a short break to ensure I haven't missed anything.

5 THE COURT: We'll take another morning break now, and then we can consider next steps. Mr. Mae, I don't know if you have questions relating to your particular defence that might be directed to this witness, or if you feel issues are covered.

MR. MAE: At the presence, I might feel the issues have been covered, so I'm not anticipating any questions, Your Honour.

10 MS. CHAPMAN: Your Honour, I was having someone from my office come to take notes while I cross-examine Mrs. Nikityuk today, and I'm not certain they could be here in 15 minutes. I'm prepared to start before lunch because we had talked about not wrapping until one-thirty, but I would probably need at least twenty minutes to half-an-hour to have someone here. I apologize, Mr. Bornmann had expected he'd be 'til lunch.

15 THE COURT: All right, well we can come back about one o'clock...

MS. CHAPMAN: Sure.

THE COURT: ...giving you about half an hour...

MS. CHAPMAN: Yes.

THE COURT: ...before we break for the lunch...

25 MS. CHAPMAN: Thank you.

THE COURT: ...And then continue, as I said, at two-thirty. Do you have an anticipation of how long you might be? Because I'm just concerned about beginning and finishing the next witness.

30 MS. CHAPMAN: Yes, that's actually a concern of mine also, and I've expressed that. I likely won't be finished until late tomorrow.

5 THE COURT: So Mr. Bornmann, that presents a bit of difficulty because I don't think it would be efficient to have Mr. Nikityuk give his evidence in-chief, but not be cross-examined for six months.

MR. BORNMANN: Yes Your Honour, that would be untenable.

10 THE COURT: And you may not even finish the examination in-chief, which gives you dilemmas as to whether you can talk to over that six month period. So, alternatively, if we're finished with this witness, would you have other witnesses you could call that might be shorter in nature?

15 MR. BORNMANN: There are no further witnesses, Your Honour. I don't anticipate requiring more than half a day for Mr. Nikityuk, but if the cross-examination of Alla Nikityuk does in fact take the balance of tomorrow, it may make sense for us to put over Mr. Nikityuk's testimony to the next sitting. We will have the issue with respect to the interpreter, however, we're in the Court's hands on that issue.

20 THE COURT: All right. I think you suggested that through your own facilities through Legal Aid Ontario, you might be able to resolve the issue, but we can talk about that later...

MR. BORNMANN: Yes, Your Honour.

25 THE COURT: ...because it now appears that we may need an interpreter going forward in six months if we delay this examination.

30 MR. BORNMANN: Yes, Your Honour.

THE COURT: So, Mr. Mae, we may have some time to

spare on Friday.

5 MR. MAE: Yes Your Honour, we - it does pose a logistical problem for me with respect to staff on my case for a variety of reasons, so candidly, I assumed that I was going over to fall. So, to use a Canadian would I de-warmed all of my witnesses. I wonder though, Your Honour, thinking laterally, there's been talk about a midtrial. Is it feasible for that to take place on Friday?

10 THE COURT: Well, I can find out if there are judicial resources available, I'm not sure even if - if counsel wanted it, because most judges are doing with trials in the blitz. I'm not sure if anybody will be available on Friday. I'll make those inquiries if counsel wish.

15 MR. MAE: And of course, that's just my personal muse, in without having spoken to either of my friends, but....

20 THE COURT: You can chat with them over this break and, as I said earlier, there may be an opportunity in June to see Justice McKinnon when he is here for a block of time. That would give him a chance to get fully briefed on it if you update your pretrial briefs that you may have prepared before for whoever dealt with that.

25 MR. BORNMANN: Your Honour, just to assist us in our counsel in the discussion as to next steps, is there - would it be feasible for the Court to sit a single day next week in order to complete the Nikityuk cross-examination?

30 THE COURT: I have a criminal trial, jury trial starting on Monday, but I'm seeing Crown defence

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15  
counsel this afternoon for the scheduling, so if there's some glimmer of hope that that issue may be resolved or shortened, that may provide an opportunity, but I won't know until this afternoon. At this point, it's a five day jury trial, which is scheduled for next week, so that - I may have an opportunity to provide the day a little bit later in June. I'll check my schedule, but let's see what happens. I do have - I may be able to free up another day later in June, if it's just a matter of finishing up the one witness, rather leaving it go for six months. So, we can speak to that issue, and we'll just see how we're doing by the end of the day tomorrow.

15 MR. BORNMANN: Thank you, Your Honour.

CLERK REGISTRAR: All rise.

R E C E S S

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

THE COURT: Good afternoon.

CLERK REGISTRAR: Court resumes. Please be seated.

25 THE COURT: Ms. Chapman, are you ready to continue? Proceed, I should say?

MS. CHAPMAN: I am, assuming Mr. Bornmann - sorry, I thought we took a break so you could see whether you had any additional questions. Am I incorrect?

THE COURT: Nothing came to mind?

30 MR. BORNMANN: No, Your Honour. Thank you.

THE COURT: All right.

MR. BORNMANN: Those are my questions.

5 THE COURT: Just an update for next week, there's a potential that another judge could do that trial, in which case I would have up to five days available to continue with this trial, to either finish it or to get as much done as possible. Mr. Mae, does that catch you by surprise?

10 MR. MAE: It doesn't catch me by surprise, I may have one obligation next week, but I'm sure it's not something that I can't change. The difficulty I would have would relate to the availability of witnesses. I know that the internal people at YMCA should be available, and I stress the word should, as opposed to are. I can make inquiries.

15 THE COURT: All right, I'll know more definitively by five o'clock today in terms of my availability for next week. Is that....

20 MS. CHAPMAN: The only real commitment I have is in Toronto court on Monday, but I too could see what I can do about that, and whether someone could attend for me.

THE COURT: Mr. Bornmann, does next week suit you?

25 MR. BORNMANN: Yes, Your Honour. I would have to check with the - with my - with the Canadian Legal Clinic in terms of resourcing, but I imagine that would be a welcome development, Your Honour.

30 THE COURT: All right, so we'll just leave that undecided for the moment. We've got some potential. I don't want to take up any more time now because we want to make some progress before one-thirty, but maybe later Mr. Mae can let me know how long it may take for his case.

MR. MAE: I just looked at my calendar, there's

one issue that I can't change, which is a personal issue, which relates to Tuesday afternoon, but....

5 THE COURT: Well, we can have some flexibility if that's the case, 'cause I'm not giving you much notice on this issue.

MR. MAE: Thank you, Your Honour.

THE COURT: But otherwise, do you have an idea of how long your case may take to present? Assuming that we finish with Mr. Nikityuk?

10 MR. MAE: I do have a number of witnesses, but I know that I'm not going to get to them all because of the third-party witnesses. I would suggest that the YMCA people will probably take, in evidence in-chief, maybe a total of three days.

15 And then my friends, in terms of cross-examinations, but I would - respective of third-party witnesses, of course I haven't canvassed their availability, so I don't know if I can call anybody else to fill in any gaps.

20 THE COURT: All right, well in any event, we can make some progress next week, and reduce the length of the trial that might needed, or the trial time that might be needed in November...

MR. MAE: Yes, Your Honour.

25 THE COURT: ...if not reduce it completely.

MR. MAE: Thank you.

THE COURT: Does that cover the issues that we're going to talk about for now? All right, could we have the witness back to the witness box then?

30 CLERK REGISTRAR: You're still under oath.

THE COURT: So yes, Ms. Chapman, we're just going to go until eleven-thirty so that the court staff

gets a bit of a...

MS. CHAPMAN: Yes.

THE COURT: ...break before we come back at two-thirty.

MS. CHAPMAN: Thank you.

CROSS EXAMINATION BY MS. CHAPMAN:

Q. Mrs. Nikityuk, hello.

THE WITNESS: Hello.

A. Good afternoon.

Q. We are going to start by talking about living in Russia. Now, you gave some evidence yesterday in relation to living with the Danilovs in the 1980s and early 1990s. Is that correct?

A. Yes.

Q. And we understand during that time, that you lived together in a two room apartment?

A. Yes.

Q. You shared a kitchen?

A. Yes.

Q. And you shared one bathroom?

A. Yes.

Q. And then that you also gave evidence about the paperwork being registered for the privatization of this apartment?

A. Yes.

Q. It's true this was a multi-step process?

A. No.

Q. No? What was involved with privatizing your apartment?

A. No, an apartment has been privatized in '93. Well, just two people, myself and Valentin registered in that

apartment. What is called in Russian "prapiska" - "propiska."

Q. Yes...

THE INTERPRETER: P-R....

Q. ...but yesterday we looked at the certificate  
5 of registration, which is dated Oct - pardon me, December 17<sup>th</sup>,  
2004.

A. Well, you are confused. That document was  
received after we were selling the apartment. In light of  
selling the apartment - now, the privatization document related  
10 to the privatization of the apartment. It was taken away from  
us after we sold the apartment. Now that document, as of  
December 17<sup>th</sup>, 2004, it was required - it was a required message  
and document to verify, to confirm that that apartment has been  
privatized back in 1993, and is in the possession at the present  
15 time - in the possession of Nikityuk Valentin, my cousin - and  
Nikityuk Valentin my husband.

Q. Right, but that registration of that document  
didn't occur until December 2004.

A. Incorrect, it has been privatized back in '93,  
20 please have a look.

Q. Okay, let's do that. Let's have a look at the  
document. It is Exhibit 2(a), Tab number 2. Yes, there's a  
Russian version at page three.

A. Yes.

Q. And in English, it says, "Registration Date."  
25

THE INTERPRETER: Oh, this is the Russian version.

Q. That's okay, if you can locate it on the  
Russian version.

A. The date of the registration of that document  
30 - the document which was issued to me, that document?

Q. Right.

A. But this is the reason for the renewal of the



rights. An agreement of free of charge transfer of an apartment into the mutual common ownership of citizens. Well, it says clearly, this is an agreement. This is an agreement with regards to the free of charge transfer of an apartment into the mutual common ownership of citizens - citizens number 9430, dated 04 02, 1993. That administration of the Moscow district, City of St. Petersburg.

Q. Yes, I agree with you, that it was in relation to the privatization that arose in 1993, but the actual registration....

A. From the State ownership into the private ownership, that apartment came back in 1993, and there was a document number listed here, number 9430.

Q. But there was a process, you didn't automatically acquire ownership of this apartment.

A. I disagree with you. Here it says a certificate regarding State registration of the right, and that registration of the right to place in '93.

Q. Did you have to prepare documents for the government?

A. No, we have done everything. We have prepared everything, and that document is a final. That document has been issued based on the fact that the apartment, or an apartment in question has been privatized back in 1993.

Q. But there were steps that you had to take in order to have this certificate issued to you and Valentin?

A. In order to obtain that document, all the papers, all the documentation based on which that final document has been issued, all those basic documents are being held by a State organization, which was requested, and which is issued to us that final document.

Q. So the State asked you questions, and asked

you to file documents before they issue the certificate?

A. No, this privatization process, it was free of charge. We did not pay people, didn't pay any money....

Q. I didn't ask if you paid. I didn't ask you  
5 that.

A. It was extremely simple, very easy.

Q. Tell me the steps that you took, please.

A. Right now, but right now I do not recall clearly all the steps, but I do remember that an apartment - the  
10 apartment itself has been privatized back in 1993.

Q. Did you have a Power of Attorney for Svetlana at this time?

A. What Power of Attorney and for what?

Q. In 2004, before the Danilovs left for Canada,  
15 did Svetlana give you a Power of Attorney?

A. Yes she did, she gave.

Q. And did you use that Power of Attorney to deregister Svetlana and Anastasia from the family apartment?

A. Yes, that apartment, that Power of Attorney  
20 was meant in order for her to be unregistered out of that apartment.

Q. And so you relied on that document to deregister Svetlana and Anastasia?

A. Yes, yes, that happened.

Q. And do you personally believe that Svetlana  
25 and Anastasia had no right to this apartment in St. Petersburg?

A. Yes, yes, I was confident that Svetlana with Anastasia had reregistered back, only after the fact of - the fact of privatization of the apartment in question, and it was  
30 the property only of myself and of my husband's. And when an apartment has been sold, it was being sold, they had the registration that the piska, the right of residence, would now -

any rights of ownership.

Q. Yesterday, your evidence, you stated that the Danilovs had to provide a document that their child was registered somewhere in St. Petersburg?

5 A. Yes.

Q. So I ask, why must the child be registered in a residence in St. Petersburg?

A. That is the law, that is a statute in St. Petersburg, in order to prevent the child being on the street.

10 Q. Because a child has a right to shelter in Russia, correct?

A. Not the right, but what we would call "propiska," which means the child - a child does not have a right for property, but he has a permission to reside at the specific place.

Q. The government wants to ensure that children have a home, correct?

A. The child did have a house, did have a roof over her head, and she had the propiska, this right of residence. Now, the child have a right to use medical services. A child had the right for education, and other services, as well.

Q. But your evidence is that Anastasia was registered at some point at her father's apartment?

25 A. Yes, yes, I did give such a statement, yes.

Q. So why then would she need to be registered at your apartment?

A. So, when Pavel has replied, or have replied, the propiska, the right of residency in St. Petersburg, known as linear, in order to continue his post-doctoral studies. His parents has arranged for a room from that place of - sort of that place of living in St. Petersburg. His parents had

arranged a room for him. Now, that room was part of what we call communal apartment. There was another person sharing the same apartment. Now, that room belonged to the State. It was government owned. Now, in from formerly known City of  
5 Leningrad, there was a huge queue of people waiting for government housing, and Pavel, by registering Svetlana and Anastasia into his residence, he was deregistering out of our apartment in order to obtain a place and now, but in that queue, long queue, for the government-provided - State-provided  
10 housing. This was now, instead of just him alone living in that one room, now they've got three people living in the same one home. So now, the living conditions have deteriorated, and now their right to at least enroll, register themselves into the government State housing program.

15 Q. And so how does that relate to their answer yesterday that Svetlana and Anastasia were registered in Pavel's apartment to get some kind of waiting list to improve living conditions?

A. That was the law that was how things went  
20 about back in Leningrad. Well, they had to register - deregister out of - they have to register out of their former place of residence, because now they have formed a family.

Q. And this is not the apartment that Pavel's parents owned?

25 THE INTERPRETER: Val? Val?

Q. Pavel's parents.

THE INTERPRETER: Oh, Pavel. Pavel.

A. Well, it was a private property, private accommodation belonging to Pavel.

30 Q. We know that Svetlana and Anastasia agreed to deregister from the apartment when you went to sell it?

A. Yes.

Q. And if they had not agreed to deregister, what steps would you have had to take?

A. Well, we would have evicted them. We would have deregistered them by the court order.

5 Q. How long would that court process take?

A. I can't say, I never was on trial - participated in a trial.

Q. And would the courts protect the rights of a minor, like Anastasia?

10 THE COURT: Mr. Born.

MR. BORNMANN: Your Honour, as I - as it's been submitted previously, the Danilovs had the opportunity of calling an expert on the Soviet era, and Russian property law, and this has been discussed between the previous counsel and when the Danilovs were self-represented. They neglected to the operations of Russian property law beyond the witness's experience, not - I submit is not an appropriate or fair line of questioning

20 MS. CHAPMAN: I'm not asking for the witness's legal opinion, I'm asking in relation to her belief or knowledge of what that process would be.

THE COURT: I thought her answer was she didn't know. You asked her about how long it would take for the court process. Is that what you're looking for?

MS. CHAPMAN: Then my follow-up question was whether they would protect the interest of a minor, like Anastasia. If she knows.

30 THE COURT: Is she going to give her common knowledge about that issue, not obviously - it's

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not legal opinion...

MS. CHAPMAN: Of course.

THE COURT: ...if she has knowledge. So do you  
wanna ask that...

5 MS. CHAPMAN: Yes.

THE COURT: ...question again?

MS. CHAPMAN: Q. So, Mrs. Nikityuk, do you know  
whether the Court would have protected a minor, like Anastasia,  
if your brought that kind of application?

10 A. Well, at that time, it was not how - option,  
because we have nothing to do, nothing against the child. Well,  
we simply have to sell an apartment, their apartment. No one,  
and nobody would have bought that apartment had there been two  
people to own a - still residing in that same apartment.

15 Q. Two owners still residing, who are you  
referring to?

A. Well, not the owners. No, the proprietors,  
the people simply having a right to reside - a right to reside  
there. Having the propiska, right of residency, there. They  
20 couldn't have sold that apartment, they didn't have - exchanged  
that apartment for something else, but they have the right to be  
there and, if for example, you Madam Prosecutor, were going to  
buy that apartment, it would have sold twice.

25 Q. Because a right to residency is a right of  
ownership, correct?

A. Well, propiska, like a residency is....

30 THE COURT: Just - just hold on, wait a minute  
sir, there's an objection to that question, so  
just give me a moment. Mr. Bornmann, I think I'm  
anticipating that you're going to say that she's  
going to ask a legal opinion on this issue.

MR. BORNMANN: Yes, Your Honour.

...OBJECTION BY MR. BORNMANN

...SUBMISSIONS BY MS. CHAPMAN

R E C E S S

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

THE COURT: Good afternoon.

CLERK REGISTRAR: Court resumes, please be seated.

THE COURT: Mr. Mae?

10 MR. MAE: Your Honour, during the lunch recess, I had the sudden realization why I was seemingly so available next week, and the reason is the whole week was blocked off for me to prepare for another trial starting on June the 20<sup>th</sup>, and a long summary judgment motion on June 16<sup>th</sup>. So, I have to

15 retract all my availability for next week.

However, I spoke with both of my friends, and we all seem to be of the same view that finishing off Mr. Nikityuk, subject to the Court's availability at any time during this month, would make sense,

20 and just start with a clean slate for the YMCA in the fall sittings.

THE COURT: All right, first of all I have to decide - you don't have any days next week, is that what you're saying?

25 MR. MAE: I could be available for the - for the one day, but....

THE COURT: All right, I'll have to check with my coordinator because it might be easier for my - for me to provide a week than a day. I'm either

30 doing this other trial, or I'm not. So, I'll make inquiries, but I understand what you're saying. So, if I can provide a day next week or some other

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day later in the month, we could talk about that.

MR. MAE: Yes Your Honour, I do apologize for that, it was only when I was contacting my office to make arrangements that the realization sunk in why my calendar was seemingly empty next week.

THE COURT: And did you talk about a third party action, or were you using that in a generic term?

MR. MAE: Third party action?

THE COURT: Is that what you said when you were talking about the YMCA's claim?

MR. MAE: No, I said starting with a clean slate, as in we just deal with our...

THE COURT: I mean before lunch, I thought you mentioned something about a third party claim, but there isn't one, of course.

MR. BORNMANN: The third party witnesses?

MR. MAE: Oh, yeah, I mean third party witnesses. I meant the lay witnesses, people who...

THE COURT: Oh, outside of the organization, okay.

MR. MAE: ...do not work at the YMCA. Yes, Your Honour.

THE COURT: Good. So, we'll just have to see how this is going. It's the end of tomorrow, and then decide what we could do next. If we take more time than anticipated with this witness, we may not even get able to start his testimony.

MR. MAE: Yes Your Honour, with respect to if it is one more day, we can be completely available, because my colleague Mr. Thompson can sit in for me if I'm in another court.

THE COURT: All right, so we'll see if one more day next week might work.



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

5 THE COURT: Let's see how we're going at the end of today, or perhaps tomorrow. Ms. Chapman, we were in the middle of a question we had, and we should revisit that issue again before we proceed. I've forgotten what the question was, and what Mr. Bornmann's objection was. But let's just start fresh on that issue before the witness comes in - comes forward. I believe it had to do with the - or Mr. Bornmann thought it was a legal question, but did it have to do with any of the children's rights? Or do you recall?

10 ...SUBMISSIONS BY MS. CHAPMAN

...SUBMISSIONS BY MR. BORNMANN

15 R U L I N G

MULLIGAN, J. (Orally):

20 I think the question is what would the Court do in 2008, because isn't that what you are really focussing on? At that point, the evidence has shown us that Anastasia is an adult, and also that she was not even a resident of Russia. She was either in Canada under Visa or temporary

25 residency, but she was not a resident of Russia at that time.

30 I am not going to allow the question for the reason that it asks for a legal opinion on a very complicated set of facts, well beyond her knowledge, I'm sure, about Russian law. I don't think it helps the Court in the truth seeking

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function with respect to this case.

So with that in mind, can we continue with other questions?

5 MS. CHAPMAN: Sure, yes.

CLERK REGISTRAR: You are still under oath.

IRINA FILIPPOVA: INTERPRETER RECALLED - Russian/English

10 MS. CHAPMAN: Q. Mrs. Nikityuk, I want to now turn to the cottage property. I believe your evidence yesterday was that, on occasion, Pavel worked on the cottage?

A. Well, Pavel worked on this cottage occasionally as a family. They all were a family, and they all worked on this cottage.

15 Q. Now, did Pavel's father work on this cottage?

A. Pavel's father didn't work on this cottage. He just wanted to help us out. He was helping us to extend the veranda. He didn't touch the house. He didn't touch it.

20 Q. So he worked on veranda attached to the cottage?

A. It was literally two, three Sundays.

Q. And when Anastasia live with you during her first year of university, did Pavel and Svetlana provide financial support to you for her?

25 A. Yes, for help and supporting.

Q. And they brought furniture to the apartment for her?

A. We had everything in an apartment, we didn't need any of the furniture.

30 Q. How about a computer?

A. Yes, computer was - yes.

Q. And Valentin had a computer. Who gave that

computer to him?

A. I don't remember exactly, but his computer was Valentin's - yeah, that Pavel gave him.

5 Q. And the Danilovs not only provided support for Anastasia, but for yourself and Valentin as well?

A. You know, we had very good relationship. There was some support from our side, from their side, everything was mutual.

10 Q. I'm speaking specifically about financial support. Did the Danilovs provide yourself and Valentin with financial support?

A. Financially okay, could support only - two of the payments. Otherwise, we didn't need anything.

15 Q. And so yesterday when you spoke about, I believe you used the term "common area fees", that was with reference to utilities?

A. People who register at this particular place, they pay utilities. Who was registered and was - myself, Svetlana, Anastasia, and Valentin.

20 Q. So, why would Svetlana sharing the cost of utilities for an apartment that you allege you and Valentin owned?

A. On a particular case, everyone who's registered pays for utilities. Regardless, you have ownership 25 or you don't, you're registered, you pay.

Q. So, Svetlana and Anastasia had moved on to Canada. Why continue to be registered at your apartment in Russia?

A. You have to ask them.

30 Q. Well their - their answer was that they continued to be registered because of their ownership rights in the apartment.

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A. No.

Q. You don't agree with that?

A. No, I disagree. Myself and Valentin were the owners after the privatization in '93.

5 Q. And your evidence yesterday is that you were able to withdraw \$100 monthly from Svetlana's account, correct?

A. Yes.

Q. And at that time, do you know how much \$100 was in rubles?

10 A. I don't remember right now, but it was enough for us to pay.

Q. How would you withdraw these funds? From an ATM?

A. Yes, yes.

15 Q. And would you withdraw the funds, or would Valentin?

A. We were going together in withdrawal.

Q. And is there ano - a minimum amount that you can withdraw from an ATM machine in Russia?

20 A. If I'm not mistaken, it was 5,000. I might tell not the truth, but I believe it was 5,000.

Q. Five thousand rubles?

A. Yes, yes, rubles.

25 MS. CHAPMAN: Your Honour, I have a document I'd like to enter as Exhibit 12. I've provided copies to my friends, and these are some travel exchange rates for dollars and rubles, and I'll provide you with two copies so we have one for the witness.

CLERK REGISTRAR: Exhibit 12.

30 THE COURT: Exhibit 12. Exchange rates.

EXHIBIT NUMBER 12: Four pages of Exchange Rates from Dollars to Rubles - produced and marked.

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5 MS. CHAPMAN: And, just to be clear for the record, Exhibit 12 is a total of 4 pages. The first document sets out the exchange between rubles to Canadian dollars as of June 13, 2008, and the second document - the second 2 pages would be rates as of today, and today's rates are only provided to show the value of the ruble was more back in 2008 than it is today.

10 MS. CHAPMAN: Q. Now, Mrs. Nikityuk, on the first page of Exhibit 12, it shows 5,000 rubles.

THE INTERPRETER: Shows?

Q. 5,000 rubles, is equivalent to \$215. Is it not true that you could only withdraw a minimum of 5,000 rubles from the ATM machine at a time?

15 A. It means one time. Once in 24 hours, I think.

Q. Right. So, how then, do you withdraw \$100 from an ATM machine at one time?

A. Depends at what time, what time is it here? I don't need now, it was different - completely different time.

20 Now it's 2016...

Q. Yes.

A. It was different time.

Q. The rates that you're looking at on page one are from 2008.

25 THE COURT: Well counsel, is that when they were already in Canada?

MS. CHAPMAN: Well, they came to Canada in June of 2008, but....

A. We came to Canada in 2008.

30 Q. Yes, but from January 'til June, 2008, you were residing in St. Petersburg, correct?

A. Yes.

Q. And during that time, you were withdrawing funds from the Danilovs' account.

A. You mean from 2008 - from January to June, did I understand you right?

5 Q. Yes, that period, and the period before that, the Danilovs were providing funds to support you.

A. They - they was sending us money, and not for support purposes only. The rest of this money to transfer the documents to - to start the process of paperwork. For medical  
10 examination, I remember they sent us money. It was related to our arrival.

Q. Arrival?

A. Arrival.

Q. Isn't it true that the Danilovs were providing  
15 you with between \$400 and \$600 per month?

A. There was some transfer more than \$100, yeah. There was some transfers like that. Yes, for birthday, for holiday, yeah.

Q. On a regular basis?

20 A. In any case, yeah, they would send - I mean, limited by \$100, there were bigger amounts.

Q. Now yesterday, you also gave evidence that the Valentin received 90,000 rubles when he retired?

THE INTERPRETER: 9....

25 Q. Ninety thousand.

A. Ninety? Nine-zero?

Q. Ninety rubles? Or 90,000 rubles?

A. Ninety thousand rubles.

30 Q. Thank you. And, this was the cash that you brought to Canada? Is that correct?

A. It was the money that we deposited on account, and we would use it whenever we decided there is a need. It was

2004.

Q. So the - yesterday, when you said you gave Svetlana \$15,000 cash when you arrived in Canada, where did that money come from?

5 A. This money was from selling the property that we have left in our hands. And plus, we withdrew whatever we had on saving book - like saving account.

10 Q. So, all the funds you received from selling your properties in Russia were not in those four transfers to Svetlana?

A. We had left this 15,000, and we brought it as cash.

Q. Who carried this cash?

15 A. We are all together with Valentin, he had the money. We came together.

Q. So Valentin had it on him in his pocket?

A. Yes, it was permitted to bring this amount together - to put yours.

20 Q. Right, but you didn't declare this money when you came into Canada, correct? Declare it?

A. It was permitted, and there was a declaration. Everything's supposed to be.

Q. I put to you that that money was not declared when you came into Canada. Do you have evidence that it was?

25 A. We could bring 10,000, each of us, and we brought in 15,000.

Q. You were here for Pavel's testimony, Mr. Danilov's testimony. You sat here and listened to it, correct?

A. Yes, yes.

30 Q. And your lawyer, Mr. Bornmann, put to Mr. Danilov that Valentin is going to testify he gave \$18,000 to Pavel when he arrived in Canada.

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THE COURT: Mr. Bornmann.

MR. BORNMANN: I believe my question was 15,000, Your Honour.

5 THE COURT: All right. I remember the number coming up, I recall 18,000, but I don't know if that was in opening statements or in the actual question.

10 MR. BORNMANN: Your Honour, and I apologize to the Court, the number 18,000 in my opening trial statement was stated in error.

15 THE COURT: Of course, opening statements aren't evidence, but do you maintain the question you put was about 15,000 to this witness? I mean, to Mr. Danilov? That's - counsel suggest that we put the figure 18,000 to him.

MR. BORNMANN: Your Honour, I did, I misspoke, and I apologize.

20 THE COURT: All right. We can check the transcript later if it's important.

25 MR. MAE: I can be of some assistance, I just did a quick word search in the - in my notes, and the question was, "Alla and Valentin brought over 15,000 which they gave to you when they arrived," and Mr. Danilov's answer was, "No, that's a lie, why would he?" That was the - that's what I have in my notes, Your Honour.

30 THE COURT: All right, we can check the transcript, Ms. Chapman to be sure, but my recollection of 18 was distinctly in the opening statement, and I - I didn't make a specific note thinking Mr. Bornmann's question - can we....

MS. CHAPMAN: We can come back to it...



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THE COURT: Yes.

MS. CHAPMAN: ...but I would like to check the transcript.

THE COURT: I'll have Madam Reporter check that in her notes at her next break, and we can come back to that issue.

MS. CHAPMAN: Thank you.

MS. CHAPMAN: Q. In any event, the evidence that was put to Mr. Danilov was that Valentin gave these monies to Pavel when he arrived in Canada.

A. Yes.

Q. And yesterday, your testimony was that you gave the monies to Svetlana.

A. We put it on a table, and said here's the cash. And what did they do with that, or where they put it, I don't know.

Q. On what table? Where were you?

A. When we - when we came, put it on the table, somehow from me? From myself? We ask here, we brought it at the - took this money and put in the bank.

Q. Did you set the bills on the table? Were they in an envelope?

A. I don't remember, but Valentin gave this money, he had it, and he gave it.

Q. And who picked up the money?

A. They took this money, everyone was present: Svetlana, Pavel, Valentin, and myself.

Q. But do you recall who picked up the money? Did Svetlana reach for it? Was it Pavel?

A. I don't remember. We just had the conversation that they deposit in a bank.

Q. And you also gave testimony yesterday that

when the four of you - or the family lived together in St. Petersburg, that the relationships were okay.

A. Good relationship.

Q. And you enjoyed living with them?

5 A. Well, family business, all kind of things, everything was discussed. We're leaving as one family.

Q. But I mean back in Russia, when you lived together with the Danilovs in Russia.

10 A. Yes, I mean in Russia. As long as they were living with us.

Q. Yes, you enjoyed living with them at that time?

A. Svetlana got married. It was her choice. We accepted her choice, and we lived as one family.

15 Q. And in comparison, that two room apartment in St. Petersburg to the house in Innisfil, which was bigger?

A. You know, it was two different lives. They weren't bad or good, just two different lives.

20 Q. Could you tell me which of those two, either the apartment or the house, was bigger in terms of the living space?

A. We live in two apartment. They were isolated. One was isolated, and the other one, we were isolated from each other. We had common kitchen and bath. How this is - it's a space, a beautiful space. Of course - of course house means in this case, there's nothing to say about that. If you wanting to talk about the living space.

25 Q. Right, well you referenced the Danilovs having their own in suite, right? Their own bedroom with bathroom at the house, correct?

A. It's in Innisfil.

30 Q. Yes.

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A. Yes.

Q. And you compared it to a small apartment.

A. I didn't compare it to anything, I just explained what kind of rooms we had in a - when we live in  
5 Innisfil, and what Danilovs had.

Q. But you were used to sharing a kitchen with the Danilovs when you lived together in Russia, correct?

A. Yes.

Q. And in the house in Innisfil, you had four  
10 bathrooms, compared to one shared bathroom with the Danilovs when you lived in Russia.

A. But we were - but we were using only one with Valentin. Three of the others didn't have any relation to us.

Q. But they were available, you could use them,  
15 correct?

A. We believe that ours - the one that we used.

Q. And you said multiple times yesterday, that living separately when you came to Canada was very important.

A. Yes, and I...

Q. Can you explain why - sorry.  
20

A. ...and I say the same now.

Q. And can you explain why upon immigrating to Canada that was very important to you?

A. It was - it's important in a moral aspect, and  
25 socializing with people.

Q. Why do you say this in a moral aspect? What do you mean by that?

A. When people live separately, they can allow themselves different things. They can allow themselves  
30 different conversations, and other things. Separately is separately, and a house is the same - it's the same kitchen, socializing is different.

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Q. Could we have a look at Exhibit 2(a), Tab 3, please? You're familiar with this document, right Mrs. Nikityuk? Yes?

THE WITNESS: Yes.

5 Q. You recall what's contained in that email?

A. Yes.

Q. In relation to the items listed on page five, or what would be in the Russian version on page seven, what of those items did the Danilovs not provide you with?

10 A. Everything was provided.

Q. And when Pavel listed in this calculation, your pension being \$200 per month?

A. Yes, it's written here. Two hundred dollars.

15 Q. Why did you not correct him and include the dividends that were also payable to Valentin at that time?

A. This pension was approximate here, and if I had the addition to the pension back then, it would be very insignificant.

20 Q. But it was additional income you had available to you at that time, correct?

A. Yes, but here we have a specific - we're talking specifically about pension, State-paid pension.

Q. Well, pension is one item listed under the title, "Income."

25 A. Yes. That's what I'm saying, if we calculated that which you're talking about, it would be very - not much at all.

Q. Now, I understand from your evidence that you take this email to be an offer?

30 A. Yes.

Q. And I believe your evidence is that you accepted this offer?

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A. Yes.

Q. And did you see this as being two options? One being to provide your lifetime savings, as you call it, for lifetime support?

5 A. No, we never had this conversation about lifetime support. We were - we wanted to come on the sponsorship.

Q. Right. The 200,000, the option you say you chose, was that it would be invested at 10 percent risk free.

10 A. The main thing was that 200,000 would be invested under 10 percent interest, there is no risk. That's the main thing in this email.

Q. But you would agree this offer doesn't state that Nikityuks will live in a house?

15 A. Yes, different options offered, including if there will be a house.

Q. Okay, so can you be more specific? Which options on this email did you accept?

A. Number two, second.

20 Q. And if you accepted number two, does that not mean number seven does not apply?

A. We just said that there was a few options. We didn't know any specifics how it's going to look like, but I agree with you, was one and second. First and second.

25 Q. So, these really were more options in relation to your opportunity to come to Canada, correct?

A. The most important - saving the money, there was no risk.

30 Q. And so that's the option you chose, option number two?

A. Yes, mainly it - it was very important moment for us - to us.

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Q. And so when you learned that a home in Innisfil had been purchased and you would be moving there, did you believe that the agreement had changed?

A. We were told that this house was purchased by Valentin, one, and that it was - there was an invested \$150,000 into this house. It was a surprise for us, what Pavel said. It was his words.

Q. So based on that information, did you believe that you no longer - that you no longer had an agreement related to option two?

A. But we had a house, our house, turns out.

Q. Okay, so after you're told that \$150,000 of the money that you sent to Canada is invested in the house....

THE INTERPRETER: She was told - she told. Sorry.

Q. Sorry?

THE INTERPRETER: She was told, or she told?

Sorry.

Q. No. Your evidence is that the Danilovs told you \$150,000 of your money was invested into this house.

A. Yes.

Q. So at that point, how much were you expecting Davilovas would pay you risk free?

A. You know, we didn't discuss it. He would never sit us down and explain to us something. We just understood that it's our house. Nobody explain us - to us anything. We didn't have any discussion on this subject that you asked about.

Q. Right, you didn't have any discussion because the Danilovs continued to support you, to pay your expenses.

A. We didn't have - we trusted them a lot.

Q. So you were okay that they weren't going to invest the \$200,000 at 10 percent risk free, and rather they had

taken \$150,000 of your money, and purchased this home in Innisfil. Is that correct?

A. This offer came - when was email, we had only one main option one, but the second line appeared later on in the process of our lives.

Q. The second line, are you referring to this home allegedly being purchased with \$150,000 of your capital?

A. Yes, yes.

Q. Okay, so you were - were you concerned, how are the Danilovs going to support us if they used \$150,000 of our capital to purchase this house?

A. The thing is, we never discussed this question. They just put us in front of a fact; we purchased, we bought a house. It's not called a choice, it's a - it's a reality.

Q. Right, but you didn't ask. You didn't ask the Danilovs how are you going to support us now?

A. I repeated once again, we were - we trusted them a lot in this question.

Q. Right, so I would put to you that you didn't ask because you knew they would continue to provide for you?

A. The thing is, there is - if he informed us and he would tell us, maybe we would have a different conversation, but he didn't.

Q. And I would put to you that there was no conversation about \$150,000 being put into this house?

A. We didn't have conversation.

Q. That you didn't have this conversation with the Danilovs?

A. Before that, no. He simply informed that house is purchased, and money, 150,000, invested in the house. Money was our.

Q. So who informed you of that? Specific?

A. He didn't inform us before that, he just purchased and told us. He didn't ask for permission...

Q. Who? Who?

5 A. ...he just did it. Pavel and Svetlana did it, and just let us know that we purchased a house - actually, Valentin and Dreys (ph) purchased the house, and we put in a house 150,000. It his problem if he did like that, if he calculated, he counted somehow to provide us.

10 Q. Well, the Danilovs say that that didn't happen whatsoever. They did not use your money to purchase this house.

A. I say that how it was.

Q. So, who told you that they used your capital to purchase this house?

15 A. He said that 150,000 invested this money was already in Canada. They had it on their account.

Q. Pavel said those words to you?

A. Yes, it is your money invested, \$150,000.

Q. And was this a face-to-face conversation?

20 A. Yes, yes, yes.

Q. And do you remember when this conversation occurred?

25 A. Svetlana, Pavel, Valentin, and myself were on a nature kind of field trip, and this conversation was presented to us.

Q. Do you remember the time? What month? Year?

30 A. I can't remember the time, but it happened when we - after we sold this house, and then I saw the model of the house. They said that this is the house we purchased under Valentin's name.

Q. So you were in Canada when you had this conversation?



5 A. Yes, we were already in Canada. We arrived on June 13<sup>th</sup> of 2008. We moved to the house on August 15<sup>th</sup>, and it was in between this - in this interval.

Q. But you actually had visited this house, or what was only a lot, during your Canada trip in 2007?

A. Yes, yes, the lot. We were shown the place, the lot, but nothing was said about the house. Nothing. It was only said that it's going to be a construction here.

10 Q. So when they took you to the lot, they didn't say that we have purchased a home that will be built here on this lot?

A. No.

MS. CHAPMAN: Your Honour, this might be a good place to take a break this afternoon.

15 THE COURT: All right, we'll take out afternoon break. We'll come back in about 15 minutes.

CLERK REGISTRAR: All rise.

R E C E S S

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

CLERK REGISTRAR: Court resumes, please be seated.

MR. BORNMANN: Your Honour?

THE COURT: Yes?

25 MR. BORNMANN: During the break, one of the interpreters approached me and advised that during the examination in-chief earlier today, when I'd asked Alla Nikityuk a question about the next of kin on the Ontario Works application form, that in fact, when she translated next of kin to Alla  
30 Nikityuk, she used a word meaning someone closely related to you, or something to that effect. But

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5 subsequently, she had gone on to the internet, and learned that there was a more accurate word for next of kin that she should have used. I raised this just a moment ago with my friend and other friend. We don't believe there's any need to take any further steps, but just to advise the Court accordingly.

10 THE COURT: All right. Well, I suppose we know if that form that was in English in any event.

MR. BORNMANN: Yes, Your Honour.

15 THE COURT: And witness - are you saying she didn't really properly understand the question, or it wasn't properly explained to her given the language difference?

MR. BORNMANN: No Your Honour, I'm advising that the interpreter approached me with this correction, and discussed it with counsel, and we agree that the Court needs to take no further action with respect to that advisement.

20 THE COURT: All right, thank you. So, Ms. Chapman, are you ready to continue?

MS. CHAPMAN: Yes, I am.

25 THE COURT: Madam Registrar, I'll give you that back, so don't lose track of it.

LEON KAIBANOV: INTERPRETER RECALLED - Russian/English

MS. CHAPMAN: Q. I'm going to move on and look at some documents from the damages brief, which is Exhibit 4, and I appreciate we haven't seen those for some time, so - Mrs.

30 Nikityuk, if you could turn to Tab 5 please. And I do appreciate that these documents are in English.

A. Yes.

Q. But I'm hopeful that you'll be able to understand the amount of rubles, and the amount of Canadian dollars. So, for example, on page 130, we have a Citi Mastercard statement for February 8<sup>th</sup>, 2005. You'll find the date of the statement in the top line on the right-hand-side of the page.

THE INTERPRETER: February 8<sup>th</sup>?

Q. 2005, to March 8<sup>th</sup>, 2005. So, I'm going to ask you a few more questions about the support the Danilovs allege they provided to you when you lived in Russia. And you agree that Svetlana had given you a Citi Mastercard when she visited Russia in 2005?

A. Yes.

Q. And you used that card to make cash advances? Withdraw cash.

A. Yes.

Q. And on this page, it appears that on March 3<sup>rd</sup>, 15,000 rubles was withdrawn.

A. Yes.

Q. Yes?

A. Yes.

Q. Did you or Valentin withdraw those funds?

A. Well, I've told you already that we have been withdrawing funds, different amounts - different amounts depending for the purpose of being - of them being sent, of them being forwarded.

Q. Right, and I put to you that the Danilovs' evidence was they sent you between \$450 and \$600 per month.

A. Yes, they did. Yes, they did, but we're now talking about the - also talking about different payments for different documentation. For example, medical tests, et cetera, and right now I can't name all the resource - all the purposes.

I'm not denying them sending money. Yes, they did.

Q. Right, but it wasn't just \$100 a month to cover utilities, correct?

A. Yes, correct.

5 Q. Okay, and in some months, it was more than \$1,000.

A. Well, we needed a lot of money in order to obtain the paper, in order to get the document. When you get a document, you have to pay them some money. I don't have a list  
10 in front of my eyes for what purposes - on what purposes those money were spent.

Q. Right, and the documents you referred to are in relation to the sponsorship agreement, and possibly immigrating to Canada, correct?

15 A. Yes, yes, including medical tests, I had to undergo medical tests, and I had to pay for the doctors.

Q. And when did those medical tests....

A. Well, initially at first, we have received an email. Now, we have received an email and we read that email.

20 We started it. Now, we have given our consent for immigration - to immigrate, and then I have to wait for the results of the medical tests, the medical examinations.

Q. When did you go through the medical examination for the immigration process?

25 THE INTERPRETER: Once again please, I'm kind of confused.

Q. When, what year, did you go through the....

A. 2008. Whatever I'm talking here about is the year 2008.

30 Q. Okay, so we're looking at a statement from 2005. So at that time, you did not have costs for medical examinations relating to immigration.

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A. Well, back in 2005, dad already also sent us money, and actually, in that year, I was undergoing - I've undergone a surgery. Sveta has - had come, I mentioned her visit before.

5 Q. Yes, so the funds that Danilovs sent to you back in 2005, you may have used those to pay for your surgery or medication?

A. Well, we have paid for the surgery from our own mean, and yes, I do not deny they support us. They did send 10 us money for the medications. Those were different reasons at paying for the utilities, paying for the paper for the documentation - yes, everything was there.

Q. But the Danilovs did not tell you or Valentin how to spend this money.

A. Why - why we spoke over the phone, and for 15 example, if there was a need to arrange or get a document, well we had to pay lots of money to get such a document. We have to pay lots of money for the translation of the documents.

Q. How much to translate a document in Russia?

A. Right now, I can't tell you, but I know it was 20 lots of money, and lots of plaintiff papers, plaintiff documents.

Q. So is it necessary for us to go through these bank statements, or do you agree that they sent you anywhere 25 from \$450 to \$600 each month?

A. Yes, I may say so. I may say so, yes. Yes, lots of money, and lots of money was required.

Q. I have a few more questions to ask you about the \$150,000 that you allege was used to purchase the house. 30 And for the Court, I appreciate that the Nikityuks' counterclaim that is filed in the trial record is in English. So, I'm going to ask my questions without going directly to that document

unless we have to, and I'm sure that Mr. Bornmann will assist.  
Okay?

A. Yes.

Q. In your counterclaim, you allege that you're  
5 entitled to have \$200,000 on a separate bank account so that you  
can withdraw it at any time. If it assists, that's paragraph 47  
on the counterclaim, which is at Tab 2 of the trial record. And  
Mrs. Nikityuk, Mr. Bornmann is looking at that, okay? So, why  
do you believe that you should have access to \$200 - excuse me,  
10 \$200,000 in capital, if \$150,000 was spent on the house?

THE COURT: Mr. Bornmann?

MR. BORNMANN: Your Honour, I'm looking at the  
counterclaim and trying to understand why my  
friend's question got success. I read paragraph  
15 47 as a fact that was pledged that indicated that  
they, the Nikityuks, asked the Danilovs to keep  
the savings in a separate bank account.

THE COURT: So you're not - it's doesn't suggest  
that they're asking for that back, or what is  
20 the....

MR. BORNMANN: I'm unclear as to what the - the  
question my friend asked was with respect to  
entitlement to a certain amount of money, and I'm  
not seeing the claim that was referenced in the  
25 question.

THE COURT: Does this tie into the relief sought?

MS. CHAPMAN: It is.

THE COURT: In another paragraph.

MS. CHAPMAN: I'll come back to this, Your Honour.

30 THE COURT: All right.

MS. CHAPMAN: Q. Mrs. Nikityuk, yesterday you  
testified that when you asked Svetlana about opening a separate

bank account, that she fainted.

THE INTERPRETER: That she?

Q. She fainted.

A. Yes, that happened.

5 Q. Did the conversation take place in the car?

A. It started in the car, and it ended.

Q. And were you on the way to a doctor's  
appointment at that time?

10 A. Right now, I don't know, I don't remember  
where we're heading. I do remember we were driving. We were  
driving.

Q. And isn't it true that when she got out, when  
you stopped the car and she got out?

15 A. I was not driving, I was not driving. She was  
driving.

Q. Svetlana was driving? Not Valentin?

A. No, no.

Q. Only yourself and Svetlana in the car at this  
time?

20 A. And Valentin as well.

Q. She obviously stopped the car before she got  
out?

A. Yes, she stopped the car.

Q. And how did she faint?

25 A. It was very hot. Apparently, she started  
feeling bad. She stopped the car, and she exited from the car,  
and she went into the shadow, and she lied down in the grass.  
In the shadow.

Q. So she didn't fall into the grass?

30 A. No, she did not fall, she simply lied down and  
she asked me - she said don't touch me, don't touch me, and she  
was simply lying down.

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Q. What happens to someone when they faint?

A. Well, I have an impression - I have an impression even though she was breathing and everything was okay, but she simply asked me not to touch her. And I was sitting next to her, I didn't know what to do. I was lost, and she said it will pass, it will pass.

Q. Is it possible she was just car sick?

A. I don't know, I was trying to ask her may I help you somehow? And she kept saying no, just leave me alone.

Q. But your evidence yesterday was that she fainted. What did you mean by that?

A. Well, I didn't mean by that, that she had lost consciousness. It was very hot, it was over 30 degrees, so she started feeling badly, and she just lied down in the shadow.

And I was asking her what happened, but she won't respond, and she told me, okay, I will deal with it on my own. After that, I was asking her, perhaps you should go to a doctor, and then in response, she would say, no, you go to the doctor yourself. I don't need help. I do not need help. Up until today, I have no idea what has happened to her, and there was another occasion, it was just - that's when she - she has attacked me, and then lied down on the floor.

Q. Okay, and we're going to talk about that later. Let's turn now to Tab 6 in volume - pardon me, Exhibit 2(a). And the Russian version of these documents start at page 44.

THE COURT: So counsel, a shorthand description of these always help so...

MS. CHAPMAN: Yes.

THE COURT: ...you're talking about the wire transfers?

MS. CHAPMAN: That's correct.



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MS. CHAPMAN: Q. Could you tell the Court, and I apologize if you addressed this yesterday, is this your handwriting on the Russian version of the document?

A. Yes, yes.

Q. And so you wrote the word, "present?"

THE INTERPRETER: Present?

Q. Yes.

THE INTERPRETER: Ah, okay.

A. Well, purpose of the transfer - gift, present.

Q. And why did you put that word in English?

A. An operator from the bank has advised me to put it that way.

Q. She advised you to write it in English?

A. Yes, yes.

Q. And I believe your evidence was so that everyone understood it was a gift?

A. No, it was not so. Well, it was meant in order to avoid paying a fee, a certain percentage every month, and I've done that on four occasions. Yes, I've done four transfers, and each and every time it was written in that same manner.

Q. And you also signed a declaration on this document?

A. No, this is a request for a transfer.

Q. At the bottom of the document, you have a second signature, and I put to you that that, in relation to the declaration, stated in the last paragraph of the document.

THE INTERPRETER: Correspondent bank to Canada?

Q. If I could, I'll read it in English. It says, "I, Nikityuk, Alla, Alexandra (ph), confirm that this foreign currency operation is not done with business or investment purposes..."

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THE INTERPRETER: Aha, yes, yes, yes. Yeah,  
Nikityuk Alla Alexandra (ph) translation - yes, yes, I found it.

Q. Yes?

THE INTERPRETER: Yes.

5 Q. "...and not for acquisition of real estate  
title."

A. This is a transfer of my own funds, my own  
money.

10 Q. And you didn't intend to use those funds to  
purchase real estate? Or to use...

A. Exactly...

Q. ...them for business purposes.

A. ...exactly as it says.

Q. Or to use them for business purposes.

15 A. Though swear our own funds, our own money that  
we have transferred from one bank into another.

Q. That you transferred to Svetlana?

20 A. Which we have transferred to Canada. Sveta  
has - Svetlana has provided us with details of a bank that we  
have forwarded the money into that bank. The money belonged to  
us. It was our money.

Q. So, I would put to you that you gifted these  
funds to Svetlana?

25 A. No, that is not correct. That was simply us  
sending money. That was the only means for us to send the  
funds. We can't carry that amount of money in cash, but to make  
a banking transfer, that was possible.

Q. But you had a Russian bank account at this  
time, correct?

30 A. Yes.

Q. And did Valentin have a Power of Attorney in  
Russia at this time?

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A. For what?

Q. For transferring of funds from Russia to Canada.

A. What is your question? I didn't have any  
5 Power of Attorney given by Valentin to me.

Q. No. Did someone else in Russia act as a Power of Attorney for you or Valentin?

A. You mean who could have used - who could have used our account after we left for Canada?

10 Q. Yes.

A. Yes, it was a female relative of mine, but we have sent the money from another account, from another bank. Sveta has provided us with banking information, and we trusted that information, and we have use of that account to send money.  
15 We had no doubts.

Q. But isn't it true you could've come to Canada and had this relative transfer your money to Canada after you arrived?

A. No, no, that relative she was given - she was  
20 given Power of Attorney for another account which was left behind, and that other account has nothing to do with this one, with this transfer.

Q. I'm not suggesting to you that it does, I'm suggesting to you that there was a relative in Russia who could  
25 have transferred these funds after you arrived in Canada.

A. No, there was lots of money on that other account. We didn't have that much of money. We have some amounts, a small amount. Now, that account in that bank, we have put the money after selling our property. We never even  
30 held that money after selling our property in our hands. We immediately deposited it onto the account.

Q. But what I'm suggesting to you is you could

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have taken those funds, and transferred them from your bank to another bank account that you held inside of Russia.

A. Well, as a matter of fact, we trusted her because a person in question was my daughter - is my daughter. We trusted her, and she kept calling us from Canada all the time, and she told us - she explained to us how to go about. And I was doing everything strictly according to her instructions.

Q. Right, and the truth is Pavel would not have signed your sponsorship agreement without your funds arriving in Canada before Nikityuks arrived in Canada.

A. Well, as a matter of fact, this talk of sponsorship, it was - it took place back in 2004, and we are now talking about the year 2008. There's no mention, there's been no talk of any selling of any properties back then. That's what I was trying to say.

Q. So there was no conversation as to what would need to be done for Pavel to sign a sponsorship agreement for you and Valentin?

A. No, nothing. We have nothing. The only thing that happened, as a mother, when they left while they were living - at the time of that departure, I knew that I have problems back in Russia, back in Latvia, I have given to her my will in case of my death. In case of my death, I gifted her, I willed to her a part of my real estate property. That is what I have done, yes. But there could have been no talk whatsoever of the money in question. But - but that will, which I have prepared back in Latvia, now it is void and null. As of now, I have no property left. Well, initially my will had to do with the case - in case I die. Myself and Valentin, we were so pleased, so happy that they thinking of us so much. They went to Canada. After that email, we had no doubts that the - there

shall be no risk for us and for our money. What we have, they are thinking even after we die, after our deaths, the money will be - that the money will be left, will be willed for them. We never mentioned that conversations, those ideas to them. But, we were thinking in those terms. Yes, yes, that's what we were thinking about. We were thinking about willing to them whatever we had. Well, it has been mentioned here that him Valentin, has two daughters from his previous marriage. But Svetlana was so attentive. She took such good care of us, and we trusted her and we believed her, and we fully cooperated and we have fully - have done - we're doing whatever she was telling us to do. Because we have decided that we shall remain with Svetlana for the rest of our lives. And there's been no talk of any present. Now, that present has been used just for the sake of transferring funds.

Q. Isn't it true that you begged Svetlana to come to Canada?

A. No, we did not beg - no, there's been a talk such as you are elderly, and you are becoming sick, and so on. But we did have our doubts, we had our doubts very much.

Q. Well, the Danilovs' evidence, and specifically Pavel, was the transfer of that \$200,000 was the price you had to pay for his signature on your sponsorship agreement

A. No, no such conversation ever took place.

Q. Did you ever speak to Pavel before he signed the sponsorship agreement? Specifically about the agreement?

A. No, no, no. Pavel, we never discussed, never spoke.

Q. And at the time that you made these transfers, the ones in front of you at Tab 6, Svetlana did not have a Power of Attorney for you or Valentin, did she?

A. Well, upon our arrival, after we arrived, we

have given to her such power in view of the fact - in view of the fact that we had to arrange for the papers, that we don't know English, we don't know anything at all here. And it was all based upon pure trust.

5 Q. But those powers of attorney were not signed until 2009, correct?

A. Well, it seems to me that I signed that Power of Attorney immediately after my arrival, and I've mentioned - I've told about that before.

10 Q. Well, let's have a look at those powers of attorney. They're in Exhibit 1(a).

A. Well, upon our arrival, we have made - we have signed the travel of power of eternity paper [sic], then they took us to the northery - northery which was back in 2009. Yes, 15 it happened. Perhaps the first one was going to expand, no idea.

Q. Let's look at the documents.

THE INTERPRETER: Tab?

20 Q. Mrs. Nikityuk's Power of Attorney is at Tab 42, and the signing page is on page 239. And the document is in English, so could you please confirm with Mrs. Nikityuk that she understands this to be a Power of Attorney?

A. Yes, it is in the English language, and I didn't see the Russian version.

25 Q. Do you remember signing this document, Mrs. Nikityuk?

A. Yes, I - yes, I do see my signature, but I do not have the copy of that document in the Russian language. That document was created in the English language, and we 30 completely, fully trusted her.

Q. And one of the witnesses to this document is Aurika, spelled A-U-R-I-K-A.

Alla Nikityuk - Cr-ex (by Ms. Chapman)

THE INTERPRETER: Once again please, for me.

Q. On page 239, we have 2 witnesses listed, and the second witness, the column to right hand side. You see Aurika Karasseva? K-A-R-A-S-S-E-V-A. Karasseva.

THE INTERPRETER: E-S-S-A. Yeah.

Q. And do you recall signing this document with these two witnesses?

A. Yes, I sign. I will repeat once again, I do not know the contents of that paper because of the document, because I didn't have a Russian language copy.

Q. Yes, but did Ms. Karasseva...

THE INTERPRETER: Karasseva.

Q. ...Karasseva, okay, thank you. Did she translate this document for you?

A. In and all it?

Q. Yes.

A. I don't remember, I don't remember. I don't have a copy right now. I'm looking at the document, and I have no copies now. Because if this is - because if this is an important document, I must have a copy. I do not deny myself signing that paper, because I was trusting him.

Q. So, you do not deny that you signed this Power of Attorney on September 15<sup>th</sup>, 2009?

A. Yes, I do not deny. I do not deny.

Q. And would you agree this is the first Power of Attorney you've signed when you arrived in Canada?

A. I don't think that that was the first one. If I'm not mistaken, we did sign some other document immediately upon our arrival, but we came here back in 2008. Sveta was - Sveta, Svetlana was indicating the fact, was passing the fact, underlining this fact, that we do not speak the English language, and that it will be more convenient for them to have

that power.

MS. CHAPMAN: Your Honour, I'm looking at the time, and thinking maybe this would be a good place to stop today.

THE COURT: That sounds like a good idea, I'm sure it's been a long day for this witness in the witness stand, not to mention counsel and the Court, so we'll adjourn 'til tomorrow at nine-thirty. If you just - after I adjourn, if you give me a few minutes, if I can find out about availability next week for one day, I'll try and let you know today, rather than tomorrow.

MS. CHAPMAN: Thank you.

CLERK REGISTRAR: All rise.

M A T T E R    A D J O U R N E D



5

Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

10

I, Spencer Edgar, 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 on June 1, 2016, held at 15 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811\_02\_20160601\_085715\_\_10\_MULLIGG.dcr, which has been certified in Form 1.

\*This certification does not apply to the Ruling, which was 20 judicially edited.

25

, 2017

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Spencer Edgar  
(Signature of authorized person)

30

THURSDAY, JUNE 2, 2016

5 THE COURT: Counsel, a couple of housekeeping matters from yesterday. First of all, I'm available next Thursday to continue with the trial, in hopes that we'll finish the second of the defendant's witnesses. And Madam Reporter checked on the issue of what the witness said about bringing cash into Canada, and she gave me a note indicating that Mr. Bornmann asked, "Did you bring any cash?" "No, not from this account, no." Question, "No in general?" Answer, "Yes, we had it. Cash, brought it, 15,000."

10 So counsel, if you need a copy of that portion of the transcript, you're welcome to order it, but....

15 MS. CHAPMAN: Okay, my concern was actually about Mr. Bornmann putting to Mr. Danilov that the Nikityuks had brought - that they're going to give evidence that they brought \$18,000 in cash to Canada, and in fact - we'll get there, but Mr. Nikityuk's evidence on discovery is that he brought \$18,000 in cash.

20 THE COURT: All right, well there's an opportunity to deal with that as we come eventually. I don't recall Mr. Bornmann's question to the plaintiff's witness, I just recall his opening submission, so that's a separate issue. But anyway, we do have the answer from this witness that we left open from yesterday. So we're ready to proceed with continuation of the cross-examination?

25 MS. CHAPMAN: Yes, we are.

30 THE COURT: So if the witness would come forward,

please. Mrs. Nikityuk.

ALLA NIKITYUK: RECALLED

5 A. MEDJIDOV: INTERPRETER RECALLED - Russian/English  
CLERK REGISTRAR: Just a reminder, you're still  
under oath.  
MADAM REPORTER: Could I have the interpreter's  
name please, for the record?  
10 THE INTERPRETER: Yes, interpreter's name is  
Medjidov, M-E-D-J-I-V-O-D, first initial, "A".  
MADAM REPORTER: Thank you.  
THE COURT: You were here once on an earlier...  
THE INTERPRETER: I was Your Honour, yes.  
15 THE COURT: ...occasion, weren't you, sir? One  
day I think it was?  
THE INTERPRETER: One day, yeah.  
THE COURT: Ms. Chapman, you have someone with  
you...  
20 MS. CHAPMAN: Oh, yes.  
THE COURT: ...maybe you should introduce counsel.  
MS. CHAPMAN: Thank you. For the record, Boydel.  
B-O-Y-D-E-L, initial "S". Counsel in my office.  
MS. BOYDEL: Yes, good morning, Your Honour.  
25 THE COURT: Good morning.

CROSS-EXAMINATION CONTINUED BY MS. CHAPMAN:

Q. Good morning, Mrs. Nikityuk.  
A. Good morning.  
30 Q. I'm going to ask you some additional questions  
about immigrating to Canada. When Svetlana left for Canada to  
move here, did you say to her, you are not going to abandon us

here to die?

THE INTERPRETER: Sorry, I - do you mean moved from Latvia?

5 Q. No, when she immi - when the Danilovs immigrated to Canada.

THE INTERPRETER: In 2003?

Q. Yes. Did you see them off?

A. They were leaving from Latvia.

10 Q. So, you didn't see them off at the train station?

A. No. From Latvia, no.

Q. Were you concerned about staying in Russia when the Danilovs immigrated to Canada?

15 A. The concerns were that they were leaving, of course the family was parting. Their oldest such concerns when that happens, and I was very concerned.

Q. Were you concerned about who would take care of you?

A. No.

20 Q. Were you ill at that time, in 2003?

A. I was not ill to that degree, that I could not look after myself, and I could keep my household.

Q. And what about Valentin? Did he have cancer at that time?

25 A. He did not have cancer. He was in the condition that which could later become a cancer. That's what I consider it.

Q. So, when was he diagnosed with cancer?

30 A. They wrote down "flat cells," but in some instances, the cancer is coming fast, in some instances it's going slow. So, it's difficult to give any assessments. He had cancer which could be removed.

Q. He had cancer, yes or no?

A. Yes.

Q. And you spoke yesterday about his other medical condition, which was something to do with urology?

A. Yes.

Q. And he had difficulty urinating?

A. The first thing that I said, I meant urology. The thing that I said, I meant urology.

Q. Did he have difficulty urinating?

A. Yes.

Q. And the treatment that he required was not available in Russia, was it?

A. It was, with the treatment over there, he could continue living. It was not killing him, but it was giving him problems.

Q. He'd have to have a catheter with the treatment he would receive in Russia, correct?

THE INTERPRETER: Sorry, ca-what?

Q. A catheter.

THE INTERPRETER: Ah, capit?

Q. Catheter. C-A-T-H-E-T-E-R.

THE INTERPRETER: Catheter. Catheter - sorry, I'm not...

THE COURT: You have to explain it to the...

THE INTERPRETER: ...familiar with the term.

THE COURT: ...interpreter so he understands....

MS. CHAPMAN: Q. He would not be able to urinate on his own, he would need a medical device to do so.

A. Yes.

Q. But there was surgery here in Canada that could correct this problem, correct?

A. We did not know about that. The thing was

that we had a surgery in Russia, but they did not do it correctly, and the consequences were the ones which you are talking about now.

5 Q. But had you discussed the medical treatment that would be available to Valentin if he was in Canada?

A. Nobody could explain it to us. We did not know how it looks over here. We knew that the medicines - the medicine's better here.

10 Q. And you had those discussions with Svetlana?

A. Yes, yes.

Q. And you gave evidence that Valentin had surgery in Hamilton?

A. Yes.

Q. What kind of surgery was that?

15 A. First, we attended at urologists who told us, probably because of our old age, that the surgery which we would have, it is so complicated that I could not predict any results. So, you will be under my observation. I will be helping you, but that's all you can count on. Then we saw another urologist,  
20 the younger one, and he looked at Valentin and said, you know, I can help you. But he said it would be very complicated surgery, it could be done only in Toronto or Hamilton. In Hamilton, it will be faster, so you have to make your choice, and we choose Hamilton.

25 Q. So just a moment, Mrs. Nikityuk, the surgery Valentin had in Hamilton was for his urology issue, correct?

A. Yes, yes.

Q. And does he have difficulty urinating today?

A. No, two years passed.

30 Q. And he does not have a catheter, a medical device, to help him urinate?

A. No, no, he did not need.

Q. And I understand you have also had surgery here in Canada, is that correct?

A. Me? No. Personally, me, I had none.

Q. Have you had cataract surgery?

5 A. It's for the eyes, I thought - yes, it was for eyes. I had even two surgeries: one for cataract, one to lower the eyelids.

Q. Because you have glaucoma?

10 A. I still have glaucoma, I've been suffering from it for 30 years.

Q. So, now I'd like to turn to living in the house together, you with the Danilovs. And, I don't believe it's disputed that the Danilovs moved into the home with you sometime in June 2009?

15 A. Yes.

Q. And you briefly touched on this in your examination with Mr. Bornmann, but could you explain how the Danilovs told you they intended to move in?

20 THE INTERPRETER: How they explained when - what they - could you repeat the question?

Q. That they intended to move in.

A. It was explained very fast and simple. They were visiting periodically, mostly by Sundays, for weekends. And from time to time, the conversations were starting that it was difficult to pay for two accommodations. But, we did not  
25 speak about any specifics. And then, one day, they just arrived and said, we're going to live together in this house. All of us. In the house, everything was already separated, so everybody was supposed to be in their place, kind of like that.

30 Q. And so did they move in the weekend that they broke this news to you?

A. Yes.

Q. So they showed up with a moving truck?

A. The house was already furnished. Everything was in the house already, they just had their car, and by car, they were moving stuff.

5 Q. But your evidence has been that prior to this time in June 2009, the Danilovs were mostly living in the Etobicoke apartment, correct?

A. Yes.

10 Q. So they clearly had some personal belongings they would have to move from Etobicoke to the Innisfil house?

A. And they did move it, slowly later on.

15 Q. So, after they announced they're moving into the house and no longer going to live in Etobicoke, they travelled back and forth to the apartment to gather their things?

A. I am remembering now, they just took a car, and whatever they had, they brought it to Innisfil. That's how it was.

20 Q. The Danilovs' evidence is that this was the plan all along.

A. Probably, everybody had their own plan. We were thinking that they would be coming by weekend - on weekends, and they had other plans.

25 Q. But at that time, it wasn't a problem for you to then live with the Danilovs, correct?

A. Yes, we may say so. No, we had none.

Q. And so then in your evidence yesterday, you said that your trust in the Danilovs started to deteriorate in 2009.

30 A. Yes.

Q. So, when - which month in 2009 did that happen?



A. I cannot say which month, but it was not like it's supposed to be in the real family. We did not have open conversations. You ask a question, you never get an answer. It was not as open as before.

5 Q. I believe your evidence was, we didn't bug them, they didn't bug us. Does that sound about right?

A. Yes, that's how it was. We tried to behave like that.

10 Q. And yesterday we looked at some document where you provide Danilovs with a Power of Attorney in September of 2009.

A. Yes.

Q. And so, did you trust them at that point?

A. Yes, we did.

15 Q. So, what in the relationship changed, where you felt you no longer trusted them?

A. There was some kind of irritation, even when you ask important questions about the money, about cleaning in the house. It was unpleasant. Some kind of limitations started  
20 to arise. Don't be friends with this ones, don't go visiting this ones, computer was under control. It was leading to irritation. We felt that we kind of irritating them, and we were trying not to be in their way. To have a nice house and a full fridge, it's not everything.

25 Q. So, who did they limit you from seeing?

A. We could not invite our friends to our place when they were living, we did that. We were doing that. So when this kind of irritation starts, it's even - I mean even uncomfortable to talk to - to talk about it. We also started  
30 not to tell them a lot, only what was necessary. And when this irritation started, Pavel even said that, if you're going to say anything in our house, I would sue you in court.

Alla Nikityuk - Cr-ex (cont'd)

Q. And when did he tell you that?

A. When this irritating - irritated conversation was started - starting, that's what he said. He did not like if anything was held against him, and he was even swearing at me, using bad language. That's how it was. There were times when I was telling him let's talk, and he was telling me, I'm not intending on talking to you. And when this medical assessment started - undergo actively, that's when we were concerned.

Q. What medical assessment?

A. Yes, Sveta asked our family doctor to have me assessed medically, and she asked doctor about that for a weak minds.

Q. And when was that? In 2009?

A. It was when we lived together, yes.

Q. No, was it in 2009?

A. We left in 2011, so it was in that interval.

Q. So, it was in 2011?

A. No, it was in the interval, from 2009 to 2011. During, we were living together, this two, three years.

Q. I want you to be specific please. When did Svetlana ask the doctor for you to undergo this assessment?

A. I was very - I did not - I do not remember when it was, but it put us - made us very concerned that this conversations started, and Svetlana was saying, I will put you in the mad house, I will call the medics on you, and I was crying a lot.

Q. Is it possible this conversation took place in relation to a discussion about social housing?

A. When all this happened, there was not any conversations about social housing. Social housing issue raised - was raised when we alleged that something had to be done, and we started asking questions about it. It was just my reply to

the rudeness. I was not yelling in the reply, I was just going to my room and crying. And Sveta referred - talked about that to the doctor for my treatment, but I understand what the test was. It was for a weak minds.

5 Q. But you don't recall when Svetlana spoke to the doctor about this?

A. It was before the social housing issue. At that moment, it was not even in my head. I could not realize how we ended up like that, that we were living together. I was  
10 very bothered by it, but then we had these problems - until we was these problems, it was very difficult to leave in such - under such conditions.

Q. So to be clear, these problems arose sometime in 2009?

15 A. I think in 2009, 2010, yes.

Q. And they continued throughout 2010?

A. I meant not then, but '11, until we left.

Q. 2009, 2010, 2011?

A. Yes.

20 Q. And you gave evidence yesterday that at some point, you did not recognize your daughter.

A. Yes, I did not recognize my daughter when we started living together. It was completely different people.

Q. And so, when was that?

25 A. I would even say that even when we arrived, I could tell that something was wrong. You could tell it by her, she was irritated by something. She was not content with something.

Q. So, did you ask her about that?

30 A. I tried talking to her, but she would not speak openly with me - truthfully with me. She was saying they had difficulties, they were very busy, don't bother us,

something like that. And you are bugging me with these small issues, it was very difficult to talk. Kind of, you have everything. Why you not happy? Just believe and be happy.

Q. Just live?

A. Live, live, live.

Q. Live and be happy. Could we have a look at Exhibit 1(a), please? Tab 89. Mrs. Nikityuk, do you recognize these photographs?

A. Yes.

Q. And the first two photographs on page 495...

A. Yes.

Q. ...were taken in September of 2009.

A. Yes.

Q. And you trusted the Danilovs at this time.

This is the time you signed the powers of attorney?

A. Yes, yes.

Q. So, are you just smiling for the photograph, or are you happy in these pictures?

A. It's just silly to talk about that. We were sitting there celebrating something. What, I was supposed to cry? At that time, there is my granddaughter with her boyfriend...

Q. So your answer is...

A. ...how was I supposed to be in bad mood? It's explainable that I'm smiling.

Q. ...so your answer is, you're just smiling for the photograph, correct?

A. At that moment, I was happy because my granddaughter was there. I'm telling that truthful. I had good relationships with my granddaughter. Her boyfriend, we liked her boyfriend a lot, and until now he like him.

Q. So, you're happy in these pictures?

A. Yes.

Q. Okay, let's look at the next page, 496. This is sometime later in October of 2010. The top photograph is of you and Valentin.

5 A. Yes.

Q. Do you recall this weekend?

A. You mean, when they were visiting or - it's the year 2010?

10 Q. Yes, you lived together at the house at this time.

A. Yes, we lived together.

Q. And would you say you're happy in that photograph?

15 A. Yes, but when your picture is being taken, I think everybody would smile. It's normal, and when these pictures were taken also, I don't see anything special about it. It was all normal. We were not always arguing, we had times of enlightenment as well.

20 Q. And how about the photograph on page 503? The top photograph, of you and Svetlana.

A. Yes.

Q. Are you happy, or are you smiling for the picture?

25 A. I loved my daughter, I still love her, and I will love her. I do not see anything wrong with me showing tenderness towards her, it's a normal thing. We may have an argument, and then in a few seconds, we will reconcile and we will be talking to each other. It's normal. It is just life moments, specifically if it was connected with close 2011, 7<sup>th</sup>  
30 month.

Q. Do you....

A. Was connected with a holiday, so everything

was normal.

Q. Do you agree there's a difference between having an argument with someone, and not trusting someone?

A. In this moment, I think it's not compatible things. That's what I think.

Q. Forget about the picture for a moment.

A. Okay.

Q. In general, is there a difference in having an argument with someone, and not trusting someone?

A. I did not want to - our relations to end up at that point. We did not have fist fights, we did not have insults. So, I was trying not to bring the situation to that point.

Q. But that's not true, you may not have used the word insults, but you said that they spoke to you in a rude way. That Pavel swore at you, he cursed at you.

A. Yes, we had that.

Q. And your evidence is those are the reasons why you didn't trust the Danilovs from 2009 until you left the house.

A. What kind of mistrust are you talking about? Financial absence of trust, or what?

Q. I don't know, those are the words that you used in your evidence. You said that you did not trust the Danilovs. In fact, you said your trust in the Danilovs started to deteriorate in 2009.

A. We were feeling that we did not know the truth. We were feeling that we did not know what's happening in the house in reality. You can even tell that by this court. We lived in the same house, we were supposed to continue living in the same house, so of course we were trying to have nice atmosphere, not to make it some critical atmosphere.

Q. So at that time, when you felt you no longer had trust in the Danilovs, what did you feel you did not know at that time? Not now.

A. We were feeling that we allowed mutual  
5 cohabitation, mutual living, which we're not supposed to be. Which we were not supposed to allow.

Q. So was it the fact that you were now living together, or the way that they treated you that deteriorated your trust in them?

10 A. We were just feeling that we were manipulated. We used to live without any control. We did everything ourselves, and now we were under control.

Q. Okay, so let's talk about that. I want to talk about the banking. You've given evidence that you needed  
15 to advise Svetlana two days in advance if you wanted some cash.

A. Yes.

Q. Did you ever not get the cash that you requested from her?

A. No, it never happened.

20 Q. And we've seen the records. You have a joint, or had a joint account with Svetlana and Valentin.

A. Yes.

Q. And you could attend at the bank and withdraw money, correct?

25 A. That mutual account, the card for it, we only had - I only had it in the beginning. Later on, we only had credit cards.

Q. What happened to your bank card? The debit card?

30 A. We just came to the idea that we did not need it.

Q. Well, yesterday you said you lost it. Did you

lose that card?

A. We did not lose it, no. We just decided that it's gone, that we better use a credit card. What do you mean we lost it? No, we did not lose it.

5 Q. Those were your words yesterday. You said we lost it.

THE COURT: Sorry to interrupt counsel, I recall - as I recall, I thought she said that it disappeared. I don't recall that she lost it. Maybe it may mean the same thing to her.

10 MS. CHAPMAN: Sure, okay.

THE COURT: That's the wording I recall.

MS. CHAPMAN: Q. In any event, did you ask Svetlana for a new one?

15 A. No.

Q. And isn't it true you didn't need the card because you could never remember the PIN?

A. No, that's not true. That's not true. It's the same as the keys to the mailbox. I did not lose it, but I had just did not have it anymore, and with the card it was the same. We decided that we just don't need this keys, and Sveta was checking mail anyways, so the same was in relation to the card.

25 Q. So, you decided you didn't need the keys. You gave them back to Svetlana?

A. It's not that we decided that, it was done so calmly and orderly. It was more convenient, I may say so.

Q. So, you returned the keys to Svetlana for the mailbox?

30 A. Yes, later on we did not have it.

Q. They didn't disappear, you gave them back?

A. Yes, that picture is illogical to the one we



were talking about, the card. It was just an example.

Q. But you said you had credit cards.

A. Yes.

Q. And you used those credit cards.

A. Yes, yes.

Q. You weren't limited in use of those credit cards, correct?

A. We were not, but I will give you one...

Q. No, that's a good answer. That was my question...

A. ...describe you one event.

Q. ...you were not limited, right?

MR. BORNMANN: You can't....

THE COURT: Sorry, Mr. Bornmann?

MR. BORNMANN: Your Honour, the translation is difficult at the best of times, and my friend can't interrupt the answer being provided by the witness, especially when it's in the course of being translated.

THE COURT: She gave an answer on the record, and it's - only the interruption was translated. So, I think it's important that we hear the translated answer. So, the interpreter could go back and answer that question.

THE INTERPRETER: Your Honour, would you like me to finish the answer of the witness, or....

THE COURT: Yes.

THE INTERPRETER: Yes. Now I have to remember it.

A. Okay, yes, there was an event in the family of our friends back in Russia, and we send them our greetings, and we send them a gift. And later on, we had a lot of travel because of that parcel, which was ours. I was very surprised

with that. We were wrongfully accused, and we were told that you were not supposed to do such things. I consider it to be a limitation.

5 Q. Are you suggesting you used a credit card to purchase this gift?

A. Yes, but this money were withdrawn from our Russian pension.

Q. So, it was your money to spend, correct?

10 A. Yes, but we were told about it, and I consider it to be a limitation.

THE COURT: Ms. Chapman, I'm sorry that I - I recognize that you can't interrupt a question that you don't understand if - it's already answered, so it's fair of you to raise that issue, because you can't know what the witness is going to say until...

MS. CHAPMAN: Thank you.

THE COURT: ...we hear the translation. But we do seem to be going sideways here a little bit on the issue you were covering, which is the credit cards in Canada.

MS. CHAPMAN: Yes.

THE COURT: The witnesses has taken us all the way back to Russia. If you want to go there, that's fine, but I think your focus is credit cards while they were living at....

MS. CHAPMAN: Yes it is. A couple more questions, and then maybe we can take a break for a few minutes, okay?

30 MS. CHAPMAN: Q. You gave evidence that Svetlana used to give you a printout of your monthly expenses, correct?

A. Yes.

Q. And so you know how the money was being spent, would you agree?

A. Yes.

Q. And so, there was not hiding in terms of the money. The Danilovs weren't hiding the money from you, correct?

A. At least we had the printouts. We knew how much money is coming from our pension. Sveta was giving us this information, but it was all under control, and it was kind of unpleasant.

Q. Or, was it really that you didn't really care, because you were looked after. Everything was taken care of.

A. Yes, we were taken care of, but I still call it manipulation of people's lives. We had everything, everything was visible. We had internet in the house, but it was all manipulation. All letters being read, it's unpleasant picture.

MS. CHAPMAN: Your Honour, I suggest maybe we take our break here?

THE COURT: Sorry Ms. Chapman, I just want to go back to your question of a moment ago about the printout. She said she was getting it. I thought her evidence in-chief was that the printout was relating to the pension income. Was that what you were referring to, or were you referring something larger than that? I'm just thinking of her evidence at the moment, although your client may have given some different evidence.

MS. CHAPMAN: Yes, so it was in relation to the Nikityuks' monthly expenses.

THE COURT: I thought her informa - her evidence in-chief was that she got a printout, and it was from her daughter. It was relative to the pension

income.

MS. CHAPMAN: Yes, yes, the pension income and the dividends that were in the joint account, and how those were being spent by the Nikityuks.

5 THE COURT: I don't know - well, that's a separate issue. I don't know if the dividends were in there or not, it doesn't matter. But anyway....

MS. CHAPMAN: We can look at the document if you'd like.

10 THE COURT: No, that's fine. The point is that you asked her about the printout she was getting. It was related to the money in Russia that - Russian accounts, I guess. The pension income, essentially.

15 MS. CHAPMAN: Not the Russian account. It was in relation to the joint CIBC account...

THE COURT: Right.

MS. CHAPMAN: ...and I believe it was an accounting document that Mr. Danilov prepared.

20 THE COURT: All right, so that would not in any way reflect the dividend from Russia, would it? 'Cause it wasn't coming in. The dividend was staying in a Russian account in Russia, if I'm not mistaken.

25 MS. CHAPMAN: It was - it would be brought here. I believe it's paid annually, I'd have to clarify that.

THE COURT: All right, I'll just...

MS. CHAPMAN: I believe the funds would eventually make their way to Canada.

30 THE COURT: ...all right, I'll just park that issue and you can discuss that with counsel if

there's clarification required. But, my only point was to underline that the printout was relating to not all aspects of household expenses, it was relating to the pension income.

5 MS. CHAPMAN: I'll have a look at the document, 'cause I don't wanna say for sure.

THE COURT: All right.

MS. CHAPMAN: And I'll let you know after the break.

10 THE COURT: All right.

CLERK REGISTRAR: All rise. Court is recessed about 15 minutes.

R E C E S S

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

CLERK REGISTRAR: Court is now resumed. Please be seated.

THE COURT: Yes, you're ready to continue?

20 MR. BORNMANN: Your Honour...

THE COURT: Mr. Bornmann?

MR. BORNMANN: ...just before we continue, rise for the concern, and in fairness to my friend's cross-examination, although my client does not speak Russian, the Court may wish to exclude her as the issue I'm rising on concern, some of the evidence we heard a moment ago.

25 THE COURT: Your client does not speak Russian you said is that....

30 MR. BORNMANN: Sorry, does not speak English.

THE COURT: All right, so you're asking your client be - to step out of the courtroom?

5 MR. BORNMANN: If the Court and my friend feels that is necessary, because I do wish to raise a concern with respect to the evidence, and if Mrs. Nikityuk spoke English, I would most certainly suggest or submit that she be excluded.

THE COURT: All right, well she's your client. If that's your request, I'm prepared to accede to it. There's no....

10 MS. CHAPMAN: I have no position 'cause I don't know what's going on.

THE COURT: All right, well....

MS. CHAPMAN: Mr. Bornmann hasn't spoken to me about whatever he's going to address.

15 THE COURT: So, I just - I'll just ask that defence - the defendant to step out for a few minutes while we have these discussions. And the interpreter can explain to her that she's stepping out at the request of her counsel.

20 MR. BORNMANN: Unfortunately, the interpreter - it may be beneficial to have the interpreter present. During the break, Your Honour, I was advised by my friend's client who speaks Russian that there were some missed nuances in the translation, which may have resulted in the Court hearing evidence that was different than the evidence provided by Mrs. Nikityuk. And the two instances, one is with respect to the credit card example from Russia, and my understanding is that the evidence Mrs. Nikityuk gave is that the example was here in  
25  
30 Canada. That this was a gift that she had purchased in Canada, on the credit card, to send to Russia, and that they got into trouble because

5 they had used the credit card for that purpose. And the - from Your Honour's remarks before the break, and discussing it with my colleagues, that meaning may in fact have been lost in the translation. And then the second instance was with respect to the keys and the credit card. Mrs. Nikityuk's evidence, I'm advised, her Russian evidence was that these quietly disappeared because they were - 'cause that was in fact convenient for the Danilovs, and I did not ascertain that meaning from the translation of her evidence. And I, in all fairness to the interpreter, I wonder if perhaps this is the result of Mrs. Nikityuk becoming animated at times, and speaking for very long periods of time, and in fact speaking into the interpretation, and that it may be of benefit to the Court if the Court cautions her against doing so.

10 THE COURT: All right, I think with the credit card issue, I think either I misunderstood, or perhaps Ms. Chapman was moving back and forth. I don't know if she meant to deal with the credit card in Russia. So, Ms. - the witness perhaps took off in a wrong direction, or perhaps it was the translation that did that. Perhaps that issue can be recanvassed in cross-examination. Does that sound reasonable?

15 MR. BORNMANN: Yes, Your Honour.

20 THE COURT: We want to separate the two issues: what happened in Russia credit card [sic] - but she was talking about the credit card in Canada.

25 MR. BORNMANN: Exactly, she's saying in Canada,

30

she bought a gift for a nephew. So, that wasn't a friend, it was a nephew. Alla, or a relation in Canada, and that she got into trouble for using the credit card in Canada for that purpose.

5 THE COURT: Is that fair, Ms. Chapman? That you recanvas that issue just in case there's some confusion? That she may have been referring to some - or thought she - you thought, or we thought she was talking about use of the card in Russia.

10 MS. CHAPMAN: I can, I don't - that piece of her answer wasn't relevant to the question that I asked, but I'm happy to go back over that with her. I do dispute what was said about the keys and the credit card though, that they quietly disappeared, because I clearly asked her....

15 THE COURT: Well, I think she said that she gave the keys back.

MS. CHAPMAN: Yes.

THE COURT: At least in the English translation.

20 MR. BORNMANN: Exactly Your Honour, and that's the essence of the concern that I'm raising, is that I've been advised that that evidence was quite different in Russian.

THE COURT: Would it be better for that to be dealt with in re-examination? Would that be fair?

25 MR. BORNMANN: Yes, Your Honour. I'm satisfied with that.

30 MS. CHAPMAN: Well, I'd like to go back over that as well, because I thought that her answer was very clear, and I'd like to ensure that if it was a translation issue, that we address that.

THE COURT: So, you'd like to deal with the



question first?

MS. CHAPMAN: Yes.

5 THE COURT: All right, I think that makes sense. Just to separate those two issues, and be clear, and I'll caution the interpreter and the witness to - I don't say short - give short answers, but after one or two sentences, pause so there can be an interpretation, and then her answer can be finished. I can understand when she gives an  
10 answer that's a whole paragraph, no interpreter in the world is going to have a complete grasp of that, and....

MR. BORNMANN: Yes, Your Honour.

15 THE COURT: ...items that are important to counsel, may not be important to the interpreter, who doesn't have the full picture. So is that a better way to approach it?

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

20 THE COURT: All right, so Ms. Chapman, you can carry on on those issues as you see fit, and if they raise issues for re-examination, we can deal with them later.

MS. CHAPMAN: Thank you.

25 CLERK REGISTRAR: Just a reminder, you're still under oath.

30 THE COURT: Mrs. Nikityuk, I just want to speak to you through the translator. If you give a long answer, you should stop after one or two sentences so the translator can understand what you're saying and translate it, then you can continue with your answer. If you give a long answer, he may not be able to remember and translate all of

5 it. So, some of your important answers may be lost because of that - the speed of your answer, and his inability to keep up with your speed. Do you understand? And Mister Translator, if you find that she's going too fast, you'll let us know.

THE INTERPRETER: I will, Your Honour.

THE COURT: Thank you. All right, Ms. Chapman. Do you have some issues?

10 MS. CHAPMAN: Yes.

THE COURT: There are questions to continue with.

MS. CHAPMAN: Q. Mrs. Nikityuk, we're going to go back for a moment and talk about the credit cards that you had use of.

15 A. Okay.

Q. And I asked you a question as to whether your use of those credit cards were limited in some way.

A. No.

THE COURT: Ms. Chapman, are we talking about the credit cards in Canada?

20 MS. CHAPMAN: I'm going to get there.

THE COURT: Oh, okay. All right.

MS. CHAPMAN: I'm trying to set that up.

THE COURT: All right.

25 MS. CHAPMAN: Q. Those questions I asked you about the credit cards, I was referring to credit cards you had use of while living with the Danilovs.

A. Yes, I understand.

30 Q. And you gave an example that you felt there was a time, one instance, where your use of those cards was limited.

A. That point, it was not limited. It was just

discussed that we kind of did not use the money properly - for the purpose.

Q. And to be clear, you used the credit card in Canada?

5 A. Yes.

Q. For a gift that was sent to Russia?

A. Yes.

Q. Then we also talked about the mailbox keys, and a bank card that you had at some point.

10 A. Yes.

Q. And again, I'm referring to the period of time when you're living in the house with the Danilovs.

A. Yes.

Q. What happened to your bank card?

15 A. At first, we had it, but then we just decided that we don't need it.

Q. You don't need it because you were not using it?

A. Yes.

20 Q. And the mailbox keys, do you know what happened to those keys?

A. The same, we had it initially, but then we decided that Svetlana picks the mail, so we don't need that key.

Q. And did you return the keys to Svetlana?

25 A. Yes.

Q. We're going to move on. Let's talk about social housing. You've stated time and time again, that you and Valentin wanted to live independently.

A. Yes.

30 Q. And in fact, you looked at some apartments is your evidence.

A. Yes.

Alla Nikityuk - Cr-ex (cont'd)

Q. Who made those appointments for you?

A. Svetlana.

Q. And who attended with you to look at these apartments?

5 A. At the apartments, we looked with Valentin.

Q. You and Valentin?

A. Yes.

Q. Anyone else attend with you?

A. No, no one else.

10 Q. Was there an agent, or someone from the building to show you the apartment?

A. We were coming to a person who collects the applications for the apartment. We were asking what was available, writing down phone number, and by phone later on, we were clarifying how much it costs and everything.

15 Q. And was this individual Russian-speaking?

A. No.

Q. So, who communicated with this individual for you and Valentin?

20 A. We knew very short phrases. We were speaking, and they understood us.

Q. And so the same individual had a number of apartments to offer to you?

A. Yes.

25 Q. And where were these apartments?

A. We were looking close to the place where we live now, at Blake.

Q. But, this was not social housing at this time, correct? These were apartments to allow you and Valentin to live independently.

30 A. We had to rent an apartment.

THE WITNESS: Rent.

Alla Nikityuk - Cr-ex (cont'd)

A. Rent.

Q. Yes, but at this time, you gave evidence that there was a time when you wanted to live independently, and Svetlana told you to go off and look at some apartments.

5 A. Yes.

Q. So, this is the period of time that I'm asking you about.

A. Yes, after we were refused the condo, before that, there was a condo which they were building for Anastasia. Then, Svetlana said that Anastasia will not live in Barrie, she wants to live in Toronto. I asked Sveta to leave this apartment for us. Sveta refused categorically, and with the situation in the house, we had to decide something. And it came from - started to come from Sveta, look for rent. It was not a long period while we were looking. In the morning, we were looking and looking for these apartments, we were writing down the phone numbers. In the evening, Svetlana and Pavel would say that you will have no rent. So, that issue was raised several times, it was two or three times. And after that, it was told that you will not live separately. After that, we started looking into social housing.

Q. And we're going to get there, but during the time you were looking at apartments, you and Valentin physically went to some of these apartments, yes?

25 A. We just knew the similar apartment, and we were seeing the similar - we looking for a similar type of that apartment.

Q. Similar to what?

A. The one which they could offer to us for rent. We would take a phone number, and we had afoot. With Sveta's - Svetlana's assistance, look into that apartment issue later on seriously. But, it never - we could never do it, because during

the day we were looking for it, and in the evening it was said, you will have no rent. That's how it looked.

Q. So, you and Valentin physically attended some of these apartments? You walked in, you looked at the rooms?

5 A. Yes.

Q. And on how many occasions? How many days did you and Valentin do this?

A. It was three walks, three attempts.

Q. During the same week? Three times?

10 A. I don't remember right now exactly, but after all these lookings, there was a full refusal.

Q. And at this time that you're shopping for the apartment, do you know about social housing?

A. No.

15 Q. And so, when do you learn about social housing?

A. Not right away we learned everything. We were asking questions, and people were explaining it to us, and yes, we were told that there is such an opportunity. We were  
20 learning that from acquaintances, from friends.

Q. Who was the first person to tell you about social housing in Canada?

A. We were visiting our good friends here in Barrie. They had also their friends from Toronto who lived in  
25 social housing. From them, we learned a lot.

Q. And what did they tell you about social housing? What do you recall?

A. They told us that we should apply to special service, we should write an application. Every city has this  
30 service, and they've been living like this for several years already. Explained how it all looks, that everything was good, normal. They were happy.

Alla Nikityuk - Cr-ex (cont'd)

Q. Were these friends immigrants as well?

A. Yes, immigrants.

Q. And did they immigrate here, if you know, with their children?

5 A. No, they were our age people, seniors. They lived with their daughter together in one house. He was a doctor. His wife also had some profession. The daughter got married, so the situation became not very satisfactory. I'm talking about them, and they started to work on social housing.  
10 And that's how we learned about it.

Q. And did they talk about there being a waiting list for social housing?

A. They said they were waiting in line, yes. I think she said in Toronto, the line was long, and they waited  
15 about two years. We also explained that we also have some problems, and we also might want that, and they said that it's all real. It's all good.

Q. And so, did you understand from that conversation, that you too would have to go on a waiting list  
20 for social housing?

A. Yes, that's what I thought.

Q. And do you recall in what month or year this birthday party was where you had this conversation?

A. It was summer of 2011.

25 Q. Can you be more specific?

A. No, I can't.

Q. Svetlana's evidence was that you first speak to her about social housing in the spring of 2011.

A. Maybe it was spring, I don't know. It was  
30 warm already.

Q. Sorry?

A. It was warm already.

Q. So from this conversation, you and Valentin decide you would like to apply for social housing?

A. We did not decide that, but we decided to learn about it, if it's possible to do that here in Barrie.

5 Q. So how did you learn about it after that conversation?

A. Irina, our friend. She had her friend, and she was visiting her at her social housing, and I asked her to learn more about it. It was in Barrie. She told me that it  
10 should be resolved, and the application should be filed. I started asking Sveta to help us to do that.

Q. And she told you it should be resolved? What do you mean by that?

A. To write an application and wait, she did not  
15 know what's going to happen next. That's how she did it. To figure out the application, and she was waiting.

Q. And so, is that when you speak with Svetlana about assisting you with making the application?

A. Yes.

20 Q. And you agree that there were a number of conversations with Svetlana about wanting to apply for social housing?

A. After that, there was a series of conversations, yes.

25 Q. And Svetlana gave you some reasons why you would not qualify for social housing, correct?

A. Yes.

Q. And those reasons, is that what you refer to as rude answers when you discuss social housing?

30 A. Yes.

Q. And Svetlana told you and Valentin that you would not qualify for social housing, correct?



A. Yes, she did say that.

Q. And even if you could qualify, there was a four year waiting list in the County of Simcoe.

A. I did not know that.

5 Q. Did you discuss that there was a waiting list?

A. We knew that we were supposed to write application and give it, but how long to wait, we did not know. But, we were prepared to wait. We were not refusing that. If we had to do, we could do it.

10 Q. But Svetlana did not tell you there was a waiting list?

A. We just knew that. We did not know how long.

Q. But, the bottom line is, that Svetlana refused to assist you with that application.

15 A. Yes.

Q. And so, then what? Did you speak to someone else about assisting you with the application?

A. We spoke, but it was when very unpleasant things happened in our house.

20 Q. And you spoke to who?

A. I did not understand. What do you mean with who was talk - what do you mean?

Q. Svetlana refuses to assist you to make the social housing application.

25 A. Yes.

Q. And so, who do you go to, who do you turn to, to assist you with the application?

30 A. After all this unpleasant things which happened in the house, we decided not to test our fortune, not to test our luck, and we went to the school and made appointment with Yana.

Q. So who assisted you in making the social

housing application?

A. Purpose of our visit to Yana was to help us to leave the house. That was our purpose, and that's why we went to her.

5 Q. To be fair, I'm not asking about that.

A. I think that's good answer.

Q. Was it Yana that assisted you in making the social housing application?

10 A. Yana helped us to meet the person who was dealing with these issues.

Q. So, before the August 20<sup>th</sup> weekend, which we're going to come to, Svetlana had told you, I'm not helping you with a social housing application.

A. Yes.

15 Q. And so, leading up to that August 20<sup>th</sup> weekend, would you agree no steps were taken to file an application for social housing?

A. But we had the ideas.

20 Q. So, when was the very first time you ask Yana for assistance with social housing?

A. It was August - in August, when we had an appointment with her.

Q. Mrs. Nikityuk, do you recall being examined under oath back in April of 2014?

25 A. Yes.

Q. And do you recall under oath, and we can have a look at it, but it would be in English, so your translator would have to assist. When asked:

30 QUESTION: When was the first time you spoke with Yana about social housing?

Q. Your answer was:

ANSWER: This question arise when we left.

Q. And I'll give you the reference, it's page 117, question 573. Page 117.

THE INTERPRETER: I'm sorry, the last page we have is 86 here. And if I look....

5 CLERK REGISTRAR: Tab 2, the date of the transcript.

MS. CHAPMAN: Q. Alla Nikityuk, the 8<sup>th</sup> day of April, 2014.

THE INTERPRETER: May I read it out?

10 THE COURT: Did you wish him to translate it for us?

MS. CHAPMAN: Sure.

THE COURT: Could you just translate the question at - the question page 117, number 573. Is that correct?

15 MS. CHAPMAN: Yes.

A. I could have asked her earlier. I don't remember right now, but when we had an appointment with her, and when we saw her at that time, we asked her how can we do it? But I don't remember now.

MS. CHAPMAN: Q. But you now believe that may have been the August 23<sup>rd</sup> appointment?

A. It was after the weekend, yes, I think middle of the week.

25 Q. We're going to come back and talk about that appointment when we talk about the weekend of August 20<sup>th</sup>, okay? I want to talk about the physical attacks. You gave evidence yesterday that Svetlana grabbed you, and shook you.

A. Yes.

30 Q. Where did this event happen?

A. It happened by the entrance door. We were going to leave.

Q. Who was leaving? You and Valentin?

A. Sveta was dressing up. She was going to go somewhere too, and us with Valentin.

5 Q. And your evidence yesterday was that this occurred on morning of Friday, August 19<sup>th</sup>.

A. I did not say exact day. It was Friday morning, yes, that's right. I remember we were going to go somewhere. It was a morning, I don't remember where. I don't really remember what was the conversation. That's how it was,  
10 yes.

Q. Was it the morning before Yana's birthday party?

A. Her birthday was on Saturday, and it was before that on Friday, yes.

15 Q. The very day before?

A. Yes.

Q. And so, what was the conversation? What caused Svetlana to grab you?

A. I don't remember what was the conversation,  
20 but it was not so aggressive. It was not aggressive, she just did not like something in the conversation, as she was standing some distance from me.

Q. And was Valentin present while you were having this conversation?

25 A. Valentin at that moment was going downstairs, and he was coming, ended up at the same - in the same area.

Q. So you were at the landing where the front door is?

A. Yes. There were bookshelves, yes, and it  
30 happened near the bookshelves.

Q. And so, do you recall specifically the moment that Svetlana grabbed you?

A. It was very unexpected. She kind of rushed towards me and grabbed me.

Q. And she held onto you?

A. She, she was holding me and shaking me like that, and laid down on the floor. Not fell down, but kind of laid down on the floor. It looked like strength was - she was losing strength, and she laid down.

Q. And was she saying anything as she held onto you?

A. She was saying nothing.

Q. And did you say anything to her in that moment?

A. Yeah, me neither. It was very unexpected. It was a big surprise. Later on, I asked her what was that? Why did you do this? And she told me, I wanted to prove to you that you are my mother.

Q. And so, at what moment did Valentin enter?

A. He already was in that place. He saw everything.

Q. From the moment you - he - pardon me, from the moment Svetlana grabbed you, he saw that?

A. Yes, he saw it all. I was shocked, it was very surprisingly for me. It all happened very quickly, shortly, and for him as well.

Q. And did Valentin intervene?

A. He kind of approached us, and we saw that she was not losing - that she was not losing consciousness, that she was not falling, she was just - needed some time to lie down, and that's why she laid down. And then she got up, and I'm going - started to walk away, and we saw that everything was ok, and we also started to walk away. We saw that she was fine, and we just left.

Alla Nikityuk - Cr-ex (cont'd)

Q. So, Valentin did nothing? He just watched?

A. No, he did not. It was very sudden.

Q. Did Valentin say anything in that moment?

A. After that, we were walking, and we were kind  
5 of in shock, or numb because of all that.

Q. Was this the first time that Svetlana put her  
hands on you?

A. Yes, before that, there was nothing.

Q. And was this the only time that you alleged  
10 Svetlana put her hands on you?

A. Yes, the only time.

Q. One incident?

A. Yes, by hands, but similar attack. There was  
another one.

Q. So tell us about that one.  
15

A. It was a time when we raised the issue that we  
should have our separate account, only our account. After that,  
she - similar to that, she was not feeling well. She was laying  
on the ground, but a lot longer. There was incident like that,  
20 also the first one.

Q. An incident of lying on the ground?

A. We were riding in the car. She was behind  
Valentin and I....

Q. Yes, we don't need to go into that story  
25 unless she put her hands on you, she was physical with you.

A. No, she did not touch me, no. She was just  
not feeling well, and I told her she should see a doctor, and  
she told me, she replied very rudely, no, I'm not going to a -  
should see him yourself. Something like that.

Q. So to be clear, there was one incident that  
30 you say happened on Friday, August 19<sup>th</sup>, when Svetlana attacked  
you?

Alla Nikityuk - Cr-ex (cont'd)

A. Yes.

Q. And so, in September when things are allegedly worse in the home, there's no physical confrontation, correct?

A. Physical, no. But moral, yes.

5 Q. And your evidence is that you had bruises from this attack.

A. Yes.

Q. And it was Valentin that noticed the bruises, correct?

10 A. In a few days, yes.

Q. Do you remember on which day?

A. No, I don't.

Q. Were the bruises visible on August 23<sup>rd</sup>, when you met with Yana?

15 A. The bruises, yes, they were.

Q. Did you show Yana the bruises?

A. We told her the whole story, what happened. We spoke about bruises, but if I was showing them or not, I don't remember that.

20 Q. And the incident with the bruises is the August 19<sup>th</sup>, 2011 incident, correct?

A. Yes, it was next week after the birthday, yes.

Q. Okay, if we could go back again to your transcript from the examination for discovery. And the first question I'd like to look at is on page 127.

25 CLERK REGISTRAR: The 8<sup>th</sup> of April?

MS. CHAPMAN: I'm sorry?

CLERK REGISTRAR: The 8<sup>th</sup> of April transcript?

MS. CHAPMAN: Yes.

30 MS. CHAPMAN: Q. And it's question 602, and the question is:

QUESTION: But you went to Yana just after that

happened.

Q. Your answer:

ANSWER: But it happens not at once. It was everything, happened regularly, increasing. And it was our grief. It was our grief.

A. What is meant - what was happening frequently, regularly. I just did not understand it from the question.

Q. The question before that, 601, the question:

QUESTION: Did you show bruises to Yana?

Q. It's at the bottom of page 126. And the answer:

ANSWER: I do not remember.

Q. And so the next question was 602:

QUESTION: But you went to Yana just after that happened.

A. In a few days, we went to her.

Q. Right. So, maybe you could explain what you meant by your answers that it happens not at once.

A. We had a conversation that I had bruises.

Yes, we had a conversation, but I don't remember how I was showing it to her. And we went to see her only in a few days, but the bruises were there, and we talked about it.

Q. And what did you mean by that it happened regularly? Increasing?

A. I did not mean attacks were regularly, I only meant that unpleasant things in the house were happening regularly. About the attack, we already found out with you that it happened only once. I meant difficult relations, difficult negotiations at high tones. And what happened, it was just one component - one component of what was happening before that too. The glass here through the plate was broken at the wall, I meant all that. It was component of everything else. Also, I must



resolve that she was between two fires, between her husband and us. I realize that it was wrong, it was not right to have such a relationship. How long I supposed to test your luck? You never know how it may end up.

5 Q. So, let's look at the next question, 603:

QUESTION: And when did accident with bruises took place?

Q. And your answer:

ANSWER: It was very close to the departure.

10 A. Yes, we were already talking about that. We should leave separately. We spoke about that, and it was not anything unexpected.

Q. So, did the incident with the bruises take place in August? Or in October when you left the home?

15 A. No, it was in August.

Q. So, you told Yana about the bruises, but you're not sure if you showed her your bruises. Is this correct?

20 A. I don't remember, yes. But we discussed that topic, and there were bruises.

Q. And did Valentin tell Yana he saw these bruises?

A. I don't remember that.

25 Q. And who told Yana that your granddaughter, Anastasia, had seen these bruises?

A. I don't know who told Yana.

Q. But you agree that Yana knew, and mentioned that your granddaughter had seen these bruises?

A. I don't remember that. I don't know that.

30 Q. And - well, did your granddaughter see these bruises?

A. She could not see them, it was the next day.

We ourselves did not see them.

Q. We know from Anastasia's evidence, she was at the house this weekend in August.

A. Yes.

5 Q. And her and her husband, who was her fiancé at the time, they didn't leave until sometime Sunday.

A. Yes, they left on Sunday morning.

Q. Is your evidence that the bruises were not visible as of Sunday?

10 A. On Sunday, they were not visible. We did not see them ourselves.

Q. So, when did Valentin mentioned to you that you had these bruises?

15 A. I don't remember that, but definitely it was in a few days.

Q. Sunday is August the 21<sup>st</sup>. No bruises?

A. No.

Q. And Monday, August 22<sup>nd</sup>, we've heard you had a doctor's appointment.

20 A. But it was completely not related to that incident. The doctor did not know anything about it.

Q. And then, the next day, August 23<sup>rd</sup>, you meet with Yana, and you tell her about this attack.

A. Yes.

25 Q. And you talk about the bruises.

A. Yes.

Q. But you don't show Yana the bruises.

30 A. I don't remember. We spoke about bruises, and we spoke about that incident for sure. But, if I was showing them, I don't remember.

Q. Did you tell Anastasia about this attack that took place on Friday, August 19<sup>th</sup>?

5 A. Maybe I did tell her, but I did not want to involve them into that story, so I kind of spoke to them very cautiously, very careful. They were very occasional friends, occasional guests in our house, so I did not want to load them up with this.

Q. So, did you speak to them cautiously about it, or you didn't speak about it at all?

10 A. I think cautiously, I remember it very badly right now. They were unfrequent guests, and she was helping mom, and she had also problems with social housing, and I remember we were talking about social housing, that she - that we could not receive the social housing.

15 Q. And where were these bruises? I believe you showed us the top of your arm as being where the bruises were located?

A. Yes, the shoulder, yes.

20 Q. And during this attack, did Svetlana only grab you by the top of your arms, or did she put her hands on your throat? On your neck?

A. The bruises I had in this area, like five fingers. She was kind of was holding me with her fingers.

Q. And so did you have bruises on your neck as well?

A. On the neck? No.

25 Q. So, let's go back to your transcript from April 8<sup>th</sup>, 2014. Page 126, question 597. And the question:

QUESTION: And you said there were some bruises on your neck?

ANSWER: Yeah, from her fingers. Yes.

30 Q. Mrs. Nikityuk, where are the bruises?

A. I did not say that she was strangling me.

THE COURT: Just a minute. Mr. Bornmann has an

issue to raise.

5 MR. BORNMANN: Your Honour, in all fairness to the witness, there was an extended conversation through a translator on this topic, and the questions go on, and there is another answer, question 606. So, if my friend wants to put this to the witness, in all fairness, she should get the entire passage, Your Honour.

10 THE COURT: Ms. Chapman, is there more that we should deal with?

MS. CHAPMAN: Yes, there's more. It goes on.

MS. CHAPMAN: Q. At question 606, you're asked,

QUESTION: Somewhere on your neck?

ANSWER: Not on the neck, but in this area.

15 Q. And Mr. Bornmann says:

QUESTION: Sorry, what area are you....

Q. And then you come back on the record, Mrs. Nikityuk, and you say:

ANSWER: On the neck. Maybe on the neck.

20 QUESTION: And I agree, you then show, I presume with your hands, on the shoulders close to the neck.

A. Yes.

25 Q. So, maybe you can show us where exactly were these bruises?

A. How can I do that? It was like that, person grabs you and shake you. It was more comfortable to hold me by these spots to shake me. If she was shaking me, she was not holding my neck.

30 Q. So, she did not put her hands on your neck?

A. No.

Q. So these bruises, were they at the front, or

were they near the back of your arm?

A. Front, front, front.

Q. But she was grabbing you by the arms, like this?

5 A. Not arms, but if she grabbed me like this, with both hands, probably there's spots. When a person tries to strangle somebody, he is not shaking the other person.

Q. So, there was no strangling involved?

A. No.

10 MS. CHAPMAN: Your Honour, do you want to take another break? Or shall we continue to lunch?

THE COURT: I'm just wondering how you're making out in terms of your time. It may be a good idea to take a break for the benefit of the witness and the translator.

MS. CHAPMAN: Yes.

THE COURT: And then we go 'til - so one? Do you have an idea of....

MS. CHAPMAN: In all likelihood, I'll probably be most of this afternoon.

THE COURT: All right, thanks.

MS. CHAPMAN: But I should be able to finish today.

25 THE COURT: All right. That means that we would be able to deal with the other defence witness, the other defendant tomorrow, hopefully, and one day next week. Does that sound like we can complete that? That witness?

30 MR. BORNMANN: Yes, Your Honour, from my perspective, Mr. Nikityuk's evidence will be fairly brief if we are able to start the - after the last break today, we should be able to wrap up

before lunch tomorrow. Well before lunch.

5 THE COURT: All right, well in any event, we have a full day next week, and there may be some economies in this evidence because obviously he doesn't need to go over issues that are already on the record and not in dispute. There'll probably be more of a focus on those issues, so there may be some economies. So it seems to me that we could finish this week, plus the one day next week, as far as those two witnesses.

10 MR. BORNMANN: I would agree with that, Your Honour.

15 THE COURT: All right, so let's take a short break and we'll come back about twelve-thirty for another half an hour.

CLERK REGISTRAR: All rise.

R E C E S S

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

20 CLERK REGISTRAR: Court is now resumed. Please be seated.

THE COURT: So we can continue with Mrs. Nikityuk?

CLERK REGISTRAR: Just a reminder, you are still under oath.

25 MS. CHAPMAN: Q. Mrs. Nikityuk, before the break, I put my hands on my shoulders to show how Svetlana had grabbed you, and I just wanted to be clear for the Court record. Did her fingers wrap around the back of your arm? Or was the hand merely on the front by your collarbone area?

30 A. Well I - it was like that, I didn't know how you consider it.

Q. At the top of the shoulder, like this.

Alla Nikityuk - Cr-ex (cont'd)

A. Like this, yes, and arms.

Q. Okay, so for the record, the witness is showing the hand at the front with fingers over the top of the shoulder. Is that fair?

A. I don't know how to explain it.

MR. MAE: Your Honour, would it actually be of assistance to the Court if maybe - and I'm speaking for my friend here, he doesn't even know I'm going to say this, but would it actually be easier if his co-counsel were to stand with the witness, and she can demonstrate? Because moments before, I heard the words arms as well, just in that last section.

THE COURT: So you're suggesting we have a demonstration?

MR. MAE: I am indeed, Your Honour.

THE COURT: Does that help, Ms. Chapman? Or less than helpful?

MS. CHAPMAN: It may be helpful...

THE COURT: It's hard to describe.

MS. CHAPMAN: ...it's relative to some evidence that I expect Mr. Nikityuk will give later.

THE COURT: All right, obviously it's hard for the record to pick up the demonstration that you're doing, unless it's descriptive as well.

MS. CHAPMAN: Right.

THE COURT: So, I guess if counsel wish, we could try this with co-counsel coming forward to provide this level of assistance.

THE INTERPRETER: You want me to show it on her?

MS. CHAPMAN: Yes, nicely.

THE COURT: No bruises. Just - if she could just

place her hands the way she....

THE INTERPRETER: Kind of like that.

MS. CHAPMAN: Q. So, I would explain that as the  
hand being over top of the shoulder, but the palm of the hand  
5 being at the front, by the collarbone. Is that fair, Mr.  
Bornmann?

A. I cannot exactly reproduce it. It's  
difficult.

Q. Okay.

10 A. It's difficult to do it.

THE COURT: All right, let's thank the accused.

A. And I also saw it from my point. It's not so  
easy.

MS. CHAPMAN: Q. Yourself or Valentin did not  
15 take pictures of these bruises, correct?

A. No.

Q. And do you recall whether you showed the  
bruises to anyone other than those persons we spoke about  
earlier?

20 A. Our friends knew about it. Our close friends  
knew about it, I think. Maybe they saw it, I don't remember.  
Maybe they saw it.

Q. Did you show them the bruises? These close  
friends?

25 A. I did, I think if we talked about it, then  
probably the bruises were visible too.

Q. So you did tell people about the bruises.

30 A. Yes, not to everybody, only to close friend.  
I did not want to tell and to show it to everybody. Only to  
close, close friends. I was myself in a very bad shape, and  
people by my condition knew that something happened. Even the  
instructor for the housing, she was looking for a Russian-



speaking person to bring me up to normal shape.

Q. Did you show the bruises to this social housing person?

A. No, no I did not. It was just a consequence of everything that - I'm just stating what condition I was in. I was very upset, I was crying. It was difficult.

Q. But who did you show the bruises to?

A. Only to close people.

Q. Tell me their names, please.

A. Yulia Malycheva saw them. She was with me at that time a lot.

Q. And did she see you on August the 23<sup>rd</sup>?

A. I don't remember, but at the time when it happened, we were socializing with Yulia.

Q. Do you recall for how many days you had bruising? Visible bruising?

A. No, I cannot tell that.

Q. Was there anyone other than Yulia Malycheva that you showed these bruises to?

A. I don't remember. I don't remember if there was anybody else, but Yulia was a lot with me at that time, and I showed it to her.

Q. And did you talk to your other friends about the bruises?

A. No, only with the close ones. Very close ones. I did not speak to anybody else.

Q. So, Irina Flemming, and Yulia Malycheva?

A. Yes.

Q. And to be clear, Yulia Malycheva, her married name is Sakchuk (ph)?

A. Yes, yes, Malycheva is - was the first one.

Q. So just those two close friends?

A. Yes, and I did not have idea to show it to everybody. It just happened so that these people accidentally saw it.

5 Q. So, when Lika Severin is called as a witness, she's not going to say that you told her about your bruises, right?

A. With Lika, I don't remember if we had this conversations or not.

10 Q. Let's talk about the flying dish incident. Do you recall when this event happened?

A. I don't remember the day, I don't remember the date, but I remember that it was in the kitchen. We were all sitting in the - at the table: me, Valentin, and Pavel.

15 Q. Do you recall if it was before the physical attack on August 19<sup>th</sup>?

A. Before, of course. Yes, before.

Q. And were you eating a meal together?

20 A. We were sitting at the table. We were finishing, I think, and there was very unpleasant conversation, and Valentin was saying that he doesn't like all that, and he would just buy a ticket and go back to Russia. Fly to Russia. And he will become a bum.

Q. And so, what exactly was the conversation about?

25 A. I don't remember, I don't remember. Some kind of unpleasant conversation. We had simil - this kind of conversations regularly. Frequently, sorry.

Q. But the conversation was so terrible, Valentin was prepared to take a one-way trip back to Russia?

30 A. At least that's what he expressed. I am fed up with that, something like that.

Q. But you don't recall who said what to him to

make him say that?

A. No, what was the conversation, I don't remember. But, the conversation was unpleasant.

5 Q. And so, how did Pavel come to throw a dish at the wall?

A. Yes, Pavel's reaction was he grabbed the plate and threw it at the wall.

Q. His dinner plate?

10 A. No, some kind of a dish which was standing there.

Q. A clean dish?

A. Clean dish, a plate, yes.

Q. And your evidence is that Valentin took pictures of the damage that was caused to the wall.

15 A. There was just a trace left of that, and we took a picture of it.

Q. And when did he take those pictures? Were you present?

A. I was present.

20 Q. So do you recall when - how soon after the actual dish incident occurred?

A. When the pictures were made?

Q. Yes.

25 A. In a few days, we did that. We saw that dent, and we made it.

Q. Could you explain why you took pictures of the wall, but not of your bruises?

30 A. I can't explain it, because when the incident with Svetlana happened, she was my daughter. I could not assess that, I could not feel that. When later on I was asked why you did not call, why you did not take a pictures, these incident could end up for her badly. We did not want any problems.

Q. But, you already had problems, correct? Your daughter had assaulted you.

A. It was after that. Daughter's attack was after that. It was at the last moment. Late moment.

5 Q. What do you mean by "late moment?"

A. The dish was before that incident. First was the dish, then when we started already looking out of the kitchen, Pavel dropped the glass on the floor, and he said that next time, it will be on your head. It was before the attack.

10 Q. So in terms of sequence, you have the dish throwing incident, then on another day the glass incident.

A. No, on the same day. It was a continuation.

Q. Okay, so the dish and the glass happened on the same day?

15 A. Yes.

Q. So, at what did you realize that living like this was impossible?

A. When there was that attack, and we were just afraid that it may end up badly for the whole family. We did not want to test our luck anymore.

20 Q. You heard your granddaughter's evidence.

A. Yes.

Q. And she advised the Court, that was she was part of a conversation that took place on Sunday, August 21<sup>st</sup>. Do you recall that?

A. August 21<sup>st</sup>? It was before they left.

Q. Yes.

A. What conversation? I don't remember.

Q. A conversation that you and Valentin were having with Svetlana in the kitchen about social housing.

30 A. Yes, Sveta probably spoke to her about it, and Asa also told me about it. Anastasia.

Q. But there was a family conversation taking place on that day. Do you remember that?

A. It was family conversation only with Svetlana, me, and Anastasia. That was the family conversation.

5 Q. And what did you - what were you discussing?

A. We were discussing the same topic; that we do not have a right to live in social housing.

Q. And what did Anastasia tell you about that? What did she think?

10 A. She was telling about that, that we were not eligible. But, it was not the solution for the problem in the family. In the family, everything was supposed to end up well.

Q. Would you say this was a heated conversation?

A. Yes.

15 Q. And would you say that you kept making the same argument? That you wanted social housing, and Svetlana kept telling you no, you wouldn't qualify?

A. Yes, that's how it was. Everything went in a circle.

20 Q. And you weren't afraid to have this heated conversation with Svetlana after she had physically attacked you?

A. They were conversations which we had to deal with, which we had to finish. But not like that, not this way.

25 Q. So you weren't concerned that she might attack you again?

A. No, I was not concerned. But, you could also not tell that it could not happen again.

30 Q. And at some point, Valentin joined in on this conversation?

A. Valentin? No, he did not join it.

Q. Anastasia's evidence was that he did join the

conversation, and he had a high, aggressive tone.

A. It was not exactly like that, I would say. Vice versa, Sveta was raising her voice on me, and Asa, Anastasia, told her mom, why are you yelling at grandma? Asa -  
5 Anastasia made that remark to Svetlana.

Q. But Valentin was not any part of this?

A. Valentin was present, but he did not say anything.

MS. CHAPMAN: Should we take our lunch break here, Your Honour?

THE COURT: All right, this is probably a good time, and we will return at two o'clock to continue with this cross-examination. I just - before we do that, this morning we talked again about the 15,000. I checked my notes, and my notes would indicate that Mr. Bornmann put to Mr. Danilov the proposition that they brought 15,000. That's what my note showed, I don't remember - is that what you recall this morning, or did you say  
15  
20 18?

MS. CHAPMAN: I said 18.

THE COURT: That's what my note said, and I will ask Madam Reporter to check that. But that's what the note I made at the time said.

MR. MAE: Your Honour, if it's any help, my notes said 15,000 as well. I've been...

THE COURT: All right.

MR. MAE: ...fairly good at keeping up with the....

THE COURT: Mr. Bornmann has acknowledged you made reference to 18,000 in his opening remarks.

MR. MAE: I - I recall that as well, Your Honour.

5 THE COURT: And as I said, that's opening remarks from counsel, not evidence. They are simply a roadmap as to how counsel hopes to proceed. I think Mr. Bornmann has acknowledged that that was - I don't know what you acknowledged, but it's - it was not the evidence that we heard. So we'll return at two o'clock.

CLERK REGISTRAR: All rise.

10 R E C E S S

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

CLERK REGISTRAR: Court is now resumed. Please be seated.

15 THE COURT: Yes, Mrs. Nikityuk, if you'd come back to the stand.

CLERK REGISTRAR: Just to remind you, you're still under oath.

20 THE COURT: Counsel, just to go back to the last point we were talking about, Madam Reporter did indicate to me that Mr. Bornmann's question was regarding 15,000.

25 MS. CHAPMAN: Q. Mrs. Nikityuk, when did Yana Skybin first learn about the financial situation at home, meaning with the Danilovs?

A. When we had - started having problems with living accommodation.

Q. So, you would have first spoken about this on August 23<sup>rd</sup>, 2011 when you met with Yana?

30 THE INTERPRETER: Sorry, did you say 21<sup>st</sup>?

Q. August 23<sup>rd</sup>.

A. No, we did not speak about that. When we left

already - when we left the house, we needed to leave alone, on our own.

Q. But by the time you leave the house on October 17<sup>th</sup>, you've already applied for social housing, correct?

5 A. Yes.

Q. And in fact, you learned on October 17<sup>th</sup>, that you were approved for the apartment at 1 Blake Street, correct?

A. I think it was a little bit later. It was later.

10 Q. Well, we know that the social housing application was made October 7<sup>th</sup>, 2011.

A. But we did not know the address yet.

Q. Okay, but by October 7<sup>th</sup>, 2011, you had discussed the financial arrangement in the house with Ms. Skybin, correct?

15 THE INTERPRETER: Sorry, may I - it's my probably....

Q. Yes.

A. We were just discussing which money we were supposed to live on. Before, the witness was saying we were not discussing it with any of us, and I tried to rephrase the question. My question was discussion with Mr. Skybin, not many of us.

Q. Is it true that you had had a discussion with Yana Skybin in early 2011 about your income tax returns?

A. I don't remember that.

Q. If we could have a look at your transcript again, from the examination for discovery that took place April 8<sup>th</sup>, 2014. And at page 100, at question 489, the question:

30 QUESTION: But Yana told you in the beginning of 2011 what your actual income is?

Q. And your answer:



ANSWER: She mentioned that to us, but - but we didn't realize the source of this income because they never discussed it with us. They never told us about the business income, or anything else.

5 A. Meaning Danilovs, yes it is true.

Q. So - go ahead.

A. That was my answer to Yana, that we never discussed it with Danilovs. It is so.

10 Q. But you did discuss your income with Yana in the beginning of 2011.

A. Over here, it means we did not discuss with Danilovs.

Q. Right, but you discussed it with Yana.

15 A. But I did not know that income. I could not discuss it with her if I did not know it. And I answered to her that we were not discussing that with Danilovs. We had no idea what kind of income we had.

Q. So, how did Yana learn what kind of income was being reported to Canada Revenue Agency?

20 A. You know I wouldn't be able to answer that question as you want me to. I honestly do not remember it.

Q. Do you recall discussing your income tax returns with Yana at all?

25 A. When we were leaving with Danilov, we did not do it. Did not prepare it.

Q. I appreciate that, but I'm asking whether you recall discussing the actual return, the document, with Yana Skybin.

30 A. No, we did not know about that, and obviously we did not discuss it.

Q. But at some point, you did provide Yana Skybin with authorization to communicate with the Canada Revenue

Agency.

A. Yes, we did give it to her because we could not communicate, or then we could not understand anything, so she was our representative.

5 Q. And so when was that? You gave that authorization?

A. I don't remember.

10 Q. So, let's turn please to page 98, and it's question 478 in the transcript from your examination. Actually, I'm going to read a few questions and answers just to give the full picture:

QUESTION: Did you give Yana any authorization to check your income?

ANSWER: You mean to Revenue....

15 Q. Question 479:

QUESTION: Yes, in Revenue Canada.

ANSWER: Yeah, yes, I think we gave her authorization to learn about us.

A. That's correct.

20 Q. And if we look then at question 482:

QUESTION: Did you give this authorization....

MR. MAE: Sorry, Your Honour, I know this is my friend's client, but my friend has jumped over a significant part of the transcript.

25 MS. CHAPMAN: I'm happy to go over those questions as well. Okay....

THE COURT: Would it be useful if you just tell him what to read...

MS. CHAPMAN: Yes, so....

30 THE COURT: ...so when you're reading it, he can read it to her in English.

MS. CHAPMAN: Thank you.

THE COURT: Russian, I should say.

MS. CHAPMAN: Q. So, for you as the interpreter, would you mind reading the next questions: 480, 481, 482, and the answer?

5 THE INTERPRETER: And translate them?

Q. Yes, translated for Mrs. Nikityuk.

THE COURT: She doesn't have to answer, just read it to her so she understands what we're talking about.

10 THE INTERPRETER: Okay, I did up to line 24.

THE COURT: I guess the problem is I haven't heard the questions...

MS. CHAPMAN: Okay....

THE COURT: ...so if you just....

15 MR. BORNMANN: Next page.

THE COURT: Ms. Chapman, do you want to continue reading?

MS. CHAPMAN: No...

THE COURT: No....

20 MS. CHAPMAN: ...I don't think it's necessary to...

THE COURT: All right.

MS. CHAPMAN: ...go over the whole transcript.

THE COURT: Okay.

25 MS. CHAPMAN: Maybe I can just ask.

MS. CHAPMAN: Q. Do you now recall when you may have given Ms. Skybin authorization to contact Canada Revenue Agency?

A. When we left the home, yes.

30 Q. When you left the home?

A. Yes.

THE COURT: I'm sorry Ms. Chapman, since I didn't

5 hear the questions and answers, I don't know if there's anything there that - whether I need to hear it or not. 'Cause I haven't - don't have it in front of me, and I don't understand Russian. Is there anything that should be in the record?

MS. CHAPMAN: So, the series of questions, 4, 5 questions, are in relation to this authorization, and at question 481, it asks:

10 QUESTION: When was it that she gave this authorization?

ANSWER: It was at the moment that we left already, so everything was connected to the money.

Q. Next question, 482:

15 QUESTION: Did you give this authorization in the beginning of 2011 as well?

ANSWER: Yes.

Q. So, there may in fact could have been two authorizations to Ms. Skybin.

A. I don't remember that.

20 Q. Mr. Bornmann asked you some questions yesterday about gifts that you may have given to Yana Skybin. And you said that you gave her a vase, is that correct?

THE INTERPRETER: So, vase?

Q. A vase.

25 A. Yes, the glass one. It was a glass present.

Q. And you may have contributed to a gift card, is that correct?

A. Yes.

30 Q. So, let's look at your answers from the examination for discovery. And those questions and answers start on page 136. Question 661:

QUESTION: Did you give any money or property to

Yana Skybin in terms of your relationship?

A. No.

Q. So your answer was:

ANSWER: Yana Skybin has no relation - no relations to our belongings, or anything, or our anything.

Q. We didn't - sorry.

THE INTERPRETER: So Yana already....

Q. Okay, so for the Court, the next part of that answer is:

ANSWER: We didn't give her anything, and she didn't give us anything.

Q. Question 662:

QUESTION: Did you give her any gifts?

ANSWER: No.

Q. Question 663:

QUESTION: Never?

ANSWER: No, never.

Q. You did in fact give Ms. Skybin some gifts, correct?

A. It - when a person - it was when a person had a birthday, it's different things. We were not throwing gifts at her, we were just - congratulated her with her birthday, and we gave her a modest - a modest present.

Q. But you were asked if you gave her any gift, and you answered:

ANSWER: No, never.

A. In my understanding, given - giving gifts is not connected to a birthday. Outside of the birthday, we were never giving any gifts. But for the birthday, on the birthday, yes, we gave her a gift.

Q. So, when you give someone something for their

birthday, that's a gift.

A. Yes.

Q. So, you gave Ms. Skybin a gift.

A. But you did not clarify when, and in - you  
5 said in general, and in general, I was not giving anything.

Q. After your meeting with Ms. Skybin on August  
23<sup>rd</sup>, 2011, you then meet with her again at the end of  
September. Do you recall that meeting? It's September 30<sup>th</sup>,  
2011.

10 A. I don't remember. I don't.

Q. Could we put to the witness Exhibit 3(a), Tab  
A(1)? It's just behind that plastic. And it is in English, so  
the interpreter is going to have to help us through this. But  
do you recognize this document?

15 A. No, I do not recognize it.

Q. For the Court, it is a copy of Yana Skybin's  
log that she took during this time.

A. But I'm not familiar with it, how am I  
supposed to know if....

20 Q. Well, I'm going to ask you about some of the  
contents that she writes in the log. And on September 30<sup>th</sup>,  
2011, in the first line, Ms. Skybin writes, "Alla and Valentin  
came back to my office, saying things have gone worse, and peace  
did not last." Do you recall this conversation with Ms. Skybin?

25 A. No, I don't remember. I remember that the  
atmosphere in the house was tense, that I remember.

Q. And do you remember telling Ms. Skybin that  
the atmosphere in the house was tense?

A. I did say.

30 Q. And the next sentence, "The abuse is ongoing,  
and they can't live like that." Did you make that statement to  
Ms. Skybin?

A. I did.

Q. "They are now hiding in their rooms, and come out only when the daughter and son-in-law are not around."

A. Yes, yes.

5 Q. And you made that statement to Ms. Skybin?

A. Yes...

Q. Okay.

A. ...we were avoiding them, that's right.

10 Q. And maybe with the interpreter, he can assist you reading the rest of this paragraph.

A. Yes, I am signing under that. I'm subscribing to that text.

Q. That these are statements that you made to Ms. Skybin?

15 A. I did not remember exactly, that it was connected with a visit, but she knew about it, and she did everything right.

Q. And when you say to her that the abuse is ongoing, what exactly are you referring to?

20 A. Everything was being spoken in high, raised voices. The visit of - the visit from Valentin's daughter, she was visiting us. There were approaches, how much we were supposed to give for that. They were all our expenses, and we were not against it. We were not against that to be deducted.  
25 They were threatening that they would remove the car keys, that we could not drive the car. There were other kind of reproaches. Yes, we had all this. They were reproaching that Pavel had Power of Attorney for the car, that they could remove us at any moment, and all the time, there were conversations  
30 which we were not happy with.

Q. And these allegations that you speak about, those happened after the August 23<sup>rd</sup>, 2011 meeting, correct?

A. Why before but - no, we're talking about later time, around September.

Q. Yes, so these - when you refer to the abuse being ongoing, you're talking about incidents that occur since  
5 you last saw Ms. Skybin on August 23<sup>rd</sup>, 2011.

A. Yes, we mentioned everything that was after that. But there was one thing which said it was before, which I did not understand it correctly. We've a TV set with a TV, we have loud conversations regarding Russian TV that his benefit is  
10 finishing, and he will cancel it. It all happened.

Q. And did you discuss making the application for social housing at that meeting as well?

A. I don't remember that.

Q. Did you discuss what your next steps would be  
15 with Ms. Skybin?

A. The idea that we should leave, we talked about that, but we couldn't make a decision on that yet.

Q. So, when did you make the decision that you were going to leave?

A. After we closed the account, and after that, there was a big conversation about this account, and on the same day we left.  
20

Q. So, is it your evidence that you did not decide to leave the house until the day you left the house?

A. Yes, probably.  
25

Q. So when you make the application for social housing on October 7, 2011, you're not yet decided that you will leave?

A. We decided, but we had nowhere to go, and we  
30 did not know how to do it.

Q. And when you make that application for social housing, are you with Ms. Skybin when she completes the



documentation?

A. No, she was not present. There were people who were dealing with that. Dorothy was, and there was another person starting, "B". It was kind of their commission.

5 Q. But was Ms. Skybin present as well?

A. No, she was not.

Q. So, who translated for you when that application was prepared?

10 A. Probably Yana was as an interpreter, she did not take part in that. Maybe she was as interpreter. It was happening in the - in the building of the school, where the school was.

15 Q. So, let's have a look at the application that was made. It's in Exhibit 2(a), at Tab 9. Have you seen this document before?

THE INTERPRETER: Sorry, what's the page? Which one? This one?

Q. The application for subsidized housing, yes.

20 A. Yes, but I forgot a lot. It was almost five years ago.

Q. Could you turn to page 62, please? It's at the same tab, Mrs. Nikityuk.

THE COURT: Tab - we're at Tab 9.

25 MS. CHAPMAN: Q. Tab 9, page 62. Do you recognize the printing or handwriting on this document?

A. Yes, I do.

Q. And whose handwriting is it?

A. It was when Yana was filling it out. She was asking us questions and filling it in in English.

30 Q. So then Yana helped you complete this application?

A. Yes, she helped with the English language.

Q. Can we turn to page 64, please? This is the page where you're required to provide any sources of income, and to detail and assets that you may own. And you listed that there was other income, a pension from Russia. Do you see that?

5 A. Yes.

Q. But you don't list any other income.

A. We did not have any other income, only pension.

10 Q. But what about the pension that you received in the joint CIBC account here in Canada?

A. We had nothing to do with this account. We did not use this account.

Q. But you and Valentin were both named on the account, correct?

15 A. Yes, but we did not use it.

Q. You went to the bank and closed that account, correct?

A. Hold on, you're talking about the account which was opened jointly with Svetlana?

20 Q. Yes.

A. But we were not taking money from this account. We did not use it.

25 Q. Do you know which account your pensions were deposited in when they arrived in Canada? Each time they were paid, which bank?

A. They were coming to that account, but we were not taking this money from there. We were only using credits.

Q. But you would agree, you had access to that account?

30 A. But we did not have a card.

Q. But you could have went into the bank, and withdrawn your money, much like you went into the bank and

closed that account, correct?

A. Maybe we could, but we simply did not do that. It was never said in our family go and take money from there. We did not use it. We were included there, yes, but we did not  
5 use it.

Q. But, at this moment that you make application for social housing, things are changing in the family, aren't they?

A. Yes, and we did not do that.

10 Q. Did you not want access to your pension funds that were available in Canada?

A. We wanted this pension to be ours. We wanted it to come to our account, not to some other account. That's why we closed this account, and opened a new one.

15 Q. But you didn't speak with the bank about that issue; that you wanted your pension transferred to a new account, correct?

A. We were not supposed to talk about that in the bank, we were supposed to tell about that in Russia. The  
20 pension was coming from Russia, from Moscow. That's why we closed this old one, we open the new account, and the pension started to arrive to the new account, and we became the owners of our money. Our own money.

25 Q. But you could've made that request to Russia before closing the joint account, correct?

A. We did that when we left.

Q. When did you make the request to Russia?

A. I cannot tell right now exactly, but we did do this transaction.

30 Q. And so do you believe that you reported all of your income on this application?

A. Income? Yes, which were coming into Canada.

But let's clarify something. We also have account in Russia into which we have additional income coming from Valentin's enterprise, and dividends from that enterprise. But they were so little in monthly accounts - monthly sense, that were was no sense of mentioning it. It was - they were within \$20 per month. That's why we could not transfer this little amounts of money every month, so we were not withdrawing it. We were collec - saving money there, collecting there? And for six months, we managed to - for six years, sorry, we saved \$2,730. My relative sent this money, and we indicated it everywhere in the taxes, declaration, everywhere. It was our income, and it did come to our account, and we used this money to buy the old car - an old car. And at that moment, we were not indicating this \$20 every month - as income, sorry.

Q. So, did you report all sources of income on this application?

A. Yes, we had nothing else.

Q. And did you report all assets on this application?

A. What assets do you mean?

Q. Well, they list a number, but most importantly, it asks, "Do you or any other person listed on this application own property? I.e. [meaning for example], house, farm, land, mobile home, cottage?"

A. We had nothing of that.

Q. So, you marked no because you did not own any of those properties?

A. We simply did not have it.

Q. And what about the house in Innisfil?

A. Pavel and Svetlana were living in a house already, and we were told that we could not pay for anything. It was not our house anymore, everything was coming from them.

They live there, and paid for everything. We were nobody anymore.

Q. And if you look on the next page, page 65, this application is made on a special priority basis.

5 THE INTERPRETER: And what?

Q. And that sets out that you must provide evidence of abuse.

A. Okay.

10 Q. And so, you made the application based on your allegation that the Danilovs were abusing you.

A. The life was such that we had to leave. I don't know how you call it, abuse or not abuse. But we could not live like that, we had to leave.

15 Q. When you met with Yana Skybin on September 30<sup>th</sup>, and you told her that the abuse is ongoing, did you use that word? Abuse?

A. Probably, it fits there. Yes.

Q. And would you agree or disagree that there was no abuse?

20 A. I do not wish you to be in our situation.

Q. Do you agree or disagree that there was no abuse?

25 A. Aggression is not abuse. Manipulation with somebody else's life is not abuse. Is it considered a normal thing? You see how you're being used, and they use that you love them sometime, and you trusted them. And absolutely unclear is what was happening with finances, and it was already said here that we did not need to know that, we do not understand anything about that in any case. We - it was not the  
30 purpose we reach - we were coming to Canada. We were coming by sponsorship in which it clearly said support and - care and support parents, and you cannot call whatever was happening in

the house these words.

5 THE COURT: Ms. Chapman, I think she's answered the question directly, but do you want a more direct answer to the question? Did you ask her to - for a double negative?

MS. CHAPMAN: Yes - no, I'm - that's fine. I'm satisfied with your answer.

10 MS. CHAPMAN: Q. So, what - what do you say under the sponsorship agreement that the Danilovs not provide you with?

A. I will say again, a full fridge and a beautiful house; it's not everything what is required for a good life.

15 Q. But does the sponsorship agreement set out that the Danilovs have to provide you with a good life? Or with some basic requirements?

A. Normal human requirements, and it would include providing and all normal - good, normal human qualities.

20 Q. Sorry, I didn't catch the last word.

A. Good, human, normal qualities.

Q. And so, what would you define that to be?

25 A. I would define that as normal, good, human relations. In this case, our close people, they completely lost moral and conscious [*sic*]. That's my conclusion.

MS. CHAPMAN: Before I move on Your Honour, would we like to take break at this time?

THE COURT: All right, we'll take a break at this time.

30 CLERK REGISTRAR: All rise.

R E C E S S

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

CLERK REGISTRAR: Court is now resumed. Please be seated.

5 THE COURT: Mr. Bornmann, I meant to ask you if the translator will be needed next week, or if you could make your own arrangements, or are you still hoping that the Ministry will provide a translator for the ongoing evidence next week? I need to tell the managers here to make those arrangements.

10 MR. BORNMANN: The Nikityuks would be most obliged, Your Honour, if they could avail themselves that the Court translator. In addition to the matters that Ray spoke with - spoke about, the quality of interpretation is higher with these interpreters than the resource that we have  
15 available to us.

THE COURT: All right, well, we seem to have gotten halfway through this procedure, and I think we have to continue on this basis. So, we'll  
20 request an interpreter for next week on the Thursday if Madam Registrar would let the Ministry staff know that while we're carrying on today.

CLERK REGISTRAR: Certainly.

25 THE COURT: So, we can continue with the cross-examination, if Mrs. Nikityuk would come back to the stand.

CLERK REGISTRAR: Just a reminder, you're still under oath.

30 THE INTERPRETER: Your Honour, if I, as an interpreter, may make a remark?

THE COURT: Yes.

THE INTERPRETER: The last portion of witness's

5 answers I trans - whatever she said, I translated,  
"Moral and conscious," which was supposed to be,  
"Moral and conscience." I don't know if anybody  
made any mark of that but it was at the end of her  
testimony...

MS. CHAPMAN: Yes.

THE INTERPRETER: ...before the break. Yeah,  
moral and conscience.

THE COURT: All right, thank you.

10 MS. CHAPMAN: Q. I'm going to ask you some  
additional questions about Yana Skybin's involvement and  
assistance with you and Valentin. Could we look at Exhibit  
3(a)? And first we'll have a look at Tab 15. Oh, I apologize,  
it should be Tab B(15). It is a YMCA release of information.

15 Is that the document you're looking at, Mrs. Nikityuk?

A. Yes.

Q. And are you familiar with this document?

A. Yes.

20 Q. And do you recall signing a number of these  
with Ms. Skybin? If you have a look at Tab 16 - sorry, Tab  
B(16), B(17).

A. Yes, yes.

Q. And were you provided with Russian translated  
copies of these documents?

25 A. Yes, it was translated into Russian language.  
I do not have a copy, but it was translated.

Q. So, a written copy in Russian was provided to  
you?

A. No, I do not have it.

30 Q. But at some point, you had a written Russian  
copy?

A. It was just interpretive into Russia, this



text.

Q. Orally?

A. Orally? It was an official representative - an official. I did not have any doubts.

5 Q. And so what did you understand this document to be when you signed a release of information?

A. It says that our English language is not very good, and it - we're going to use the person through whom we will provide information.

10 Q. And so, you consented to providing this information with Ms. Skybin's assistance?

A. Yes, and vice versa. From her to us.

15 Q. So, let's have a look at some of the correspondence that Ms. Skybin wrote on your behalf, and that would be in Exhibit 2(a) - pardon me, Exhibit 1(b). And the first correspondence is at Tab 139. And much of this correspondence is in English, so the interpreter will have to assist us. So, this first document is email correspondence from Yana Skybin to Anthony Cuffbert (ph) at CLC, the Community Legal  
20 Clinic, dated October 4<sup>th</sup>, 2011. And at paragraph two, Ms. Skybin writes, "I have a case of elderly abuse." Is this Ms. Skybin using your language, or her own?

A. She confirms what was there.

25 Q. Who referenced this as elderly abuse? Did you tell Ms. Skybin that this was a case of elderly abuse?

A. Whatever she knew, I personally call it abuse.

Q. But who used those words? Were those your words that Ms. Skybin then put in this letter?

30 A. I said in Russian, she translated it in English, but I am saying it corresponds as the interpreter translated to me.

Q. So, let's look at paragraph three, the second

last sentence. It starts, "Now it's a full blown abuse with physical attacks, threats, and financial robbery." Did you make this statement to Ms. Skybin?

5 A. If you count that we were supposed to receive 10 percent, we did - we were not getting this 10 percent.

Q. I'm talking specifically about the words that are used in this correspondence.

10 A. Okay, if there's money not being given to the people, it is - it means they've been robbed. How else would you call it?

Q. And so, did you tell Ms. Skybin that we've been robbed? Are those the words you used?

15 A. We were - I said that we were cut off - this money, this money - we were robbed. We are not receiving this money.

Q. You used the word robbery.

A. Robbery, we were not given, but when you are not given on systematic basis, then it would become robbery.

20 Q. So, did you use that word? Did you say to Ms. Skybin, this is financial robbery?

A. That's what I think, yes.

Q. And did you say that there had been physical attacks?

25 A. The attack, there was - it was a physical attack. An assault, it was a physical attack.

Q. But Ms. Skybin uses plural, an "s" on the end of attack.

30 A. Throwing off a glass under your feet, threats, next time it will be on your head, aren't those the attacks? I think those are attacks as well.

Q. But earlier today when I asked you about physical attacks, you said there was one incident. Agreed?

5 A. If we say that one attack was soft, another one was more rough, then it was more than one attack, if I can say so. But I did not want this glass to fly into my husband's head next time.

Q. And then in the last paragraph, last sentence, Ms. Skybin writes, "And how they can remain safe in the house where the daughter constantly harasses them."

A. Yes, it says correctly here.

10 Q. And so you told Ms. Skybin that Svetlana was constantly harassing you?

A. Constant harassments with the car, on domestic level, how else would you call all that?

Q. So you used those words?

A. Yes.

15 Q. Let's look now at Tab 140, and on page 891, we have email correspondence from Yana Skybin to Anthony Cuffbert (ph), dated October 14<sup>th</sup> 2011. And in the last sentence of the first paragraph, it states as follows:

20 "The situation at home escalates, but they are still managing to stay low and out of harm's reach. It may all change drastically, though."

MR. MAE: Your Honour, forgive me for rising.

THE COURT: Yes, Mr. Mae?

MR. MAE: In case my friend's....

25 THE COURT: Mr. Interpreter, I just ask you to pause while we hear from Mr. Mae.

THE INTERPRETER: Okay.

THE COURT: Mr. Mae?

30 MR. MAE: Okay, while I have no objection to my friend putting this email to the witness, the question appears to be on the basis of it being defamatory, and this is not pled in the statement

of claim as being one of the defamatory letters.  
So if my friend is trying to now make out a case  
of libel on this email, I object to the questions.

5 THE COURT: Is it potentially helpful to you if  
this is the information sheet...

MR. MAE: Well, it....

THE COURT: ...reported to the Y, and then the Y  
use that information?

10 MR. MAE: It is indeed. If my friend wants to  
keep digging that hole for herself, I'm more than  
happy with that. But I - the point I'm making is  
this is not one of the defamatory plea to this a  
defamatory letter. So, I feel....

THE COURT: It's not one of the big five?

15 MR. MAE: It's not one of the - one of the five.

THE COURT: All right, and those five were related  
- they were - did relate to these defendants, they  
related to the Y, right?

MR. MAE: Sorry, Your Honour, I missed....

20 THE COURT: Were they - were those defamatory  
statements just related to the Y, or were they  
related to these defendants as well?

MR. MAE: That...

THE COURT: The Nikityuks.

25 MR. MAE: ...I don't know, because the case  
pleaded against these defendants, in respect to  
the defamation from the pleading, is a bold  
allegation.

30 THE COURT: Was it - does it involve the Nikityuks  
as well? Nikityuks, or just the YMCA?

MR. MAE: Well, as I read the...

THE COURT: Files Ms. Chapman.

MR. MAE: ...plead - it might be worth asking her, Your Honour.

MS. CHAPMAN: The - I'm not going through these emails in relation to the defamation claim. I'm in fact trying to ascertain, are these the statements that Nikityuks made to Ms. Skybin?

THE COURT: And that's fair, I think.

MS. CHAPMAN: I hope so, I think it's fair.

THE COURT: That is, there's no claim of defer - defamation to stem, is there?

MS. CHAPMAN: Specifically, no.

THE COURT: All right, that's not part of the plaintiff's claim...

MS. CHAPMAN: It is not.

THE COURT: ...against these defendants. Okay, but I think it's still important then for that purpose, so let's carry on.

MS. CHAPMAN: Thank you.

THE COURT: And if it - well, just carry on.

MS. CHAPMAN: Q. Have you had an opportunity to now read that with the interpreter, Mrs. Nikityuk?

A. Yes.

Q. And is your evidence that you made these statements to Ms. Skybin?

A. Yes, and that's why we left home. Because we were afraid, we did not want that to happen again, and we did not make it worse. We did not want to make it worse.

Q. But we're talking about October 14<sup>th</sup>, 2011, and you're stating that the situation at home escalates.

A. It was a escalating thing the whole time. That's why we left, it was never improving.

Q. But escalating means that it's getting worse,

would you agree?

A. Yes, I agree.

Q. So, what is worse than Svetlana attacking you physically?

5 THE INTERPRETER: Sorry?

Q. What is worse? Can you tell me something that's worse than a physical attack?

A. It was all like a snowball, it was increasing and increasing, and the last thing with the car keys. Can you  
10 imagine? We did not want to stay without a car. There are no busses, nothing in Innisfil, only taxi cabs. We already lived in Barrie for two years without car, but it was only beneficial for us. We learned the public transportation system.

Q. But on October 14<sup>th</sup>, 2011, you still have use  
15 of the vehicle.

A. Yes, but it always noted that the keys would be removed from here.

Q. Were the keys ever taken away from you?

A. If every time you have been told you cannot do  
20 that, you cannot - you're not able to do this, and the keys should be taken away from you, these kinds of conversations which we heard all the time. High tones of voice changing into yelling. What was that?

Q. Did the Danilovs ever take the keys away from  
25 you?

A. I'm saying they did not take it from us, but there was such conversations that we depended on them completely.

Q. Let's now turn to Tab 155, please. And this  
30 document is a letter titled, "Client Report to OW," and it's dated November 2<sup>nd</sup>, 2011. Do you know who prepared this letter, Mrs. Nikityuk?

Alla Nikityuk - Cr-ex (cont'd)

A. No, I'm not familiar with it.

Q. Have you ever seen this letter before?

A. I do not know its contents. Right now, I don't remember this letter. Who signed it?

5 Q. Well, if the language appears to be as though Valentin writes this letter - I'm just trying to see if we have a Russian version, just a moment.

10 MR. MAE: Allow me to, Your Honour, I can assist my friend with the Russian copy. It is at Exhibit 3(b), Tab 15 - in fact, sorry, Tab 16. Tab 15 is just the translation of the first page, but Tab 16 is the complete document.

MS. CHAPMAN: 3(b)?

15 MR. MAE: Yeah, 3(b), Tab 16, right at the very end of 16.

MS. CHAPMAN: Ah, thank you. F(16).

MR. MAE: The Russian copy just to help with the - the original Russian copy is at the back of that Exhibit.

20 MS. CHAPMAN: Q. Do you rec - pardon me, do you recognize the Russian version of this letter?

A. Yes, looks like it. Yes.

Q. And did you assist Valentin in drafting this letter?

25 A. We probably were writing it together. I don't remember exactly right now, but I think we wrote it together. Yes, judging by everything, it's a letter from me and Valentin together.

30 Q. Now, at paragraph four of this letter, you talk about the situation living with the Danilovs, and about halfway through this paragraph, it starts, "House scandal started being frequent."

A. Yes.

Q. You got that? Okay. And then, a little farther down in that same paragraph, it reads, "This summer, during one of the scandals, Svetlana grabbed Alla's [her  
5 mother's] hands and shoulders. I was afraid that she would grab Alla by the neck. Alla had bruises all over her hands." Do you recall this incident?

A. Yes, yes. I read it all, that's all true what is written here...

10 Q. And so, you....

A. ...this letter was written by both of us.

Q. So, you have bruises all over your hands?

A. On both hands in the upper portions, yes.

Q. On your hands?

15 A. On both. There's hands too. Arms, shoulders, you can reach shoulders, arms, and goes to the neck. Everything is right.

Q. But this reads that Alla had bruises all over her hands, meaning that there were bruises on your hands.

20 A. Yes, this are arms - hands.

THE INTERPRETER: Okay, if as an interpreter, I may interrupt?

THE COURT: Yes.

25 THE INTERPRETER: In Russian, hand means up to the shoulder.

THE COURT: The whole arm?

THE INTERPRETER: In English, this is arm, this is hand. In Russian, you say arm this hand. It is basically the whole thing.

30 THE COURT: All right, so the word in Russian in the form is what?

THE INTERPRETER: Hand.



THE COURT: But that could mean....

THE INTERPRETER: So - which can be interpreted as the whole arm, the whole - not only arm, but on the - but including the arm...

MS. CHAPMAN: Q. So, is the...

THE INTERPRETER: ...hand and arm.

Q. ...Russian word for arm?

THE INTERPRETER: Yes.

Q. What is it?

A. Yes there is, but it was - this is....

THE INTERPRETER: The witness is saying this is shoulder and, in our understanding, this is - the whole thing is a hand. Okay, as an interpreter, I may clarify that as you ask, there is a separate name for this portion of the hand, which is arm, pletpleche (ph), but it's more official or medical term. It's barely used in everyday conversations. In everyday conversations, you use the word hand, which was Russian equivalent of the hand, which was used here.

Q. Okay, on page 916 - actually, I'll take a step back for a moment. This letter is prepared as part of your Ontario Works application.

A. Yes, we were questioned there, and they asked us to write it down, and we wrote it.

Q. And who translated your Russian version to English at that time?

A. This letter?

Q. No, this one that we're looking at, at Tab 16 was translated to English by a translator in May 2016. But, you made your application to Ontario Works well before that.

A. We applied again to the school to help us with the language. We made an appointment, and we were going to see a person who could help us.

Q. And would that have been Mrs. Skybin? Yana Skybin?

A. Yes, yes, and Yana. She was the only one speaking Russian.

5 Q. But we don't have a copy of Ms. Skybin's translation of this letter, do we?

THE COURT: I'm sorry, would this be the English version at Tab 155?

MR. MAE: Your Honour, I'll just....

10 THE COURT: Just wait until I get a response...

MR. MAE: Sorry.

THE COURT: ...from Ms. Chapman. I'm sorry Ms. Chapman, isn't....

15 MS. CHAPMAN: I don't know for certain that it is. If Mr. Mae does, I'm happy to hear it.

THE COURT: Oh, he was rising so....

MR. MAE: Your Honour, the English version is in my client's productions...

THE COURT: All right.

20 MR. MAE: ...*ipso facto* - I'm sorry, using idioms. It follows that that is the translation from the Russian.

THE COURT: The English version was by all translators?

25 MR. MAE: No, the certified copy that we were looking at is....

THE COURT: But, is this version of 155 is in your material?

MR. MAE: It is, yes Your Honour.

30 THE COURT: All right, so we have the answer.

MS. CHAPMAN: Thank you.

MR. MAE: Yes, Your Honour.

THE COURT: Ms. Skybin translated and they said 155. And so, what we have is a contemporaneous translation, and one done later officially.

MS. CHAPMAN: Right.

5 MS. CHAPMAN: Q. Let's turn now to Tab 156, please. And this is email correspondence between Yana Skybin and Ulana Damazar I believe, dated December 6<sup>th</sup>, 2011. And at paragraph two of this email, it states, "The relationship gradually broke down on many levels. Primarily, it had a form of financial fraud and emotional abuse. They came to us with 10 concerns over domestic violence." And are those statements that you or Valentin made to Yana Skybin?

A. We did.

15 Q. And do you recall when you made those statements to her?

A. That I don't remember, but there is a date, 2011.

Q. We have the date the email is sent.

A. That I don't remember.

20 Q. And then at the fourth paragraph, it reads, "OW refused to continue assistance on the grounds that they have a sponsor who is willing to support them, and who, by law, citizenship and immigration agreement to sponsor parents for 10 years is still responsible for them for 7 years." And so, was 25 your Ontario Works application denied or refused at some point?

A. It was like that.

Q. And that's because the Danilovs were making every effort to provide you and Valentin with financial support, correct?

30 A. It was - we were in some kind of difficulty in complicated situation, and we applied to - we went to Yana, and it just has reference that there is a sponsorship agreement.

Q. But you were actually refused social assistance through Ontario Works, because the Danilovs were willing to support you, correct?

A. Yes.

5 Q. And so, why did you continue to make application for social assistance?

A. Because they were not supporting us, that's why we applied. And they were supposed to, but they did not do that.

10 Q. You would agree that the Danilovs did not know where you were when you left the home on October 17<sup>th</sup>, 2011?

A. I would not agree because they were in contact with the police who were looking for us, and the police for sure would give them our coordinates.

15 Q. Are you certain about that?

A. I think so, yes I am sure.

Q. Do you remember Constable Graham Harbottle gave some evidence here last week - or early this week?

20 A. They had explained why they were looking for us if they would show that they have some positive intentions, why the police was looking for us then. Of course, we would tell them we were isolated.

Q. But you in fact asked the police to not tell Danilovs where you were, correct?

25 A. Okay, there was a school, this school. They could pass through the school, the mining the cheque....

Q. And they in fact tried to do that, let's have a look at that tab. Exhibit 1(a), Tab 68.

30 A. They were trying to do that for a long time, but we needed money to leave. That's why Ontario Works agreed to meet our requirements. And when Ontario Works gave us the money through the school, they then gave us the money - sorry,

the cheque.

Q. Tab 68, please. And again, this in English, so the interpreter will have to assist. But for the record, it is a letter to Susan Green, the director at YMCA Simcoe Muskoka, from Pavel Danilov, dated October 30<sup>th</sup>, 2011. And at the paragraph starting with numeral one, it reads, "Please give them the cheque enclosed in this package. With their support funds, for the period from October 18<sup>th</sup>, by November 30<sup>th</sup>, 2011. I estimate it should cover their basic expenses for this period of time." So, you move out of the home on October 17<sup>th</sup>, 2011, correct?

A. Yes.

Q. And on October 24<sup>th</sup>, 2011, it's clear you're not coming back. You move out your personal belongings, correct?

A. Yes.

Q. And on October 30<sup>th</sup>, 2011, the Danilovs do their best to provide support to you and Valentin.

A. But this cheque, they sent already through the school when we already were receiving Ontario Works. We could not deposit it. We - we left it for the next month...

Q. Right, because...

A. ...put it aside for next month.

Q. ...if you deposited that support cheque, you wouldn't be entitled to Ontario Works, correct?

A. But we did not have the money. When the cheque came, we were - we maybe even have to borrow the money from somebody. But thank God, we never had to borrow the money from anybody. That's why we applied to Ontario Works, and we receive - we received this amount, but their cheque was not there yet. It came later, and we put it aside. We thought ok, good. They are helping us. And we put it aside for the next

month. Good for them. When we went to deposit it, the cheque was already cancelled.

Q. You tried to deposit this cheque five weeks later, correct?

5 A. Yes, because we already had money from the other organization which helped us.

Q. And so, you didn't want the support cheque to interrupt your Ontario Works payment, correct?

10 A. We did not want to deposit it because we had the money. We just put it aside for the next month. That was the reason.

Q. You had money from Ontario Works at that time, correct?

15 A. Because we did not have the money, we came to Ontario Works and they gave us the money.

Q. And then when you received the support cheque, you decided not to let Ontario Works know that our sponsor is support us, but keep the Ontario Works money as well.

20 A. No, it was not exactly like that. If we would - if we had deposited that cheque, then we would inform Ontario Works immediately.

Q. But whether you deposit the cheque in the bank or not, you had funds available from your sponsors, correct?

25 A. We decided that we do not need that. We - when the money from Ontario Works would finish, we would deposit that cheque, and we would inform the Ontario Works that we are being assisted. But, the cheque didn't go through because it was cancelled.

30 Q. But that wasn't your decision to be made, whether you needed the sponsor's support or not.

A. We simply did not have it, the assistance. We did not have the money.

Q. You - you had a cheque. You could have went to any bank with some identification and gotten the money, right?

A. I'm explaining how we did it. I have explained how we did it.

Q. Right, you wanted the Ontario Works money, and you wanted the sponsor's money, correct?

A. Not true, not true. That's not true.

Q. And did you realize that by not accepting the money, the sponsor, the Danilovs were trying to give to you, you would cause problems for them with Immigration Canada?

A. Why do you consider that we did not accept that cheque? We did accept it. We could not cash it out.

Q. You chose not to cash it out in November of 2011.

A. If that cheque was sent to us a month earlier, in November 2011, then we would have cashed this cheque out. We - but we did not have this money. Why it was not done then?

Q. It wasn't done a month earlier because you were still living in the house, right?

A. I don't remember. There was such a period when we already received the money, and then we received this cheque. I'm coming back to that again.

Q. So, let's now turn to Tab 71, please. And this is a letter from Svetlana Danilov to Mrs. Susan Green, director of YMCA Simcoe Muskoka. This letter is dated December 15<sup>th</sup>, 2011. And Ms. - Mrs. Danilov writes, at paragraph two, "Under the sponsorship undertaking, I am responsible to provide them with a monthly support to cover all their mandatory living expenses, and my sponsorship undertaking does not expire until June, 13<sup>th</sup>, 2018." So, the Danilovs at that time believed they still had an obligation, an undertaking to sponsor you and

Valentin, and they were making every effort to do so. Wouldn't you agree?

A. No, I would not agree, because it was also complicated and twisted. We were receiving this money - we were not receiving this money. It was also difficult. They had no contact with Ontario Works, and even Ontario Works did not understand what they wanted. So, with this phrase, you cannot resolve whatever you're talking about right now. It was their responsibility, as she writes down, but it doesn't mean that that's what they did.

Q. Well, let's look at Tab 78, because here we have a letter from Mrs. Danilov to Crystal Hilton (ph), County of Simcoe, Social Services Ontario Works Department, December 15<sup>th</sup>, 2011. So, the Danilovs did, in fact, contact Ontario Works, correct?

A. But they were contacting them in such a way, that at the end, Ontario Works almost took us to the Court. It was not so simple. They were supposed to return this money to Ontario Works. They were not doing that, and at the end, it was happening so that Ontario Works was putting this debt on us.

Q. In fact, that's not true. That debt has been incurred, and it's the Danilovs that have to pay Ontario Works back, correct?

A. That tells the Danilovs could not find the common language with this service. They were - they were trying to twist everything, and at the end, then Ontario Works was handing everything on us.

Q. Well, let's look at the letter. It says, at paragraph two, "First of all, we would like to let you know that we cancelled the support cheque that was sent through YMCA director, since we discovered that they received social assistance money for the period the cheque covered." And I



believe that the cheque that you tried to cash on December 5<sup>th</sup>, 2011. And so, Mrs. Danilov continues, "I attach a copy of the cheque again, just to draw your attention to the memo on the cheque indicating the period of support." And if you look on page 459 of this letter, Svetlana encloses a void cheque that she asks Ms. Hilton to provide to you and Valentin. What did you do with that void cheque, Mrs. Nikityuk?

A. What did we do with it? I don't remember what we did with it. It didn't go through, and that was it. What did we do?

Q. So, you never received any support payments from the Danilovs after December 2011?

A. I need to have my documents, which I was - what I can - which I was filling out. Right now, it's difficult for me to remember everything. Right now, I cannot reveal the - it was seven years ago. Restore the picture, it was seven years ago. That cheque just did not go. What could we do with it?

Q. We can look at the bank statements, if you would like. They're at Tab 182 in Exhibit 1(b).

A. I should have brought my own calculations, then I would be able to tell. Right now, I was - every month I was conducting my own balances, incomes, and expenses. Right now, without that, it's difficult for me to make any assessments. We had big problems, and we just could not stand it anymore. Help of our sponsors one - once they had money, then they don't have money, then they have money. Only problems.

Q. Mrs. Nikityuk, are those records you're referring to in your document brief here with the Court?

MS. CHAPMAN: Could we maybe take a short break and see if we can locate those Your Honour?

MR. BORNMANN: Your Honour...

THE COURT: Mr. Bornmann.

MR. BORNMANN: ...I seriously question what the value to the Court is of this line of inquiry. I think it's uncontroversial - it's not  
5 controversial that the Danilovs were making support payments. I'm uncertain what other information we're searching for at this point. I mean, what my friend is proposing that we undertake a review of all the bank statements to  
10 find what support payments were paid on what month. I'm not sure that's going to be of use to the Court in decidingly [sic] matters before it.

THE COURT: Ms. Chapman is acknowledging that your client was making support payments, or at least  
15 trying to....

MS. CHAPMAN: But I'm not sure that the witness is making that acknowledgment.

THE COURT: Well, counsel makes it on her behalf that...  
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MS. CHAPMAN: Okay.

THE COURT: ...she's bound by it, I think.

MR. BORNMANN: And I believe the client's answer was that sometimes there was money, sometimes there wasn't money. If there were problems with  
25 these support payments.

MS. CHAPMAN: And so that's the very issue that I want to get at.

THE COURT: All right, but does the material at 182 and 181 give you the paper trail to follow  
30 through for this - this witness?

MS. CHAPMAN: Yes.

THE COURT: Is there - there's nothing else that

she would....

MS. CHAPMAN: It's the witness saying that she needs her records. I'm happy to go through the bank records that we have provided.

5 THE COURT: I think that's the better course. Mr. Bornmann?

MR. BORNMANN: Your Honour, perhaps it would be of assistance the - there's a letter that was produced by the Ministry of Community and Social Services showing the benefits that were paid, and the amounts fluctuate over the course of the entitlement period, and the fluctuations are due to changes in income, some of which come from the Russian pension, some of which come from the Danilovs. So, perhaps that would be a useful document for us to put before the witness.

10 MS. CHAPMAN: And I plan to get there, Your Honour, but this is my cross-examination, and I would like the witness to give me her answers in relation to what support payments were made, and when.

15 THE COURT: All right, well why don't you take her to these documents, if you wish. If she needs to look at something else, we can get there, but isn't this the best source as far as you're concerned?

MS. CHAPMAN: As far as I'm concerned, it is.

20 THE COURT: So, why don't you - since it's your cross-examination, why don't you direct her through that? And if it can be summarized in some way by totalling it up, then I'll accept that too, because - I mean, these are written records, and

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they are what they are.

MS. CHAPMAN: Right.

THE COURT: I don't need the witness to ferret these out for us if we can do a summary.

5 MS. CHAPMAN: No, I'd - I'd like to address a few of them to show that there are support payments going in, and there's withdrawals of those funds...

THE COURT: All right, and....

10 MS. CHAPMAN: ...and then we'll get to the...

THE COURT: Summary.

MS. CHAPMAN: ...other Ontario Works disclosure.

THE COURT: All right, let's move along then.

MS. CHAPMAN: Thank you.

15 MS. CHAPMAN: Q. So Mrs. Nikityuk, we're at Tab 182, and these are the CIBC joint account statements for the year 2012, Exhibit 1(b). Sorry.

THE INTERPRETER: This one?

Q. Page 1248. Is that the page that you're on?

20 A. Yes, 1248.

Q. Thank you. So, this first page is part of the CIBC account statement for January 2012. And on January 3<sup>rd</sup>, there's a deposit via internet transfer of \$430. And that was withdrawn on January 10<sup>th</sup>. Did you or Valentin withdraw those  
25 funds?

A. There was such payment

THE COURT: I just don't see that on my statement.

A. I remember 430.

THE COURT: Page 1214 I present?

30 MS. CHAPMAN: Sorry, 1248. 48, at Tab 182.

THE COURT: Yes, 430. Thank you.

MS. CHAPMAN: Q. And then on January 23<sup>rd</sup>, we see

another internet transfer of \$592, and that amount is withdrawn on January 27<sup>th</sup>. And would you agree that those funds were withdrawn by yourself or Valentin?

A. Yes.

5 Q. Let's look at the next month. That starts - that statement starts on page 1250, and there's a internet transfer, a deposit, on February 1<sup>st</sup> in the amount of \$1,022. And those funds, along with some additional funds, were withdrawn on February 7<sup>th</sup>.

10 A. When money were coming from them, we - we were not receiving money from Ontario Works. It was all counted. It was not that everything was together.

Q. So, every dollar of support that was paid by Danilovs was reported to Ontario Works. Is that your evidence?

15 A. It was going into the income.

MR. BORNMANN: Your Honour, sorry, did the interpreter get her complete answer?

A. Yes, we were putting that money into our income.

20 MS. CHAPMAN: Q. Could we give the witness Exhibit 11, please? And Mrs. Nikityuk, could you turn to page four of that document?

THE COURT: What is that, just for the record...

MS. CHAPMAN: Sure.

25 THE COURT: ...Exhibit 11 is?

CLERK REGISTRAR: County of Simcoe documents.

THE COURT: Thank you.

MS. CHAPMAN: Q. And page four is an income verification form for County of Simcoe Social Housing Division.

30 And is this one of the form that you say you used to report income to the county?

A. Yes.

Q. And can you please show me on this form where you report the Danilovs support payments?

A. I see our pension here, quarterly for three months. What is this? I don't know.

5 Q. Right, I see that. And you report another amount under number 12, "Other." Is that the Danilovs support amount?

A. No, those are not money from Danilovs.

10 Q. So, did you report the money that you're receiving from the Danilovs?

MR. BORNMANN: Your Honour...

A. I don't know.

15 MR. BORNMANN: ...to be fair to the witness, I beg my friend needs to establish that there was support from the Danilovs in this month. This is in 2014. The line of questioning that we were pursuing was with respect to bank accounts in 2011.

20 THE COURT: Ms. Chapman, is there - I don't have that exhibit in front of me, but obviously Mr. Bornmann suggests it doesn't match the 2012 year that you were just discussing in terms of reporting, for example, the incomes you suggest...

MS. CHAPMAN: Yes, so....

25 THE COURT: ...for January and February of 2012.

MS. CHAPMAN: Let's go to those documents as well.

30 MS. CHAPMAN: Q. Mrs. Nikityuk, if you can keep this exhibit handy, we're also going to look at Exhibit 1(b), Tab 177. And if you could turn to page 1135. Are you at that page now?

A. Yes.

Q. And you recognize this? It appears to be a

copy of a cheque number 2 - pardon me, cheque number 15.

A. Yes, yes.

Q. From Pavel Danilov, payable to Alla Nikityuk.

And this cheque is dated June 1<sup>st</sup>, 2014.

A. Yes.

Q. It appears that it was deposited on June 2<sup>nd</sup>, 2014.

THE INTERPRETER: Sorry, June 2<sup>nd</sup>?

Q. June 2<sup>nd</sup>. Do you see that?

A. Yes.

Q. Let's look at the next page. This - on page 1136, is a cheque dated July 1<sup>st</sup>, 2014, in the amount of \$550, and unfortunately, it's not clear when it was deposited, but it was deposited at Scotiabank on 44 Collier Street. Mrs....

A. Yes.

MR. BORNMANN: Sorry Your Honour, again, to be fair, the stamp says J-U-L, which would indicate July. The verification was dated July 4<sup>th</sup>, so there's no indication that it's inside the timeframe we're looking at.

THE COURT: I don't understand you. What timeframe?

MR. BORNMANN: My friend is referring to the timeframe on the verification document. So, the cheque was cashed in - and the cheque was - is stamped sometime in July by the bank. The point my friend was trying to make is that it's not appearing on this verification form. The verification form is dated July 4<sup>th</sup>. Just that the date needs to be put to the witness, Your Honour, is the point.

THE COURT: All right. Ms. Chapman?

5 MS. CHAPMAN: Well, if necessary, we can go through the entire 2014 year and verify that the Danilovs were making support payments of \$550 per month. I appreciate that specific cheque of July 2014. It's not clear on what day in July it was deposited, but I don't think that would defeat the fact that they're receiving \$550 a month at that time.

10 THE COURT: I don't have Exhibit 11 in front of me, but is that what it tends to show? That the reporting, or is there some deficiency in the reporting?

15 MS. CHAPMAN: In Exhibit 11, which is dated July 4<sup>th</sup>, 2014, there is no amount set out for the support.

THE COURT: All right, is that the only months it's problematic, or is that form relating to just that one month? Or does it deal with the whole year?

20 MS. CHAPMAN: I understand these forms were to be provided to the county each time Nikityuks have a change in income. I'm not certain when other forms had been prepared, or if they were. But on this form, when they're providing updates to the county on their income, they're not including the support that they've been receiving for months from Danilovs.

25 THE COURT: You mean they're not reporting June either? Is that what you're saying? Or is it just a problem with the July in terms of the timing?

30 MS. CHAPMAN: Well...



THE COURT: Like is this....

MS. CHAPMAN: ...I don't think it's just a problem with July. We only have the income verification form for July 2014, which is supposed to be triggered when there's a change in income. But the fact is, we have the cheques here for all of 2014 showing support of 550 a month.

THE COURT: Okay, well why don't you just ask her that global question and answer, because that's your point, isn't it?

MS. CHAPMAN: It is.

THE COURT: We have the whole bundle for 2014? IS that your - is that the point?

MS. CHAPMAN: The point actually is that they're receiving support from the Danilovs and they're not reporting it.

THE COURT: All right, well, why don't you just confirm that she's receiving the 550 a month, and then I guess ask her if there's a failure to report. If that's an issue that Mr. Bornmann wants to address in another way, that's fine, but your point is that there was support of 550 a month throughout 2014?

MS. CHAPMAN: Yes.

MS. CHAPMAN: Q. Mrs. Nikityuk, were you receiving support from the Danilovs throughout 2014 in the amount of \$550 per month?

A. When we were receiving this amount, we were always reflecting it. It was ODSP. We were bringing it to our worker, and we would show exactly how the pension changed, what was the amount from the sponsor, and depending on that, ODSP would pay us or not. So if this money are less than what we

supposed to receive, they would pay us. If it's more, then they would not pay us. But that amount, 550 which we're talking about, it was not for the whole year - during the whole year. I cannot exactly tell you right now how many months and for which months, because I do not have anything with me.

Q. But we do have the cheques here. Do we need to go through each of those months?

A. It's up to you. It's up to you, if we - you decide yourself if we need to do that or not, but that amount was not for the whole year.

THE COURT: Ms. Chapman, is your submission that there's cheques for 550 for the 12 months? Maybe if that's the case, Mr. Bornmann would acknowledge that on behalf of his client. Otherwise, the client would have to look at it overnight to confirm the numbers. But, I presume that it's easily determined by counsel looking at them. She suggests that the amounts varied, and it may well have varied in some other months or years, I don't know that at this point. But, at this point, we're talking about 2014. Mr. Bornmann, are you - is it clear that the exhibits show 550 a month for the 12 months, or do you need time to look at - look through them?

MR. BORNMANN: Your Honour, I would need time to look at them, and I was just reflecting on the concern I have that this is not, unless I mistake the matter, this is not ahead of damage in this particular client. What brought me to my feet on the first instance, is the fact that my friend is using an income verification form for social housing to direct questions, and I'm trying to

5 speak carefully here cause the witness is still on  
the stand, and perhaps it would be easier if the  
witness was excluded for the extent of my  
objection, Your Honour.

THE COURT: All right.

MR. BORNMANN: But I do have a concern here with  
respect to where my friend is taking this and how  
- and the manner in which she's making this point  
to the Court.

10 THE COURT: All right, well why don't we just have  
the witness step out, and given the time of day,  
we'll have her step out for the day, but we'll  
have our discussion and we can continue tomorrow  
with the witness. So the witness can step out,  
15 she's excused for the day. Thank you. Mr.  
Interpreter, are you available for next week for  
June 9<sup>th</sup> I think it is? It would be assistive  
continuity if you came back.

THE INTERPRETER: June 9 I'm available.

20 THE COURT: Are you here tomorrow?

THE INTERPRETER: No.

THE COURT: All right.

THE INTERPRETER: Somebody else will be here.

25 THE COURT: That answers my question, thank you  
sir.

MR. BORNMANN: Your Honour, my concern is the  
point that my friend is trying to make is that the  
Nikityuks haven't reported their income to the  
social assistance authorities, and because of  
30 that, the Danilovs have suffered a loss because  
there's a debt which is accruing that they've yet  
to pay that's going to be larger. My concern is,

5 is that there's very small bits of information that are being fed to this witness that are not providing her with an opportunity to respond fairly to this allegation. At the outset, I will note that this is not a cause - this is not ahead of damage that we've heard from the Danilovs on. The document we're using is a verification. It's one month - it's a verification form for one month, and....

10 THE COURT: But not for Ontario Works, for social housing...

MR. BORNMANN: For social housing...

THE COURT: ...is that your point?

15 MR. BORNMANN: ...and in fact, the reporting on income, and it's a very complicate process, but the reporting of income, there's a reporting to ODSP, and then ODSP adjusts its benefits, and then there's a - it's all sort of connected, and it appears that this particular, and I haven't looked  
20 at this closely, but there may well be a specific purpose for this one income verification form that has been put. As to the question of the cheques, my colleague took a quick look at the exhibits. So there's three different amounts that are paid  
25 over the course of the year. My understanding, the 550 amount was paid for a while, and then another amount was paid for a while, and then there's another amount paid for a while. And these - to be frank Your Honour, I struggle at  
30 times to follow the dollar values with the support payments, and the reconcile, and with the benefits, and we were taking a place in time, and

presenting many facts and figures to the witness,  
and trying to obtain general admissions which is  
what was the basis for my initial objection.

5 THE COURT: All right. So Ms. Chapman, it seems  
that there's no serious debate that your clients  
were supporting the defendants, and you got the  
cheques to show that. The amounts vary from time  
to time, and those totals can easily be  
10 quantified. You got all the cheques there, if you  
want to do that. But is your point that they  
weren't reporting all the income to the proper  
authorities? Is that the point?

15 MS. CHAPMAN: That's the point, and I haven't  
gotten to there yet, but also in Exhibit 11, is a  
copy of an Ontario Works cheque that was my next  
step to put to Mrs. Nikityuk. That, again, in May  
of 2013, she's not reporting the support that  
she's receiving from the Danilovs. And these  
20 issues go to the very heart of this matter,  
because this is really about the sponsorship  
agreement, and whether it was breached or not.  
Meaning breached by the Danilovs, or not. And did  
they make every effort to try and support  
25 Nikityuks, which is what I'm trying to get from  
the witness.

30 THE COURT: And how are we going to get there in  
terms of efficiencies? Because we spend weeks on  
this, and we all know that there's a gap in time  
between social assistance timing and cheques and  
reporting and everything. Anyone who's ever tried  
to check with Legal Aid would know that - or  
social assistance. So, isn't that the really

difficult puzzle for us to solve here?

5 MS. CHAPMAN: Well, given that we don't have the complete file, I would agree. But I don't think my friend could point to one document that shows they're reporting this support income to the county. Social housing, or Ontario Works.

10 THE COURT: Doesn't the form showing the Danilovs' cheque - debt vary from time to time. Doesn't this not sound reflection of lower amounts because they were paying higher amounts? That summary shows different amounts.

15 MS. CHAPMAN: We can assume that, I don't know for certain how those amounts are calculated. Again, Ontario Works doesn't provide the Danilovs with a calculation, it's an amount.

THE COURT: But we can't say as a general principle that they weren't reporting anything, can we?

20 MS. CHAPMAN: I haven't seen any document where they report the support income. If my friend can point those out to us....

25 THE COURT: But doesn't the summary from Ontario Works reflect some payments? In other words, the debt would be different per month if - depending on what level of support they got. They gave different levels of support, presumably filling a gap from what your clients were paying, and what they should have - what these people needed. Doesn't that give us some matching....

30 MS. CHAPMAN: But we're also making the assumption that these funds coming from Russia are the same year after year, or month after month.

THE COURT: The pensions again?

MS. CHAPMAN: The private pension and the dividends.

THE COURT: All right.

5 MS. CHAPMAN: I don't know that that's a fair assumption based on the documents we have from the County of Simcoe. And I will note that all counsel were with Kathy Kateko (ph) when we went through this file, and this was the only income verification form that I saw in the file, and that I asked for a copy of.

10 THE COURT: Mr. Bornmann?

15 MR. BORNMANN: Your Honour, with all due respect, this is not the social benefits tribunal, and nowhere in the statement of claim is there an allegation that the Nikityuks were concealing income from the ODSP and Ontario Works authorities. This type of dispute comes before the clinic quite a bit more frequently than the type of dispute before the Court, Your Honour, and I can assure you that it'd be a very different file before the Court if we were going to look at that matter. And my objection is based on the fact that there's an allegation being made. The evidence - there's not the evidence before the Court to make that ascertainment. It's an allegation hasn't been pled, and as Your Honour noted, if one looks at the - you know, when looks at the correspondence at Tab 42 of Exhibit 1(b), the - this is the correspondence from the Ministry of Community and Social Services, you'll - Your Honour can see that the amounts do vary

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5 dramatically, and in some instances, we have, you  
know, for example, \$14 in April 2014, and \$70 in  
October 2015. And these are not - there's no  
evidence before the Court that the Russian pension  
is spiking it, and there's all sorts of  
allegations that could be made, Your Honour,  
without notice that we could then reason or  
support with, oh, there's no evidence to support  
10 the contrary, but this was not pled. This was not  
a matter that was put before the Court in a proper  
way, and my concern, with respect to really - my  
concern with respect to the questions to the  
witness, is that we're not providing the witness  
with a full picture. If we're going to take one  
15 particular income verification form, we need to be  
clear what that form is. We need to establish  
what the witness's recollection of this form is,  
what its purpose is, then - you know, we need to  
ascertain what the period is that we're talking  
20 about, and then perhaps we can take a look at the  
cheques. And frankly, Your Honour, I'm - you  
know, this is an income verification form for  
social housing. It doesn't even - it indicates no  
income from ODSP, no income from Ontario Works.  
25 We know - the Court knows, the Court can see this  
correspondence from the Ministry of Community and  
Social Services, showing - and so, we look at the  
period July 4<sup>th</sup>. And actually, you know Your  
Honour, there's even a gap here between April and  
30 October 2014, where they weren't collecting any  
assistance. So, I mean it's possible that the  
Danilovs were paying the full amount during that



time. But the concern remains that if we're going to be trying to make a point about the reporting of the Nikityuks, we need to be very careful with the evidence we're putting to the witness.

5 THE COURT: All right, Ms. Chapman, I think underlying your point is that your clients have been supporting them by these various amounts over the years. Wouldn't it be useful if you put to her that the Danilovs provided, or attempted to provide, "X" dollars in 2011, and "X" dollars in 10 2012 so that she acknowledges receipt of those funds, which I think there's a paper trail for. It's not very disputable. And I think your - the question that follows is whether she reported those or not. But I think what your client wants to get credit for, is the fact that they made the payments. In various amounts, obviously.

15 MS. CHAPMAN: Yes, so....

20 THE COURT: Isn't that the bottom line? Without chasing into this other area of whether they fully reported, and the timing of the report, it would be very hard to pin that down, I think. But your point is they made payments, and they want to be - and you want that to be acknowledged.

25 MS. CHAPMAN: Right, that they were making every effort to support Nikityuks.

THE COURT: And can't that be done by....

30 MS. CHAPMAN: If my friend will allow me to calculate the amounts that were paid in total for each of those years, I'm happy to do that.

THE COURT: I think that's useful, and it gets to your point. I think that's really what you're

5 trying to get at. Whether they report it or not is another issue, but your point is that your clients were making these efforts to provide support. First of all, by this void cheque procedure, and eventually by sending cheques which have changed over the years.

10 MS. CHAPMAN: Yes, I still believe the reporting is an important issue because if they're not reporting the support that they're receiving, then entitlement to Ontario Works arises.

THE COURT: And that's an issue....

MS. CHAPMAN: My client's position is there's no need for the Ontario Works.

15 THE COURT: That's an issue between Ontario Works and these people, isn't it? I mean, they would be putting themselves offside with Ontario Works by double dipping.

20 MS. CHAPMAN: But it's also an issue for the Danilovs, because they have to repay that debt to Ontario Works. It's not Nikityuks incurring a debt, it's the Danilovs incurring a debt.

25 THE COURT: And that may be another issue as well, but it's not for this Court to adjudicate because Ontario Works isn't at the table, they're not a part of the proceedings, and your clients may well have a valid argument there based on the exhibits filed in court. But I don't think that debt is an issue for the Court to finally adjudicate on it. The issue is between the Danilovs and Ontario  
30 Works. If they can suggest that they - here's what we supplied, and it was more than sufficient, or the debt is larger than it should be. That's a

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separate argument. And we could spend a week or two on that, and - but without the right parties at the table, we don't have Ontario Works here, and I don't think it's an efficient use of our court time, given that we've spent a great deal of time in this case. I know the important issues for your clients, but I think when we focus on the key issues, I think it is what we want to establish is credit for what they've actually paid.

MS. CHAPMAN: Okay.

THE COURT: So, let me simply that area of questioning for tomorrow. At least somewhat reduce it. How do you feel you're doing otherwise?

MS. CHAPMAN: I don't see that there's too much more to cover, likely 40 minutes or so tomorrow morning to finish.

THE COURT: All right, and maybe counsel can agree beforehand as to what these totals are so that you could do the math in advance...

MS. CHAPMAN: Yes.

THE COURT: ...based on, I presume we've got a paper trail for all these years that we're talking about?

MS. CHAPMAN: Yes.

THE COURT: So, that may simplify matters if we can do it that way. Is there anything else we need to discuss for today? All right, if not, we'll adjourn until tomorrow at nine-thirty.

Thank you.

CLERK REGISTRAR: All rise.

M A T T E R    A D J O U R N E D

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Certification

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Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, Spencer Edgar, 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 on June 2, 2015, held at  
15 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811\_02\_20160602\_085729\_10\_MULLIGG.dcr, which has been certified in Form 1.

20

, 2017

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Spencer Edgar

(Signature of authorized person)

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June 3<sup>rd</sup>, 2017

ALLA NIKITYUK: (reminded of oath)

TESTIFIES THROUGH INTERPRETER

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MS. CHAPMAN: And maybe before we start with some additional questions we can address the issue of the amount of support that was paid. I spoke with my friends this morning and we compared notes in terms of cheques and bank statements and so on and I'm in agreement with Mr. Bornmann's summary that he has prepared. So if I could pass these copies. Thank you. I'll pass those up to Your Honour and a copy to be marked as Exhibit.

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REGISTRAR: 13.

MS. CHAPMAN: 13, thank you.

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THE COURT: Exhibit 13 will be an agreed statement of support paid. Shall we call it that through the period November of 2011 to April 2016.

MS. CHAPMAN: Yes.

EXHIBIT NUMBER 13 - Agreement statement of support paid - Produced and marked

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MS. CHAPMAN: And since this is agreed to, I don't intend to ask the witness any further questions about this issues.

THE COURT: That's fine.

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CROSS-EXAMINATION BY MS. CHAPMAN:

Q. Good morning, Mrs. Nikityuk.

A. Good morning.

Q. In relation to Canada Revenue Agency, did you claim the amount of support that the Danilovs paid to you and Valentin each year you filed your tax return?

A. What period of time?

Q. During the time since you left the house 2011 to 2015.

A. Yes.

Q. And during the time that you were residing with the Danilovs so in the years, be tax years, 2008 through 2011, did you receive any kind of tax refund?

A. No.

Q. I'd like to go to Exhibit 1B, please, Tab 159. And we're going to have a look at page 923. For the court record, this is a copy of the letter prepared by Yana Skybin on behalf of the YMCA dated December 20<sup>th</sup>, 2011. And it is addressed 'To Whom it May Concern.' I would like to ask you, Mrs. Nikityuk about some of the statements that Ms. Skybin makes in this letter. At paragraph 4 starting at the second sentence, it says, they shared with me that the atmosphere at home is unbearable with threats verbal and physical attacks and constant arguments.

A. Yes.

Q. And much like I asked you yesterday about some other letters and emails, are these words, the statements made by you to Ms. Yana Skybin?

A. Yes.

Q. Now, let's look same paragraph the sentence starting '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.' Did you make this statement to Yana Skybin?

5 A. I couldn't show my granddaughter bruises; they weren't there yet.

Q. So why does this statement state that your granddaughter was shown the bruises?

THE COURT: Before you answer.

10 MR. MAE: Mrs. Nikityuk did not write the letter, Yana wrote the letter. That's a question that should be put to her, Your Honour. This witness can only speculate.

THE COURT: I think the question that follows is whether she told this.

15 MR. MAE: And that's been asked and answered Your Honour as I hear it.

THE COURT: I don't know if she's been asked that specifically about these words to this writer.

20 MR. MAE: I believe that was the previous question and the answer was I shouldn't show my granddaughter bruises if they weren't there at that time.

25 THE COURT: Well, the question was, did you make this statement and she didn't answer that. She answered it in a different way as I understand so I don't think that question has been answered. And the statement is really - they're two-fold statement. There's one about the bruises and the other is about -

30 MS. CHAPMAN: So let's break them down.



5 Q. Mrs. Nikityuk did you make this statement,  
"Alla showed me her bruises and there were bruises on  
both arms"?

A. When I was at this appointment, I told Yana  
that I had this bruises. I'm talking about this  
incident. I told her I don't remember how - I showed her  
or not, I don't remember.

10 Q. And what appointment are you referring to;  
is that the August 23<sup>rd</sup>, 2011 appointment with Yana?

A. I remember it was the following week, next  
week somewhere in the middle I don't remember the date  
but it says here August 23<sup>rd</sup> perhaps that was the date.

15 Q. So do you recall whether or not you showed  
Yana Skybin the bruises?

A. I repeat it again, we had discussion about  
bruises but how it was, I can't remember.

20 Q. So you also can't recall if you showed her  
your arms?

A. I only can guess right now most likely I  
did it, but I cannot remember.

25 Q. Okay. And we don't want you to guess.  
Let's look at the next sentence. "On the weekend their  
granddaughter came for a visit from Toronto and they  
showed her the bruises too." Did you tell Mrs. Skybin  
this statement?

A. I couldn't state it because I didn't have  
any bruises. I didn't show this bruises.

30 Q. Meaning you didn't show the bruises to the  
granddaughter.

A. Yes, granddaughter.

5 Q. Let's look at paragraph 7 now, please. The main reason for argument and disagreement was money.

A. I wouldn't say so. It was a reason but not the main reason, was important but - I couldn't understand how everything looks like.

Q. So what was the main reason for the arguments and disagreement at the house?

10 A. We didn't like the - everything was transparent that our life was like on display for them. We wouldn't receive answers, the answer that we would have liked to have in regards the money.

Q. In fact, you didn't receive the answer that you wanted in regards to social housing, correct?

15 A. What period of time you mean?

Q. When these arguments and disagreements were going on with the Danilovs.

20 A. The social housing was like a last resort for us. We tried everything there, condo, apartment. I was trying to talk to Pavel, but he refused. He said, I'm not going to talk to you. What else we had left. I believe it was aggressive behaviour that was listed before.

25 Q. When Svetlana told you that she would not assist you in applying for social housing that was the first time she ever said no to you, isn't that true?

A. Yes, it was. She replied right away no, you're not going to have social housing.

30 Q. And she explained why, we talked about that.

A. She said you are in a position that you have no right, you're not entitled to have social

housing, but we were in a position to live with them together.

Q. But you didn't like that Svetlana told you no?

A. It was a very certain way, no. She said no in a very certain way. Beside she said in a very certain way you will never live separately and at the same time within parallel she could say it's not your house and you have nothing in this house of yours. It says about our full submission, we could live silently and suffer and take everything.

Q. Let's now turn to page 924, the last paragraph of the letter number 12. And in the very last statement, last line, it says "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 to have full control and debilitating power over their lives." So did you advise Ms. Skybin that you felt Danilovs had full control and debilitating power over your lives?

A. I don't quite understand that debilitating word. I don't understand this word.

Q. So that's not a word you would have used.

THE COURT: Well, she didn't use any of these words because they were Russian at least -

MS. CHAPMAN: No. This is a support letter prepared by Yana Skybin. I don't believe this is a translation of a letter.

THE COURT: I guess I'm just jumping in because if she had a conversation, it would have been

in Russian and then this other person would have written something in English. Maybe there's a misunderstanding about the word that you've put to her in English.

5  
word?  
MS. CHAPMAN: Q. Is there a similar Russian

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MR. BORNMANN: As the court has pointed out when we started into these debates about the meanings of specific words and whether debilitating in English is used in a more metaphorical sense whether it's used in a more literal sense. I'm thinking about the hand debate we had yesterday. I'm worried unless we talk about the overall meaning we will find ourselves going down.

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THE COURT: I'll just let the questions continue then. Sorry.

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THE INTERPRETER: May I use my dictionary to provide another synonym in Russian?

THE COURT: Yes, that will help.

THE INTERPRETER: This translation I agree - sorry, she doesn't know the word.

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THE COURT: Do you want to ask the question again for clarity?

MS. CHAPMAN: Yes.

Q. Did you make this statement to Yana Skybin?

A. Yes, I agree with that.

30  
Q. You gave in evidence that you and Valentin attended Yana Skybin's wedding. Do you recall that?

THE INTERPRETER: Can you repeat the question?  
Sorry.

Q. That you gave evidence that you and Valentin attended Yana Skybin's wedding.

A. Yes.

Q. Was that the ceremony and a reception?

A. We gathered together, we sit down, we social, we wished her a happy birthday to a good person and went home.

Q. I'm not asking about the birthday party, it's her wedding, when she got married, do you recall that event?

A. Yes, I was at the church. We came to congratulate. There were a lot of like us, a lot of people like us. She's a person, individual who does a lot of things for other people. We had a full right to come and congratulate her. I don't see anything bad about that.

Q. So there were a lot of local Russians at the wedding?

A. I mean people from school, acquaintances and relatives.

Q. And did you give Yana a wedding gift?

A. Yes.

Q. And do you recall what gift that was?

A. Right now I don't remember. I know that I couldn't give it to her anything expensive. I couldn't afford it. We wrote a message for her, flowers - if there was a gift, I would remember that.

Q. There was no gift of money?

A. I couldn't afford it. Yes, there were flowers and a card that was written from the bottom of the heart.

5 Q. Just a few more things to cover with you today, okay? I want to talk about October 17<sup>th</sup>, 2011. You gave evidence that the morning of that day, Pavel asked Valentin and I'm probably not going to say this name right Andravitz (ph) to come to his office.

A. Yes.

Q. And he used his full name, correct?

10 A. Yes. When he calls his name he uses his first name and patronymic.

Q. And that's a sign of respect to an elder, correct?

A. Yes, it's accepted in Russian, sign of respect to use a first name and a patronymic.

15 Q. And so this meeting; were you there?

A. Yes.

Q. And you say that Pavel was speaking about burial insurance.

A. Yes.

20 Q. Did he call it burial insurance or was it referred to as life insurance?

A. He was calling it burial insurance.

Q. And did he explain what this insurance was for?

25 A. No. I can tell you literally what he said. Because I was so - his words and I remember them really well. His words were I would like you to do burial insurance with your Russian pension. I buried my own parents and I'm not going to bury you. And I'm not going to bury you.  
30

Q. And did he tell you about the costs for funeral arrangements and burial here in Canada? Did you talk about that?

5 A. He said there's different options look for one and something like that and then we got up and left. We wouldn't discuss anything against his insulting horrible words and we got up and left.

10 Q. Is that the moment that you and Valentin decided that you were moving out that day?

15 A. Another reason was they had closed the account and we had fear, rough, harsher conversation. It was another - another push for us. In a few days before that he didn't like something in the conversation with us and he said what are you it's a slang word in Russian, making attempts to do something. We both have a cancer and you have only a couple of years to live.

Q. And when did he say that?

20 A. It was a few days before that moment, not the same day, a few days before, but there was his expression like that.

Q. Did you explain to him why you had closed this bank account?

25 A. He would mention it before wherever - whatever accounts are there where our names appear and we don't use this accounts we're going to close them.

Q. You gave evidence about the time later that evening when you and Valentin are leaving the house with your bags.

30 A. Not with the bags, one bag it was the most necessary, the most necessary things.

Q. But you're leaving the home, you have one bag.

A. Maybe two little bags but they were only things for the first time to start.

Q. And were you surprised to meet Svetlana at the front door as you were leaving?

A. She probably had a sense because she followed us, right behind us.

Q. Wasn't she coming in the front door as you and Valentin were going out?

A. No, they were in the house, at the home.

Q. So how did Svetlana come to realize that you were leaving?

A. The atmosphere in the house was very intense after all these conversations about the income and I don't know how it happened but she turn up right next to us.

Q. So what was the conversation?

A. The conversation was she saw us with the bags heading to the door. She even screamed at Pavel, Pavel look at this, they're leaving, and Pavel came downstairs.

Q. And then you said that you had the keys taken from you, the keys for the car.

A. Yes. We had the keys in our hands and they said, give the keys back.

Q. And did they take them out of your hands?

A. No, Valentin was held there, the keys in his hand and there was a small table he put them on a table or maybe on a bookshelf. I can't remember exactly, but he didn't throw them down.



5 Q. And there was a conversation about that. Pavel explained to you that if you're not residing in the house, Valentin is not insured on that vehicle, is that correct?

A. At that moment he didn't say anything like that. He just requested to give the keys back.

10 Q. And you also gave evidence that you had a telephone, an emergency telephone, I believe.

A. Yes, we had a telephone like that.

15 Q. And Valentin had a cell phone as well, correct?

A. Yes, and a cell phone as well.

20 Q. And you attempted to call 911 from the emergency phone, is that correct?

A. No. We didn't make any attempt. We just said if you don't let us go, I will push the button on this receiver and the call will go to the police.

25 Q. And they let you leave.

A. And Svetlana stepped aside from the door and we came out, we exited.

30 Q. And then on October 24<sup>th</sup>, 2011 you returned to the house to remove some of your personal belongings.

A. Yes.

35 Q. Who suggested that the police attend?

A. The atmosphere was kind of - we even had this receiver so we decided to get the police involved so everything goes smoothly and calmly.

40 Q. But you never had to involve the police before that day at the house, correct?

A. Yes, never did.

Q. And there were no issues moving out of the home on that day.

A. No. Everything was quiet and calm. A policeman was right in the house.

Q. And in your evidence earlier, you had said that the furniture bought for this new house was owned jointly by yourself and the Danilovs.

A. Yes.

Q. Why not take some of that furniture when you move out?

A. We took only the most necessary things. We didn't need the stuff anymore. Because we had one-bedroom place and we had to purchase a different bed. This is one of the reasons why we returned - turned to Ontario Works. They gave us money to buy everything that we need, basic needs.

Q. But if there were items in the house that you owned, why not just take those?

A. I am explaining. We didn't take the beds. We didn't need them anymore. When we came to Canada, we came with our own library, it's a big library. There were two bookshelves, open bookshelves purchased for this particular books. We needed them, we took the shelves. And they were open and worn ones. We didn't know what kind of reaction that we would get if we started to take the TV because they took away the car so we decided not to do it. Our friends told us, we have an old seating set you can have it and then we took our four chairs, vacuum, TV set, vacuum. People have some extra things; they were in a good condition though. Somebody, I think it was Lika, a table and new furniture and they said we

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have old furniture sitting in our garage. Go and take only thing that would fit into our small apartment like a shelf. We took our two computer desks and the computer as well. Kitchen had everything, we didn't need anything there. My table for the bedroom. We have two inbuilt closets. I didn't want to cluster a lot so we did everything in a reasonable way. We decided this big TV set that was in the house for our small apartment now it sounds like there was four TVs. We didn't need such a big TV. It was done in a common sense, reasonable. We didn't have any problems.

Q. Just one last point, when you went to the CIBC in December of 2011 and you accessed the joint account, do you recall how you managed to access that account?

A. It was related to our pension. Our pension would be transferred to our joint account Svetlana, Valentin and myself. It happened somehow - you meant we opened our new account?

Q. No. In December of 2011 somehow you accessed that CIBC joint account. And you gave evidence that at that time you no longer had a bank card.

A. Yes, we didn't have them.

Q. So I'm asking, do you recall how you accessed that account in December of 2011?

A. I think we closed this account and opened a new account for ourselves. This account was ours and our pension now would be transferred to this account. I still been using the same account. We have our own account.

THE COURT: Perhaps there's a misunderstanding of the question.

MS. CHAPMAN: I think maybe there is.

5 Q. I'm going to ask you whether you recall this joint CIBC bank account remaining open until 2013 and the Danilovs would use that account to transfer funds to you and Valentin for support purposes.

10 A. When they closed it, they started to set out cheques for us.

Q. Right. But this account wasn't closed until I believe it was April of 2013 - pardon me, June 2013. So you would access that account somehow to access the support funds.

15 THE COURT: Counsel, when you use the word 'access' I wonder if it would be simpler to ask her, how she took money out of the account. Perhaps the word 'access' is complicated in a sense.

20 MS. CHAPMAN: Sure. Q. Do you recall how you took money out of that account?

A. You know what I can't recollect right now. I will let Valentin tell you about that.

25 MS. CHAPMAN: Thank you. So those are my questions for the witness, Your Honour.

THE COURT: Counsel, is there any re-examination?

MR. BORNMANN: No, Your Honour.

30 THE COURT: Ms. Nikityuk your testimony is completed for the time being.

MR. BORNMANN: I am ready to call the next witness. Sorry, may I have some time with my client?

RECESS TAKEN

UPON RESUMING

VALENTIN NIKITYUK: (SWORN through Interpreter)

TESTIFIES THROUGH INTERPRETER

EXAMINATION IN-CHIEF BY MR. BORNMANN:

Q. Hello Mr. Nikityuk. I have some questions about your background. You were born on October 7<sup>th</sup>, 1936, correct?

A. Yes.

Q. In Leningrad, now St. Petersburg in Russia.

WITNESS: Yes.

Q. In 2004 when Alla signed the sponsorship agreement, you were 68 years old, correct?

A. Yeah.

Q. And you're now 79 years old, 80 in October, correct?

A. Yes, correct.

Q. I'm going to ask you some questions about your education and work. You're now retired, correct?

A. Yes.

Q. You used to be in the military we've heard, correct?

A. I graduated college, military college.

Q. But you served in the Armed Forces, correct?

A. Yes.

Q. For how long?

A. Eight years.

Q. Could you tell the court briefly about your education?

A. Which one; the first one or the second one?

Q. After high school.

A. After school I attended military college credited got an officer's rank and was serving.

Q. And was there more education after that?

A. When I resigned from the army from the military I attended the institution - university.

Q. Which university? Where was the university?

A. In St. Petersburg, Leningrad.

Q. And what degree did you get there?

A. Engineer.

Q. Did you work as an engineer after that?

A. Yes.

Q. And I understand it's designing submarines.

A. Not before that, it was my last one.

Q. Okay. Do you speak or understand English?

A. A little bit.

Q. In 2008 did you speak or understand English?

A. Barely.

Q. I'm now going to ask some questions about family. You married Alla in 1978, correct?

A. Yes, '78.

Q. You were previously married with twin daughters.

A. Yes, the first marriage two.

Q. And the court has heard that Alla has one child Svetlana.

A. Yes.

Q. So when you married Alla in 1978 Svetlana would have been about 14 or 15 years old, right?

A. Yes.

Q. And where were you living when you married Alla?

A. We exchanged a room for a community apartment where Alla and Svetlana and I had one - one room apartment as well.

Q. And in that exchange, what did you get?

A. Two room apartment.

Q. And you lived in the two room apartment with Alla and Svetlana, right?

A. Yes.

Q. And the court has heard that later on Svetlana married Pavel, right?

A. Yes.

Q. And that was 1983.

A. Yes.

Q. And after they got married Pavel lived with you as well?

A. Yes. After they rented for a couple of months, two months.

Q. After they rented?

A. A room.

Q. And we've heard Anastasia was born in 1985.

A. Yes.

Q. And at that point there's now five people living in your apartment, correct?

A. Yes, living.

Q. I want to ask you about life with five people in the apartment. So we're thinking about the mid 1980's. What was life like in the apartment with all five of you living there?

A. Well, Pavel, Svetlana and Anastasia lived in one room. Alla and myself in the other room.

Q. And how often were you at home?

A. Back in those years not much I was home.

Q. How often were you away approximately?

A. Approximately it would come out, in total I would be away for six months, half of a year, half of a year out of one year. It was like that, I was months on a business trip and the one week at home, months on a business trip and one week at home.

Q. And what was your relationship like with Pavel at that time?

A. We tried not to meet very much.

Q. Why not?

A. I mentioned before I was on that business trips because I had a period of time when we had to submit the object that we were working on to sign it off.

Q. But when you were at home, I'm talking about, when you are at home, why did you try not to meet too much with Pavel?

A. So I don't know.

Q. The court wants to hear why.

A. We have different -

Q. Different what?

A. How to say - I have one thing so to say, he has different.



Q. What do you remember about Pavel at that time? What was Pavel like?

A. To say I didn't have much time for that. I was too busy about to sign the objects and - better.

Q. So I understand the Danilovs moved to Latvia in 1995.

A. '96.

Q. ;96. And would you keep in contact with the Danilovs after they moved out?

A. Alla would talk every day on the phone.

Q. Did you?

A. No, not me.

Q. Did you go visit the Danilovs in Latvia?

A. Not to visit. I went there to see a doctor.

Q. And how long did you stay?

A. A month.

Q. And when was that? What year was that?

A. In '99.

Q. And who took care of you while you were there for the surgery?

A. Where?

Q. In Latvia.

A. I wasn't for the surgery in Latvia, I just was visiting once a week a doctor and I would get the injection shot.

Q. And who did you stay with in Latvia?

A. At the Danilovs.

Q. And did they help you while you were in Latvia?

A. Yes.

Q. When did you stop working?

A. I stopped working 2004, November the 30<sup>th</sup>.

Q. So I want you to think back to around that time 2005. Back in 2005, what was your and Alla's income?

A. In 2005 we had pensions higher than average.

Q. Do you remember all the pensions you had?

A. I don't remember which ones, I just remember that we would get additional funds from a pension fund and the city. Then I had some addition to my pension from the employer. Also when I returned - resigned, the employer gave me 90 thousand rubles. Also I had dividends from shares of the employer.

Q. How would you describe your income, your and Alla's income in Russia at that time?

A. It was a good income.

Q. Do you remember the pension amounts?

A. I can't recall if the pensions because they would increase the amount for every 10 percent every March.

Q. And did the Danilovs send you any money at that time?

A. They sent \$100.00 for utilities. And after they started to raise the documents, they started the paperwork for sponsorship, they started to send money for all this expenses related to paperwork.

Q. And did they send money for medicine?

A. No. Well, there was one time when they send drugs for Alla.

Q. So the court has heard about the property - about some property you owned in Russia in 2005. And I

want to talk about the summerhouse. Did you own a summerhouse?

A. Yes.

Q. And who was the owner of the summerhouse?

A. Myself.

Q. Anybody else?

A. No. Well, the first owner was of this was my first - second wife because the guardianship was from the employer.

Q. Sorry, which wife?

A. Second.

Q. And who is that?

A. Nadisha (ph).

Q. It wasn't Alla?

A. No, Alla is the third one.

Q. Okay.

A. And then when she passed away, I transferred to myself.

Q. And I understand that there was an addition to the summerhouse constructed at some point.

A. Yes, reconstructed a little bit.

Q. And did you have some help with that?

A. Yes, Pavel's father would come and he expressed wish to help out.

Q. And what was the construction that was done?

A. I will explain. There was a small veranda, I decided to extend to make it bigger and the place where it was small, I put the oven.

Q. Did Pavel help with the construction?

A. I can't recollect it.

Q. But Pavel's father helped?

A. He came two times.

Q. And was there any agreement with Pavel or Pavel's father that they would get an ownership interest in the cottage in exchange for the work?

A. No discussion happened in regards to this topic.

Q. Did they ask - did either Pavel or Pavel's father ask for payment?

A. No.

Q. Was there a discussion about Pavel inheriting the cottage?

A. No, there wasn't.

Q. Did you promise Pavel he would inherit the cottage?

A. No.

Q. In addition to the summerhouse, the court has heard that between you and Alla you owned an apartment, a garage and a car, correct?

A. Yes.

Q. Okay. Let's go back to the Danilovs. I understand the Danilovs moved to Canada in 2003, right?

A. Yes.

Q. Did you keep in touch with the Danilovs after they moved to Canada?

A. Yes. They would call and Alla was talking. Svetlana would call and therefore she would talk to Alla.

Q. Did you ever talk to them?

A. Maybe something, a little bit.

Q. How often would you talk to them?

A. Me?

Q. You.

A. Very random.

Q. Was there any emailing?

A. Yeah, there were emails and I would bring  
5 them up.

Q. Can you explain how the emails worked? Who  
emailed who?

A. Svetlana and Pavel would send them and I  
10 would print them out and I'd give it Alla.

Q. Did Alla have an email account?

A. No, only me, only I had.

Q. And if - did Alla ever send emails back?

A. No. I would send them. If there was any -  
15 Alla doesn't know computer.

Q. Okay. Mr. Nikityuk, I want to turn your  
attention to Exhibit 2A Tab 1, the sponsorship agreement.

A. What Tab?

Q. Tab 1. Do you recognize this document?

A. Yes.  
20

Q. Do you recognize the signature at the  
bottom of the document on the right?

A. Yes, Alla's.

Q. Do you know how this document came to be  
signed by Alla?  
25

A. There was an offer from the Danilovs let's  
try maybe we'll try to start paperwork for moving - to  
move.

Q. And why would you want to start the  
paperwork for moving?  
30

A. Well, the Danilovs were talking us in and  
we decided to try.

Q. And why did you decide to try it? The court wants to know why you would start the immigration process?

5 A. We decided we are elderly people, the Danilovs would say it's going to be hard for you along. They more or less tried to the process and then we'll see how it goes. We'll decide later.

10 Q. When this document was signed in 2004, had you decided that you were going to immigrate to Canada?

A. No. There was no decision yet. There was simply a preliminary, like this.

15 Q. Did you talk - were you aware of any discussions about money with the Danilovs? Yes. I'm talking 2004 when this document was signed.

A. No.

20 Q. Was there an agreement with the Danilovs to give all your money to them if you actually decided to come?

A. No, it was nothing like that.

25 Q. Did you promise the Danilovs to give them money in exchange for the Danilovs signing the sponsorship agreement?

A. No, there wasn't.

30 Q. So the court has heard that Alla visited Canada in 2005 by herself and then you and Alla both visited Canada in October 2007, right?

A. Yes.

Q. So let's talk about the visit in 2007. Why did you visit Canada?

A. We decided to get acquainted, yes.

Q. And why did you want to get acquainted?

A. There were discussions all the time about the sponsorship so we decided to see.

Q. And who were having these discussions about sponsorship?

A. The Danilovs would offer all the time.

Q. But who was talking to who?

A. Svetlana to Alla.

Q. Who paid for that visit?

A. The Danilovs.

Q. But whose idea was the visit?

A. Danilovs.

Q. And did the Danilovs say that they wanted to be repaid for the trip?

A. No, there was no such conversation.

Q. Did you promise to repay them for the cost of the trip?

A. No. We didn't have a discussion on this topic.

Q. On the 2007 trip to Canada, did you make a decision about whether to immigrate?

A. No, not yet, no decision.

Q. You said there were discussions all the time about immigration. After the trip were there still discussions between Alla and Svetlana about immigration?

A. Yes, it continued.

Q. Do you remember what some of the considerations were, some of the things that you were thinking about at that time, you and Alla?

A. Back then nothing solid. We didn't think anything.

5 Q. What were - so there - were there some things that looked good and then some things that you were thinking about that you had concerns about?

A. In general, everything. We were still thinking.

Q. And what were some of the reasons you were thinking it was a good idea?

10 A. To live in Russia, the entire life and then to leave a country, it was hard to decide.

Q. But what were some reasons why you might want to do it at that point?

A. Svetlana is Alla's daughter and it's a family unit.

15 Q. What about you; what did you think?

A. I thought as possible if it's good for Alla then me too.

Q. Did you have - did you and Alla have any concerns?

20 A. Of course we had them to go to a new country that we don't know really well.

Q. Was there discussion of how you would live in Canada?

A. Yes, we had these discussions.

25 Q. And what were some of the things that you were thinking about at that time?

A. At that time, we thought if in case we move to, then we have to live separate from them.

Q. And why is that?

30 A. Because we got used to live two of us together.

Q. Anything else?



A. I don't remember anything special.

Q. When did you finally make your decision to come to Canada?

A. After the discussion of email in 2008.

Q. And why was it after the email that you made the decision?

A. Because in this email it was a detailed breakdown how we were going to live and that the money that we would invest without risk on ten percent. There was indicated rent amount that meant that we were to live separately.

Q. Do you remember the discussions that were taking place before the email arrived?

A. They were all offers.

Q. Sorry, could you be a little more specific? What were the conversations like, if you remember?

A. Svetlana was telling about life in Canada. Alla would pass it to me, would tell me and we sit and discuss it, talk about it.

Q. And before the email, what were the things that you were thinking about?

A. We were thinking about how we're going to leave. We didn't even know the language. I didn't know at all.

Q. I want to turn you to Exhibit 2A, Tab 3. This is the email I can direct the witness to the Russian version on page 7. Mr. Nikityuk, can you read that version?

A. Yes. Do you like me to start?

5  
Q. Well, wait for the question. What's brought capital - the email says brought capital 200 thousand, what does that mean?

A. It was preliminary data because I didn't know how much we were going to sell for.

Q. So what was this preliminary data about what?

10  
A. The preliminary data was about that's how much we could get money from the proceedings.

Q. By proceedings, you mean, the sale proceedings?

A. Sale proceedings.

15  
Q. And have you sold the property at that time?

A. Not at that time, no.

Q. And did you know how much money you would get for your property?

20  
A. No, I didn't know because constantly on a real estate market.

Q. So that amount is an estimate?

A. Yes, estimate.

25  
Q. And this 10 percent, what was that supposed to mean?

A. This 10 percent was supposed to mean this 200 thousand hundred or whatever the amount would be from - that we would get would be deposited in the bank on 10 percent.

30  
Q. And what would you do - what would the 10 percent do? What would the 10 percent be used for?

A. For living.

Q. And is that set out in the email too?

5  
A. Yes. Here it is, item 2. Investment on the 10 percent annual, ten percent. It's a risk-free option.

Q. And all these items listed under expenditure starting with one-bedroom apartment rent, what were all these?

A. It was an explanation of what could be done with this money.

10  
Q. What money?

A. This one that we would get from sales proceeding and transferred.

Q. And after this money, the brought capital, whose money - who does that money belong to?

15  
A. This is your money - our.

Q. By our, you mean who; Danilovs, Nikityuks?

A. Alla's and mine. Because they brought it to us. And item 1 it says we will simply live here like 85 percent of Canadian retired people.

20  
Q. Is that an important comment for you?

A. Yes, of course.

Q. Why?

25  
A. Because in this item 1 it says that the majority of retired people in Canada sell their houses and deposited their money into bank and live on interest.

Q. Why was that important to you?

A. Like everyone does. For example, in Russian retired people travel.

30  
Q. And after you came to Canada, based on this email what were your expectations?

5 A. That this money would be deposited in a bank - in a bank on a 10 percent in our account Alla's and mine, and we would use this money.

Q. Did you discuss this email with Alla?

A. Yes.

Q. I want to ask you about one other comment. Can you look at comment six, and it's on two pages? Just read it to yourself please.

10 A. I read it.

Q. Is this an important comment?

A. It's a good comment as well.

Q. Why?

15 A. Because it says here, if there is any money left afterwards, something pleasant, we can travel - we invest and this way to increase their capital.

Q. When you were discussing the email with Alla, what was your discussion?

20 A. That the offer is so good that you will have money risk-free.

Q. Anything else?

A. And that we would live really well and go anywhere we want to travel.

25 Q. And did - was there a response to this email?

A. We replied over the phone and said that we agreed to this conditions, the best conditions.

Q. And who - who was on the phone?

A. Alla and Svetlana.

30 Q. And where were you when this call took place?

A. I was sitting next to Alla.

Q. And what happened on the call?

A. Nothing.

Q. Do you remember the details from the call?

A. No. I remember that after this email there was a conversation that we agreed, but we'd have to wait for the medical examination.

Q. After you make the decision to come to Canada, I want to ask you now about preparing to come to Canada. And the court's heard that you and Alla sold a garage, a summer house, a car and your apartment in St. Peterburg's, right?

A. Yes.

Q. And what did you do with that money?

A. Money from actually we sold the car, we used this money to rent - for example we ordered the container to draw a lot of our own property.

Q. I'm talking generally, the money from the house - sorry, the money from the apartment, the money from the summer house and the money from the garage and the money from the car, where did that all go, most of it? Where did most of it go?

A. Money from the summer house and the apartment we transferred to Canada.

Q. And did you do it in one transfer or many transfers?

A. There were four transfers.

MR. BORNMANN: With the court's permission, I've prepared a spreadsheet which has the amounts in rubles from each of the sales documents and then the amounts in US dollars from each of the wire transfers. Behind each

5  
10  
we've included the foreign exchange table and so using that table, we've calculated the wire transfer amounts in Canadian and then the sales of - the sales proceeds from each of the assets we've got a column in US dollars and a column in Canadian dollars and we thought this might of assistance to the court and would put to the witness as to whether he recognizes the ruble amounts from the sales and the wire transfer amounts from the - the US dollar amounts from the wire transfers, but this might be a benefit in terms of -

15  
THE COURT: Ms. Chapman, you've got a copy of that?

MR. BORNMANN: I have not provided this yet.

20  
THE COURT: All right. I take it, it strictly comes from the evidence we've heard by in large.

MR. BORNMANN: It has, Your Honour. And I'm happy to take the witness through each of those documents again.

25  
THE COURT: I don't think we need that, but I'll let Ms. Chapman look it over. The bottom line is that we've already heard evidence the total amount was about 263 thousand Canadian after exchange of US funds. Is that what your figure shows?

30  
MR. BORNMANN: The new piece of information it's contained in the evidence that's been heard but we have done an addition of the amounts in rubles from the sale and the sum of

those amounts in US dollars is a little different, slightly different than the sum of the amount in US dollars that is in the wire transfers.

5 THE COURT: Isn't the bottom line the wire transfer figures. Isn't that the base figures that we have. That's the known known.

10 MR. BORNMANN: It is, Your Honour, but the other - the other known is the ruble amounts of the sale proceeds so the new information perhaps out of fairness I should give my friends an opportunity to review this. But the due amount would be when you total the US dollar conversion of the rubles, there is a figure digit, or five figure difference between the amounts indicating that there was more from the sale proceeds than what was wire transferred.

15 THE COURT: So your point is that they had more money than they actually transferred.

20 MR. BORNMANN: Yes, Your Honour.

THE COURT: They didn't transfer every last cent.

25 MR. BORNMANN: Yes, Your Honour.

THE COURT: But we do know what they sent.

MR. BORNMANN: Yes, Your Honour.

30 THE COURT: Ms. Chapman, is math appears - his review appears to indicate that if you look at the rubles they may have collected more rubles from those various sales than they actually

transferred. That's what he's trying to establish.

5 MS. CHAPMAN: Okay. But I question whether the exchange rate in April of 2008 is the same as May 2008 is the same as June 2008 because there's only one historic exchange rate attached and that's for June 13<sup>th</sup>, 2008.

10 THE COURT: I think what Mr. - if I can simplify this, Mr. Bornmann is trying to determine or ask if every last cent, every last ruble I should say was sent. It that a simple way to approach it without going through detailed math?

15 MR. BORNMANN: Yes, Your Honour.

THE COURT: In other words, if they didn't - they weren't left penniless.

20 MR. BORNMANN: Yes, Your Honour. And the court has heard evidence there's two versions of events with respect to a sum of cash and a submission would be this is evidence that might help the court on that issue.

25 THE COURT: All right. But Ms. Chapman's concern is that we have to compare apples with apples. Do your documents properly show the exchange rate at that time, Canadian dollars versus - US dollars versus rubles?

30 MR. BORNMANN: Your Honour, my friend's point is well taken in that the exchange rate is only provided for one day whereas in fact the wire transfers took place on a number - on four days and then the sales took place. If we wanted to



be precise we would take this away and bring it back with seven different exchange rate tables, one for each day.

5 THE COURT: Reasonably speaking we resolve it within a very short period of time, is that the idea?

MR. BORNMANN: Yes, Your Honour.

10 THE COURT: These various sales that took place in 2008.

MR. BORNMANN: Yes, Your Honour.

15 THE COURT: So why don't we just park that for the moment. If you wish to further refine it or give Ms. Chapman further opportunity to look it over but if you want to ask a generic question and then we can come back to that perhaps.

MR. BORNMANN: Thank you, Your Honour.

20 Q. Mr. Nikityuk, the money that was transferred, the wire transfers, perhaps I can turn your attention to Tab 6 and the Russian version of the document is at page 50. So Mr. Nikityuk, do you recognize this document?

A. Yes.

25 Q. Could you tell the court what it is?

A. This was arranged in the bank. It was a request for transfer.

Q. And who filled out this form?

A. Alla filled this form.

30 Q. Were you present when she did that?

A. Yes.

Q. And there's four documents like this.  
There's another one -

A. Yes, all four of them were filled out like that.

Q. And generally the total amount of money in these four wire transfers was that all the money you had at that time?

A. Yes.

Q. So after you sent the wire transfer you had zero money left?

A. No, we had some money left that we used for different events. Money that we had from sale of the car.

Q. And did you bring any cash to Canada when you came?

A. Yes. All of it that wasn't spent. I went in last day I went to the bank and exchange it to Canadian dollars, 15 thousand.

Q. If I could turn your attention back to the wire transfer document. And there's a row that is says 'purpose of transfer' and written there, it says present. Why does it say that?

A. That's how accepted common in the bank whether the money transferred for some financial, they pay taxes. In case when how we transfer the money, this is our money and we transferred it for our own use you write present. That's how we were told by our bank worker that took this request from us.

Q. Was it a present?

A. No, it was in order not to pay the taxes.

5 Q. So you and Alla arrived in Canada on June 13<sup>th</sup>, 2008, right?

A. Yes.

Q. And we have heard that on arrival you lived with the Danilovs in their two-bedroom apartment.

A. Yes, two-bedroom, right.

Q. And this was in Etobicoke?

A. Yes, in Etobicoke.

10 Q. And we've heard that Pavel and Svetlana showed you a condo around that time.

A. No, not a condo, an apartment in the next door building.

Q. Do you remember that?

A. Yes.

15 Q. And what do you remember about that?

A. We didn't like the apartment. It was a solid glass.

20 Q. Just before we move on from there, Mr. Danilov - sorry, Mr. Nikityuk, if I can turn your attention to Tab 5. These are the purchase and sale agreements. Starting on page 29 and that's page 23 in the English version. At paragraph 4 there is an amount of 800 thousand; what's that?

25 THE COURT: If I can help, are these summarized on the summary that you have?

MR. BORNMANN: They are, Your Honour.

30 THE COURT: Why don't you pass those up subject to further proof, but I think these items that you're talking about are not controversial.

I presume Ms. Chapman will not disagree with that. The garage sold for X and Y and that sort of thing.

5 MR. BORNMANN: I believe my friend's concern is with the foreign exchange conversion which is on the spreadsheet.

10 THE COURT: So why don't we just file that subject to further proof or discussion on that one issue, but these issues that you're going to take him through are not controversial. I think there's already a basis in the exhibits for what - how many rubles were realized for each of these items, and if they're summarized on this form, it may assist.

15 MR. BORNMANN: Thank you, Your Honour, I will.

Q. Mr. Nikityuk, you would agree with me that the cottage was sold for 800 thousand rubles.

A. Yes.

20 Q. The garage was sold for 390 thousand rubles. And the apartment was sold for five million 300 thousand rubles, correct?

THE COURT: I didn't hear an answer.

25 THE INTERPRETER: Your Honour, he couldn't answer because he doesn't have the numbers.

THE COURT: He doesn't have it in front of him.

A. Yes.

30 MR. BORNMANN: Q. Thank you. So Mr. Nikityuk, after the apartment in Etobicoke, the court has heard that you moved into a house in Innisfil, correct?

A. Yes.

5  
Q. Can you tell the court about that house, please? How did you come to live in that house?

A. When we came, the Danilovs took us to Innisfil and there was a - constructions that were about to finish the construction on the house. After a look at this house under construction, we went to the park and Pavel said that this house he bought in my name.

10  
Q. Who else was present when that happened?

A. There were four of us, Svetlana, Pavel and Alla and I.

15  
Q. And do you remember any details from the conversation?

A. I just remember that it was said this way that the house was bought under my name and now I'm the owner.

20  
Q. And why would the house be bought under your name?

A. That's how they told us.

25  
Q. What did you think?

A. We thought since then they bought a house under my name, so it's our house therefore we didn't ask where our money is.

30  
Q. Did they tell you how they bought the house? Did they say where the money came from to buy the house?

A. They said that 150 thousand they deposited to the mortgage that they took for - got for the house purchase.

Q. What about - where did that come from?

A. Pavel was telling.

5 Q. Sorry, what the court heard was not very clear. Whose \$150,000.00 was used?

A. Ours.

Q. And who said that?

A. Pavel.

Q. Was there any discussion about a mortgage?

A. No, no discussion. No, they just notified us.

10 Q. And did you believe him?

A. Yes. And we believed in everything from their side.

Q. Was this different than the email?

A. Yes.

15 Q. What did you think of that difference?

A. What difference?

Q. With the email. Was it a good difference, a bad difference, neutral difference?

20 A. The email didn't consist a word about the house. It was only about simply the deposit money on the 10 percent annual.

25 Q. So at that time, what did you think about the fact, the email agreement was now different? The situation was different from the email. What did you think of that?

A. At that moment, I trusted them, we believed them and they decided so the decision wasn't that bad, we will have a house and therefore we trusted them and everything.

30 Q. Was this a good change, a bad change or a neutral change?

A. A good change. We liked the house.

Q. You and Alla moved into the house on August - in August 2008, correct?

A. On August 16<sup>th</sup>.

Q. And Pavel and Svetlana were living in Etobicoke during the week and coming up the weekends on average, correct?

A. Yes.

Q. What was life like at that time?

A. We lived separately for five days and a couple of days with them, it was good.

Q. And what did - did you do anything around the house?

A. Yes.

Q. What did you do?

A. I would vacuum, and I would cut the grass. In the wintertime I would shovel the snow on driveway.

Q. And who made decisions about things around the house?

A. Things?

Q. Life in the house, who made decisions about life in the house?

A. In 2008 we would make the decisions and then in 2009 when they moved in, they started slowly, slowly, slowly.

Q. Slowly what?

A. To command what to do and not to do.

Q. So the Danilovs moved in in June 2009, right?

A. Yes.

Q. Were there any discussions in advance?

A. No.

Q. What do you remember about the Danilovs moving in?

A. They notified us that right now, the financial situation is bad therefore to maintain a house and an apartment, and they notified that they moving.

Q. How did you feel about them moving in?

A. That it was - it was normal circumstances and we trusted them. Everything was quiet.

Q. Were you happy that they moved in?

A. Oh well, they moved in so the family -

Q. Sorry.

A. Well, we decided to live together so to say and then it started they would pick on us and it was escalating and escalating. And then they stated that the house is not ours and that nothing belongs to us.

Q. What about the money? Can you tell me what the financial situation was at that time in the house?

A. That the Danilovs were managing everything. We didn't have any access to any resources even to our pension.

Q. What do you mean when you say the Danilovs managed everything?

A. We what to go to the store, Svetlana would say no reason for you to go to the store, she would bring the groceries herself. We could only use the credit cards that we had, we could buy drugs, clothes, shoes. The Danilovs were obliged to us. The sponsorship agreement, however we paid off - pay a bill the Danilovs would pay the bill taking money out of our pension.

Q. So when you say they paid the bill with the Russian pension, what are you talking about?



5 A. That's what I'm saying, it says in the sponsorship that Danilovs have to pay if we use the credit cards, drugs, clothes, shoes, all this credit card bills they have to pay by the sponsorship agreement. However, they were paying from - with our pension.

Q. Could you use the credit cards however you wanted to?

10 A. The only purchases - the only access to our finances was this credit card. That's what we were using.

Q. And did the Danilovs have - did the Danilovs try and control how you used the credit card?

A. Yes. Everything was under control.

15 Q. Can you explain to the court with details how they tried to control the credit card use?

A. Well, how we didn't have access to this account where we had our pension.

Q. Did you know what happened to your money?

20 A. No we didn't.

Q. Did you ever ask about it?

A. Yes. We asked but we would get a conversation that we stopped asking.

Q. And what kind of a conversation?

25 A. All kind. Sometimes it would come to the use of foul language.

Q. What would they say when you asked about the money?

30 A. They said the phrase like that, you already eat out your money.

Q. Sorry, can you say that again please?

THE INTERPRETER: You eat out.

Q. You already what?

THE INTERPRETER: When you eat out something.

Q. I understand, I just didn't hear.

THE INTERPRETER: You eat out your money.

Q. You already ate out your money.

THE INTERPRETER: Yes.

Q. When did they say that?

A. When all this scandal started. It all happened and why we left in 2011 because all this accumulated and the station - the condition was already. People don't run away from good life.

Q. When did you find out that much of the money was lost in the stock market?

A. We didn't know anything about that and all this financial schemes, they didn't participate, they didn't even involve us into it.

Q. Did the Danilovs ever show you any tax assessment or bank account information?

A. No.

Q. I'm going to turn your attention Mr. Nikityuk to Exhibit 1A, Tab 59, page 352. This is a 2010 notice of assessment. Do you recognize this document Mr. Nikityuk?

A. Page?

Q. 352. Do you recognize this document Mr. Nikityuk?

A. No, I don't.

Q. This is a notice of assessment from the Canada Revenue Agency for 2010, for 2009. It's a notice of assessment for 2009.

A. No, we didn't know.

5 Q. So this is a tax document that says your income in 2009 was \$20,245.00.

A. We didn't know anything about our income. The only thing that I found out later after figuring out the document that was saying for 2010 it was saying that we were paid for \$40,000.00.

10 Q. You and Alla?

A. Yes.

Q. Was that a surprise?

A. And here - here yes -

15 Q. Mr. Nikityuk, let's just look at this document. Did you have access to \$20,245.00?

A. No. I calculated approximately that they would provide us this 15 thousand a year, not more than that.

Q. Each or separately?

A. No, for us together. It's easy to calculate.

20 Q. Did you know whether Pavel Danilov kept financial records in the house?

A. No, I don't know. We wouldn't get involved in it.

25 Q. But did you know that there were - did you know whether there were financial records available for you to look at in the house?

A. He would say if you want to see you can go to the office and take a look, but I don't understand anything. So therefore we wouldn't go and wouldn't look at it.

30 Q. And when did he say that?

5  
A. Somewhere between he mentioned if you want to go, go and look at it.

Q. Did you go look?

A. No.

Q. Why not?

A. I didn't understand finances anything. I'm not a financial specialist, I'm an engineer.

Q. So what did you say to him?

A. I said I don't understand.

Q. Did you try to get verbal answers?

A. Yeah, we were trying in the beginning in 2009 necessary to get the answers, don't bother us we are busy with stuff.

15  
Q. What else would the Danilovs say when you asked for information?

A. Sometimes they would say something rude, don't get involved, we have no time.

MR. BORNMANN: Your Honour, I'm wondering perhaps if this is a good time for a break.

20  
THE COURT: We'll take our lunch break. Just going back to the document you handed up.

Perhaps we should mark it as an exhibit because it was shown to the witness.

REGISTRAR: Exhibit Number 14.

25  
THE COURT: Summary of wire transfer as converted from rubles to American dollars. And just looking at this for a moment with all counsel, it looks like the totals on the top left are uncontroversial that's the amount that was wire transferred to the US - by US dollars? 30  
The conversion to Canadian, the total seems

5  
different than what we heard before. It says  
268 versus 263. So we'll leave that for  
another discussion and the bottom figures are  
subject to further inquiries that you may have  
or further discussions with Ms. Chapman about  
the actual conversion rates that are the  
foundation for these figures. We'll just call  
that Exhibit 14 for now.

10  
EXHIBIT NUMBER 14 - Summary of wire transfer as  
converted from Rubles to American Dollars  
- Produced and marked

Scheduling discussed

15  
RECESS TAKEN

UPON RESUMING

20  
MR. BORNMANN: I've spoken with my friend  
during the break with regards to Exhibit 14 and  
the Nikityuks wish to submit that exhibit as an  
aid to the court and only with respect to the  
numbers that are in the evidence as being the  
rubles for the sale amounts and the American  
dollars for the wire transfer amounts and with  
that being said, we don't intend to return to  
this exhibit.

25  
THE COURT: All right. So it's subject to  
submissions to the contrary. In other words,  
it is what it is.

MR. BORNMANN: Yes, Your Honour.

30  
THE COURT: The defence can question it or  
doesn't mean it's proof of the same in terms of

the translation from rubles to dollars, is that fair?

5 MR. BORNMANN: Yes, Your Honour, so we're not submitting the other figures. We're not - the Nikityuks are not submitting those other figures as evidence. The document was an aid to the court for the purposes of an examination.

10 THE COURT: All right. Are the extra pages relevant or are you saying we've just got to go with page one or just take it all as is?

15 MR. BORNMANN: Just page 1, Your Honour and just the rubles on the - the ruble amounts for the assets and the US dollar amounts for the wire transfers.

THE COURT: So we'll just remove the extraneous pages and page 1 is the exhibit.

20 MR. BORNMANN: Q. Mr. Nikityuk, the court has heard that you left the house in October 2011.

A. Yes.

Q. Can you explain to the court why did you leave the house at that time?

25 A. Late time the verbal attacks from the Danilovs came more frequent.

Q. Do you remember -

A. Actions became more frequent.

Q. Can you remember some of those actions?

A. Yes.

30 Q. Can you tell the court about them?

5 A. One of the last incidents towards me when I said that I'm getting my pension buy a ticket and going back and I will be leaving as a bum as a homeless.

Q. What happened then?

A. Pavel grabbed a plate and threw it at the wall. And when he was passing by me, took a glass from the table and threw it at my feet and said the next one will fly into your head.

10 Q. How did that make you feel?

A. When the glass is flying by you - near you and it got broken, it's a very unpleasant feeling. Alla towards her there was an aggressive attack from Svetlana's side as well.

15 Q. Can you describe that for the court, please?

A. Svetlana stood across from her and then she grabbed her like this, shook her and she fell on the floor.

20 Q. And did Alla sustain any injuries from that event?

A. Two or three days I can't recollect exactly now, the bruises appeared from fingers.

25 Q. And who noticed the bruises first?

A. I noticed first.

Q. And can you describe those bruises for the court?

A. Grabbed with the finger like this, like this, like this, blue marks on the skin, spots.

30 MR. BORNMANN: And did Your Honour have an opportunity to see where the witness was

pointing or do we need to a description for the record?

THE COURT: If you could tell us counsel where he pointed.

5 MR. BORNMANN: Q. Mr. Nikityuk could you point to where the bruises were?

A. From one hand and the other hand.

10 Q. And for the record the witness was pointing at the shoulder and upper arm area of both arms. And were the bruises on the front, the back or both?

A. The way she grabbed from on the front, on the back.

Q. That's where she grabbed her?

15 A. Yes.

Q. And that's where the bruises were?

A. Yes.

20 Q. And where were you when this took place when the attack took place?

A. Alla was going downstairs and they were standing.

25 Q. Earlier today you testified that living with the Danilovs in the house was first okay, but it got worst over time, right?

A. Yes.

30 Q. Can you describe other than what you've already told us, can you describe how it got worse?

A. Svetlana started to pick on Alla. She wouldn't let her do anything in the kitchen.

Q. What else?

A. Before basement was finished, they arranged to settle their office what you call it, balcony side of



the balcony there was my room, Alla's room and the bathroom and when you passing by them.

Q. When you're passing by them what?

A. It's unpleasant when you going to the bathroom and they stare at you, they look at you.

Q. Were there arguments in the house?

A. Because of that, no.

Q. No, in general.

A. Yes, in general, yes.

Q. Can you describe those arguments?

A. For example, there was an incident.

Everyone was sitting in the kitchen. Svetlana started to yell and Anastasia says 'momma, why do you yell at grandma'?

Q. How often - in 2011 how often were there arguments like that?

A. Exactly when they became really frequent in 2009, no arguments, 2010 one or two and then 2011 more and more. There was an incident like that when they were changing car again because I was driving used cars. When he was passing the Civic to me I inspected it and then I say, look the right side - that right side of the car has a dent. Pavel would say, that's okay, I'll fix it later, we'll do it later. But a couple of days later when Svetlana she was using it all the time too. She was going to swimming pool. She came back and she started the fight that I put this dent on the car, I damaged the car. I went to her asked Pavel, because I showed him before this dent on the car when he was - when he passed this car to me. When we would go somewhere and she would

come with us, she would always yell at me that I don't drive a car properly.

Q. Do you remember the day you left the house?

A. Yes.

Q. Before you left the house, did you try to get any - when did you - before you left the house, did you try and get help from anyone?

A. No. After the last fight we would get dressed with Alla and go outside and Alla asked me where are we going to spend the night? And I told her, do you remember once we were in the park and there was half ruined house, abandoned house, there was a floor like one and a half metres above the ground, we'll crawl in and stay overnight there.

Q. After the attack on Alla, did you meet with Yana Skybin?

A. Someone next week after that, we made an appointment with her, but before that we would go to her birthday party, but at this moment there is no bruises on the arms yet.

Q. What happened at the appointment? Do you remember?

A. Yeah. I remember we came to this appointment and Alla told Yana everything about that and we asked Yana to help us out to find a place where to go.

Q. So Alla testified that you left the house on October 17<sup>th</sup>, 2011, right?

A. Yes.

Q. And you now live in social housing in Barrie.

A. Yes.

Q. What is your current rent?

A. Today, it's 235 a month.

MR. BORNMANN: And Your Honour if I may pass up another exhibit, Tab 45 to the Exhibit 2B. These are financial information for the Nikityuks. This was produced at the request of the Danilovs during the week prior to the commencement of trial.

THE COURT: So you're proposing to add this as Tab 45 to the binder, is that the idea?

MR. BORNMANN: Yes, Your Honour.

Q. And if I could direct the witness and I apologize to the court, the tab is not page numbered, but it begins. There's a notice of assessment and there's you flip through, pass the notices of assessment, there's a letter from the County of Simcoe dated July 14<sup>th</sup> 2015. Mr. Nikityuk, this is a letter from the County of Simcoe. So the social housing department. And the letter writes, I'll just read the first paragraph, "Thank you for providing this office with the information regarding your income. Your rent has been calculated to be \$235.00 effective July 1<sup>st</sup> 2015.

THE COURT: Yes, I found it. Tab 35, is that where you said?

MR. BORNMANN: Yes, Your Honour.

Q. And Mr. Nikityuk we've heard that you're receiving Russian pensions at this time.

A. Yes, and I'm still receiving it.

Q. And how much do you and Alla get together?

A. Lately we received nine hundred and something for three months is my pension and 835

5 approximately for three months for Alla. This is for three months that we use for next quarter of the year as per agreement ODSP because our pension comes at the end of the quarter.

Q. And where does your pension go? Does it come to you by cheque or is it deposited in a bank account?

A. Deposits on our account in the bank.

10 Q. And if I can direct attention one, two, three, four, starting at about five pages before that letter in Tab 45, there's Scotiabank statement, power chequing account.

A. It says December on the top?

15 Q. It's handwritten December 1 2015 to April 15 2016. My apologies. It says current balance \$1,710.94. And the date on the bottom right of the page is 2016 04 15. Do you have it Your Honour?

20 THE COURT: They're missing pages here, they're not numbered. What is the point you're trying to get to?

MR. BORNMANN: The Scotiabank statement shows the Russian pension amounts.

25 THE COURT: And does that match the Canada Revenue form where it's on the tax return near the beginning would that be easier? The total is shown there on the form, on the notice of assessment for 2015, shows \$3405.00, is that the sum total for the year?

30 MR. BORNMANN: Yes, Your Honour, there are two notices of assessment; one for Valentin Nikityuk and one for Alla Nikityuk and the - I

believe that's only the Russian pension, Your Honour, but I'm not certain of that.

5 Q. Perhaps I can turn the witness - can we turn to the beginning of Tab 45? The amount of total income for you and for Alla Mr. Nikityuk what is the source of money for that income? It's on the second page.

A. Here's Alla.

10 Q. And what is that income?

A. \$3,406.00.

Q. And where does that income come from?

A. This is the annual income for - for transfer of pension.

15 MR. BORNMANN: Your Honour, I think there may be - unfortunately the other document might be better because I think there's some split between Alla Nikityuk and Valentin Nikityuk's.

20 THE COURT: We're sort of wandering all over the place. I think I'm going to adjourn for a few minutes so these pages can be numbered. It will be easier for the witness, the interpreter and for the court.

25 MS. CHAPMAN: If I may, Your Honour, I'm not sure that ours in the same order.

THE COURT: We'll adjourn to let those comparisons take place including the one that was handed up -

RECESS TAKEN

30 UPON RESUMING

MR. BORNMANN: Your Honour, I wish to apologize to the court for the confusion and the time that this has cost all of us. I'm sorry.

THE COURT: That's a new tab passed up 45 it seems thinner.

MR. BORNMANN: Yes, Your Honour.

THE COURT: This is what you're going to be referring to now?

MR. BORNMANN: Yes, Your Honour.

THE COURT: Thank you.

MR. BORNMANN: Q. Mr. Nikityuk, Tab 45 in front of you, if you turn to the second page, there's a Scotiabank statement with that document there to assist you, can you advise the court approximately what your and Alla's Russian pension is?

A. My pension here it is, here.

Q. You need to say where it is.

A. Second from top.

Q. And what is that amount?

A. \$874.22.

Q. And is Alla's pension there as well?

A. Four from the top.

Q. And what's that amount?

A. \$785.98.

Q. And we've heard that that's the pensions paid quarterly, is the amount always the same?

A. No. Every quarter is different and it depends on how much dollar costs.

Q. And do you have any additional pensions to these?

A. Yes.

Q. And what do you have?

A. I have addition to my pension from the employer that I used to work for.

Q. Is this what's been called the dividend?

A. Yes.

Q. And approximately how much is that?

A. I received for six months in 2014 \$2,730.00.

Q. Is that six months or six years?

A. Six years.

Q. Okay. Approximately how much do you get each month on average?

A. One thousand 200 and forty rubles.

Q. Okay.

A. Dollar. I say exactly in dollars. I don't know.

Q. And where does that dividend money go; what bank account?

A. Same, the same account.

Q. The dividends go to the Scotiabank now?

A. Yes, my account is Scotiabank.

Q. And do you receive support from the Danilovs?

A. Yes.

Q. How much?

A. \$150.00.

Q. And have you received more in the past?

A. Yes.

Q. And do you report this income to ODSP?

A. Every month, monthly.

Q. Including all the pensions?

A. Yes.

Q. And the dividend?

A. Dividends no, only when I get. When I got 2014 \$2,730.00 and in 2015 \$690.00.

Q. So when the dividend comes to Canada.

A. Yes.

Q. And we've heard evidence that you have received about \$19,000.00 from ODSP and Ontario Works over the last number of years, correct?

A. No.

Q. Plus your medical expenses?

A. Medical expenses ODSP wouldn't cover.

Q. Could you turn to Tab 42, please? This Mr. Nikityuk is a letter from the Ministry of Community and Social Services. And you would agree that this is all money you and Alla received from ODSP and Ontario Works?

A. Yes.

Q. And have you promised to -

A. Here is 18 thousand.

Q. Okay. Have you promised to repay ODSP this money if you were to come into funds?

A. Yes.

Q. And have you made that promise in writing?

A. Yes, we found a document in ODSP in case if we received money after legal proceedings which we will return this money to ODSP.

Q. And has Alla made this promise as well?

A. We're like family whatever we get. We don't have anything separate. We get from ODSP for family.

Q. And who does your taxes now?

A. We turn to an accountant does.



Q. And do you declare everything on your taxes?

A. Yes, everything.

MR. BORNMANN: And Your Honour, this is my last question. And it is I apologize it's a document.

Q. Mr. Nikityuk, do you recognize this document?

A. Yes.

Q. What is it?

A. This is the promise to ODSP that we signed that we will return this money.

MR. BORNMANN: I have no further questions, Your Honour.

THE COURT: Did you want to make this -

MR. BORNMANN: Sorry, thank you, Your Honour.

REGISTRAR: Exhibit 15.

THE COURT: Exhibit 15. So Exhibit 15 will be the authorization and assignment.

EXHIBIT NUMBER 15 - Authorization and Assignment - Produced and marked

MR. BORNMANN: Yes, Your Honour.

THE COURT: And that completes your questions?

MR. BORNMANN: That does, Your Honour.

THE COURT: Ms. Chapman, did you want to ask some questions today?

MS. CHAPMAN: My preference would be to start fresh next Thursday.

SCHEDULING DISCUSSED....

Matter adjourned to June 9<sup>th</sup>, 2016 for continuation

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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. 3811-02-20160603-085951 which has been certified in Form 1.

, 2017

\_\_\_\_\_  
Cathy Knelsen, C.C.R.

[cathytheartist@sympatico.ca](mailto:cathytheartist@sympatico.ca)

Danilova v. Nikityuk et al.  
Valentin Nikityuk - Cr-ex (by Ms. Chapman)

THURSDAY, JUNE 9, 2016

THE COURT: Good morning everyone.

MR. BORNMANN: Good morning, Your Honour.

THE COURT: I think where we left off last week,  
5 we were going to begin cross examination of Mr.  
Nikityuk. Is that correct?

MR. BORNMANN: Yes, Your Honour, and before my  
friend proceeds with that, I just wanted to  
10 introduce my co-counsel who's joining me today,  
Lisa Loader, L-O-A-D-E-R.

THE COURT: All right, so if we could have Mr.  
Nikityuk return to the stand. And we have our  
interpreter again today?

MS. CHAPMAN: We do, Your Honour.

15 CLERK REGISTRAR: Just a reminder, you're still  
under oath.

VALENTIN NIKITYUK: RECALLED

20 IRINA FILIPPOVA: INTERPRETER RECALLED - Russian/English

THE COURT: Good morning. You could have a seat,  
if you wish.

MS. CHAPMAN: Thank you.

THE COURT: Ms. Chapman?

25 MS. CHAPMAN: Yes.

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. Good morning, Mr. Nikityuk. I have a few  
questions to ask you about the apartment in Russia. Is it your  
30 belief that Svetlana and Anastasia have no property right to the  
apartment in Russia?

A. Yes.

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

Q. And so, could you explain to the Court then why Svetlana was contributing to the utilities and expenses for that apartment?

A. Because there is a rule in Russia. If someone is registered in a property, the utilities calculated including this person, regardless if this person doesn't live there.

Q. So, there was no property right. Why not deregister Svetlana and Anastasia, and reduce the utility expenses on the apartment?

A. We registered them according to their request.

Q. But they had no ownership interest.

A. They didn't have the right.

Q. So, you gave evidence about bringing some cash with you when you immigrated to Canada. And I understand from your evidence last week that you went to the bank, and you exchanged some money in Russia for \$15,000 Canadian. Is that correct?

A. Yes, it was in Russia.

Q. Now, do you recall being examined under oath on April 8<sup>th</sup>, 2014?

A. Yes.

Q. Okay, so I'd like to have a look at some of the questions and answers that you gave on that date. If we could provide the witness with a copy of his transcript. At page 16, and we're going to start at question 83. So the question....

THE INTERPRETER: Sorry.

Q. Yes? Page 16, question 83.

THE INTERPRETER: Ah, okay, yes.

Q. The first question on that page:

QUESTION: Did you have any savings before you came to Canada?

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

ANSWER: Yeah.

A. Yes.

QUESTION: How much was it, and where it came from?

ANSWER: Do you mean in details?

QUESTION: What was the amount of the savings?

ANSWER: I remember that when everything was done and we moved, I brought 18,000 Canadian in my pocket with me to Canada.

A. No, no, we brought 15,000.

Q. So, it was not 18,000? You now believe it was 15,000?

A. Yes, yes, 15.

Q. And I believe your evidence was that you declared this money when you came into Canada, is that correct?

A. The permission - the rule in Russia, anyone who leaves the country is entitled to take out up to \$10,000. Just because we were - there were 2 of us, we had tried for 20,000, but we were only 15, so we brought in 15,000.

Q. But did you report that cash to Immigration Canada when you entered Canada?

A. Nobody asked.

MS. CHAPMAN: So, Your Honour, I have an additional document I'd like to add - enter as Exhibit 16. It is Citizenship and Immigration Canada confirmation of permanent residence.

EXHIBIT NUMBER 16: Citizenship and Immigration Canada Confirmation of Permanent Residence dated June 13<sup>th</sup>, 2008 - produced and marked.

MS. CHAPMAN: Q. And I appreciate the document is English, Mr. Nikityuk, so the interpreter is going to have to assist you. And for the record, this is a two page document.

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

5 The first page is the confirmation of Valentin Nikityuk, and the second page is the confirmation relating to Alla Nikityuk. And if you could have a look please, on the first page at number 42, and this states, "Money in possession." And there appears to be a line through that. Do you remember making this statement, Mr. Nikityuk?

A. No, I don't remember.

Q. Do you recall whether an immigration officer asked you if you had any cash in your possession?

10 A. No, I can't remember. I don't remember.

Q. And let's have a look at page two, which is the confirmation relating to Alla. Now, the number 42 doesn't appear to be on this copy, but we can clearly see it reads, "Money in possession," and that space is blank. So, that appears as though nothing was claimed. So, did you bring cash - bring any cash with you to Canada, Mr. Nikityuk? Did you actually bring any cash with you to Canada?

A. Yes, 15,000.

20 Q. And I believe your evidence on direct-examination was that this was money that was left for different events, including the selling of your vehicle. Is that correct?

A. Yes.

25 Q. So, let's again turn to your transcript from your examination for discovery. And at question 88, which is on page 17, you're asked - the question is:

QUESTION: So, this 90,000 were your only savings? Or was it like more other money?

A. Yes, there was other.

Q. And your answer:

30 ANSWER: Yeah, as I told you, this lump sum plus our pensions, our salaries.

Q. So, where exactly did you get this \$15,000

cash from?

A. When we started to sell our property, we sold our car. Money from a sale precedence of apartment, garage, and summer cottage they sent over. Money after we sold the car we  
5 used for different things, like for paperwork to send the belongings, and different things. And whatever left over from this money, I went to the bank last day, and exchanged it to Canadian dollars, and we brought in 15,000.

Q. And who carried this \$15,000 cash into Canada?

10 A. Us. Me - myself and Alla, we were flying together.

Q. Was the money in an envelope?

A. No, simply in a wallet of somehow. I can't even remember right now how I brought it.

15 Q. And who did you give the money to?

A. To Danilovs when we arrived, we gave money to Danilovs, and they promised us to deposit in the bank.

Q. Can you be more specific?

A. About?

20 Q. Did you hand 15,000 cash to Svetlana? Or did you have it to Pavel?

A. No, I don't remember this.

Q. And do you remember where this incident occurred? Where were you when you gave the \$15,000 cash?

25 A. House - in apartment that we used to live together with them in Toronto.

Q. Could we turn now to Exhibit 2(a) please, Tab

3.

THE COURT: Before we do that Ms. Chapman...

30 MS. CHAPMAN: Yes?

THE COURT: ...was there a date on Exhibit 16 that we should make a note of?



Valentin Nikityuk - Cr-ex (by Ms. Chapman)

MS. CHAPMAN: I believe there is. There's a "valid until" date. I'm not sure that there's a specific date of the document, per se.

MR. MAE: Your Honour, there is a date, if I could be of assistance, on the right hand side just under the signature, there's a date, 13<sup>th</sup> of June, 2008.

MS. CHAPMAN: Oh yes, number 45 on page 1.

THE COURT: All right, June 13<sup>th</sup>, 2008? Thank you.

MS. CHAPMAN: Q. So, it's Exhibit 2(a), Tab 3 please. And this is the January 27<sup>th</sup>, 2008 email that we've spent some time going over with your counsel. So, in terms of the items that are listed on page one of this email, would you please advise the Court what the Danilovs did not provide you with?

A. First of all, the first item, he promised \$900 for rent - apartment rent.

Q. Right, but instead you lived in a house in Innisfil, correct?

A. Correct.

Q. And at the time you moved there, you were happy to be living in a house in Innisfil, correct?

A. Yes, yes, because we were told that this house was purchased under my name.

Q. Are there any other items listed on this page that you say the Danilovs did not provide you?

A. Yes, item number two. It's written here that the money could be deposited under 10 percent risk free, and we could live on - just live on this interest.

Q. So, when the Danilovs advise you they've now taken \$150,000 of that capital, and put it into the house, did you ask them about item number two in this email?

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

5 A. No, because in the beginning, there was nothing said about purchasing a house, and then when they purchased the house, they didn't say - I thought it was their house, but then when they advise us that the house was purchased under my name - and when they said that they put into 150,000, I didn't have questions because it was said that house was purchased under my name.

10 Q. But based on your evidence, that changed this agreement, did it not?

A. Not exactly, because the money that left over shouldn't be - should be deposited under 10 percent.

Q. So the balance of \$50,000?

A. Why if we owed 250 - 260 minus 150, we have balance of 110,000.

15 Q. Even though this document only speaks of 200,000 being brought?

A. It was a preliminary. By that time, we didn't know how much we would get from selling everything.

20 Q. But, you would agree that fact is not addressed in this email?

A. What fact?

Q. That the brought capital of 200,000 was preliminary. It was an estimate.

A. Yes.

25 Q. And so, also listed here is income that you and Alla would be supported on.

A. What income?

Q. For example, your pension is listed here for \$200 per month.

30 A. It was preliminary to - wasn't 200, was much more.

Q. So, let's that about that. The - we know that

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

you and Alla each have a pension that would automatically be deposited to a joint bank account in Canada once you were living here.

5 A. We didn't know anything about the joint account. We were told that it - we have to open account specifically, the purpose of our income and pension.

Q. The question is were you and Alla each receiving a Russian pension in Canada when you immigrated here?

10 A. We didn't receive pension, would come to the account Svetlana opened - had opened for pension, this purpose.

Q. So you mean you didn't get that cash in your pocket?

A. We didn't have access to this account.

15 Q. We're going to get there, but were the Russian pensions payable to you and Alla being transferred to a bank account in Canada once you immigrated here?

A. The Pension Fund of Russia transferred this pension, this money to the account once every three months - quarterly - once a quarter. That's how it was.

20 Q. Right, and it works out to be about \$600 a month for the two of you?

A. No, no, it's now - when the dollar went up, and we get - receive from 580 to 600 a month, but back then, it was from \$800 to \$900 for two of us.

25 Q. For what period of time? A quarter, or a month?

A. Quarter - for the three months, we - now for three months. Yes, I think so, for three months, and now we report to ODSP \$580 for two of us.

30 Q. Per month?

A. Per month.

THE COURT: Ms. Chapman, if there's some

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

5 differences in the previous years, they may be in the record, and maybe Mr. Bornmann would agree to stipulate that rather than trying to have this witness recall it, because I'm sure we have enough documentary evidence of these facts are already in the record, unless I'm mistaken.

MS. CHAPMAN: Yes, I'm just trying to plant foundation for my next question.

THE COURT: All right.

10 MS. CHAPMAN: So, if 580, 600....

THE COURT: All right.

MS. CHAPMAN: Q. That's fine. So, in addition to that pension that each of you and Alla receive, you also get a private pension from your previous employer, is that correct?

15 A. It was - would get transferred, deposited into account in Russia. But I wouldn't transfer this money to Canada, because it wasn't worth it. In the calculation and exchange, it would come around \$20 a month.

Q. And this is a pension, not dividends from that employer, correct?

A. Yes.

Q. And then, in addition to that private pension in Russia, you have dividends from your previous employer?

A. Yes, from the organization's shares.

25 Q. And so, when you gave evidence that in 2014, you transferred \$2,730 from Russia to Canada, that was for a 6 month period. Is that correct?

A. Six years.

Q. Six years?

30 A. Yes.

Q. Sorry, yes, you did say six years. And that included what had accumulated from the private pension and what

had accumulated from dividends from that six year period?

A. Yes, it's a total.

Q. I'm going to come back to this point....

5 MS. CHAPMAN: Sorry, Your Honour, I had thought that Nikityuks bank statements had been included in and exhibit from the previous day, but they were not. So I'm going to have to make copies of those.

MS. CHAPMAN: Q. Okay, so let's move on for now.

10 Let's talk about your retirement from that employer in 2004. Is it true that you had to retire in order to qualify, or to pass security clearances for the sponsorship agreement?

A. No, my retirement was simply - the director of - issued an order. It would say that the - this was - that  
15 would retire the workers. The - sorry, the retired workers that continue working. They once was given a pension and continued to work. This was whole retired before the November the 30<sup>th</sup> of 2004, they would receive 90,000 rubles.

Q. Until this offer was made to you, and you  
20 accepted that from your employer?

A. Yes, and I retired - resigned on November the 30<sup>th</sup> of 2004, and I have a - I have it in a labour book. If you need the explanations, in the labour book, you have a stamp.

Q. But isn't it true that you would not have  
25 passed the security clearances to immigrate to Canada if you remained employed with that company?

MR. MAE: Your Honour....

THE COURT: Just a minute, we'll wait for Mr. Mae's....

30 MR. MAE: I do apologize, but it seems to me that the question is asking to the nature of the Government of Canada, and I'm not going to allow

them to speak to that.

THE COURT: You can only, I guess, speak to what he actually knows.

MS. CHAPMAN: Right.

5 THE COURT: That's what you're asking? Not what the government wishes.

MS. CHAPMAN: Exactly.

THE COURT: So maybe you can just rephrase the question somewhat for the defence then.

10 MS. CHAPMAN: Q. Were there steps that you had to take, Mr. Nikityuk, to clear security in order to immigrate to Canada?

A. No, nothing like that. By 2004, I already had a foreign passport - travel passport, and I could go anywhere I  
15 wanted.

Q. So, as far as you're aware, the only concerns Immigration Canada had were in relation to medical assessments and assessing your health?

A. Yes, but I passed in 2008. After this email,  
20 after I passed the medical examination, our documents were sent to England. And after receiving the commission from England, I started to sell my property. Only after that.

Q. So let's talk now about the banking and finances while you're living with the Danilovs.

25 THE INTERPRETER: De-banking?

Q. The banking, sorry.

A. We didn't have any banking. Even if there was bank accounts open under our name, we didn't have any access to that. Only as Svetlana and Pavel.

30 Q. But would you agree that Mrs. Nikityuk gave evidence that one time she did have a bank card?

A. We had credit cards. We would purchase

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

medical things, clothes, shoes using this credit cards. But they would be paid off by using our money from our pension funds.

5 Q. But that was the agreement, wasn't it? That the Danilovs would be responsible for the items under the sponsorship agreement, such as food and shelter? And you and Alla would be responsible for your entertainment and travel expenses. Is that correct?

10 A. No, as I mentioned before, we didn't have any access to our pension money. The first time we got the access to the - to this money was on December the 10<sup>th</sup> of 2011. All this financial events was - were managed by Svetlana. We weren't aware.

15 Q. Alla also gave evidence that if you asked Svetlana for cash, she would provide you with the cash that you requested. Would you agree with that?

20 A. Not exactly, that's how it was. If we needed, for example, \$100 for some miscellaneous, we would have to turn to Svetlana, and only in the 2 days, we could go to a bank machine and withdraw this \$100.

Q. So in fact, you had access to cash, correct?

25 A. No, it's not an access. From my understanding, access when you go and you take and - yeah. In our case, you have to tell Svetlana, then she transfers, she sends the money somehow, and then I can go and take this money.

Q. So why didn't you ask for your own bank card?

A. In the beginning, we didn't see any reason. But then, in beginning of 2010, we weren't allowed to ask.

30 Q. But you would agree - do you still have Tab 3 open there, Exhibit 2(a)? Yes, based on this email, your pension income was supposed to be used towards your monthly expenses, correct?

Valentin Nikityuk - Cr-ex (by Ms. Chapman)

5 A. No, as we were told, your pension is for you. Your small expenses, miscellaneous, to go with friends to coffee shop, and not for this.

Q. And both you and Alla have given evidence that you did in fact have credit cards to use as you saw fit, is that correct?

A. Yes.

Q. And you used these credit cards?

10 A. Yes, but as I mentioned before, as I said before, they were paid off from our pension.

MS. CHAPMAN: This might be a good time for a break, Your Honour, before I move on.

15 THE COURT: All right. We'll take our morning break. Madam Registrar, is that clock correct, or did we lose any time on the power failure. Is that clock accurate? More or less?

CLERK REGISTRAR: It appears to be.

THE COURT: All right, thank you.

20 CLERK REGISTRAR: All rise. Court will recess for about 15 minutes.

R E C E S S

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

25 CLERK REGISTRAR: Court is now resumed, please be seated. Just a reminder, you're still under oath.

MS. CHAPMAN: Q. Mr. Nikityuk, we're going to go back and talk about the Russian pension and dividends. And so, I have another exhibit to enter. It will be Exhibit 17.

30 EXHIBIT NUMBER 17: Russian Bank Statement - produced and marked.

CLERK REGISTRAR: Is there one for His Honour?



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MS. CHAPMAN: Yes, sorry.

MS. CHAPMAN: Q. And I may be guessing, because the document is in Russian, but I believe this is a Russian bank statement belonging to yourself, Mr. Nikityuk. Is that correct?

5 A. Yes.

Q. And do you hold this bank account jointly with Alla? Your personal account?

A. No, it's - no, it was an account for a spare bank. It was opened long, long time ago.

10 Q. But is this the bank account in Russia where you receive the private pension and the dividends from your previous employer?

A. No, pension wouldn't come. Only this from employer and dividends.

15 THE INTERPRETER: Here it is.

Q. So, let's have a look on page four, for example. The circled item, dated October 18<sup>th</sup>, 2010. Could you confirm, is that a dividend payment?

A. Yes, this is dividends for 2009.

20 Q. And so, the other items on this page that have a little star beside them. And in some months, they're 1,257 rubles, and in other months, they're 1,258 rubles.

A. Yes, this is addition to my pension starting from 2009. Before 2009, they were paying 454.

25 Q. Right, and we can see that on page two of this document. So, it appears in 2008 and 2009, the amount was 454 rubles per month.

A. 2008, 454. From 2009 - here, the first transfer from October of 2009.

30 Q. November 2009 on page 3, is that where you are?

A. Yes, November.

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Q. Okay.

A. Yes, before that was 454.

Q. And does that pension amount increase annually?

5 A. No, no, one time it increased in 2009.

Q. There appears to be an increase again in April of 2011, if you look at page 5.

A. Yes, yes, it was increased in....

10 Q. And if you turn to the last page of this document, which is marked page seven, this statement ends on June 13, 2013, but would you confirm; do you still have this bank account, Mr. Nikityuk?

A. Yes.

15 Q. And you continue to receive the employer's pension and the dividends in this bank account. Is that correct?

A. Yes.

20 Q. And so, aside from the \$2,730 that you transferred to Canada in 2014, you used these funds for other purchases in Russia, don't you?

A. Yes.

Q. And when your daughter Lena came to visit in the summer of 2011, she had access to funds in that account for that visit, did she not?

25 A. No.

Q. Okay, let's have a look please at Exhibit 1(b).

THE COURT: Just before we finish, we'll mark this Exhibit 17.

30 MS. CHAPMAN: Yes, thank you.

THE COURT: Russian pension - bank statement, I should say. Could we have clarity on whose - was

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this joint or not, I wasn't sure...

MS. CHAPMAN: Not, it's Mr. Nikityuk's bank...

THE COURT: ...whether it was. All right.

MS. CHAPMAN: ...statement.

THE COURT: Thank you. Exhibit 17.

CLERK REGISTRAR: Thank you.

THE COURT: Sorry, are you taking us down to exhibit....

MS. CHAPMAN: 1(b), and it will be at Tab 117, page 719.

MS. CHAPMAN: Q. And this is an English translation of a Russian email.

THE COURT: Sorry, what was the tab number again?

MS. CHAPMAN: Yes, 117. The email is on page 719, it's dated May 25<sup>th</sup>, 2011, from Valentin Nikityuk to Lana Nikityuk - Lena, sorry.

THE COURT: Are we in the white binder?

MS. CHAPMAN: Yes, we are. 1(b), 117.

THE COURT: All right, yes, translation.

Something translated?

MS. CHAPMAN: Yes, the Russian version of this email is at page 721.

MS. CHAPMAN: Q. Mr. Nikityuk, I just need you to read the first email. Have you had a chance to look at that?

A. Yes.

Q. And do you recall sending this email to your daughter with regards to her visit?

A. No, I don't remember.

Q. Who is Olya? O-L-Y-A.

A. Alla's niece.

Q. And this is the niece that has a Power of Attorney in Russia to access this bank account of your behalf?

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A. No, no, her mother has Power of Attorney to access this bank account.

Q. And I see you actually say in the email to contact Olya, but her mother will withdraw funds that you need.  
5 Is that correct?

A. Yes, and she would pass this through Olya, because her mother lives all the time at the summer cottage, and comes to - comes to the city really rarely.

Q. So, Lena used some of your funds in Russia to  
10 come and visit you in Canada, right?

A. Yes, I passed to her through Olya small amount in order to use it to do the paperwork.

Q. So, did it come out of this bank account?  
This statement that we have at Exhibit 17?

A. Why from this account, the money came out of  
15 this account.

Q. Yes, sorry, the money did come out of this  
account?

A. Yes.

Q. So when you gave evidence about transferring  
20 six years' worth of dividends here in 2014, it's true that there were funds that had been used in Russia that weren't transferred here, correct?

A. No, no, only \$2,730 were transferred in 2014.  
25 Before that, we wouldn't transfer even single ruble.

Q. But that wasn't all the money that you had in this Russian bank account, the \$2,700 that you transferred here, correct?

A. At that moment.

Q. And today, you have money in that Russian bank  
30 account that you've not transferred to Canada?

A. Yes, I have.

Q. So, let's talk now about what you and Olya refer to as an interest in living independently. Alla gave evidence that you and herself went out and looked at some apartments in Barrie. Is that correct?

5 A. Yes.

Q. And who went on those visits with you?

A. We were going a lot.

Q. But who showed you the apartments?

A. We would be given an address, and we would go  
10 to this address and see and look.

Q. But someone would be there to let you in the door, and to show you around, and to lock up after, correct?

A. The landlord whose the properties [sic].

Q. And were they Russian-speaking?

15 A. No.

Q. So, did you have an interpreter - a translator  
with you?

A. No.

Q. So how did you communicate with these  
20 landlords?

A. On a basic level, we started at school, and we know to talk. Nothing complex, nothing hard.

Q. And how many apartments did you look at in  
total?

A. Two of three. It was when they say go and  
25 look, and then in the end they say you will get nothing.

Q. And then the discussion of social housing came  
up?

A. When everything discussed with them - when we  
30 were living with them, we didn't discuss.

Q. You did not discuss social housing with the  
Danilovs?

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A. Yes.

Q. Ever?

A. I don't remember such a - I don't remember  
such a thing that we would discuss with them. In 2011, it was  
5 impossible to discuss with them.

Q. Do you recall Alla gave evidence about  
learning about social housing from some friends who lived in  
social housing in Toronto?

A. Yes, yes, I was present at the birthday party  
10 as well.

Q. And Alla also gave evidence that she then went  
and spoke with Svetlana about applying for social housing.

A. Maybe they were talking, I wasn't present  
there.

Q. So you were never part of any conversation  
15 with the Danilovs, where the topic of the conversation was  
social housing?

A. No, Alla was discussing it with her daughter.

Q. So, what was the topic of conversation when  
20 you alleged that Pavel threw a dish at the wall? What was being  
discussed then?

A. I don't remember the topic. I only remember  
there was a scandal, a fight. I approached, I came, and I said,  
I'm tired of it. But I get my pension, I get the ticket and fly  
25 to the Peterburg [*sic*], and I will live there a bum - homeless.  
Pavel grabbed the plate, and threw it at the wall. And then he  
went upstairs, and on his way, he grabbed the glass, and threw  
at my feet, and said the next one is going to your head.

Q. So you recall that specific statement, Pavel  
30 saying that the next one is going to your head, but you don't  
recall what the conversation was that caused this incident?

A. I wasn't there. I came downstairs when I

heard all this noise and screaming, and....

Q. And did you ever ask Alla why she was fighting with Svetlana all the time?

A. It was clearer why. Alla would ask something, from the other side would become a scandal.

Q. So what would Alla ask that would cause scandal?

A. Maybe it was a rental house, maybe something else, because we were made - it was made of us, so we would - wouldn't squeak, wouldn't - there's this one word. I wouldn't trust it into neutral word - wouldn't talk. We just sit quietly.

Q. And so, what about the Sunday that Anastasia is visiting? In August of 2011?

A. I mean, I don't remember all the days when she was coming. When she was visiting.

Q. But, specifically on that date, and Anastasia gave evidence about this, she was part of a conversation or argument that was going round and round about social housing.

A. Maybe, I don't remember.

Q. You don't remember that conversation or that day?

A. No, no, because it was a woman's conversation. Svetlana, Anastasia, and Alla, and then myself.

Q. So, when did you and Alla decide that you would make an application for social housing?

A. Well, after this - that scandal, we started for - we contacted social workers.

Q. After what scandal?

A. That - this ones, when the plates and glasses flying - were flying.

Q. And did you know at that time that there was a

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waiting list for social housing in the County of Simcoe?

A. Yes, we knew.

Q. And how long was that waiting list? Did you know?

5 A. This friends that explained to us everything. They said that they were waiting for five years.

Q. And were you prepared to wait out four or five years?

10 A. As a matter of fact, we didn't count on the social housing. We came and thought that we will live independently, and it would have - yes, and it would live in a separate apartment. And that document that you are looking at before, it says clearly \$900 for rent to rent an apartment.

15 Q. And so, did you ask the Danilovs to provide you and Alla with \$900 per month to pay for rent?

A. The simple moment then to rent the apartment for us, and we would live in it. Because it says in our sponsorship agreement, a last phrase, that we have a right being entitled to live separately.

20 Q. So, when you made the application for social housing, was it on the understanding that you would be on the waiting list?

A. We haven't applied for social housing.

25 Q. I believe you just said you applied after the inc - the dish throwing incident, is that not correct?

A. Talking with social workers in regards the housing.

30 Q. So, let's talk now about the attack - the physical attack, as we've been calling it. I understand that you were going down the stairs, and you saw Svetlana grab Alla by the shoulders?

A. Yes.



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Q. And so - sorry, just a moment. You gave evidence last week that you just watched this happen, and then Svetlana hit the floor. Is that correct?

5 A. No, not hit the floor, she just simply lied down or fell.

Q. So, you did not interject in their dispute? You did not pull Svetlana off of Alla?

A. No.

10 Q. Okay, so let's have a look again at your transcript from the examination for discovery. If you could turn to page 39, and it's question 212. And the question is:

QUESTION: And where did the bruise - were on the neck? Or on the arms you said?

15 ANSWER: No, I didn't see the neck. I saw the bruises on her arms, on her shoulders, and when I saw what was going on, I interfered and break them apart.

Q. So Mr. Nikityuk, what did you do when you saw this physical attack happening?

20 A. I just simply said enough, whatever.

Q. So did you break them apart?

A. No, I didn't use my hands.

Q. And Alla gave evidence that you did not take any pictures of her bruises.

25 A. No.

Q. But you had taken pictures of the wall that was damaged from the dish.

A. Yes.

30 Q. And that incident happened before this physical attack, correct?

A. I don't remember the dates.

Q. Do you remember whether that the dish flying

incident happened before Svetlana attacked Alla?

A. One was happening after the other one, and I wouldn't pay attention.

5 Q. So, could you explain why you would take pictures of the wall, but not take pictures of Alla's physical injuries?

A. I don't even know why. We didn't need to - didn't have any intention to go to police. Not for the first one, not for this one.

10 Q. And so, who did you discuss this physical attack with?

A. I made an appointment. We went to see Yana and explain to her this - something like that happen. And if some of our friends would see that, I didn't know what would  
15 happen. Alla would talk to other women.

Q. They would see what?

A. Bruises.

Q. And is this on the same day that you go to school and speak with Yana? August 23<sup>rd</sup>?

20 A. Yes, we made an appointment to see Yana and went.

Q. And so, you spoke to some of your friends at school that day?

A. No, there was no school. We would simply meet  
25 his friends.

Q. And did any of these friends see Alla's bruises?

A. No, that you would have to ask Alla who she would meet, and see, and was talking to women. I wasn't present  
30 there.

Q. So, you weren't part of the conversation that Alla was having with her friends about this physical attack?

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A. That's what I'm saying. If you would meet someone, I would talk to men, and Alla would probably hopefully did another - talk to woman - women.

5 Q. So, did you, Mr. Nikityuk, speak to Yulia Malycheva? Or Sakchuk (ph) is her married name?

A. No, her maiden name is Malycheva, and marriage Sakchuk (ph). It's her husband's name

Q. Right, but did you speak to her about the abuse?

10 A. No, not with her. I was talking to her husband, Sasha Sakchuk (ph).

Q. Okay, so let's go back to your transcript again, page 46, question 259. And actually, I'll back up a little bit, because it doesn't give you the clear question. So, 15 the question starts at question 254:

QUESTION: Did you complain to your friends about that physical abuse and emotional abuse? Did you describe the situation at the time to your friends?

20 A. Probably, we were talking on this topic - on this subject.

Q. So, then at question 258, Mr. Tomokoks (ph) asks:

QUESTION: You have to name these people.

25 THE COURT: Mr. Bornmann?

MR. BORNMANN: Your Honour, in all fairness, especially given that the transcript's in English, if my friend wishes to read that question to the witness, we should hear the three questions in 30 between, as they form part of the dialogue.

MS. CHAPMAN: I'm just trying to save time, but I can put those questions and answers on the

record...

THE COURT: All right.

MS. CHAPMAN: ...if my friend wishes.

THE COURT: All right.

5 MS. CHAPMAN: Q. So we'll go back. I laid out  
question 254, and your answer was:

ANSWER: Yeah, sure.

Q. And then question 255:

QUESTION: Who are you defence? You disgust.

10 Yeah, just translate.

ANSWER: With the - with ones that we study at  
school.

A. We went to school from September the 1<sup>st</sup>.

15 Q. Yes, let me finish reading this in, and we'll  
get to the question, okay? So then, the next question 256:

QUESTION: Can you name several of them?

ANSWER: Why? So why? To provide you with the  
names so that she could call them back? Like she  
called Yulia and started yelling at her? Why you  
20 provide any assistant to them? You want to own  
their money?

A. Yeah, there was a conversation like that.

Yeah, there was a call - a phone call like that.

Q. So then, question 257:

25 QUESTION: But you....

Q. And then Mr. Bornmann comes on the record,  
"You need to answer the question."

QUESTION: And what he means is, that you need to  
name the people that you complained about this  
30 physical abuse and emotional abuse.

Q. And so your answer at question 258:

ANSWER: Is Yulia. We discussed it with Yulia.

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Q. Question 259:

QUESTION: Yulia Sakchuk (ph)?

ANSWER: Yes.

5 Q. That means you, Mr. Nikityuk. Did you discuss it with Yulia Sakchuk (ph)? The abuse?

A. I was talking to Sasha - Alex, her husband. Alla was talking to Yulia.

Q. So, you're changing your answer then, that you gave on the examination for discovery?

10 A. Once we were all four of us, Alla was talking to Yulia, and Asa with Sasha were listening, and then we were talking with Sasha.

Q. And then, did you also speak with Emma and Stal Totrovs? T-O-T-R-O-V-S. Yes...

15 A. Yes.

Q. ...you did speak to them about it? And do you recall anyone else that you spoke to?

A. Maybe we were talking to - I wasn't fixated on it to remember who we were talking to.

20 Q. Did you discuss it with Lika Severin?

A. Maybe, I....

Q. You don't recall?

A. Of course I don't remember.

25 Q. And did you tell your relatives in Russia about this abuse?

A. Yes.

Q. So, we've heard the evidence that, essentially, things are not going well in the house. And so, by October 17<sup>th</sup>, 2011, you and Alla decide to move out.

30 A. Yes.

Q. And Alla gave evidence that Pavel tried to discuss with you the possibility of purchasing life insurance

that morning. Is that correct?

A. No, it was before that. He said do the paperwork for burial insurance. I'm not going to bury you. I buried my own parent's, I'm not going to bury you.

5 Q. So, when did that conversation take place with Pavel?

A. I don't remember the specific date. I'm telling you, every day would happen something, so....

10 Q. So, what do you recall from October 17<sup>th</sup>, 2011?

A. I can't - I can't remember, I only know there was some scandals or fight. I don't remember the specific topic. I got dressed, and came up, went outside. We contacted Dorothy social worker. She said that she needs a half an hour of time, then she called back and said that we have to get to Barrie to the - by the homeless centre. Then, they called our friends, Iryna Lavreka, and she promised to come with her husband, and they came, and - her husband in 40 minutes, and they came. They took us to this one. They registered us, and then took us to the motel.

20 Q. And so, was your apartment at 1 Blake Street available to you by October 17<sup>th</sup>, 2011?

A. No, no, there was no apartment yet. The issue - we started to work on the issue after October 17<sup>th</sup>, when we contacted the social services, and then started to.

25 Q. But your social housing application had been approved by October 17<sup>th</sup>, 2011, right?

A. No, we didn't know if we would leave or not. Something like that happened, and we ran away to protect our lives.

30 Q. Something like what happened?

A. Something like we were talking about plates, bruises, screaming, and use of foul language.

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Q. But that had been going on for months.

A. Why...

Q. What led you to leave....

A. ...not, this started in 2011.

5 Q. What led you to leave on this day? Something must have happened.

A. Some scandal or fight happened. What exactly, I don't remember now.

10 Q. And I understand that you and Alla saw two available apartments for social through social housing.

A. Yes.

Q. And you chose the Blake Street apartment when you live now?

A. Yes, yes.

15 Q. So, when did you and Alla get to go and see these two apartments? Do you recall?

A. In the period of from 17<sup>th</sup> to 21<sup>st</sup>. What date, I don't remember.

20 Q. And we've heard evidence that Pavel approached you about this joint bank account that you and Alla had closed.

A. Maybe, I don't remember then.

Q. And you and Alla went ahead and opened your own bank account at Scotiabank, correct?

A. It was after we left them.

25 Q. And did Yana assist you in opening that bank account?

A. I don't remember.

Q. Do you recall....

30 A. I know that there was a Russian-speaking woman who worked in this bank. We found out and returned to her.

Q. So you met with a Russian-speaking bank employee?

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A. Yes.

Q. And is this the same employee that helped to close the joint account that you had with Danilovs?

A. No, no, I told the employee of the bank that -  
5 we came to the bank, and were told here's the Russian-speaking woman.

Q. So, Yana Skybin never assisted you with those transactions at the bank?

A. No, it didn't happen.

10 Q. And you've also heard evidence that you and Alla returned to the home, the house in Innisfil, on October 24<sup>th</sup>, 2011 to remove your belongings.

A. Yes.

15 Q. And you did not let Svetlana know where you were moving to, correct?

A. No.

Q. And you would agree that the Danilovs sent a support cheque to the YMCA payable to you and Alla, on or about October 30<sup>th</sup>, 2011?

20 A. I don't remember the date was this cheque on, but you receive it after November the 20<sup>th</sup>, and we are - we were living from October the 18<sup>th</sup>. We needed money, and we turned for help to Ontario Works. And when this cheque from Danilovs arrived, we already received some help, so we didn't put this  
25 cheque from November. I did put it for December, and another cheque we would put that Svetlana gave us. She said it's leftovers from your pension, when we were taking out belongings. And when we are - put this cheques in on the next second date, both of those cheques were cancelled - annulled. And they  
30 didn't support us - didn't give us any support for December.

Q. So, could you explain to the Court? You recall receiving this cheque on November 20<sup>th</sup>, 2011? Is that



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correct?

A. Yes, they sent it by letter to YMCA. YMCA received it, and then passed it to us after.

5 Q. But how do you recall that was the specific day that you received the cheque?

A. I just simply - saying that we received it after we got help from Ontario Works.

10 Q. And so let's say you received it on November 20<sup>th</sup>. You didn't attempt to deposit it until December 5<sup>th</sup>?

A. Yes.

Q. So, why did you hold that cheque for 15 days?

A. Because I already said it, we missing help from Ontario Works for November, therefore, we put it in December. Somehow it like a helpful December.

15 Q. And do you understand that you're not entitled to Ontario Works if your sponsor is providing you with support?

A. The thing is, if the sponsor would give us support, we wouldn't turn to Ontario Works. A sponsor from October the 18<sup>th</sup> is nothing. We only received on November the 20<sup>th</sup>. Here's the period of time.

Q. But you agree that the Danilovs, during that time, didn't know where you and Alla were.

A. But they could have sent this cheque someone - end of October, not in November.

25 Q. But they did, they sent the cheque October 30<sup>th</sup>. That was Danilovs' evidence, and we have a copy of the letter in the record.

A. Understood, but we receive it only on November 20<sup>th</sup>.

30 Q. And so, on November 20<sup>th</sup> when you receive those funds, did you notify Ontario Works that the Danilovs had now paid you some support money?

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A. No, we just deposited it for December, and December we didn't turn to Ontario Works.

5 MS. CHAPMAN: So Your Honour, I think I'm fairly close to finishing, but if we could take a short recess, and I can confirm....

THE COURT: All right, so you're almost...

MS. CHAPMAN: I think I'm almost finished, yes.

10 THE COURT: ...finished? All right, so that will give Mr. Bornmann a chance for re-examination if required, and we can talk about scheduling beyond that, so that we can then determine how much court time will be required at the next sittings. I spoke earlier about midtrial of counsel of interest that they should speak to the trial  
15 coordinator. As I said, Justice MacKinnon may be available over the next two weeks. If not, perhaps another judge may be able to do that if counsel are in agreement, that would be a useful step, and I expect that we will talk about  
20 scheduling and find out how much more time might be required when we get to any other defence witnesses, including the YMCA witnesses. So, 20 minutes, would that suffice?

MS. CHAPMAN: Yes, that'd be great. Thank you.

25 CLERK REGISTRAR: All rise.

R E C E S S

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

30 CLERK REGISTRAR: Court is now resumed, please be seated.

THE COURT: Ms. Chapman, are you ready to

continue?

MS. CHAPMAN: I do not have any further questions for the witness, Your Honour.

THE COURT: All right.

MS. CHAPMAN: Thank you.

THE COURT: Mr. Bornmann, do you have any?

MR. BORNMANN: No, Your Honour, we won't be re-examining.

THE COURT: All right. Could you tell the witness's testimony is complete? So, Mr. Bornmann, I don't be anticipated of having any other witnesses for today?

MR. BORNMANN: Your Honour, that concludes the Nikityuks' case.

THE COURT: All right, so then we're left with the issue of Mr. Mae's defence?

MR. MAE: Yes, Your Honour, we - to answer you, there's little to no point in me starting anything from today.

THE COURT: Well, I just wanted to canvas the issue of scheduling for going forward. In terms of the likely trial time that all counsel may think we need at the next sittings.

MR. MAE: Well, I have eight witnesses, two of whom I would suggest would be substantial, one of whom would be Yana Skybin. I can only speak to my personal time next - trial management, I indicated by the day, I'm going to be a lot less with - other than that now, a lot of the echoes just kind of show that we are in Ms. Chapman's hands with respect to cross-examination. The other witness, I would imagine, that would be more than a few

5 hours with the - if you want to cast a net, would be the main witness, is the - I think we can do them within a few days. Of course, there would be cross-examinations as well, Your Honour. So, to be ultra-cautious, I would say I could put my case here, and cross-examinations in a week, subject to how long Ms. Chapman will be.

10 THE COURT: Ms. Chapman, is there anything you could add to that estimate? Obviously, if it starts in the sittings, I will continue 'til completion, whether it takes a week, or five or seven days or what have you, but obviously for scheduling purposes, the trial coordinator will know what my availability is for other matters during the sittings.

15 MS. CHAPMAN: My estimate would be more in the range of two weeks, given the time that it's taken us thus far, and all the documents that we do have. A number of them I would be putting to Ms. Cascagnette and Ms. Skybin, so I think that's going to take some time.

20 THE COURT: All right, so we have arranged somewhere between a bit of a week to two weeks at the very least, or at the preface of the outside. Is there anything else we need to discuss today before we....

25 MR. MAE: Yes, from me, Your Honour, you may recall last week I indicated I'd be asking for an order to bind over the witnesses...

30 THE COURT: Yes.

MR. MAE: ...so I have a draft order, if I may hand it up, Your Honour. It just saves you

administrative time, eventually new summonses,  
cancelled cheques, et cetera.

5 THE COURT: I'll sign the order and I'll add that  
to the endorsement when I meet with the registrar  
later today.

CLERK REGISTRAR: Thank you.

THE COURT: Any other matters?

10 MS. CHAPMAN: I'll just update you, Your Honour.  
I did speak with the trial coordinator with  
regards to a midtrial pretrial. The dates that  
Justice MacKinnon has available in June, I  
understand that Mr. Mae is on a trial that week,  
so there is a possibility of a pretrial the week  
of September 12<sup>th</sup>, so maybe we can leave that to  
15 counsel to discuss and arrange.

THE COURT: That's with Justice MacKinnon you  
mean?

MS. CHAPMAN: Yes.

20 THE COURT: All right. Unless counsel wish me to  
speak to the trial coordinator to find another  
judge to deal with it in the coming weeks. If  
you're content with - we'll leave that date open,  
it's fine with me, it's really up to counsel. Mr.  
Mae, Mr. Bornmann, are you happy with potentially  
25 that date in September?

30 MR. MAE: I'm happy with the September dates, or  
the alternative Your Honour, depending on my  
friends. With respect to my trial starting on  
June the 20<sup>th</sup>, as of last night, I was advised by  
opposing counsel that we're, quote on quote,  
agreed on everything but one matter. So, I'm  
hoping maybe by tomorrow, I'll actually find out

5 if that is indeed the case, because the - if that is the case, then I'm probably only going to need one day of trial time to argue the one matter before the Court in Parry Sound. But I don't know how that would sit with the Court in terms of scheduling something for that week. I - it's probably best to err on the side of caution and not look at that week, but....

10 THE COURT: Well, I'm just going to leave that to counsel, because it's not something I need to deal with. So, there's a potential - a possibility of a date in June which counsel can explore, if it works out. If you wish to have a different pretrial judge, I can urge the trial coordinator to make those inquiries if you think that it might be better to have something sooner rather than later. So, I just leave that to counsel to discuss among yourselves, and let the trial coordinator know. And if I can assist in finding another judge sooner, I will try to do that. But obviously, September has some advantages, in that it is well before the sitting, so it may be advantageous.

25 CLERK REGISTRAR: For the interpreter, we've inquired - interpreting required?

THE COURT: No, I don't think so. I think we've agreed that that's - the interpreter services are no longer required, and Mr. Bornmann will make his own arrangements...

30 CLERK REGISTRAR: Thank you.

THE COURT: ...for translation as needed by his clients. So, I will thank the interpreter for

5 attending today and on other days. That's been of assistance to the Court. Thank you. So, I'm going to adjourn until the November sittings, the date of which escapes me, but I'm sure that Madam Registrar can find that out for us.

10 MR. MAE: Your Honour, one other issue, a housekeeping issue. I'm - whether Your Honour wished to make a direction with respect to exchanging and filing facta before the next time we're here. Whether that would appear to be a sensible option, I'm sure we've all drafted facta and have our books of authorities. I don't think anybody's made the first move yet in terms of delivering them, but I wonder whether that would be of assistance to you, having them before the next sittings.

15 THE COURT: I think it'd be useful if you did that preparation, since there is quite a bit of advance time, and all the information. The evidence you've heard is fresh in your minds. I already have some material from Mr. Bornmann I believe, that was filed previously, but I don't know if that's everything that he intends to need - to rely on. But this is a case that may call for written submissions after the close of the trial. So, counsel may want to discuss that and, if that's the case, I would set some timelines at the end of the trial for delivering those materials.

20 MR. MAE: Certainly, Your Honour, that would make evident sense. Thank you.

25 THE COURT: We can then - I would get counsel's agreement on the length of those submissions so

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5 that there's not undue repetition, and that we  
confine them to a reasonable length of material.  
So, if you want to do some advance preparation,  
then that's fine. So, we will adjourn until the  
November sittings. Thank you.

CLERK REGISTRAR: All rise.

M A T T E R   A D J O U R N E D

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Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, Spencer Edgar, 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 on June 9, 2016, held at  
15 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811\_02\_20160609\_093923\_\_10\_MULLIGG.dcr, which has been certified in Form 1.

20

, 2017

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Spencer Edgar  
(Signature of authorized person)

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