

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 November 15, 16, 17, 21 and 22, 2016 at BARRIE, Ontario

VOLUME V

25

APPEARANCES:

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

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TUESDAY, NOVEMBER 16, 2016

THE COURT: Good morning everyone.

MS. CHAPMAN: Good morning.

MR. BORNMANN: Your Honour.

5 THE COURT: We are resuming this trial which we began at the Supreme - sittings, and just by way of recap, I believe we had 15 days of evidence on - starting May 16<sup>th</sup>, and finishing on June 9<sup>th</sup> with the cross-examination of Mr. Nikityuk. And I think we were turning to the YMCA issues at this point, am I right on that counsel?

10 MR. MAE: That is correct, Your Honour. A couple of housekeeping matters before we start opening. Mr. Bornmann has a few issues, probably courteous of me to let him address those before I deal with my housekeeping issues.

15 MR. BORNMANN: Your Honour.

THE COURT: Good morning, sir.

20 MR. BORNMANN: Your Honour, May 19<sup>th</sup>. Your Honour had made an order with respect to certain records from the Canada Revenue Agency, and we can advise that the Nikityuks have complied with that order, and we have received a document from the Canada Revenue Agency, and we have disclosed that document to each of my friends, and with your permission, we'll hand up a copy for the Court.

25 THE COURT: All right, are we going to make this an exhibit?

30 MR. MAE: Certainly I would need it made as an exhibit. My intention was to introduce it through my first witness.

THE COURT: All right, so could we hold it up 'til

then? That'd...

MR. MAE: I - I have no...

THE COURT: ...be the better time to do it?

MR. MAE: ...I have no problem with that, Your Honour.

MR. BORNMANN: We have no issue.

THE COURT: All right, but if you want to pass up a copy as the judge's copy, then I'll have that for now.

MR. MAE: Yes, Your Honour.

MR. BORNMANN: Your Honour, one other preliminary matter. I would advise that our clients, Mr. and Mrs. Nikityuk are in attendance, however, the Russian interpreter is not present, so they will not be able to understand the vast majority of what transpires here today, Your Honour. However, we do have an interpretation service that's available by telephone should we require instructions from our clients. We would ask the Court's indulgence for a break so then we could step outside, and access that service, and seek instruction from our clients.

THE COURT: All right, and you've got counsel assisting you again today?

MR. BORNMANN: Yes, Your Honour, my colleague Lisa Boder (ph) is attending for today, and an articling student, Mr. Christopher Alzen....

MR. HESENBERGER: Hesenbergger (ph).

MR. BORNMANN: Hesenbergger (ph). He is going to be joining me for the balance, Your Honour.

THE COURT: All right, so if you're - you or your co-participants can do any note taking that will

assist with the translation issues and questions that have to be answered, that may assist in keeping your own records that way.

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

5 THE COURT: All right, housekeeping. Dare I ask how long we might need to finish this trial? Mr. Mae? Would you....

MR. MAE: That's one of the housekeeping issues, Your Honour. I - I understand from the trial office that you're not available next Wednesday?

10 THE COURT: Yes, I have a criminal matter in Newmarket, so I'm going to have to be - excuse myself for that particular day.

MR. MAE: I'm not sure if Your Honour is aware, I looked in the Court maybe about six weeks ago - five weeks ago to advise that one of our witnesses is away on vacation. It was a pre-planned

15 vacation. She doesn't return to the country until the 22<sup>nd</sup>. Might I - must have called her on the 23<sup>rd</sup>. So, certainly we're going to need you for maybe a morning after the 23<sup>rd</sup>. The other

20 scheduling issue, again, it's within our timeframe, and I haven't answered the timeframe question yet. I have a translator booked for the

25 21<sup>st</sup> because a few witnesses need to give evidence through a translator. So, depending on the flow of the evidence, witnesses may be taken out of turn. I can imagine that you'll be hearing mostly from me for this week in terms of witnesses,

30 however, Mr. Thomson will be dealing with the vast majority of the witnesses with smaller issues.

So, I'm only going to be presenting three

witnesses, and Mr. Thomson will be dealing with six or seven, depending on whether we decide to call everybody or not. And with that, we only have one other scheduling issue. One of our witnesses who, I was hoping to call third, but because of a logical sequence, she has commitments this Thursday afternoon, so we may have to present other witnesses ahead of her on the Thursday. Or we may have to bifurcate her evidence, which isn't necessarily satisfactory, but it might be appropriate in the circumstances. So, in answer to your question, and it was a question raised at the conclusion, I thought we would be about a week. Given the Wednesday issue, it's going to be a little over a week, but I'm going to be in my friend's hands in terms of how long the cross-examination is of the witnesses.

THE COURT: All right, thank you. Ms. Chapman, can you add to the discussion?

MS. CHAPMAN: Sure. Well, if you recall, I had suspected we'd go another two weeks. And given the Y is intending to call 10 witnesses, and the other scheduling matters, I still suspect we'll take 2 full weeks. So, we might be into a Monday-Tuesday of the third week at this point, given some of the scheduling. I mean, I expect closing submissions to be quite lengthy.

THE COURT: All right.

MS. CHAPMAN: There's a lot of evidence to go over in that....

THE COURT: I'm certainly available for the third week as needed, except for the December the 2<sup>nd</sup>, a

Friday where I have a criminal matter to finish. But that's at the very end of the third week, and I....

5 MS. CHAPMAN: Right, and I suspect if we need, it would - the third week, it would only be a day or two.

10 THE COURT: All right, so other than the 23<sup>rd</sup>, I think we're fine on Friday the 25<sup>th</sup>, which is next Friday. Later in the afternoon, there's a swearing in of a new judge in Newmarket, and I would like to go to that, which mean I would probably need to close court about three o'clock. Depending on where we're at with the evidence, we can adjust that, and if it's at some crucial  
15 point, then I will - I'll stay here and not go to the swearing in, but if it works out, I'll do so. And maybe we can just have a longer than normal morning, and work it that way. But we'll just see where we're at on that date, and I am flexible,  
20 but I would like to go to that. See the swearing in of jus - Joseph, Justice Joseph Deluca, is our newest judge in central-east region, he's already been officially sworn in, and he's starting - been starting a civil trial this week in new -  
25 Newmarket or Oshawa. So, putting him right to work. The trial record is getting a bit tattered. I don't know if there's an extra copy that counsel would like to file later in substitution. It doesn't matter necessarily, but it has come apart.  
30 If you have one, I don't suggest you make up a new one, but if there's an extra one, we could substitute it. One thing I'd like to get a copy



5 of - I don't know if I have a full copy of Tab 10, which is Justice Corkery's ruling. I do have - I did - look more particularly, I do have a copy of his page 11 where he enumerated the 12 points that he was considering in terms of the issues that he addressed. But I would like to get a complete copy of that at some point, if counsel could file that.

10 MS. CHAPMAN: I - I can have my office bring that up sometime today.

THE COURT: All right. So, for the time being, I'll give the trial record to Madam Registrar, and we have it held together with binder twine at the moment. Any other issues? Mr. Mae?

15 MR. MAE: One other housekeeping issue, Your Honour, the issue of closing argument and factums. I seem to have a recollection of the last time we were here, and maybe I misunderstood, but I gained the understanding that there wouldn't be a closing arguments, it would be a written arguments?

20 MR. BORNMANN: That's my recollection as well, Your Honour.

THE COURT: Ms. Chapman, do you have....

25 MS. CHAPMAN: Well, I - I kind of gapped on that conversation. My concern is my factum is ready, it's being bound as we speak. But, the issue is I haven't heard any of the evidence on the Y, so, you know, it would be unfair for me to, you know, be stuck to the arguments I'm making in my factum alone. I'm prepared to make written submissions.

30 THE COURT: If I call for written submissions, there'd be time to do so. It wouldn't be

immediate.

MS. CHAPMAN: Sure.

5 THE COURT: And if the lawyers need time to digest the final bits of evidence that we hear in the last closing days, so I would give an appropriate period of time if that's what they said. Maybe Madam Registrar - Madam Reporter could check how we left off the discussion, if we discussed at the end of the day.

10 MR. MAE: I believe it was discussed at the end. I haven't revisited the audio. I obtained a copy of the audio, but...

THE COURT: I think I...

MR. MAE: ...trying to....

15 THE COURT: ...may have suggested that counsel start working on their factum - facta, et cetera.

MR. MAE: My recollection was to the effect that you indicated that - wouldn't have to deal so much with the facts themselves. And again, that's just maybe on confabulation in my mind, but certainly if we could have some clarity on that issues at some point this week, because....

20 THE COURT: Okay, well we can discuss that later, and maybe I'll have Madam Reporter check that as we go along. At one point, I made a list of key dates. Did I give a copy of that to counsel?

25 MR. MAE: Yes you did, Your Honour.

30 THE COURT: All right. So, you know, a lot of that is uncontroversial stuff. Facts that are not in dispute by and large, and we can discuss written submissions if we're going to go that route, and I'll - and the length of those.

Obviously, if we're going to have oral submissions, it's going to add to the trial time. It conceivably could last a day or two.

5 MR. MAE: That's certainly one of the reasons why I was flagging it, in terms of the time being allocated.

10 THE COURT: All right, so we'll review that issue, and obviously, if we use as many days as we might into the third week, we'll have less and less time for oral submissions unless we come back at a considerable period of time later. So, is there any other background or housekeeping issues that we need to discuss? I have the judge's copies of the exhibit books up here, and the Court Officer has copies there for the witnesses as needed as we go along. Anything else that we need to have at hand?

15 MR. MAE: I have nothing, unless my friend has....

20 MS. CHAPMAN: The only other issue would be to request a sealing order again. I'm not sure that it's still in place from the last sittings, but if it's not...

THE COURT: ...All right, we'll...

MS. CHAPMAN: ...I would make that request.

25 THE COURT: ...make a sealing order so counsel can leave their materials here. And of course, there's an order excluding witnesses, I believe it's still in place.

30 MR. MAE: Well, with the exception of Fiona Cascagnette, who's now in the back of the court, Your Honour. But she's not going to be my first witness. She is a director at the YMCA.

THE COURT: All right.

MR. MAE: And if you recall Your Honour, I requested permission to lift the order in relation to her.

THE COURT: Yes, that she's been here before.

MR. MAE: Yes, Your Honour.

THE COURT: All right.

MR. MAE: So, in that case Your Honour, with your permission, I will call my first witness.

THE COURT: Yes.

MR. MAE: Yana Skybin.

CLERK REGISTRAR: Do you wish to swear on the Bible, or make an affirmation without the Bible?

YANA SKYBIN: With the Bible, please.

CLERK REGISTRAR: Ok, put your hand on the Bible, please.

YANA SKYBIN: SWORN

MADAM REPORTER: Sorry to interrupt Your Honour, but I seem to have a problem with the witness mic. It was fine when I did my check at nine o'clock this morning.

THE COURT: Should we take a brief adjournment, or do you - so you can adjust - you can have a seat, Ms. Skybin, if you wish.

MADAM REPORTER: If you can do a test.

YANA SKYBIN: Test, one, two, three.

MADAM REPORTER: Seems to be fine now, Your Honour.

THE COURT: All right.

MR. MAE: Your Honour, before we start, you will notice that Ms. Skybin is heavily pregnant, so we

may need some additional breaks throughout the day, and I would advise Ms. Skybin if she does feel the need to have a necessary comfort break, that she should raise the issue.

5 THE COURT: I understand, I - I wouldn't have noticed unless you told me.

MR. MAE: Thank you, Your Honour.

EXAMINATION IN-CHIEF BY MR. MAE:

10 Q. So, Ms. Skybin, what's your current occupation?

A. I'm a settlement counsellor and volunteer coordinator with the YMCA and according services of YMCA Simcoe Muskoka.

15 Q. And how long have you held that position?

A. Since January 2009.

20 Q. If I could hand the CSO - provide to the witness, the two green binders? And Ms. Skybin, I'd like you to turn to volume two, and you'll see a large tab with the letter "F." Be in that section. Can you go to tab number one? Do you have that document in front of you?

A. Yes, I do.

Q. And what is that document?

A. That's my job description.

25 Q. We'll be coming back to that in a moment, but if you go to Tab 2, what is that document?

A. It seems to be the letter of acceptance of the position offer - job offer.

Q. And two pages into that....

30 A. Wait a second, no, sorry, this is my letter. That's my cover letter, the application for the job. Yeah, sorry...

Q. And a touch....

A. ...and then my résumé. Sorry.

Q. And that's what we'll say for the moment with the résumé. Could you give the Court some background as to your educational experience and qualifications?

A. Yeah, I have international education and Canadian education, so I graduated with a B.A. in literature and languages from the Ukrainian University, and I studied for a year in New Brunswick that - as an exchange student, 1995, '96.

Then I came back to Canada in '97 to do my Master's degree in cultural studies, philosophy in Toronto, which I completed successfully in 2000. And, yeah, in 2000, I immigrated to Canada and I was working as a - even before that, I was working as an admin assistant for the Ukrainian-Canadian Social Services in Toronto. I was also working as an admin assistant to the chair of Ukrainian studies at the University of Toronto. I was also working as an interpreter-translator. I translated the history of Ukraine, multiple entries for the encyclopedia, and I was working for the Canada-Ukraine elementary program, which was also in Toronto. Then, I was working for six years as an academic officer, registrar, financial aid officer at a graduate school in Toronto. That was a six year experience, and then I stayed home with my children for three years, and I had applied for this position, and I got it, and I've been working ever since. I have multiple volunteer roles....

Q. Before we move on to the volunteer roles, I just want to pause there. I think it might be helpful if you slow down...

A. Oh, okay.

Q. ...with the people taking notes. So, you mentioned being a translator. What languages do you speak?

A. I speak Ukrainian, Russian, and English.

Q. And prior to working for the YMCA, did you work as a translator?

A. Yeah, I did back in Ukraine. I worked, well, I worked as a teacher of English, but I was also working as an  
5 interpreter and translator at a big company. I was translating negotiations for the CEO and military, and I've international negotiations between the company. And then when I came to Canada, I was, as I said, I was doing translation work for the chair of Ukrainian studies.

10 Q. And are you qualified as a translator?

A. I'm currently a certified interpreter, so I've never completed my certification. It's just kind of - I didn't do that, but yeah, I'm a certified interpreter.

15 Q. And were you a certified interpreter back in 2011 when you were dealing with the Nikityuks?

A. No, I wasn't.

Q. And if you could turn to Tab 8, do you recognize those documents?

20 A. Yeah, that's my diploma, yeah, mhm. From the Ukrainian University.

Q. And in fact, I see a large number of diplomas and transcripts. Are they all yours?

25 A. There is more than that, yeah. It's my diploma from Ukraine, and then my diploma from ICS in Toronto, Master's degree, and diploma - it's just a one year diploma from Stevens University. And then all the certifications I received while working for YMCA, by - when I was taking courses and training. Yeah, all of these are my certifications.

30 Q. And you were just about to mention the volunteer activities, and specifically, yeah, I would just direct you to deal with the volunteer activities with respect to immigrant services.

5 A. With respect to immigrant services, I have a significant knowledge of the community resources due to my volunteer enrollment, because my children were diagnosed with autism, and I became very heavily involved in their education and therapies and overall upbringing. So, I got involved in pretty much every program out there. I know a lot of the resources in the community and currently, I'm a parent mentor with CTN, which is treatment - Children's Treatment Network. I'm also vice chair of the Special Education Advisory Committee with the Simcoe County District School Board, and I was invited to be on the advisory for the York University study, which is called, "Mothers Speak Up," which is specifically about immigrant mothers raising children with special needs. So, because of my involvement in the community, I have big knowledge of the resources, and can help my clients through my work.

15 Q. So, let's go back to 2011 when these events took place. You - you're working at the YMCA at that time, correct?

A. Yes.

20 Q. And where were you actually based in 2011? At which office?

A. I - well, at the time, I was already involved - employed full-time, and I had two days in the office in Barrie, and the rest of the week, it was - I was in the community. So, really a Collingwood, Midland, and attend Innisfil, which I was still doing my itinerant work, but I wasn't - I was present in the office for two days.

25 Q. And the office in Barrie, that's at the Bayfield Mall, correct?

30 A. Yes, that's correct. Mhm.

Q. And, was it at the Bayfield Mall when you dealt with the Nikityuks?



A. Yes, that's right.

Q. At the office at Bayfield, can you describe the layout in relation to your office, and other people in the building?

5 A. Yeah, there are - basically we have a corner, an administration corner, so to say, where it's my office. At the time, it was Ruth's office - Ruth Miller's office, my supervisor, and then my director's office, and they're all interconnected. They're separate offices, but they're basically  
10 one next to each other with open doors, and we always have an open door policy unless we're using the phone - speakerphone, then we might close the door. But otherwise, it's - our doors are always open, and you can always see who's coming in, who's leaving, you know? You can see who's in your office. So,  
15 that's the layout.

Q. So in that, you mentioned Ruth Miller. Who is she?

A. She was a set - lead settlement counsellor, and my direct supervisor.

20 Q. And you also mentioned a director. Who was that?

A. Susan Green. She was the director of all immigrant services. At the time, it was called newcomers' services. They changed on me later.

25 Q. Now, we've seen your job description at Tab F(1). Can you generally explain to the Court what your roll is, or was, in 2011 as a settlement counsellor? What was expected of you?

30 A. As a settlement counsellor, I was expected to provide assistance in pretty much every area of life in Canada to qualified clients to help them settle in Canada, or to become familiarized with the system, with basically every aspect of

life. And if necessary, provide help with forms, provide referrals to other agencies depending on the client's needs, and support them through the process of receiving such assistance.

5 Q. If we look at the job description in front of you, on the second page, there's a date of September 2008? At the very bottom?

A. Yes.

10 Q. Is that the job description which was in effect when you were dealing with the Nikityuks?

A. Yes, that correct.

15 Q. And if you can take the Court to the section on the first page under "Programs."

A. Yes.

Q. There are many bullet points.

20 A. Yes, so it would be:

To screen clients for eligibility for various programs within the organization, assess their needs [that's true, we do the needs assessment during the intake, and ongoing]. Assist them, including newcomers, refugees for orientation, translation, interpretation, information, counselling, and preliminary requirements, and refer to community resources including training programs. Provide also life in-between government, communities, agencies, and the clients, and provide sensitive cross-cultural counselling to newcomer clients, and also be sensitive to their cultural needs. Facilitate also group services or group information sessions, and complete correspondence on behalf of clients as

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30

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needed, on a regular basis. Assist with recruitment of volunteers to work in settlement programs and English classes, and provide orientation and match volunteers with individuals if possible, and promote settlement services to community organizations [all of which I've done in my role].

10

Q. And one of the items, "Complete written and oral correspondence on behalf of the clients on a regular basis"...

A. Yes.

Q. ...that was one of your jobs?

15

A. Yes, yes, mhm. And it's norm - like, I mean it's pretty much standard practice.

Q. And over the course of your employment, the letter particularly deal with up to 2011. Had you helped any YMCA clients with social housing?

20

A. Yes, I helped - well, like any client, depending on their needs or requests, yeah, I provided information, gave them forms, help them complete the forms. I would refer them to services - transitional services if that was needed. Yeah, I've done that prior to 2011 as well.

25

Q. Have you ever given any client any advice how to illegally, or otherwise, bypass the social housing system?

A. No.

Q. Specifically, have you ever given any advice or assistance to the Nikityuks to bypass the social housing system?

30

A. No.

Q. And specifically, have you given them any advice to bypass the waiting list for social housing?

A. No.

Q. Prior to August of 2011, had you provided any advice at all to the Nikityuks about social housing?

A. No.

5 Q. Prior to August 2011, did you have any discussions with Nikityuks about social housing?

A. No.

Q. Prior to August 2011, had you ever been asked about social housing by the Nikityuks?

10 A. No.

Q. Going back to your job, when you were first hired by the YMCA, what information or training was given to you about your role?

15 A. I received quite a bit of training. Some of it was initial, and then ongoing. We always receive training - ongoing training a lot. We receive a lot of internal training, so I was sent for orientation at the YMCA, and I also received training from my direct supervisor. She provided me with a lot of resources. I sat on appointments with her. I specifically  
20 requested to - for her to - to be job shadowing when she was doing specific cases so that I could learn, and she would also invite me on her own, you know, to be able to learn. I was going to training such as find help, like 2-1-1, human resources, and different conferences. We have an organization  
25 supporting settlement agencies, so they have yearly conferences. They were specifically designed for settlement counsellors to learn, you know, about different aspects of the job, and I went yearly. I also went with Ruth Miller, my direct supervisor, for a three day conference organized by Citizenship and Immigration  
30 in Toronto, that was also learning opportunity and I did those for a lot of online training including webinars. There is a site, [settlementatwork.org](http://settlementatwork.org), and they have a whole list of

different areas. You can sign up for a course - for a free course, or online webinar. And also, I attended - there is professional development money available through that organization, so I applied for it yearly. My organization  
5 always supported, so that requirement with the training was that it was necessary for my job, and my director approved it, and so I took courses at Georgian College and also at Seneca College to help me with inter - like courses, like interpersonal communication, counselling skills - yeah, and it's ongoing. And  
10 then, we also received internal training, but that's after 2011 that - I don't want to mention after that.

Q. So, if you can turn to Tab F(14).

A. Sorry, one more thing I forgot to mention. I was expected to attend coffee time meetings in different  
15 communities. So, those meetings are designed for community agencies, and I attended monthly meetings in Orillia and Midland, and those were also about sharing information with all of the agencies and networking. So, I did that on a monthly basis. Mhm.

20 Q. Thank you. If you go to Tab F(14). Do you have that in front of you?

A. Yes I do, human resources policy.

Q. And so, I was just going to ask you what it was. And it's dated on the front page July the 1<sup>st</sup>, 2008. Was  
25 that document given to you when you were first hired by the YMCA?

A. Yes, with the hiring package, I did receive it.

30 Q. And was that a document that you had to become familiar with?

A. Yes, yes, and sign off on that - like that's I've read it.

Q. And I'd like you to go to - it's classed as page one of the document. It's three pages in beginning with section one, "Human Resources Governance Policy?"

A. Which page, sorry?

5 Q. Page one, it'll be on the bottom right-hand side. So you go past the index.

A. Oh, okay.

Q. And you have the section, the "Code of Ethics."

10 A. Mhm, yes.

Q. Can you explain what was expected of you in terms of your ethics in the workplace?

A. Yeah, that I would conduct myself with integrity and honesty. That I would be responsible for my  
15 behaviour and the decisions I make, and that I would fulfill obligations to my organization and I should carry out my duties in a manner that reflect the vis - mission and vision of values of organization, and keeping with all the policies and practices, and the standards of the organization. Also, I would  
20 follow the YMCA's privacy statement, which is signed with the clients during the intake.

Q. And we'll come to the privacy statement. Is it your possession that in dealing with the Nikityuk, you're binded by the code of ethics?

25 A. Yes, absolutely.

Q. Now, we know that there was no policy in effect with the YMCA for dealing with elder abuse...

A. No.

Q. ...that's correct, isn't it?

30 A. That's correct, yes. Mhm.

Q. So, what information or protocols were in place for dealing - and this is back in 2011. What protocols

were in place for dealing with that type of situation?

A. My direct supervisor, Ruth Miller, was actually a member of the Violence Against Women Coalition, and she sat at the table. So, she brought a lot of information, specific information, regarding power and control issues. She shared the resource with me, and she invited me to a conference. I attended a conference with her on those issues, and we - our practice was to refer people to the shelter - Barrie Women's Shelter, because they do have a transitional worker and a legal advocate who can inform them of their legal rights in Canada. So, that basically was the standard if there were indicators of power and control situation, or if the client disclosed abuse, we would refer them, if they wish, to connect with the services like through the women's shelter.

Q. And you just mentioned about legal rights. Did you give any legal advice to the Nikityuks?

A. No, not legal advice. I was - like I was referring them for legal help to external organizations.

Q. And in addition to the - those protocols, what literature or educational material was available for your use?

A. Yeah, we had a number of pamphlets that were sent to our office, and we had them readily available. We kept them in offices, they were available on the bookshelf in the hallway, and they still are. And - so yeah, we regularly received educational - public education pamphlets from various organizations like CLEO, FLEW, even Violence Against Women and elder abuse specifically. You know, like we had them available in the office.

Q. And we'll come onto some of the pamphlets shortly. But, how were you made aware of the existence of these pamphlets?

A. Well, first of all, they were sent to us -

mailed to us. We had them in - they were available on the website. We also had presentations from those organizations, so we learned that way about the resources, and Ruth was very good at giving me every single resource she came across that was new. So, whenever she came across a new resource, it would be on my desk right away. And she made sure I would read and familiarize myself with it.

Q. Are you aware of what a conflict of interest is?

A. Yes.

Q. And - forget about what we know now, let's go back to 2011. Did you know what a conflict of interest was back in 2011?

A. Yes, I did.

Q. And what was your understanding of a conflict of interest?

A. That you would use your position to somehow benefit yourself personally, and you know, you would jeopardize - well, what the policy states, you know, regarding code of ethics.

Q. And as a general question, in your dealings with the Nikityuks, did you do anything in relation to them to benefit yourself?

A. No.

Q. Now, I understand that at the YMCA, there's also a system in place of performance reviews?

A. Yes.

Q. Can you explain to the Court what that system entails?

A. Yeah, it's an annual performance review of your job, and also we have, during the year, we set goals. So, once a year, it will be setting the goals, and then in six



months, it's reviewing the yearly outcomes.

Q. And that was the....

A. It's a formal process.

5 Q. And if I can take you to Tab F(3). You see  
the first black document?

A. Yes, mhm.

Q. And what is that?

A. That's my performance assessment tool...

Q. And....

10 A. ...and then the probation - like, there was a  
three month probation, so this is the evaluation of that period  
for me - for myself - person.

Q. And I just take you through just to identify  
the documents, and then I'll ask some questions.

15 A. Okay.

Q. And then at Tab 4, what - do you have Tab 4 in  
front of you?

A. Four? Yes, mhm.

Q. And what is that?

20 A. That's the performance review...

Q. For the period....

A. ...and the year here is - yeah, for the period  
of July 1<sup>st</sup>, 2009, to June 30<sup>th</sup>, 2010.

Q. And firstly, who performs that review?

25 A. The direct supervisor, and then the director  
would sign off after reviewing what the supervi - the  
supervisor's comments.

Q. And so, the signatures on here, the direct  
supervisor is Ruth Miller?

30 A. Yes, correct.

Q. And the supervisor once removed was Susan  
Green?

A. Correct.

Q. And if we go to Tab 5, do you have that document?

A. Yes, I do.

Q. And what is that?

A. And it's also the next year's performance review from July 1<sup>st</sup>, 2010, to June 30<sup>th</sup>, 2011.

Q. And is it the same supervisor?

A. Yes, the same supervisor.

Q. And then Tab 6?

A. That's the following year, from July 1<sup>st</sup>, 2011, and June 30<sup>th</sup>, 2012.

Q. And that review relates to the period which is an issue in these proceedings?

A. Yes.

Q. And just for the sake of completeness, Tab 7?

A. Yeah, that's the following year. July 1<sup>st</sup>, 2012, and June 30<sup>th</sup>, 2013.

Q. And on that document, for the supervisor once removed, I see a different signature. Whose signature is that?

A. Fiona Cascagnette, I believe. We had - yeah, Susan Green already retired. She just retired at that time in the summer, when they should become the team leader for the centre, but then I believe it was Fiona who was - Fiona Cascagnette who was the next once removed.

Q. Now, in....

A. Or Janette, sorry, I'm just not sure because there was change...

Q. Okay.

A. ...in our management. It might be Janette.

Q. So, in relation to the hierarchy, we have you, Ruth Miller above you, Susan Green above her, and who was above

Susan Green?

A. That would be the VP.

Q. And who would that be?

A. At that time, it was Fiona Cascagnette, she  
5 was overseeing our program.

Q. I'm correct on that Fiona Cascagnette did not  
have day-to-day involvement?

A. No, no, she was not located in our office.

Q. But you had two supervisors above you?

A. Yes, mhm.  
10

Q. And with respect to the performance reviews,  
have you ever had any reprimand or any negative comment with  
respect to your dealing with the Nikityuks?

A. No, on the opposite, I was praised for my  
15 actions.

Q. And we'll deal with those from the  
supervisors. And, have you had any disciplinary proceedings  
with respect to your dealings with the Nikityuks?

A. No.

Q. You mentioned earlier on about the on-the-job  
training. Who was that provided to you by within the  
organization?  
20

A. Well, there was initial orientations, so  
employee - new employee orientation at the Y, so I went to the  
25 Barrie YMCA for that orientation, but there was staff from  
different departments and centres.

Q. And specifically, in respect of newcomer  
services, who educated you? Who trained you?

A. Ruth Miller directly. And as I mentioned, I  
30 was provided with training outside by - you know, I was given  
time off, or they paid for the conferences. I applied to  
professional development training for settlement counsels, and

my director approved it. And so, things like that. And networking in the community.

Q. So, whenever you needed help or assistance, who would you go to for help or assistance?

5 A. I would go to Ruth directly.

Q. And how often would you report to Ruth Miller?

A. On a regular basis. So if I had a question, if I wasn't sure, I would come to her directly. She was always available to speak with me, and she would come to me, also on a  
10 regular basis, and say so how are you doing, because I was in the community, she wasn't there, so she'd say how are you doing? How things are going? Do you need any support? And also during the performance reviews, we always talked about goals, like I wanted any further - like professional development, or any  
15 support. Maybe things need to change, you know, like what should change or what I see as necessary for the development of organization. So, there were always discussions, and then we would have the same discussions with Susan if it had to do with some plans. You know, for the organization.

20 Q. And specifically dealing with the Nikityuks, did you obtain guidance and advice from anybody?

A. Yes, yes, from Ruth and from the women's shelter.

25 Q. And to your knowledge, was Ruth supervising your activities?

A. Yes, she was.

Q. And I'll be right in saying that Ruth Miller was also involved in assisting the Nikityuks...

A. Yes, she was.

30 Q. ...is that correct?

A. We have - we share clients. There is never, "This is my client, this is your client," so we have - we create

a file, and then whoever's available to assist the client would help them in any given moment when they need help.

Q. And how did Ruth Miller become involved specifically dealing with the Nikityuks?

5 A. I brought it to - well, they were students. They were coming to class.

Q. I mean with respect to the problems, not generally.

10 A. To the problems, yeah. I brought it to her attention, and then, you know, through the discussion, we referred them to the women's shelter, and then we had a worker - a transitional support worker come to the office, and she had discussions with both of us, with Ruth and myself. So, it was like a joint, you know, effort.

15 Q. So, when you say a joint effort, were you working closely with Ruth Miller?

A. Yes, yes, a joint effort to support them. Yes, I was. She did too, so it's not just me.

20 Q. And when did you involve Ruth Miller? Can you recall?

A. Do you want me to say the whole story in terms of like when....

Q. Well no, just a date.

A. Oh, on September 30<sup>th</sup>, 2011.

25 Q. Prior to the Nikityuks reporting abuse to you, had you had any experience dealing with cases of abuse before that time?

A. Yes, mainly with women.

30 Q. Any experience dealing with elderly people at that time?

A. No, it's not that common, to tell the truth.

Q. When you say not that common, not that common

for you?

A. For me, yeah. For - well, yeah, from what I've seen, it's not that common.

Q. And how many abuse cases had you been involved  
5 in before dealing with the Nikityuks?

A. Well, I can't give you a number, but - a specific number, but we had women disclosing abuse and wanting referrals of support to leave the relationship, and that's kind of ongoing. Sometime even - I don't know, it comes - you know,  
10 it's like we have lots of cases, then it's quiet, and then you have another case, but it's ongoing. Like....

Q. So, you - would you say that you had a lot of experience dealing with abuse cases?

A. I had experience, yeah, I've already had  
15 experience dealing with the women who were leaving an abusive relationship, yes.

Q. And....

A. And working with the shelter, yes.

Q. And just in global terms, you mentioned  
20 earlier on the protocol, but if you could explain that again slowly. What was the way of dealing with a report of abuse?

A. It would be initial - like when they disclosed, we would listen to the person, and their wishes, and what they need. So, that would be like the needs assessment  
25 piece. And then, we would refer them to, depending on their wishes again, we would refer them to organizations. Sometimes we would just give them the public education resources so that they can familiarize themselves - a lot of them also translated in different languages. Not all the resources are translated,  
30 so I guess they picked and chose which ones, but we try as much as possible to give them information in their language. And then if they wished to be referred - like, we'll meet with the

worker, they have a choice. If they have good English or they're confident enough, they go there directly. If not, then we invite the worker to come to our office, and then they would come and meet with them, the legal advocate first, and then they would decide, you know, where the person would be referred within their organization. So, the next step would be the transitional worker, and then basically they go from there. They work with them on their plan. And quite often, also, we referred them to Legal Aid Ontario, because a lot of them require Legal Aid certificate if they need legal help.

Q. And we mentioned earlier on the literature that was available to you. If you can go to the other binder, volume one? And I'm going to ask you to go to Tab A(3). Do you have that in front of you?

A. Yes, I do. Mhm.

Q. And you've seen this before?

A. Yes, yes.

Q. And what are the documents in this tab?

A. So, there is this clear Community Legal Education Ontario pamphlet on elder abuse. And then, I believe there is also a resource - I have to look it up, just one second. Is it separated or no?

Q. The pages are numbered in the top right-hand corner. If I can assist, the next document is...

A. Yeah, yeah, I think the next document is the Ontario resource.

Q. ...at page 35.

A. Service Ontario resources on elder abuse with indicators of abuse, and also the resources where people can obtain help in their situation or information.

Q. And can you go to page 39?

A. Yeah, mhm.

Q. And it's a document from the Province of Ontario, "What You Need to Know about Elder Abuse."

A. Yes.

Q. Have you seen that document before?

5 A. Yes, yes, I looked it up on the internet.  
Yeah, mhm.

Q. And was that document available to you in 2011?

10 A. Yes, it was, and I actually used it for the resource page to translate it for the Nikityuks, and then gave it to them.

Q. And you mentioned the translation. Are these the documents that are in the same tab at the start of page 50?

15 A. Yeah, that's the resource page for seniors, like hotline, and information, Legal Aid, and so, yeah.

Q. And we'll be coming back onto these documents more later on, but generally, when you dealt with the Nikityuks, did you follow the steps taken in these documents?

A. Yes, I did.

20 Q. Let's talk about the Nikityuks. Can you recall when you first met them?

A. I first met them 2000 - in 2010? It was summer of 2010, I believe it was July 2010 in the Innisfil library? For, basically, for the first appointment.

25 Q. Could it have been 2009?

A. No, that was 2010. July 2010. I think it was 2010. Maybe it's 2000 - I'm not sure, actually, sorry. Yeah, but I met them for the first appointment in - that's how I met them for the initial appointment, at the Innisfil library.

30 Q. If we go to Tab A(8) in front of you - sorry, Tab A(6). Do you recognize that...

A. Was it 2009?



Q. ...document?

A. Yeah, then it was 2009, I apologize, yeah.

That's why...

Q. What is that document?

A. ...it's been no longer - that's the intake.

That's the front page, like their contact information and the information when we did the intake, when they immigrated to Canada, where they live.

Q. And whose handwriting is on that document?

A. Mine.

Q. And if you look at Tab 7, there's another intake form.

A. Yeah, it's Valentin's. That was Alla's intake. That's correct, yeah, there are two files.

Q. And can you remember what service was required by the Nikityuks when they first...

A. Settlement...

Q. ...were introduced to you?

A. ...settlement service. During that first appointment, we do the needs assessment. So, we go through the....

Q. Well, no, no, let's back up the train. When they first were presenting to you, can you recall what was specifically asked?

A. Yeah, that's what I mean. When we first meet with the client, we go over a variety of - like, we basically go through the list of different topics, and then whatever applies to them, we would discuss. So, they were specifically interested in attending English classes, and so I helped them by referring them to the assessment because that's the process of the YMCA. They first get the assessment, and then they get placed in a class. Yeah, but that wasn't the only topics at

that meeting.

Q. And who introduced the Nikityuks to you?

A. I received a phone call on my phone - work  
phone number from Svetlana, their daughter. She asked - she  
5 found us on the internet, and she was asking about our services.  
She said she has her parents here, and it would be helpful if,  
you know, they could study English. They could learn some  
English, and then I provided information about what we do, what  
- that I can meet them in Innisfil 'cause I'm travelling to that  
10 area, and - so yeah, and I booked an appointment and I actually  
expected them to come together, but then when I arrived, it was  
just Alla and Valentin there. I didn't know they could drive,  
you know. I didn't know much about them from the conversation  
with Svetlana, but - so yeah, that's who introduced us.

15 Q. And did you know Svetlana before that time?

A. No, no, never.

Q. And in respect of the programs that the  
Nikityuks enrolled on, what were any fees paid to the YMCA for  
those programs?

20 A. No, it's a free program. We're funded by  
Citizenship and Immigration Canada.

Q. And could I take you to Tab A(9)? Do you have  
that document in front of you?

A. Yes, I do.

25 Q. And what is that document?

A. That's the privacy statement that follows the  
privacy legislation in Ontario that we need to inform the  
clients of and abide by.

30 Q. And what did you understand in terms of the  
privacy obligations you owed to the Nikityuks?

A. Well, it's all here. That I am to keep any  
information collected from them, including their names, address,

phone number, any information confidential. And I'm not allowed to release it to anybody without their permission. I can disclose it if they allow me for any specific purpose, not just in general, but for that purpose, we have a release form in the office. There's also a provision that you - they can verbally, you know, provide the release. But when you're dealing with organizations mostly, the form that you need to sign with the clients. And then, that any information disclosed at any point regarding children under 16 would not be kept confidential due to child protection policy. And that also, if you're subpoenaed to court, also you are not, you know, you will have to disclose it in court.

Q. And if we just, for identification purposes, we looked at A(9) which has Alla Nikityuk's signature on - if I could take you to 10? A(10)?

A. Yes.

Q. Is that the documents signed by Mr. Nikityuk?

A. Yes, mhm.

Q. And can you recall how they came to sign those documents?

A. Yeah, I asked them - I don't remember exactly if I gave them this form or if I emailed it to Svetlana, but after the appointment, I asked them that the - you know, I asked Svetlana to review it with them. I think it was an email - to review every single - have it translated and review it and explain it, because I wanted to make sure that they fully understand it. You know, I didn't just want them to sign and not knowing what they're signing. So yeah, that's why the date is August 10<sup>th</sup>.

Q. And in fact, just to - while we're dealing with that point, if the witness could be given the plaintiff's production on - in my heading, it's all you two I believe the -

I just want to go to Tab 64 of the plaintiff's production. Do you have that in front of you? Page...

A. Yes, I do.

Q. ...403?

A. Mhm.

Q. There's an email there dated August the 5<sup>th</sup>, 2009?

A. Mhm, yes.

Q. Is that an email from you to Svetlana?

A. Yes, that's correct. That's the email.

Q. And if I can draw your attention to the last paragraph. Could you read that out for the record?

A. The last paragraph for you mean the August 17<sup>th</sup> or?

Q. August the 5<sup>th</sup>, the one that says, "May I ask you."

A. August 5<sup>th</sup>:

May I ask you to print off the confidentiality agreement for the appearance and read it with them, and ask them to sign and bring to the appointment on the 19<sup>th</sup>? I didn't want to overwhelm them when I met them, as I gave them a lot of info that date. It's our standard form which I need to add to their files.

Q. So, when those confidentiality agreements came back to you signed, did you understand or assume that Svetlana had explained the contents to the Nikityuks?

A. I asked them, and they confirmed that they did.

Q. Thank you. Now, with respect to Svetlana, I've already asked you, did you know her before the call. Do

you recall when you actually first met with her?

A. Not 100 percent sure I remember the very first meeting, I met her at the YMCA because I was going there on my own and taking my children there, and I remember really, one  
5 time she asked, but we already had communication. That's why I'm not clear exactly on the - for knowledge of the event, but she emailed me that her daughter's dating a German fellow, and he - the family is very religious, and when they are visiting, she wants to take them to a local church. She was asking me if  
10 there are any orthodox churches. I told her that there is a Greek Catholic church, it's as close as it gets, and she wanted to go there, but then she emailed me that plans changed. And are they both to come, but I still said if you ever want to go, I'm open to that. So, at some point, she said she'd like to go  
15 on her own, and that's clearly what I remember from a meeting that we met at the church, and there was a service, and then we had coffee. But other than that, in terms of the very first meeting, I can't tell you specifics, you know. I know that it was YMCA, and this one particular - it was only time I went out  
20 with her.

Q. So, what - you mentioned about the invitation to church. If you could go back to Tab 64? Do you have that in front of you? Tab 64?

A. Yes, I do.

Q. And if you could go to page 406, and you'll  
25 see an email marked in the left hand side, there's a letter dated September the 3<sup>rd</sup> 2009.

A. Mhm.

Q. Is that the email you were referring to?

A. Yes, yeah, that's right. But then they said  
30 that plans changed, so yeah, that's the request to, you know, regarding the church.

Q. Now, while we have those emails open, just for the sake of convenience but to take things out of order, I'd like you to go to page 408 of the email chain.

A. Yeah, mhm.

5 Q. And at the very bottom, you'll see the beginning of an email, number 19.

A. Mhm.

Q. An email dated September the 29<sup>th</sup>?

A. Yeah.

10 Q. If you go to the next page, it's the body of that email on page 409. In the last sentence, you wrote, "I hope they can continue with classes, and this is their ticket to independence." What did you mean by that?

A. They - ticket to independence, it's very  
15 simple. It's because they couldn't communicate and then it's a big stress. And that's what Svetlana was also mentioning, that she has to go to all the appointments with them. It's a lot for one person. So, basically what I meant, is that if they  
20 continue with English classes, they'll learn basic English to at least get by on their own, and they wouldn't need to rely on her for every single - you know, appointment, or every grocery shopping or anything. Right, like any single trip to anywhere in the community. So, that's all I meant to say; that they will  
25 have basic English, you know, if they continue with English classes to be able to communicate on their own.

Q. You developed over a period of time a relationship with Svetlana. Could you explain to the Court the nature of that relationship?

A. It was not really much of a relationship,  
30 because - well I, at the time, I was willing. Svetlana too, she was really willing to take her mom and Valentin to the Y, like out in the community, and I did mention that we'd go to the Y on

a regular basis. There was me and a couple of other Russian-speaking ladies who really, you know, enjoy getting together at the Y. We went to the swimming pool, and I extended the invitation to Svetlana to maybe coordinate those meetings, you  
5 know, when we went. Once, we just ran into her there, and she really like it, and then we kind of emailed when we were planning to go again and if she could come, or if she couldn't come right off. And she couldn't come, because her schedule was bad on - during the week, and I couldn't attend on - during the  
10 week, so a couple of times, she asked me to go to yoga class, but I had to be home with my kids, so weekends worked for me. Sometimes she could make it on the weekends and she brought Alla. At the time, she couldn't, so - and she called. She called me at the office. She called me on my work phone, and  
15 sometimes, you know, like it wasn't often, but once in a while, and we had a friendly conversation. So, that was about - we've never really been friends, you know, like we wouldn't go anywhere together, we never got together. Like, I've never met her family. Like, it was purely - like she was more of - like  
20 she was the daughter of Alla and Valentin, and I had pleasant conversations with her over the phone mostly. And then I saw her at the Y when I went there with my children or with the ladies.

Q. And you were in court when Mrs. Danilov gave  
25 evidence, and you recall that she gave evidence that she shared information with you concerning the financial arrangements between her and the Nikityuks. What would you have to say about that?

A. The only information that I was shared with,  
30 is that they sponsored the parents, and they moved here permanently, so they sold everything and they're here for good. And that's all - and that she was taking care of them by taking

them to appointments. She was very happy they were coming to classes, so I - that's all the information I have.

Q. And so, just for clarity, did she ever give you any financial information concerning their arrangements?

5 A. No, no, we never talked about finances.

Q. And you indicated that you weren't close friends, but is it correct to say that you remained in constant - let's change that word - frequent communications with - between 2009 and 2011?

10 A. Yeah, but it was, again, not frequent. Like, not weekly, could have been, you know, a few weeks, even months. You know, and so, like - yeah, there was communication, but it wasn't close frequent communication.

15 Q. And within that - those communications, you asked her for some assistance concerning the sponsorship arrangement with your own mother?

A. There was just a couple of situation when - yeah, one time, I had clients who had - who were applying for Canada Pension Plan, and I knew there is an agreement between  
20 Canada and Russia, and I was trying to find it and I couldn't, and I thought of Svetlana that, you know, she probably knows. So, I asked her about that agreement, I don't even remember that she gave me information or not, but that was one instance when I asked her for something - about something. And then, another  
25 time, I was considering - yeah, doing the forms for my parents - for my own parents, and I looked at the forms, and there was the income form, and I didn't know if you calculate gross or net income. And I asked Svetlana 'cause I knew she did the applications for her parents, and I asked her to just help me  
30 figure out which type of income you calculate, you know? And again, we'd never really met to discuss it, or we never - like, it never came to a discussion, you know, can create discussion,



so that were - those were the only instances that I asked her about something.

Q. And also during those discussions, did you provide Svetlana with information about available jobs for her?

5 A. Yeah, one time at one point, Svetlana told me that she would like to get a part-time job, and - or a job. And so, I told her that I'll keep my eyes open and my ears open, and then a friend of mine was looking for - a friend of mine had a friend who was looking for Russian and English-speaking person  
10 to work at the press, and I thought of Svetlana right away because it was in Innisfil, and she spoke both languages really well. So, I told her about that, and she - I gave her the phone number, they connected on their own. She went to meet him, and then she told me that she didn't take the job. It didn't work  
15 out for her. And then later, I saw at the - like, when we receive job postings for the Y, that there was a position of membership sales off - like, a rep at the Innisfil Y, and I sent it to her, and I said - I just said there is a position available. So I just shared information that I came across,  
20 because she asked me...

Q. And...

A. ...previously.

Q. ...just to assist with the dates, if you go to Tab 65, page 420, we have an email there, number 12. It's  
25 marked at 12 in the right hand column. An email of February the 7<sup>th</sup>, 2011.

A. Mhm.

Q. Is that one of the jobs you mentioned to her?

A. Yeah, yeah, that's right. Mhm. With Ladnier  
30 (ph), the owner.

Q. And then, if we go over to page 421, email number 14. This is June the 27<sup>th</sup>, 2011 email.

A. Mhm, yeah.

Q. Is that the other job...

A. The other job, yeah.

Q. ...you were referring to?

A. For the sales membership at the Y, mhm.

Q. And if you go to page 421(a).

A. Twenty-one?

Q. Maybe it hasn't....

A. Ah, okay, yeah, yeah, yeah. Mhm.

Q. 421(a), is that the...

A. That's the job, yeah, the posting. Mhm.

Q. ...the job you - okay. And that's dated June the 23<sup>rd</sup>, 2011?

A. Mhm, yes. I just want to mention I - it's not exclusive to Svetlana. A lot of people asked me about jobs, like Russian-speaking especially. People - I gladly share information when I hear of something, so it's not exclusive just to Svetlana. It's common practice.

Q. And in respect of Pavel Danilov, had you ever met Mr. Danilov?

A. No, never. Well, until the discovery.

Q. Until the?

A. Discovery, you know?

Q. Discoveries. Did you ever invite Svetlana Danilova or Pavel Danilov to your house at any time?

A. I invited Svetlana, but how it happened was that I haven't seen her for a long time, and we were, as I said, we were trying to go to the Y together, coordinate in between me and the other ladies, and so, she also knew Iryna, in particulating Iryna Lavreka [sic], and you know, as always, happy to, you know, to get together. So, we kind of indicated - extended invitation to Svetlana to go to the Y, and Irina

suggested we go - before we go to the Y, we go to the park, the  
Innisfil Beach Park. But then, I - we kind of made plans about  
the date, and then I had discovered they had a meeting at school  
- my children's school, so I wrote in my email that sorry, I  
5 can't go to the Y, but I would gladly come to the park and see  
you guys, right? And then on the day, which is June 28, the  
weather was not good, and it was kind of chilly, and I said oh  
you know, I talked to Irina and I said, you know, the weather  
isn't really good, so to be out - do you still want to get  
10 together? And I said you guys can come to my house, we can grab  
lunch together, and then just see - meet, you know, for tea or  
see each other, right? And you can go to the Y if you still  
want, and I'll go to my meeting, and Svetlana wrote that she had  
something going on at the house and she wasn't available. So,  
15 that was not even planned invitation, it was kind of on the day  
of our, you know, when we wanted to go to the park, it was bad  
weather.

Q. So, just for the date of access, you go back  
to page 421 of Tab 65.

20 A. Which one?

Q. Eight - page 421, Tab 65.

A. Ah, 421. Yes.

Q. The email mark number 15...

A. Mhm.

25 Q. ...dated June 28<sup>th</sup>, is that the email you were  
referring to?

A. That's right, yeah, like - and I gave her that  
because she's never been to my house before.

30 Q. Now, it's being suggested by Mrs. Danilov that  
her understanding is the purpose you wanted to invite her to  
your house, was to discuss committing some fraudulent scheme, or  
some scheme involving the Nikityuks to get social housing. What

do you have to say about that?

A. Well, that's not true. And even in my emails, you can see what the purpose was. You know, it was just to have lunch together.

5 Q. And did you have any discussions with Svetlana Danilova to the effect that you wanted to assist her parents in getting social housing...

A. No.

Q. ...bypassing the procedures?

10 A. No, no.

Q. And you mentioned Pavel Danilov. You first met him at the discovery. So, there was no relationship between you and him at all?

15 A. No, and I've never met him. I've never talked to him, I've - yeah, don't know much about him.

Q. Now, you mentioned earlier on that you and Svetlana were not close friends. Let me ask you another - were you enemies?

A. No, no, it was a very - just pleasant...

20 Q. Did you have....

A. ...civil relationship, you know? Just, you know...

Q. Did you have....

A. ...social relationship.

25 Q. Did you have any argument with her?

A. No, never.

Q. Did you have any disagreements with her?

A. No.

Q. Any harsh words spoken between you?

30 A. No, never.

Q. In 2011, did you hold any ill will or malice towards...

A. No, absolutely not.

Q. ...her or her family? And in 2011, or at any time, have you had any reason to say false things about the Danilovs?

5 A. No.

Q. And generally, we'll come onto this in more detail, but have you ever written anything false about them?

A. No.

10 Q. And did you have any reason at any time to want to interfere in the Danilov and Nikityuk family relationship?

A. No, never.

Q. And at any time, did you have any reason to encourage the Nikityuks to leave their family home?

15 A. No, I would have never suggested something like that.

Q. During this trial, the Danilovs brought a number of witnesses to court. You sat through the entire testimony, correct? And the witnesses they called, have you 20 ever had any dealings with any of those witnesses?

A. I've never met those people, and I've never been to any of their family gatherings, or never met their daughter, no.

25 Q. So, let's talk about your relationship with Nikityuks. Explain the nature of your relationship with them prior to August 2011.

30 A. Yeah, they started coming to English classes, and they right away, you know, were interested in people around them. They were very open, very friendly. I was on the road mostly, so I wasn't much in the office. I don't remember if them or Svetlana asked me that that would like to meet other people of their age, you know, and if we know of anybody. I

asked Ruth because she was working primarily with clients in Barrie, and she knew of a family of similar age, you know, similar background, and we asked the family first - Ruth did, then they said yeah, we'd like to meet them, and we gave them  
5 the phone number, and then they connected. They were very friendly with all the teachers, but like, the teachers really loved them. Like, especially one teacher in particular who was with them the longest. She really, really, really loved them, like, and cherished them. They were communicating with other  
10 clients, Russian-speaking clients, they made friends, and I don't remember how exactly how - well, through the Y, I told them about the Y and Alla really wanted to go, so they came with Svetlana, and there were other ladies. That's how they met Irina. And so, yeah, they always shared how they love to  
15 travel, and they mentioned where they've been, you know, like - and where they would like to go. So, I don't remember exactly when, but at some point - and sometimes, Valentin came to my office and asked me for a map, because they wanted to go somewhere and at that time didn't have GPS. So, I'd print him  
20 out a map of where they wanted to go, and that's how the conversation kind of started about, oh you know, we'd like to go there, or we'd like to go here, or we've been there, or they would start saying oh we've been to that park, national park, that person. And I said oh I'd really like to take my kids to  
25 safari, I've never been there myself. They're like, well we can go together. So we made a plan, and they went in their car, and we went in our car, but we met there, and - so yeah, took the bus, my children were there, you know. They were very friendly, like very friendly people. And that's kind of how it started,  
30 so they mentioned to me they've been last year, like the year before they went to Bala Cranberry Fest, and now it's happening again. And at the time, I had my weekends free because my

children went to their dad, and I, you know, I was on my own and I enjoyed doing things too. And so I said, oh I'd like to come, you know, and they invited me to join them. So I went with them to Bala, but then it kind of an exchange you know, and my mom  
5 came and - oh sorry, my mom speaks only Russian, no English. So, I wanted to entertain my mom, and kind of take her out, and I invited them to come with us to Collingwood. They said they've never been there before, so we went to Scenic Caves together, and then as - again, as a gesture, they took her to  
10 Orillia. You know, my mom was only visiting, like she'd visit maybe a month and a half or two months at a time, you know? And so yeah, but they also shared a lot about their life back in St. Petersburg in terms of going to concerts. It was, you know, of course, a big place, right? Theatres and galleries, and so they  
15 said they really miss that part. So, when I - a couple of times I heard of different things, you know, I had a concert at the church. I was quite involved in our church at the time as volunteering with the Sunday school program. I was going there on a regular basis, and so I invited them to a Christmas  
20 concert, and they gladly - they were very happy they came, and then Ruth was singing Lyrica choir, and that choir was actually started by Ukrainian immigrant lady, and it still goes on. So, I - one time I got tickets for myself and somebody else and they couldn't come. My friend couldn't come, and so I extended the  
25 invitation to them, and they joined me to the concert. So, like that was - well, there were other occasions, but that was the nature of the relationship. Just social, cultural. Mhm.

Q. And you say social, cultural. I suspect that you're going to be asked this question. Would you, and I'm  
30 taking into account the nuances of the language, would you class them as your friends?

A. See, before this Court, I don't know. Like, I

had my notion of friendships, so at the time, I would say no. But now, have been explained what friends means in Canada, so - a friend is somebody you're very close with. You share your secrets, you rely on them in times of troubles, you know? You'd  
5 die for them, that's a friend to me, you know? Well, at the time, I would say no, they're not that type of friends. You know, how can they be with the age difference, you know? I wasn't like, relying on them, you know, for my emotional need or anything like that. So it's not that type of friendship. But  
10 now, like now I've been explained that in Canada, anybody who is not an enemy who I have good relationship with is a friend. So now, yeah, I would say that yeah they're friends. But not the type of friends I would describe, like we understand friendship, you know? Like that's deep, like it goes back to something. You had shared experiences, you know? Like it's not just, you  
15 know, like somebody you'd go to a concert with, and hang out in the park. It's different.

Q. And so going back to 2011 - so just to understand, you attended social occasions with them?

20 A. Yeah, yeah, that's all, you know? Like, that's the extent of friendship, yeah.

Q. And we'll be dealing one of those social occasions later on specifically. But in terms of your dealings with them back in 2011 and prior to 2011, what would you say the  
25 nature of your work obligations were towards them?

A. Well, as a counsellor, my obligations were to provide them with assistance if needed or whenever requested, information, orientation, that's - that was a part of my job.

30 Q. And when they asked you for help, why did you provide it?

A. Well, that was also part of my obligations as a counsellor, so that was different. It's - you know, if was



work related, it's - I would treat them like clients, like anybody else.

Q. And you were able to separate that relationship?

5 A. Yeah, absolutely.

Q. When you were helping them, were you acting in your role as a counsellor or as their friend?

A. No, as a counsellor. When I was helping them on the job, I was helping them in my role as a counsellor.

10 Q. And the assistance you gave them, which we will come on to, would you have provided the same assistance to any other YMCA client?

A. Yeah, yeah, I would.

15 Q. Now, when you communicated with the Nikityuks, did you communicate with them in English or in Russian?

A. Russian.

Q. Always Russian?

A. Yes.

20 Q. And in your assisting them, would you have treated them any differently if you did not know them prior to them seeking help?

A. No, no, of course not.

Q. Have you had any gifts, or rewards, or money from them?

25 A. No. No rewards, or money, or any - like, I had - but not in my role as a counsellor. No gifts in that respect.

Q. So nothing as a counsellor, but what about privately? Did you ever receive any presents from them?

30 A. On my birthday there was a gift, and I think one time I invited them, but not just them, I invited a whole bunch of people to a thanksgiving party. We had offices from

Base Borden learning English through the NATO program, and my friend brought them, and I wanted it to make it like a cultural event. So, I think they brought a little vase, like a - you can put candy in, you know, that was - and they, for holidays sometimes, they would bring like Christmas, you know, New Years. At the office, they would bring just a box of chocolate. They would always say oh it's for the children, you know? But just - that's all. Like a box of chocolate.

Q. And we'll come on more to the gifts, because it's a significant part of the case. But have you ever received any promises from the Nikityuks...

A. No.

Q. ...that they would provide you with any gifts, rewards, compensation for assisting?

A. No, services were completely free and they knew that...

Q. But....

A. ...so never. There was never any discussion of, you know, rewarding me for my job.

Q. And did you do anything with or for them in the expectation of receiving something from them?

A. No, no, I do support and work - I work, it's my job, right? I do that in my role for anybody.

Q. And did you have any discussions with the Nikityuks at any time concerning any expectation of them giving something to you...

A. No.

Q. ...or rewarding you?

A. No, no.

Q. Now, back in August 2011, before you became aware of the assault, what did you understand about the nature of the relationship between Mr. and Mrs. Nikityuk and the

Danilovs?

A. Actually, I was under the impression that it was a very good relationship because Alla and Valentin were always fond of their family, they always shared, specifically, about their granddaughter. I think that she was the pride, you know, of the family because she was in sports and she qualified for Olympics, and that's what I remember, that Svetlana and them were always proud of them. Svetlana was sharing about how - sorry, Alla was sharing how Svetlana was also - like they had dogs in the past, and Svetlana was training the dog, and the dog won awards. And so, I had a sense that, you know, it was - like they really - like it was a real family, like a true family. They didn't say much about Pavel. They said he was always working and they need to kind of respect that, because sometimes he works at home and they need to be quiet, you know? But that he's always working, so then they all have to respect that. But that's what's so....

Q. So, was there any hint of anything being wrong in their lives?

A. Not - no, not before - like, August 2011, but a couple of times, yeah. Like so one time, again it wasn't on purpose. It wasn't like Alla came and shared that to me. It was, you know, just I guess accidentally. There was a conversation and Alla said well yeah, it's hard to live with - together, you know, with your children or parents, I guess. And she says I know that I irritate my daughter, you know? Like she doesn't like me touching the appliances, you know? She doesn't want me to do things because you know I don't know it right, and - but she's my daughter, I love her, and that's the main thing, you know? Like I have to kind of let go of those other things - have to be secondary, you know? So, that was one thing...

Q. So, okay, before you go onto the next one...

A. ...but it didn't dictate any....

Q. ...do you know - can you recall roughly when that would have been?

A. That was on our Bala trip, but no. Ask me  
5 when we went and I can tell you. Like, it was our Bala trip and....

Q. When you went to Bala?

A. Yeah, we were in the car driving back, and I  
10 don't remember. Maybe I mentioned that it would be hard for me to live with my parents, you know? Like, that's why I don't want to sponsor them, you know? Maybe I said something, and then she said yeah, it's very hard, and she shared this particular incidents. And then another....

Q. Before we go on though, I have some specific  
15 questions about that. Was there any discussion about them wanting to leave?

A. No, not at that point, no. She just shared that yes, it's hard, you know, it's hard but you kind of, you know, accept it as, you know, like that because family's more  
20 important those inconveniences, right? And you just make it work, you know?

Q. And then you were about to reference another discussion?

A. Yeah, and then another discussion, was there  
25 not - again, it wasn't really a discussion by me, but there was one occasion. I don't remember - oh, I think Pavel and Svetlana were in the Dominican or somewhere on vacation, and Alla and Valentin wanted to invite friends over, and they said they can't do it when they're home. So, this was kind of a, you know, a  
30 nice thing for them to be able to have people over, so they invited me. It wasn't anybody's birthday, just, you know, that they could do it. And so, there were a number of people there,

their friends. And I was invited too, so I went. We just had a meal and that because - you know, like you look around right? And people said oh, it's so nice, you have such a backyard - a big backyard. It wasn't me, like somebody said, and they said  
5 oh you keep plants. Different things here, and you used to garden back in Russia. And they said oh no, we're not allowed to plant anything here. Svetlana has her own plants, and we're not to, you know, kind of bring our own ideas here. So, that was another incident when it was kind of an indication that they  
10 were to not, you know, do things in that house. And you know, that they wanted to do....

Q. And again tho, was there any discussion about them wanted to leave?

A. No, no, it was a meal, you know, with friends  
15 so they - no, they didn't talk about, you know, that they hate it here. No, they didn't say anything like that, they just said that they're limited in what they can do, you know?

Q. Okay. And even though - when were you first made aware of the specific terms of the sponsorship arrangement  
20 between the Nikityuks and the Danilovs?

A. What do you mean in particular?

Q. When I mean specific, I mean the details.

A. The details? Again, I don't know - like when they already came and - in August, and disclosed the other  
25 things, right? They - then they started telling more about their financials and things they discovered, or that they thought was supposed to happen and were not happening, or they - you know, so - but again, because now you know it's been going on for so long, and I've seen so many now documents and heard so  
30 many things. So now I can't tell you if I knew those specifics then, or if I've just learned them through - but definitely through the Court. Personally, I've learned quite a bit, so

now....

Q. So, going back to August....

A. Yeah, like I knew certain - yeah, they were disclosing things, but I don't even think they knew much at the  
5 time, you know?

Q. So, we're only dealing with what you know.

A. Mhm.

Q. So, you knew there was a sponsorship  
agreement?

A. Yes, yes.

Q. Did you have any information prior to August  
2011 about the financial arrangements?

A. No, no, nothing. Just only that they lived  
with their children, that's all.

Q. And prior to August 2011, what information was  
15 provided to you by the Nikityuks about their finances?

A. We didn't talk about finances at all. I know  
they only said that their Russian pension is being transferred  
here, but they didn't mention anything of how it gets here, how  
20 much, like nothing. They just said that they moved here for  
good. Like, they transferred the pension here to, you know -  
like that's the only thing I knew.

Q. And did they discuss anything about their  
financial arrangements with the Danilovs?

A. No, no, they never talked about finances.

Q. And other than the comments you made earlier  
on, did they say anything negative about the Danilovs to you  
prior to August 2011?

A. No.

Q. When did you first become aware of the  
30 financial arrangements?

A. When they disclosed. When they started saying

things that were happening, and also that financially, they were not allowed - like they didn't have any knowledge of any finances, and they were under the assumption that the house was purchased in their name, and then with Pavel invested a portion of their money to his own business, and that was supposed to be like for some long term, you know? Like when they came and started disclosing those things.

Q. So, from August 2011 onwards?

A. Yeah, yeah, yeah. Mhm.

Q. And specifically, the transfer by the Nikityuks of all of their money to the Danilovs, when did you first find out about that?

A. When they started providing - like when we referred them already to services like Community Legal Clinic, and they were - or Ontario Works, and they - I don't remember. In any case, they were referred and they were trying to support their case, they were starting to bring those documents to be sent to the lawyers or legal clinic.

Q. Did you at any time - were you provided with any information about the Nikityuks bringing cash into Canada?

A. No, I've never heard of it.

Q. And I suspect it may be suggested to you that you received cash from the Nikityuks?

A. Yeah, that was an interesting indications. No, I never heard of it. I never received any cash, nothing.

Q. And I suspect it's going to be put to you that you put the idea of Nikityuks getting social housing into their heads prior to August 2011?

A. I never had a discussion with them about any separate living arrangements.

MR. MAE: Well, Your Honour, I'm noticing the time. I wonder if this is a convenient point?

THE COURT: Yes, we could take our morning break now.

MR. MAE: Thank you.

CLERK REGISTRAR: Order please.

5

R E C E S S

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

CLERK REGISTRAR: Order please. All rise. Court is now resumed, please be seated.

10

THE COURT: Counsel, there's just one more scheduling issue I meant to address this morning. The trial coordinator has reminded me on Monday, November the 21<sup>st</sup>, I have a criminal matter to be spoken to at nine-thirty. It should only take a few minutes, so I'm just suggesting a ten o'clock start for Monday morning.

15

MR. BORNMANN: Thank you, Your Honour.

THE COURT: And I'm also prepared to sit a bit later on any particular day if it helps to finish a particular witness, subject to staff availability and issues like that.

20

MR. MAE: Thank you, Your Honour. I'm obliged. So, if the witness could be given the two green binders which, again for the record, Exhibit 3?

25

MR. MAE: Q. Can you turn to Tab A(1)?

A. Book one or two?

Q. Volume one.

A. Can you say it again?

30

Q. A(1). You have that document in front of you?

A. Mhm.

Q. What is that document?



A. That's the log that I started in August. Well, I started it a bit later, but it's a log that I created while I was working with the Nikityuks.

5 Q. So, before this typed log was prepared, describe to me what would be in the Nikityuks file, or any client's file.

A. Well normally, you would have the first page, then the intake form with some of the points of what you've done with them, like which area you've assisted them with. And then, 10 we kept notes on file for each of the visits, so what again was done for the client, and any documents that were prepared with the client. Copies, faxes, letters, forms we would also keep in the file.

15 Q. And this log. You prepared the typed - you prepared it, correct?

A. Yes.

20 Q. And you've not been able to proceed any handwritten notes with respect to the matters in this log. Can you explain why?

A. I - whatever was on file was produced. So as soon as we received the litigation, the file was taken to the YMCA first, and then to the lawyer's office, and I've never touched it since. So whatever was in the file was available - what was produced.

25 Q. And have you personally destroyed any documents?

A. No, nothing, no. Like it was - everything that was there was there.

30 Q. And did you make any handwritten notes with respect to these log entries?

A. As I work with any client, I make - yeah, I make handwritten notes. Usually it's for numbers, you know,

like reminders where to call. But then, I don't keep them on file usually. Like it's - for me, you know, and then I get rid of them when they're not needed anymore. I sometimes have a notebook where I put that information in, and sometimes it's a sticky note. But I don't put them in the file.

Q. And for the sake of clarity, in terms of the entries in these logs - the log which starts August the 19<sup>th</sup>, 2011, did you have any handwritten notes relating to any of those events?

A. I don't think I have handwritten notes relating to the events. Well, I kept them as we went along. Maybe later on, so in October then August. Yeah, I don't think there were handwritten notes as of August events.

Q. Okay. Now, the first entry on the log is August the 19<sup>th</sup>, but you just eluded that's not the date you typed that?

A. No, no, I typed - I started typing at the beginning of October.

Q. And if I can take you to the end of the log, and it's going to be three pages from the back...

A. Mhm.

Q. ...of the log, there's a screenshot of the properties of the log. Do you have that in front of you?

A. Yes.

Q. And there's a date there, "Content created 12<sup>th</sup> of October, 2011?"

A. Mhm.

Q. Is that the date that you started to create this log?

A. It appears to be.

Q. And there's a date, "Last saved 18<sup>th</sup> of September, 2012." Is that when you stopped writing the log?

A. Yes, yes. Sorry, September 12, right? You said 12 or 11?

Q. Oh sorry, yes.

A. Yeah, 12. Mhm.

MR. MAE: And Your Honour, just an editorial.

There was a request to admit the authenticity of the documents which has been referenced a few times in the proceedings.

MR. MAE: Q. So, moving forward. So, why did you keep this log?

A. As I said, you know, I would normally keep notes on each of my visits with the clients, but in this case, it was so much, and it was a lot of information including the documents, it would be easily lost - the notes would be easily lost in between those papers in the file. So, I wanted it to be in one document where I could just add entries, and that way it would be easily accessible. You know, like all the work done and for reference points? But there was another issue when later on, when I brought it to the attention - like in September when I brought it to Ruth's attention, and in October we started receiving phone calls and letters from the Danilovs, you know? Then my direct supervisor told me to record everything I'm being - I'm doing for the Nikityuks. So basically, she told me I need to keep record of all my work.

Q. And we've already seen the log was started in - on the 12<sup>th</sup> of October, 2011, and there are entries in the log that predate that entry - that time. Where did the information come from to go into the log?

A. Well, it's from - it's a background information to how it all started. That's from my memory from....

Q. Okay, and we're going to focus on those in a

moment, but in terms of the other entries on the various dates, when was the log typed up?

A. I was in the community three days a week, so I wasn't in office, as only two days a week, and sometimes, you know, I would - like, some entries were done on the same day of the appointment, and some I entered like maybe a day or two later when I was back in the office.

Q. And during the time period when this log was created, did you ever go back and change any entries?

A. No, no, I never changed anything. Actually, after I read - there would be beneficial to add, because some of them, just in terms of details, right? Like they're very brief, like more telegraphic style. I got better with recording later, but I never changed anything.

Q. And in terms of - in general terms, are the entries in the log accurate?

A. Yes, they are.

Q. Would you say that they're complete, as in, they detail everything?

A. No, not - they're complete - they're - I don't know, like they're not meant to provide every single detail, you know? But they're more of a reference point and more of a general what's been done, you know? Like what type of assistance was provided, or what was done. Like it's not meant to provide every single detail. It's more of a record, a reference of going.

Q. So - and at the time....

A. Hard to lose track of the, you know, everything that's been done or communication, 'cause there are many agencies involved, and people, and so yeah. But it's not - it doesn't have like every single detail.

Q. And just before we go in further, can you go

to Tab 2? And there's another set of documents there.

A. Yeah.

Q. Can you identify them?

A. Yeah, those are Ruth Miller's notes. So  
5 whenever she worked with Alla and Valentin, she would make her  
own notes, and she also typed them up and put them in the file.

MR. MAE: And it's already been conceded, Your  
Honour, by us, but when we disclosed the note  
initially, they were all bundled in the same tab  
10 inadvertently.

MR. MAE: Q. So to the last question, there's  
Ruth's notes. You didn't have any input into Ruth's notes?

A. No, those are her own notes, yes.

Q. Now, let's go back to your log, and we have  
15 the first entry of August the 19<sup>th</sup>, and it relates to a  
telephone call that you had. Could you tell the Court, as much  
detail as possible, that you remember about that telephone call?

A. Yeah, I didn't have it - Alla and Valentin  
were not in classes because they were - there were no English  
20 classes in the summer, and I haven't seen Svetlana in quite a  
while. So, they - really, there was no communication. Then one  
day, I had my work cell phone because I was attending counsel,  
so I always had it with me, and one evening - I don't know the  
time, but I was already in bed reading a book, know you? I  
25 received a phone call and it was from Svetlana, and I picked up  
the phone, and she started telling me that if her parents come  
to see me and ask me for subsidized housing, I should know that  
nothing changed in the house. They're losing their minds, it's  
those people, you know, they're studying with that are filling  
30 their heads with ideas and they're completely like, you know,  
like they're crazy, you know? They want to live separately, and  
so that I should know nothing changed, and nothing's going on,

and I was really puzzled by such a phone call, you know? Like  
and I asked her but why would - like, I don't understand, why  
would they want to live separately? You know, they're two  
elderly people who don't speak English, and, you know. And then  
5 she said oh, you know, I'm sorry the doorbell rang. It was her  
daughter with the fiancé who came, and she had to go, and that  
was that.

Q. Okay, so you said the call was at your home?

A. Yeah, but it was on my work cell phone...

10 Q. Okay.

A. ...yeah, my work cell phone.

Q. And you provided that to Svetlana previously?

A. Yeah, yeah, she had my work number. I only  
had one work number. I didn't use my office number 'cause I was  
15 on the road a lot, so I was given a cell phone.

Q. And did you prepare - sorry, I'll rephrase it.  
Why did you wait until October to prepare this log entry?

A. Well, 'cause as we started working with them,  
documents started coming in. Referrals - were multiple  
20 referrals, and then it was, you know, like just keeping like  
what Ruth does. Just one entry at a time, it would get lost,  
and just to put one, you know, line for one page is  
inconvenient. So, I wanted it in a chronological order with,  
you know, in one place so that - and also because I was on the  
25 road, I didn't have that file with me. The file has to stay in  
the office. So, if I received a phone call from somewhere, I  
couldn't record it, you know? And so I went in back and I would  
type it up, and so it was just for convenience purposes, you  
know?

30 Q. And what impression did you have at the time  
of that phone call? Do you remember if you had an impression?

A. Well, I was really puzzled by what I heard,

and that was very strange. Out of the ordinary.

Q. And there'd been no pre-indications of...

A. No, no...

Q. ...anything?

5 A. ...I haven't seen Svetlana. I haven't talked to her. I haven't seen Alla and Valentin, and like - and then I received - so suddenly I received such a phone call in the evening, and I didn't understand, well, what was going on.

10 Q. And Mrs. Danilov's evidence was that your notes here are a twisted version of the telephone call. What do you say about that?

A. I really can't comment, because that's what happened. Like, I can't comment on what Ms. Danilov is saying because it's, you know, nothing of the kind happened.

15 Q. Well, let me ask you this. Did Svetlana Danilova complain to you about anything you had done?

A. Oh, no, never addressed it to me personally. I - just because I was working for YMCA and she knew that my parents could access my help, right? Like, you could just come  
20 and ask for help. So she - or maybe though it's something, a discuss - I don't know, I'm not aware of it. So, I only know that when she called me, she said that if they come and talk to you and ask you about it, I need you to know that nothing  
25 didn't say influenced by me, she told - basically she asked me not to be surprised if they come, but that, you know they're not in their mind basically, you know?

30 Q. And the other things Ms. Danilov indicated in her evidence was she specifically told you to stop brainwashing her parents about social housing. Do you recall that being said?

A. No, no, nothing of the kind. No, the only

thing she said is if they come and talk to you, this is basically like - because other people are filling their heads with ideas, and I want you to know that nothing changed in the house, and everything is good, you know?

5 Q. And just before we move on, chronologically speaking, the log ends on September the 17<sup>th</sup>, 2012. Why does it end there?

A. I don't exactly remember when the litigations were - like, when we were served. But that probably coincides  
10 with the time when I - when their file was transferred to another case worker in our office...

Q. So...

A. ...and I was no longer providing assistance on a regular basis.

15 Q. And why were you no longer providing assistance for the Nikityuks?

A. There was a disturbance circumstance. I came across the correspondence - so basically, the Court requested financial statements from Pavel Danilov, or from the Danilovs,  
20 and he put it in his submission to Court that he's not going to provide them because I'll get hold of them, and use it in my personal interest, and I already damaged them enough that we'll - they'll, you know, like he will make sure I'll get - like soon enough, I'll have real problems. And that kind of really distur  
25 - was disturbing to me that, you know, I don't know what he meant in that writing. So, I actually brought it up with my management, and I had a meeting with my lawyer, and I was advised - well, my management decided to, in order to protect me, I shouldn't be, basically, seeing such correspondence, you  
30 know? And I was - and for also to protect me, they transferred the file to another case worker so that I would no longer be accused of, you know, somehow trying to damage whatever, you



know, by working with the Nikityuks.

Q. So you weren't removed as their counsellor for disciplinary reasons?

A. No, no, for my protection. Yeah.

Q. Now, August the 19<sup>th</sup>, 2011.

A. Mhm.

Q. When's your birthday?

A. August 18<sup>th</sup>.

Q. August the 18<sup>th</sup>. And did you do anything with the Nikityuks in relation to your birthday?

A. Yeah, yeah, I actually - that summer, I wasn't going anywhere and I didn't want to do anything special, so I just wanted to have a few friends over. And there was a couple that, like, we had communication, but I've never invited them over, and they were also studying at YMCA, and I - well, one. The mother - the wife was studying, not the husband. And I knew Alla and Valentin, and Irina also knew Alla and Valentin, so I just wanted a small company. I haven't seen them in a while, and it was summer, so, you know, like, it's nice outside, so wanted just to have barbeque outside. I wrote an email to - like I wanted to invite also a couple of my friends from Toronto, and one friend couldn't make it. This couple couldn't make it because he's a truck driver and he was away that weekend. So, Alla and Valentin said they'll come, Irina, and my other friend Kate. And so, we just had a small, you know - well, it's not a party really, just a meal, you know, where we gathered and just enjoyed our social time together.

Q. And so basically, you invited the Nikityuks and some others...

A. Yeah, yeah, and other people.

Q. ...to your house for a celebration?

A. Yeah, yeah, for - just celebrate.

Q. And you referenced an email? If the witness could be provided with the plaintiff's productions, it'd be the one with - that contains Tab 65. And I'll direct you to page 421, which is the English translation of an email you wrote.

5 A. Mhm, yes.

Q. Email number 16, is that the email you were referring to?

A. Yeah, number 16. That's correct.

10 Q. And I see from that email, it's addressed to five people in total. The Nikityuks and three others, correct?

A. Yeah, but that's in Barrie, and then I talked to my other friends separately, like from Toronto. So yeah, but - so it's not exclusive list. Yeah, that's right, the email is addressed to these five people.

15 Q. And the date of that email is, in fact, the 5<sup>th</sup> of August?

A. Yes, mhm.

Q. So the party was arranged a few weeks before?

A. Yeah, yeah, mhm.

20 Q. And the date of the party was the 20<sup>th</sup> of August?

A. That's correct. Yeah, it was a Saturday.

Q. And who attended the party?

25 A. Alla, Valentin, and Irina, and my friend Kate from Aurora.

Q. And can you go to Tab 66?

A. Mhm.

30 Q. All the plaintiff's productions, and in particular, page 435?

A. Mhm.

Q. There are two photographs on that page.

A. What - just one second. Let me get there.

Yep, mhm.

Q. The bottom photograph, is that a photograph from your birthday party?

A. Yes, yeah. Alla and Iryna are here.

5 Q. Sorry, so, who's in the photo you have? Mrs. Nikityuk?

A. Yeah.

Q. The right. You in the middle?

A. Yes.

10 Q. And the lady to the left?

A. Iryna Lavreka.

Q. And, while we have this photograph open, we see Mrs. Nikityuk wearing a short-sleeve shirt?

A. Yes.

15 Q. At your party, did you notice any bruising on her arms?

A. No, I didn't notice any. Nothing of the kind.

Q. If we go to the next page, just for the sake of completeness, page 436. That's another photograph from your party?

A. Yes.

Q. And I see you, Irina, and Mr. Nikityuk?

A. Mhm.

Q. And then next page, page 437, is that another photograph from your birthday party?

A. Yes, mhm.

Q. And we see that it's a screen capture from Facebook. Did you publish that photograph on your Facebook page?

30 A. I must've put it on my Facebook, yeah. And I guess the Danilovs found it there...

Q. So...

A. ...and downloaded.

Q. ...the party was no secret?

A. No, no, of course not.

Q. And at the party, was anything discussed by  
5 you with the Nikityuk concerning the telephone call you'd had  
through Svetlana?

A. They - Alla said they need to come and see me  
in the office. She didn't say anything about why, but  
obviously, like, I kind of already guessed because of the phone  
10 call I received. So, I figured it was in relation to that issue  
of social housing or whatever it was, you know? And we never  
discussed anything about it. She just said we need to come and  
see you, I said I'm in on Tuesdays and so I told her you can  
come at 11, or whatever time it was, and they said okay, we'll  
15 see you there.

Q. And during the party though, did everything  
seem normal?

A. They held themselves together, let's put it  
this way. Like, I...

Q. They appeared happy?

A. ...could tell - they were okay, yeah. They  
were socializing, but I could tell something's bother them.  
Like, I could tell they're not completely themselves, but yeah,  
no, they didn't say anything and they - yeah, shared the meal.

Q. And at the party, did you receive a gift from  
25 the Nikityuks?

A. Yeah, well, that's the thing about the gift.  
Like, when I opened the card - there was a card, and I opened  
the card and it was signed by them, and there was \$50. I also  
30 received a gift card from my other friend, so I thought that I  
opened it already. Indeed, I didn't open it in front of them, I  
just, you know, received like - they give me the envelope, and I

think - and I would never open gifts, but then later when I opened it, I was like oh wow, you know, \$50. That's a lot of money. So I right away wrote them an email thanking them, but I basically said thank you for a big, meaning generous, gift, and  
5 that you shouldn't have, you know? And then later, I discovered it was a collected gift. So from the evidence that Alla gave, they contributed \$20 towards that gift. So, I - that's the thing about the gift. So basically....

Q. Now, a few questions about that gift.

10 Firstly, were you obliged to report receiving that gift to the YMCA?

A. I didn't think I had to report that particular gift.

Q. And....

15 A. It wasn't given to me at work as a result of my services, it was my birthday gift. And I still consider that to be a lot...

Q. And....

20 A. ...but at the time, I didn't know it was a collective gift.

Q. When this lawsuit was initiated about this gift - sorry, once the lawsuit was initiated, did you ask about this gift? Did you recall the gift at that time?

25 A. No, I didn't think of that gift at all. Like, we - 'cause I've never received any work - like I never received any rewards at work for my services.

Q. And the email that you referenced sending the Nikityuks, it's at Tab 65 with the document brief in front of you, at page 422.

30 A. There is no 22. Twenty-one?

Q. Four-twenty-two, you'll have a 421(a), 421(b).

A. Ah, okay.

Q. So you have to move forward a few pages.

A. And then 422?

Q. Yes.

A. Okay, I found it.

5 Q. And it's the email number 17.

A. Mhm.

Q. Dated 20<sup>th</sup> of August. Is this the email you're referring to?

10 A. Yeah, yeah, basically said I'm deeply thankful for the gift - for the big gift, you were very generous people.

Q. And the original email was written in Russian, correct?

A. Yeah, in Russian. That's correct.

Q. And that email, if I could ask you to....

15 A. Yeah, that's not correct translation, 'cause the word is "did."

Q. If you go to your Russian email at 4 - page 427.

A. Mhm.

20 Q. That's the email?

A. Yeah, yeah, that's the last one, 17. "Thank you for coming, and thank" - okay, yeah, see it's not even very correct translation. Sorry, it says, "Thank you so much that you came, and thank you for the big gift. You are very generous. Thank you a lot." And so, yeah, I sent them the link for Cirque du Soleil.

Q. So, just so we're perhaps clear, why did you refer to the gift as a big gift? There's a translation here that says "precious," but why did you call it such a big gift?

30 A. Not cause \$50 is a lot, I didn't expect that and I didn't - I would never, you know, expect somebody to give me \$50, and I meant to say it's too much. You know, like it's -

you shouldn't have done it. Like, I basically emphasized the fact that they kind of went - you know, like it was usually - apparently I didn't know that at the time when I was writing it, right? I thought they gave me \$50. Apparently, they gave me -  
5 they contributed \$20, but I didn't know that.

Q. Now, let's go back to the log now. We can spend a bit of time on the log, so Exhibit 1 can be taken away. The next entry in the log is August the 23<sup>rd</sup>, 2011. At - when did you type up that log entry?

10 A. Again, in October when I started it.

Q. And what was the source of this information that went into the log entry?

A. Alla and Valentin - story, they came and they told me.

15 Q. Well - so, let's go through this slowly, 'cause this is very important. You've indicated that they'd asked to see you at the YMCA?

A. Yes.

20 Q. And so, does this log entry relate to the meeting that took place on August the 23<sup>rd</sup>?

A. That's correct, in the office.

Q. And - sorry, that was going to be my next question. So, is your office at Bayfield Mall?

A. Yes.

25 Q. And so, very slowly, can you take us through what the Nikityuks said to you?

A. They said they want information about subsidized housing because they want to move out, or like, live separately. And because I already had that phone call from  
30 Svetlana, I kind of, you know, she told me, right? That they would come, that they may ask for such a thing, and that something was going on, right? So, I asked them why would you

want that? You know, you - you're elderly people, you, you know, like, you're only - like with no language skills, and there is a sponsorship. You are being sponsored by your children, you know, like you're supposed to live with your children. So I didn't understand why - again, like it kind of followed what Svetlana was saying, that they want it, right? And because they directly asked me about it, again, I was trying to understand why they would want that, you know? Like in the first place. It's not even about subsidized housing, it was all together to live separately from their family. I didn't understand why they would want that.

Q. And why did they - so did you ask them why?

A. Yeah, I asked them why would you - like I said, I don't understand. You know, like why would you want that? And that's when they told me why.

Q. And what did the Nikityuks tell you?

A. They said that things were very hard in the house, and then Alla - I don't remember exactly, like - well, maybe like, in the log or - like it's exactly - my fear is unbearable, and she then said who can live like that and she lifted - she had short sleeves, and she lifted them. And she showed me the bruises on her arm, and started crying. She said who can live like that, you know, and then Valentin started telling me how that happened, and specifically, shared the situation when Svetlana attacked Alla. He was shaking her. So basically, it - this is how the bruises came to be.

Q. And so let me stop you there. Are you absolutely certain that Mrs. Nikityuk showed you bruises?

A. Yes, she showed them to me. I saw them with my own eyes.

Q. And where were the bruises?

A. They were on her upper shoulders, both - like



- okay, shoulders. I don't know how to say that. Arm...

Q. Well, maybe if you could...

A. ...upper arm.

Q. ...direct His Honour to where....

5 A. Yeah, like they were upper arms, like here.

And they were multiple, like from fingerprints. Like fingerprints.

Q. So, above the tricep?

A. Yeah, but - like yeah. So the arms.

10 Q. On both arms?

A. Both arms, yeah.

Q. And...

A. And multiple.

15 Q. ...so you said multiple. Can you describe the bruises as best as you can?

A. Like finger - from fingerprints. From....

Q. And what were you told caused those bruises?

20 A. Valentin said that Svetlana grabbed Alla and started shaking her. And - don't remember exactly. He - if he said that, then she - oh, he said I was worried that she would go for her neck, that's what I remember. And he was ready to, you know, interfere if it was necessary, but then she dropped to the ground, and Alla said that she's not okay. Something's not okay with her, you know? And she said when they - she came to  
25 her senses, they just quietly left. And she was really concerned about her. She says something's not - she's not - something's not okay with her, you know?

Q. And what type of state, or what demeanour did the Nikityuks have when they were telling you they....

30 A. Alla was very upset. She started crying, she - she was very upset, and Valentin also shared when Pavel threw a plate at the wall, and he said - he threatened to throw a

glass at him. And it all had to do with, you know, them expressing their desire - wish to live separately. They said never, it will never happen.

5 Q. And did they say to you when these incidents happened?

A. No, they didn't say specifically dates, they just described the atmosphere in the house and what was happening, and why they were interested in social housing. Yeah, they did say they've heard from other people that there is  
10 such a program, and that's why they came to see me; to learn about it and get help with the application or information. How to apply.

Q. And - but going back to the bruises, and I know you're not medically trained, but did the - you'd already  
15 said the bruises weren't there on the - at the party.

A. Yeah, yeah, I didn't see - no, there were no bruises at that - well, at least I didn't see anything. And she had short sleeves, so obviously if they were not visible, then they were not there.

20 Q. Did the bruises - and again, you're not medically trained, did they look fresh to you?

A. Well, they were visible, so like - my office is not very big, so she was sitting right there. They were both sitting across from me, and when she lifted her sleeves, I could  
25 see them with my eyes.

Q. Now, I know you - I suggest you're probably going to be cross-examined on this, but previous there was - the Nikityuks had given a different indication as to whether you were shown bruises or not. Are you absolutely clear that you  
30 were shown bruises?

A. Yes, I was. Again, Alla started crying right away, and she seemed so ashamed about the fact that this

happened to her, and that it was her own family. So she was in an emotional state.

Q. Did you take any photographs of the bruises?

A. No, I didn't have a - like - first of all, I  
5 didn't have like, really anything you would need to - like it was unexpected. And secondly, she was - she started begging me not to tell anybody and she seemed very upset about that and ashamed, you know?

Q. So - sorry, Alla was begging you?

A. Yeah, she said but please don't tell anybody.

Q. And what did you say or do in response to  
receiving this information at that time?

A. Well, Alla also said that - she said that they had a conversation with the granddaughter. The granddaughter  
15 and fiancé were over that weekend, and she said they shared their, you know, like their desire to live separately, and they had a discussion about these problems in the house and with the granddaughter - and the granddaughter had a serious conversation with the parents. And she also asked then to give it a try,  
20 and, you know, find peace in the house and make it liveable, right? And so she said we will try, and this morning, she said when we were leaving, Svetlana was nice to me. And I don't remember what she did, but she seemed like she was trying to be nice to them, and she said we'll give it a try. We'll follow  
25 our granddaughter's advice, and we'll try to - she said we'll just try not to eat together, and stay low, and stay out of the way, and not to irritate them, you know? But...

Q. And so....

A. ...the fact that bothered me is these, you  
30 know, physical attacks. You know, the physical piece of it, and so I said to her, you know, that in Canada, it's not okay. You don't have to keep silent and you can talk to someone. I can

refer you to - I meant women's shelter, you know? You can talk to somebody about this, and she said oh no, we don't - I don't want - like, she was really scared about the whole thing with the police. She said I don't want anybody to go to jail, and I don't want to talk to anybody about this.

Q. Now, from that discussion, you - they mentioned the granddaughter to you. Did you have the understanding or impression that the same things have been said...

A. Yeah, because...

Q. ...to the granddaughter?

A. ...she told me they discussed it with the granddaughter, I assumed they discussed the whole story with the granddaughter like they told me. So, I thought that that's why the granddaughter was interested in, you know, finding the solution, right? Or finding that piece in the family. So, I assumed that they told her everything.

Q. And did you believe it that they - Alla had shown the granddaughter the bruises as well?

A. I believed she - yeah, that's what I thought she said. That they talked to the grand - because she was full of full of red after she showed me the bruises, and then kind of her story followed that the granddaughter had a - like, she came - they were over, and they had a discussion, and she - and I thought it was about the same thing, you know? That she told me and showed me.

Q. And you heard Mrs. Nikityuk's evidence in the Court, and you heard the granddaughter's evidence in Court, and they both said that Mrs. Nikityuk had not shown the granddaughter her bruises, so...

A. Yeah, cause now I...

Q. ...do you accept that?

A. ...understand they were not there on the weekend. They didn't show on the weekend. Yeah, now I understand that. But I didn't know that at the time.

Q. So, was that a mistake on your part?

5 A. It was an honest mistake. I - yeah, I thought she meant what she was telling me is that she shared the whole story, what she just told me and showed me, with the granddaughter as well.

10 Q. And in terms of continuing with the story, did you provide them with any information at that time?

A. Yeah, I told them that if they want to think about it, you know, like I gave them the pamphlet on elder abuse, and I gave them my translated refer - that resource list from the Ontario website on elder - again, elder abuse, and gave 15 them the resources, and I even told them that a lot of those places can provide interpretation. You can talk to somebody in your language, 'cause I knew they couldn't communicate in English. I said if you ever need help, you know, these are the places where you can get help.

20 Q. And just in respect of the pamphlets, those are the pamphlets we looked at earlier on at Tab A(3)?

A. AA(3)? Okay, just one second.

Q. You should have it under Tab AA(3).

A. Is it book one or no?

25 Q. Yeah, volume one. AA(3).

A. That's A. Oh yeah, right, okay. Mhm.

Q. So - and we're going to deal with some of the things in those pamphlets at...

A. Yes.

30 Q. ...the moment, but - so you gave them the pamphlets, and how did the meeting end?

A. Actually, that's how it ended. We didn't even

continue talking about housing because it was, you know, what happened to them was more pressing, and Alla was so ashamed. There was - saying no, I don't want anybody to go to jail. We're just going to change things in the house, we're going to make adjustments, and we want to give it a try. And that was that.

Q. So....

A. And I gave her the resources if she ever wants to learn about it, you know? A bit more, and so yeah, that's how the meeting ended. We didn't even end up discussing housing because she was so traumatized by that, you know? What happened.

Q. And just some pointed questions on that. Did you put the idea of abuse into the Nikityuks' head? Did you tell them to make up allegations of abuse?

A. No, I didn't. They shared with me, and I told them in Canada, that's not considered okay to be attacked by, you know, anybody really. Especially somebody who's considered your family.

Q. Did you give them any advice that if they were to make up allegations of abuse, they could jump...

A. No, no...

Q. ...housing waiting lists?

A. ...no, there was no discussion of that at all.

Q. And I asked that question, not only in relation to that event, but at any time.

A. No, no, never.

Q. And if we can just quickly look at the elder abuse pamphlet, which is prepared by Community Legal Education Ontario. I already asked you, these were pamphlets that you had readily available?

A. Yeah, they were in our office, and I just went

and got it from the shelf and gave it to them.

Q. And were you familiar with the contents of the pamphlets?

A. Yes, of course. Some of the content doesn't  
5 apply to them, but the general idea of abuse, you know....

Q. And did you consider the information in the pamphlets to guide you in dealing with the Nikityuks?

A. Yes, basically - of course, yes. But it's not just one pamphlet, right? It's more than that.

10 Q. And without looking at the pamphlets, in respect of the concept of physical abuse, what was your understanding, at the time, of what physical abuse was?

A. Assault would be a physical abuse, or threats of assault, or threats of physical injury would be a physical  
15 abuse.

Q. And is it - is that what the Nikityuks complained to you about?

A. Any containment, any - you know, like against somebody's will is also physical abuse.

20 Q. So, is that what the Nikityuks complained to you about?

A. Yes, yes, and so since then, there were more incidents that they were describing that would qualify as well as physical abuse.

25 Q. And we'll come back to those later, but actually, while we're dealing with them, we'll just deal with the later incidents. What other elements of abuse were described to you?

A. Emotional, financial. Basically any power and  
30 control, you know?

Q. And you already indicated that one of the documents, the one prepared by the Province of Ontario, you

translated some of the information from that document.

A. The resource page, yeah.

Q. Yes, which - if we go to the Province of Ontario document, I'd particularly like to go to page 41, if I  
5 may. Is this a document that you were familiar with in 2011?

A. Yes.

Q. And is this one of the documents that you used to guide you in dealing with the Nikityuks?

A. No, including - yes, this one, and those, yes.

Q. And if we look at page 41, I'd like....

MR. MAE: Well, my friend is - they haven't been numbered?

MS. CHAPMAN: No.

MR. MAE: Maybe they're numbered on my copy.

I....

THE COURT: Mr. Mae, what tab are we at again?

MR. MAE: We're at Tab A(3). I - is your copy paginated, Your Honour?

THE COURT: Yes, there's numbers in the top right corner, going from one to....

MR. MAE: If I could just approach my friend....

THE COURT: Pages 1 to 56.

CLERK REGISTRAR: This is page what, sorry?

MR. MAE: I apologize Your Honour for talking across the court. That's page 41. And I  
25 apologize for that, I feel deeply impatronated.

MR. MAE: Q. So, I'd just like to run through these documents. I believe I've asked you, you are familiar with this document. I'm going to take you through the steps in  
30 this document. This first bullet point addresses, "Believe the person." Did you believe the Danilovs? I'm sorry, the Nikityuks?



A. Yes, I did.

Q. And did you believe them just because this document said so, or did you believe them?

5 A. No, I - not because of the document. I believed them.

Q. The next bullet point, "Do not judge them." Did you pass any judgment on them? Did you say anything to them other than you've already indicated?

A. No.

10 Q. The next item, "Educate yourself on resources available to all the persons who are being abused." Did you do that?

A. Yes, I did, mhm.

Q. And how did you do that?

15 A. Well, by looking up the information and - well, first of all, we had the pamphlets, and then I looked up the resources and I looked up this particular resource.

Q. The next bullet point, "Do not deny what is going on." What's your understanding of that concept?

20 A. I didn't minimize their story. I didn't just disregard it, and - they found it, like, a different explanation.

Q. The next item, "Understand that making efforts to change an abusive relationship is extremely difficult." How did you understand that concept in dealing with them?

25 A. I - well, I - it's - I don't want to say usually, but unfortunately it happens. There's a pattern, you know? And I've seen that pattern in the actual clients' lives, and it's consistent, you know? It never starts with physical  
30 assault really. It's when other means don't work, then it can become physical. But first is usually emotional or that power and control, you know? And if the person doesn't basically

submit, if those means don't work, then it can become physical. So, at this point, it already became that, so I knew that, you know, it won't get any better even though Alla believe that they could make efforts to change. I didn't tell them that, but when  
5 they came back in a month and disclosed that, true enough, things didn't change, you know? That matched the pattern that I've seen in other relationships.

Q. The next item, "Encourage the person to seek help and assistance"...

10 A. Yes, I did.

Q. ...is that what you did?

A. Yes, I did, because she wanted to keep it quiet and she wanted to keep it to herself, and she was buried, you know? But I encouraged her not to, you know? Like  
15 encouraged her to actually open up and speak with someone.

Q. And did you see it as your role to make contact with the Danilovs to....

A. No, I couldn't do that, no. I would breaching the confidentiality, and my clients didn't want that.

20 Q. And the next bullet point item, "Do not confront the perpetrator yourself."

A. Yeah, it can be very dangerous actually, even for the person in the situation. And they've been - when we were working with the shelter, that's exactly what the safety  
25 plan that was provided to them. It was emphasized never to confront the - well, okay, the word perpetrator, but the other person because it can end badly, you know? So....

Q. Did you believe or think that it was your job to contact the police?

30 A. No, Alla specifically said they do not wish to contact the police because they're afraid that the Danilovs will be put to jail basically. She said she doesn't want to cause

them any problems.

Q. And so, was it your understanding that you have to respect their wishes?

A. Yes, they're adults, and if they wish - they do not wish to contact the police, I can't go against their will and contact the police on their behalf. Only if they wish to contact the police.

Q. And you mentioned that they're adults. In your dealing with them, did they appear to have any capacity issues?

A. No.

Q. And can we turn to the next tab, Tab 4? It's a document entitled, "Abuse of Elders and the Vulnerable Adult: Management of Issues in Simcoe County. Prepared by Simcoe County Elder Abuse Prevention Committee in January 2005." Now, this is a document that the Danilovs have put into evidence. Were you familiar with this document in 2011?

A. No, not in 2011.

Q. You - and when did you first become aware of this document?

A. Through the submissions that I know about. The network - like they approached us actually, and invited us to be partners. I've only attended a focus group, and they've also brought the resources, you know? The Simcoe County - because there is no one organization that deals with elder abuse, and it's kind of an issue. The coalition was trying to create a network of organizations who would partner together to - for the prevention of elder abuse, but that was in 2012.

Q. So it was after the event?

A. After, yeah. So I know about it, but not - I didn't know about it at the time, you know?

Q. Okay. So, I'd just like to ask you a few

questions about that document. If we can go to page eight of that document, and the page numbers are actually part of the printed material. I'm going to draw your attention to the first paragraph under capacity. And without spending too much time reading, I asked you whether you felt the Nikityuks had capacity. Did you have any problems with them understanding anything that they discussed with you or you discussed with them?

A. No, they had no issues with capacity.

Q. And of course, you weren't aware of this document at that time....

A. No, but I know what - I knew what that means. Like if you ask me if I knew back then what capacity is, of course I knew. But no, I didn't know what - I haven't seen the document.

Q. That's exactly what I was going to ask you. But let's move forward with this document. I'd love to jump forward to page 14. And this is a one page document entitled, "Assessing Each Situation," and in their mind, you didn't know about this document at the time. But I'd just like to run through this document with you to compare it to what you did at the time. So number one, "Why is this situation causing concern?" What were your concerns at the time?

A. Well, the concern was that it got physical. That's a very serious concern.

Q. And the next one, "How do I feel about the situation of the alleged abuse?" How - did you have any personal feelings at that time?

A. Well, I was shocked at first. But then, as I said, it's 'cause of a professional dealt with - I didn't expect it, you know, in that family. But once it was disclosed, I kind of in my role, I know what the steps are, and because I've dealt

with other people in similar situations.

Q. And it's going to be suggested to you, 'cause this is the entirety of the case, that you were prompted by malice towards the Danilovs. Did you ever feel malice towards them?

A. I had no reason to feel malice towards them. I have no - nothing to do with them, really. Like, no I had no interest or anything. Like I have absolutely nothing to do with them.

Q. Did you feel sympathetic towards the Nikityuks?

A. Yes, of course. I - the fact that it was so traumatic, I did feel sympathetic.

Q. Now, going back to this document, under Section 3, "What are the relevant factors?" The last bullet point, one of the factors, is, "Does the person consent to sharing information with others?" We've already addressed that, but just for the sake of clarity, did the Nikityuks want you to share what had happened to them with anybody?

A. No, they begged me not to. They specifically asked me not to tell anybody, and especially, you know, anything to do with police.

Q. And did you respect their wishes?

A. Yes, I did.

Q. And the next question, number four....

A. But I did give them the resources in case if they want to explore more and find out information.

Q. The next section, in fact, "What are the values, wishes, and goals of the client?" So, you respected what they wanted to do?

A. Yes.

Q. And on August the 23<sup>rd</sup>, did you consider any

other options with them at that time?

A. No, they expressed a wish to work it out in the family, and I respected that. And I haven't seen them - well, until they came back to classes, and I saw them only in the hallway. They didn't come for any appointment, they did ask for appointments, and again, I didn't approach them. I just said hi, bye, and so nothing to do with the situation because I respected, again, their wish to not to do anything about it.

Q. And while we're on the document, can you deal with things slightly out of sequence just for the sake of ease. I'd like you to go to page 17 of the document. And this is a flow chart, an intervention model for a vulnerable abuse victim. Again, you weren't familiar with this flow chart at the time you were assisting the Nikityuks?

A. No, but they were not vulnerable.

Q. And you've had the opportunity of reading this flow chart since the litigation?

A. Yes, yes, I saw the document, of course.

Q. And just in general terms, is there anything on this flow chart which you did not follow?

A. No, pretty much everything is consistent with my actions.

Q. So, and again, we're projecting ahead when the Nikityuks came back, you - did you determine the risk?

A. Sorry, which...

Q. We're at the...

A. ...risk for what?

Q. ...disclosure of evidence assessment by service provider - actually, let's go back to the first one.

They disclosed the evidence to you, correct?

A. Yes, they did. Mhm.

Q. And what - when they came back in September

will - can't do specifically. Generally, what did you do at that point?

A. In September?

Q. Yes.

5 A. They came back again regarding this issue.

Q. But - well, we'll come onto what this - but what did you do? How did you treat the Nikityuks?

A. Respectful and I listened to....

Q. No, sorry. What did you do to assist them?

10 A. Sorry, I guess I don't understand...

Q. Okay.

A. ...I listened first to what they had to say, and again, I offered them - as I offered them back then to refer them to transitional services or legal advocate at the women's shelter, and then they said yes because they were, at that point, already made up their mind that they cannot stay.

Q. And so you referred them onto other service providers?

A. Yeah, other service provider. Right.

20 Q. But you remain involved?

A. Yes, yes, that is also my role.

Q. And in terms of the procedure that was followed after that, were you directing the procedure? Or was it the service providers?

25 A. No, the service providers. We just follow their - like their advice, and their directions, and it was, again, joint effort. Alla and Valentin ultimately made the decisions, but the service providers were saying what the next steps are, and they asked for help with some forms, letters, and  
30 documents to be faxed, and mainly interpretation 'cause it wasn't available at the time.

Q. And if we look at page 18, this is the

intervention model for dealing with financial abuse. At some stage in the game, we'll come onto in a little bit, the Nikityuks, did they disclose to you that they've been victims of financial abuse?

5 A. Yes, they did.

Q. And again, you weren't aware of this template at that time. But have you had the chance to...

A. Yes, I did...

Q. ...review that since?

10 A. ...and it's consistent, yes.

Q. And even without knowing this document at the time, did - is there anything on here that you didn't follow?

A. No, it's pretty much - but again, it was in together. It wasn't just on our own, it was, as I said, a joint effort with the other agencies. So they were saying what needs to be done, or what - or, well, needs to be done. Like there was a discussion right? Of what Alla and Valentin wanted, and what was happening, and then what should - what they should do. And we assisted in some of those processes, yes.

20 Q. So, is it your evidence that the steps you took were consistent with the information in those policy booklets?

A. Yes, and also with the direction we received from the service providers that we referred them to.

25 Q. So, we're back now to the 23<sup>rd</sup> of August appointment. Did you report that meeting at that time to your supervisor?

A. I did not.

Q. And why not?

30 A. Because they wished to remain - like, they didn't wish to be referred or to do anything about it. They wanted to, like, resolve their issues on their own. At that



point, I did not consider it necessary to bring it up with my supervisor because no action was required.

Q. And just another question about the bruises. You said there were multiple bruises. What did they look like to you?

A. Like fingerprints.

Q. As the Nikityuks at that time had not said anything negative about the Danilovs, did anything about their story strike you as being strange?

A. The story of what was happening...

Q. Yes.

A. ...at home?

Q. Yeah.

A. Strange in which way? Like that it...

Q. Well....

A. ...wasn't true?

Q. Yes, yes.

A. No, no, nothing. In fact, it was consid - they've always been consistent, because that's when they disclosed this story, but then later they were - everyday they were reporting other things, and they were consistent with their story - initial story.

Q. But circling back though to August the 23<sup>rd</sup>, you believe - did you believe the Nikityuks?

A. Yes, I did.

Q. Even though there had been no prior indicators?

A. Yes, I believed them. And I also - I've known them already for some time, and they've been coming to English class. Other people knew them as well, so we had no reason not to believe them. It wasn't that they would just, you know, come from the street, we never met them, and we don't know who they

are. Like, we had already knowledge of them as people in our classes, and in the community, and they - like I would say they were decent, honest...

Q. And....

A. ...and trustworthy people.

Q. What duty did you understand you owed the Nikityuks at that time?

A. I was responsible - I had a duty to assist them if they requested assistance.

Q. And did you believe or understand you had any duty to the Danilovs?

A. No, I had no duty to the Danilovs. They were not our clients. I have no duty whatsoever to them.

Q. The next log entry is September the 30<sup>th</sup>.

Before we....

A. Can you remind me which one...

Q. Oh yeah, back...

A. ...is the tab?

Q. ...to A(1). So, September the 30<sup>th</sup> log entry.

You have a gap, August the 23<sup>rd</sup> to September the 30<sup>th</sup>.

Approximately a month, five weeks. Did you have any interaction with the Nikityuks in that intervening period?

A. Well, I probably did because I recollect it was one event. It wasn't work-related though. Again, I didn't really see them in the summer, but maybe when it was in my birthday. The summer where they mentioned that they know there are farms in the area, and really would like to go to a farm to see the horses, but they don't know anybody. So, they don't know how to just come and ask. And my children were actually doing horseback riding lessons in Innisfil on Line 9, and it's very close to where Nikityuks live. So, they went to a summer camp that year in August, and they told me that there'll be a

show at the end of the week, and anybody is invited. You can invite friends, family, you can come yourself. So I was working that day, but because Nikityuks told me they wanted to go to a farm and see horses, I thought it's a good opportunity. And I told them if you want, you can go, you know, it's like open show for anybody. They were very thrilled, and they went. Then they sent a picture apparently - I didn't ask them, but they just took pictures on their own, and then they sent me the pictures of the show, and they said they really enjoyed the occasion. So I did, but I - not that - like I didn't meet them, I....

Q. So you didn't meet them?

A. Yeah, no, I didn't meet them.

Q. So, between August the 23<sup>rd</sup> and August - sorry, September the 30<sup>th</sup>, did you do any follow up with the Nikityuks to ask them how things were getting on?

A. No, because it's up to a client to come and continue the conversation. We don't approach a client, even if they come to English classes and they disclose something, but did not wish to do anything about it. We do not approach them ourselves. We wait until they come back or don't. But we don't follow up, you know, it's not our practice.

Q. So, in relation to the English classes, I - just to help the Court with the location, your office is in the Bayfield Mall. Where were the English classes held?

A. In the same location. They - but their class was across the hall. We have two classrooms where our offices are, and then there is a separate level one classroom across the hall, and they were located across the hall.

Q. And you mentioned the horse farm. Were your children involved in that in some way?

A. Yeah, yeah, that was - they were in camp there, and at the end of the camp, they had a show for friends,

relatives, whatever. Whoever wanted to come and see the show.

5 MR. MAE: So Your Honour, I'm just looking at the time. The next section is going - not going to be completed in under five minutes. I wonder if it's convenient?

10 THE COURT: All right. In a few minutes, we'll take our afternoon break. But just for the record, it would appear that the Bayfield Mall location is separate and distinct from the YMCA proper.

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

15 THE COURT: Where there may be swimming or are other recreational activities, this is a discrete location.

MR. MAE: That's correct, Your Honour. I'm not sure that I'm giving evidence here, but the....

THE COURT: I don't think it's disputed.

20 MR. MAE: The YMCA location is on the east side of Highway 400, and Bayfield Mall is on the west side.

THE COURT: Right, and so we now know that the classrooms are in the Bayfield Mall as well...

MR. MAE: That's....

THE COURT: ...as this...

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

THE COURT: ...subset of offices for the immigrations assistance.

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

30 THE COURT: All right. So we'll - I should caution the witness not to talk to any of the parties in these proceedings or other witnesses. Do you understand that?

A. Yes, I do.

MR. MAE: So, you're eating lunch on your own.

Thank you, Your Honour.

CLERK REGISTRAR: Order please. Recess until two-  
fifteen.

R E C E S S

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

CLERK REGISTRAR: Order please, all rise.

THE COURT: Good afternoon.

MS. CHAPMAN: Good afternoon.

CLERK REGISTRAR: Court is now resumed, please be  
seated.

MS. CHAPMAN: If I may just before we start?

THE COURT: Yes.

MS. CHAPMAN: I have a copy of the trial record  
for His Honour, and a complete copy of Justice  
Corkery's decision.

THE COURT: All right. If you could pass that up  
to me.

MS. CHAPMAN: And I put it - we had put it in a  
binder, I thought it might be easier to navigate.

THE COURT: All right, so I'll leave the original  
as the Court record. It's come unbound, but it's  
got some elastics around it. I put an endorsement  
on the back, and I'll just use this as my copy.

And then - I may have had a copy of Justice  
Corkery's decision before, or I may have just read  
it in the trial record. But I did have at least  
with me a copy of the excerpt, so now I have the  
whole thing and counsel will tell me what the

appropriate issues are when we get there.

MR. MAE: Yes, certainly. And I'd like to thank my friend for dealing with that so expeditiously over lunch hour.

5 MS. CHAPMAN: You're welcome.

MR. MAE: Q. So, Ms. Skybin, if you can go back to the exhibit in front of you. Volume one, go to Tab A(1). We're back to the log. And we're now at September the 30<sup>th</sup>. So, I'm just going to ask you some general questions about what  
10 happened on that day. When did you type this log entry?

A. Again, in October.

Q. And what was the source of the information that went into the log?

A. That's what Alla and Valentin shared in that  
15 appointment on September the 30<sup>th</sup>, 2011.

Q. And the appointment on September the 30<sup>th</sup>, was that a pre-arranged appointment?

A. Yes, again, they requested an appointment and they came on that date to see me in the office.

20 Q. And generally speaking, could we - without reading the log, can you explain to the Court what Mr. and Mrs. Nikityuk shared with you on that day?

A. Yeah, they said that now they really wanted to leave. Things did not get better, actually they considered them  
25 worse. The harassment was ongoing. They were now trying to hide in their rooms and not come out. There were like - there were instances when, you know, the - in particular, Pavel would - he's swearing and swear at them which was very disturbing to them, and Svetlana would yell at them and block the door to the  
30 bathroom. If Alla tried to go into the bathroom and just close the door and to have some privacy, she would kick the door open and continue like - you know, rude conver - I don't know,

arguments with her that now they've been told that they eat too much, and you know, there is enough food in the fridge. If they need anything else they have to go and buy it themselves. They showed me a list that Pavel produced of all the deductions from their pension because the pension was - arrived quarterly I believe, and Svetlana would give them upon request the money that they needed. But at that time, they gave them a list of all the deductions and they said that's just how much you have left of your pension. The rest is for these purposes and - so yeah, they - that's - they also were saying that they were constantly accused that they can't remember PIN numbers for their credit cards, and Svetlana wasn't happy that they saw friends. She kept saying I'm going to take away the keys, you won't have the car - the use of the car, and they were worried that that would actually happen one day, and they'll be stuck in that house, you know? In Innisfil, there was no transportation. So, that's what they shared with me. They sort of - sorry, there was something else I wanted to say. Yeah, they would give them - they would basically dictate what cards to use. They would open cards in their names without them even knowing. Pavel would just hand them the cards and I'll use this, you know? And so they didn't like the fact that they had to just live like that; when they're being told what to do and things are being done in their name without them even knowing anything about it. They were not sure, you know, what - like anything about the money. You know, which money, whose money, where - like it was an - and why they couldn't just have their own money and use it for themselves.

Q. And how clear is your memory of not only that event, but the events of August the 23<sup>rd</sup> and August the 19<sup>th</sup>? Do you have a clear memory, or are you just relying on your notes?

A. No, I have memory of them sharing all of those

things, but yeah, I also rely on the notes because they have every detail, like everything they said at the time.

Q. And on September the 30<sup>th</sup>, what, if anything, did the Nikityuks ask of you? What did they ask you to do?

5 A. Now they wanted to see their legal advocate and transitional worker, because they were determined that they want to leave the house.

Q. And what - do you recall what their demeanour was like? What - yeah, that's the only way I can use  
10 demeanour...

A. Yeah.

Q. ...what the demeanour was like?

A. Well, that was hard for them. It was definitely not pleasant, but they - like it was - Alla didn't  
15 cry like the first time when she disclosed that the bruises, you know? But they - it was still, they - you could tell they were not happy. And actually, I did see them in the hallway. I didn't talk to them, but I saw them in the hall, and I could tell they became quieter and not as usual, you know? They're  
20 very open, very friendly, and I - in September when I saw them, I could tell they're more reserved and quiet. So, there was a change in their demeanour overall.

Q. And you say, you said in your evidence, that they actually had some documents with them at that time?

25 A. Yeah, they had the - yeah, that invoice, I guess, that Pavel produced of where their pension went. And it wasn't where it went, it went - stay deducted basically, and kept to themselves...

Q. And what....

30 A. ...for the expenses they decided they would pay - will charge them.

Q. And what did the Nikityuks tell you about the



financial situation at that time?

A. Well, that they were not happy with the fact that they have no knowledge of what's been done, and then that's - so they shared about the other arrangements they had with the - I don't know that they thought the house was in Valentin's name, and then that Pavel put money into his own business, and so that they money they brought from Russia was used for other purposes. Initially, they were promised one way of life, and now it's kind of - they're getting less and less, and being told that you've already eaten up all your money, but in a rude way. Like....

Q. And that's what they were reporting to you?

A. That's what they were reporting to me, yeah, mhm.

Q. And what was the outcome of that meeting? What decision, if any, was made?

A. That they will - we will arrange for an appointment for them with a legal advocate from the shelter.

Q. And if I can now ask you to go to Tab B(3)? Do you have that in front of you?

A. Yes, I do.

Q. And can you identify that document?

A. Yeah, that's my email to the Community Legal Clinic.

Q. And this is one of the alleged defamatory emails, so I'd like to go through this email with you. We see that the email is dated October the 4<sup>th</sup>, 2011. It's addressed to Anthony Cuffbert (ph). Who's Anthony Cuffbert (ph)?

A. He was the lawyer of the Community Legal Clinic at the time.

Q. And generally, in one sentence or two, what was the purpose of writing this email to Mr. Cuffbert (ph)?

A. To seek legal help for the Nikityuks to see the Community Legal Clinic - would advise of which areas they can assist them with, and then in terms of the law.

5 Q. And had you dealt with Mr. Cuffbert (ph) previously?

A. Yes, I did. Mhm.

Q. And the subject matter of the email says, "Another elderly couple."

10 A. I must had referred other people, not due to elderly abuse, but for the purposes of legal help.

Q. And so, in dealing with Mr. Cuffbert (ph), you dealt with him or the clinic previously?

15 A. Yes, I did, and it was short-lived. This email came shortly after that other referral, and just a coincidence that it's not the same case, but the - just a - I'm referring another couple to them.

20 Q. Now in that email, or prior to sending that email to Mr. Cuffbert (ph), did - sorry, I asked the question. I apologize. I'd just like to go into some depth in this email, because there are certain sentences in here, or parts of it that you need to explain. Now, one thing I don't see in this email is any reference to the Danilovs or the Nikityuks. Why is that? There's no - they're not mentioned by name. Why is that?

25 A. Well, there was no purpose to identify them. It was a description of the - background description of the case, basically. That it wasn't to identify an individuals.

Q. And the source of the information that went into that email; where did that come from?

30 A. From Alla and Valentin. Also, I just want to give a bit more background. Anthony did have experience in immigration law in the past, and so he would be a good contact from the point of view of understanding immigration law. Like,

with the sponsorship, you know, implications. So yeah, so that was another reason why he was a good contact for a referral.

Q. This email, other than sending it to Mr. Cuffbert (ph), did you supply it to any other party?

5 A. No.

Q. When you wrote this letter, did you have any basis for suspecting or believing that the Nikityuks' story was not true?

A. No.

10 Q. Would you have written this email if you had that suspicion?

A. No, I wouldn't have written something that's not true.

15 Q. When you wrote this email - sorry, you wrote this email as part of your role as a...

A. Yes.

Q. ...settlement counsellor, correct?

20 A. Yes, as a part of a referral process, and also seeking information about what areas they could assist them with in this situation.

Q. And as I understand the plaintiff's claim, one of the particular parts that they have - they take offence to is paragraphs one and two particularly, where you say, "Now it's full blown abuse with physical attacks, threats, and financial robbery." So, just so we're clear, where did you get that information from?

A. It's a summary of the story of all the stories I guess. Not just one story shared by the Nikityuks.

30 Q. And then then sentence continues, "They cut off their TV, internet, and deduct money from their pension, giving them a list of what they've charged for." Again, what was the source of that information?

A. Again, Alla and Valentin shared that information. All the specifics that are here came from the clients.

5 Q. And I see in the fourth paragraph in the letter, you indicate that you're meeting with Bev Juneau - and for the record, J-U-N-E-A-U. Who's Bev Juneau?

A. She's the legal advocate of the Barrie Women's Shelter.

10 Q. So you - had you already arranged to meet with...

A. Yes, I did...

Q. ...Ms. Juneau at that time?

A. ...because it says here it's happening the next day.

15 Q. Did you - when you wrote this email, did you intend to cause any harm to the Danilovs?

A. No, I was trying to get help for the Nikityuks through legal avenues that were available in the community.

20 Q. Were you acting maliciously towards the Danilovs?

A. I wasn't acting in any way towards the Danilovs, it wasn't about the Danilovs. I was seeking help for the clients.

25 Q. Did you write this email in the expectation of receiving some type of personal benefit?

A. No.

Q. So, dealing with Bev Juneau, she's at the women's shelter. Had you worked with her previous?

A. Yes, I did...

30 Q. And in what capacity?

A. ...and also for the record, Bev Juneau is a legal advocate. She's not a lawyer, so that's why the referral

went also to the Community Legal Clinic who are lawyers.

Q. And you've worked with Bev before?

A. Yes, I did.

Q. In what capacity?

5 A. As a counsellor of the YMCA. You mean my capacity? I worked...

Q. Yes, your capacity.

10 A. ...with her as - yeah, as a settlement counsellor, and I worked with her on a number of cases where, again, the referral would make - was made to the shelter.

Q. And do you know when you first then met with Bev Juneau? Or did you meet with Bev Juneau on this file?

15 A. Yeah, I met her previously, but then she came to the office - I guess it was October 5<sup>th</sup>, to meet with Alla and Valentin and myself.

Q. And so, when you met with Bev Juneau, were the Nikityuks present with you?

A. Yes, yes, they - it was basically a meeting for them with Bev Juneau.

20 Q. And what was your role in that meeting?

A. I interpreted the conversation.

Q. And during the meeting with Bev Juneau, what if anything did the Nikityuks say to Bev Juneau?

25 A. They disclosed also the same thing that's recorded in my log, the older situation. They disclosed that to Bev as well, and she brought a translated version of elder abuse, and - so basically the same thing I gave them in August. And she said that she'll put them in touch with a transitional worker, because they were determined at that point to leave the  
30 household, or to leave that situation. And so her role would be to provide them with further help, but her role as legal advocate is to give people information about their legal rights,

and also provide with a certificate to get consultation with a lawyer and put them in touch with the lawyer. So she said she will find a Russian-speaking lawyer, she'll find a couple of men. She asked me to connect with them on - to arrange for a meeting for Nikityuks and she'll fax the Legal Aid certificate for a two hour consultation.

Q. And just on that point, did you contact lawyers for the Nikityuks?

A. Bev gave me the numbers - names, numbers. She sent them to me, and I did not - all lawyers accepted Legal Aid, so basically at the end, it was one lawyer who was willing to give them a consultation and so, yeah. I did call around to find based on her - the name she gave us and the phone numbers.

Q. And did anything else happen on that occasion where - was there any discussion as to what would happen next?

A. She said she will put them in touch with Dorothy Archer, the transitional worker. And then Dorothy would work with them on the plan of how to move.

Q. And in dealing with the plan, if we can go to Tab B(2)? Do you recognize that document?

A. Yes, I do.

Q. And what is that document?

A. Those are the things that needed to take place or it were recommended to take place based on the conversations with Dorothy and Bev, and - so yeah, like that's what they would need to do if they were to become independent.

Q. Okay, so we have two columns. We have a Russian column and an English column.

A. Yes, because they don't understand English, so we made two sides for them to...

Q. So....

A. ...have the Russian version.

Q. On the English side on each of the steps, who determined those steps?

A. It was - it wasn't determined by anybody specifically, it was in the discussion with the shelter and that was - and also based on their wishes of what they wanted. Those were the things - it wasn't even the steps. These are not steps, it's like points, you know? What is important to do to transition from dependency basically, to independence.

Q. So, I'll ask it in another way. Did you come up with these points?

A. No, I didn't come up with them. It's just - like, it's put in one place, but all the things that were discussed with them with the shelter, and you know, it's for convenience purposes. It's all in one place so that it's not forgotten.

Q. And the - you did the Russian translation?

A. Yeah, I did.

Q. And what was the purpose of the Russian translation?

A. For them to have it so that they would know what....

Q. And when you say them, you mean the Nikityuks?

A. Alla and Valentin, yes. That's correct.

Q. And there's handwriting on this document. Is that your handwriting?

A. Yeah, I don't know. There is one that's not mine, I'm not sure whose it is. But....

Q. Which line is not yours?

A. "Way of referral service, ask for Russian." Like you can see mine is the one - like that's on the bottom, and the very top. But then on the right on the English one, that's not my writing.

Q. So what, in point number one?

A. Yeah, like number 1, number 8, then 10, 12  
that's not my writing.

Q. So do you have any idea whose writing that is?

5 A. I just can't tell. I don't know.

Q. Okay.

A. To tell the truth, I'm not sure whose writing  
that is.

Q. But....

10 A. I can only identify my writing.

Q. So in identifying your writing though, this  
text in Russian. That's your writing?

A. Yes, mhm.

Q. And the writing at the bottom with the  
15 telephone number, that's your writing?

A. Yes, mhm. Again, all of this information came  
from information given by the transitional services, and it's  
just for convenience purposes so that it's not forgotten, or  
that, you know, we don't lose track. Like we put it in one  
20 place, one page.

Q. Now in looking at this list, I see there's no  
reference to contacting the police. Can you explain anything  
about that?

A. Alla and Valentin - Alla, especially Alla, was  
25 very much concerned about her daughter, and not just only on the  
23<sup>rd</sup>, but to Bev and Dorothy, she - and Ruth. To basically  
everybody, she said that she does not want to harm her daughter,  
so she would not want to contact the police. And they were told  
about that option, and they had an opportunity when they were  
30 moving because Dorothy Archer arranged for the police escort,  
and the police, from what I've heard - what I've been told,  
there was, you know, a discussion and - but when they were given



that opportunity, they chose not to disclose.

Q. The Nikityuks weren't placed into the shelter at that time.

A. No.

5 Q. Could you explain what the discussion was concerning that at the time?

A. They knew that they wanted to move, but they didn't have a clear answer as to when they want to move. So they were still hesitant. They really didn't like the fact that  
10 - they didn't like what was going on. They knew they couldn't live like that anymore, but at the same time, they didn't know where they would go. And because it's a couple, the shelter cannot take them both, so it would only - they would only be able to take Alla, but not both. So they kind of indicated that  
15 we want to apply for housing, and wait until it comes through, you know? But they were going to continue staying safe, basically in the house. And so, there was no clear date, you know? When they were willing to move.

Q. And so by that time, you've involved the  
20 shelter. Are you providing any advice to Alla and Valentin Nikityuk with respect to social housing or any other benefits?

A. No, that was discussed with the shelter. Like they - the shelter informed them that they would qualify for priority - what's the word? For that category, you know? Under  
25 priority, and so the shelter advised them of that. I only referred them to the shelter, and assisted for the....

Q. So, in the next document in the bundle, which is Tab B(4), can you identify that document?

A. I apologize, which tab is this?

30 Q. B(4).

A. B(4)? Okay. But isn't that the letter? Ah, B(4), sorry. That's release - yeah, of information. That's

right, with the Barrie Women's Shelter.

Q. So what was the purpose of this document?

A. Well, that was the date when we had Bev in, and because Bev would be sending me information for them like the names of the lawyers, and I could communicate with Bev back  
5 what results were, who we found, and where to send the certificates. So, for that purpose, we needed release of information, because I couldn't, you know, communicate with Bev without Alla and Valentin's permission.

10 Q. And if you go to B(6), there's another release...

A. Yeah, for Valentin.

Q. ...signed by....

A. Same for Valentin, that's correct.

15 Q. So....

THE COURT: Mr. Mae, just before we finish up with, I guess it's B(2), I know this - there was a meeting on October the 5<sup>th</sup> I've heard. I don't know the date of that document or who got copies.

20 MR. MAE: Oh, I thought I did file - the escape plan at B(2). Can you advise the Court when that was prepared? The date?

A. I don't know the date. It was a summary of the discussions that were ongoing with the shelter. It would be  
25 sometime in October. Beginning of October, before they left. So basically, the first two or three weeks in October.

MR. MAE: Maybe Your Honour, if I can point to the log, I believe the answer's in there.

A. Oh yeah, maybe that would be....

30 MR. MAE: If I could direct the witness to the log and ask her a question without leading?

THE COURT: Well, Ms. Chapman doesn't seem to

mind.

MR. MAE: Q. Can you go back to the log and look at the entry of October the 4<sup>th</sup>, or October the 5<sup>th</sup>, or October the 7<sup>th</sup>? Could it have been on one of those days?

5 A. It could have been on the 5<sup>th</sup>, yeah.

Q. And what was the entry?

A. Or even the 7<sup>th</sup>, yeah. Around that time, but I know definitely before they moved. So it would be in those two weeks that they were being helped by the shelter.

10 Q. So, you've addressed the reason why they didn't move out immediately.

THE COURT: Sorry, did we get an answer to who got copies?

MR. MAE: Who got copies?

15 THE COURT: Of this - we call it the escape plan?

A. Just Alla and Valentin.

MR. MAE: There's the answer Your Honour.

THE COURT: All right, so I've got to look at my timelines from before, because I don't remember.

20 But I'm sure we have a trail about when they moved to the shelter et cetera? So...

MR. MAE: Yeah, and we're going to...

THE COURT: ...for context.

MR. MAE: ...come to that Your Honour.

25 THE COURT: Okay.

MR. MAE: I'm trying to deal with things in sequence...

THE COURT: All right.

30 MR. MAE: ...because they're all starting together.

THE COURT: I'll just sit back then.

MR. MAE: Thank you, Your Honour.

MR. MAE: Q. So you dealt with the reason why they didn't go to the shelter at that time. Can you in general terms, or specifics if you wish, address what happened after the meeting with the shelter during October?

5 A. What happened? Well, they needed to do these things that are listed here, or the majority of them. And basically, the shelter was looking into - Dorothy specifically, was looking into housing - priority housing for them. Then because of the financial aspect, they needed information, so I'm  
10 not sure now if it was after they left or before they left.

Q. I'll ask you....

A. Yeah, they needed that consultation, so like we're trying to find them the lawyer who would get them that consultation, and yeah. Dorothy was informing them of when  
15 something was available or what their choice would be or priority would be for housing. And because of the situation that - I was concerned for them. We put them in touch with Support Link, which is the crisis services, and they met with the worker by the name Kim Clark and she gave them a cell phone  
20 which was only working for one purpose; to call 9-1-1 if they were in any danger. So...

Q. I just....

A. ...that's basically what was happening.

Q. Okay, and just let me start. So when the  
25 Nikityuks were dealing with these support agencies, what was your role in that process?

A. I was basically helping them - well, the interpretation would be the main one, but also if the agency would tell us something, right? Like I would tell Alla and  
30 Valentin, and then I would support them in either sending faxes or whatever was necessary.

Q. And were you doing this in your own time or

was it...

A. No, at work. At work.

Q. ...at work. And did you go to any other  
institutions with the Nikityuks? Did you help them with  
5 anything else?

A. I think because they didn't know anything  
about their finances, they only had the cards. There was only  
one instance - maybe a couple instances. So I know that one  
time, they went to TD Bank to inquire if they had accounts  
10 because they had the access card. And then another instance  
that when they wanted to open a Scotiabank account of their own,  
and that was another instance that I went with them to  
interpret.

Q. And maybe this is too soon in the equation,  
15 but did the Nikityuks submit an application for social housing?

A. Yeah, Dorothy assisted then with the  
application.

Q. And what involvement did you have with that  
process?

A. Initially none. She did the application with  
20 them, and just requested some documents. Again, with the  
permission of Alla and Valentin, we provided those documents.  
But they provided those documents to us, so - and so, that was  
my initial involvement.

Q. And can I ask you to jump ahead to Tab B(9)?  
25 Do you have that document in front of you?

A. Yes, I do.

Q. And what is that document?

A. That's a translation of what Alla and Valentin  
30 wrote on that date.

Q. So within the tab, I see a Russian document.

A. Yes.

Q. Who prepared that?

A. The Russian document was prepared by Alla and Valentin. Yes, there is a Russian document. So, they prepared that document, and upon the request, again, of the shelter, and they asked me to translate it, and that's my translation.

Q. And in terms of the Russian document, did you direct the Nikityuks what to write in the document?

A. No, they wrote and they brought it. I didn't direct them in any way.

Q. And your translation at the first page of the tab, who did you provide that to?

A. That probably went together with the housing application.

Q. So, that was your involvement in the...

A. Yes, yes, interpretation.

Q. ...housing application?

A. Yeah, translation of the letter.

Q. At - if we go over to page 2, B(10)? And might as well look at B(11) as well. What are those documents?

A. Those are authorizations of a representative for Revenue Canada. Alla and Valentin were - needed medications, and they went to the pharmacy. And when they - there is a program right, for senior citizens. And when they tried to like - I think they could just use their health card, and it said that they didn't qualify because they have high income, like reported income on the income tax return. There's no knowledge of what's been reported on the income tax return. It was advised again by the - I think at that point, it wasn't on the shelter, it was the Community Legal Clinic who advised to requesting income tax from Revenue. We called - they came for an appointment again. We called and Valentin didn't pass the verification interview over the phone, and so I did explain to

the revenue agency that - like, they don't speak much English, so how can we get around it, right, if they can't pass the verification interview. And we tried, like they tried, but they still said no, he can't pass. So, they advised to do the rep  
5 authorization, and just for the purposes of requesting those documents, you know? Those income tax returns. So that's what we did.

Q. And if we go to the second page of the document, the date is the 11<sup>th</sup> of October, 2011. Is that when  
10 the authorization was completed?

A. Yes, but then we had to send it, and then it took a very long time for them to process it, so...

Q. And....

A. ...almost two months. Yeah, two months.

Q. Prior to this authorization, and in fact, at  
15 Tab 11 is the authorization for Mrs. Nikityuk. Prior to those authorizations, had you ever been authorized by the Nikityuks with respect to Revenue...

A. No, never.

Q. ...Canada previously?

MR. MAE: And Your Honour, this is the time where I wish to hand up the confirmation which came through from Revenue Canada. My friend already has a copy. If I can hand up one copy for Your Honour and one copy for the witness, and asking  
25 the....

THE COURT: I have a copy that you passed up earlier this morning.

MR. MAE: Oh, and actually then I'll have one left. If you'll just provide one to the witness.

THE COURT: The fax cover sheet?

MR. MAE: Yes, but there's two letters attached to  
30

it, Your Honour. And if I could produce one to the witness?

MR. MAE: Q. Have you seen these documents previously?

5 A. In your office, yeah.

Q. Yes, and Revenue Canada, the letter reads:

We can confirm that the T1013 form authorizing Yana Skybin to be a representative on Alla's account was processed on November the 30<sup>th</sup>, 2011. This is the first and only time that Yana Skybin was authorized as a representative. She was not a representative for Alla Nikityuk prior to this date.

15 Can you confirm that that information is accurate?

A. Yes.

Q. And the next letter is a virtually identical letter relating to Valentin Nikityuk. And in the second paragraph, it provides:

We can confirm that the T1013 form authorizing Yana Skybin to be a representative on Valentin's account was processed on October the 17<sup>th</sup>, 2011. This is the first time that a T1013 form was received to authorize Yana as a representative on Valentin's account. Yana was not authorized on Valentin's account prior to October the 17<sup>th</sup>, 2011.

Can you confirm that that is correct?

30 A. Yes.

Q. And for the sake of clarity, did you contact Revenue Canada for the Nikityuks at any time prior to these



authorizations...

A. No.

Q. ...being granted?

A. No.

5

MR. MAE: So Your Honour, I'm not sure that it's been formally made as an exhibit number. I believe the next exhibit would be 18 if that suits the Court?

10

THE COURT: Yes, it was actually addressed to Community Legal Clinic, but obviously this is received as a result of our discussions earlier in this trial, and it was contemplated that this would be received. So, exhibit number....

CLERK REGISTRAR: Eighteen, Your Honour.

15

MR. MAE: Eighteen.

THE COURT: Exhibit 18.

EXHIBIT NUMBER 18: Revenue Canada Documents - produced and marked.

MR. MAE: I'm obliged, Your Honour.

20

MR. MAE: Q. So, when you were authorized to contact Revenue Canada, did you request copies of the Nikityuks' tax returns?

A. Yes, for 2008, 9, and 10.

25

Q. And what was the purpose of requesting those tax returns?

A. Those were the returns done on their behalf, and I - but never seen then, so they wanted to see them for themselves. And also because of the income reported on those returns. They didn't qualify for other things, like I mentioned, drug plan for seniors.

30

Q. And what did you do with those tax returns? Who did you give them to?

A. Well, I sent them to Community Legal Clinic.

Q. So, you didn't....

A. I didn't receive them, they came to Alla and Valentin's home address, and then Valentin brought them and we  
5 faxed them to Anthony.

Q. Now, we need to now go back to your log I'm afraid. So, you'll have to flip back. And I'd like to take you to October the 17<sup>th</sup>.

A. Mhm, yes.

10 Q. And the entry starts at the bottom of one page, and goes on to the other. That's the day that we know the Nikityuks left their house. Firstly, my question is when did you prepare that log entry?

A. I must have prepared it just shortly after.  
15 Maybe the day after on the 19<sup>th</sup>.

Q. So, we're now in the timeframe where Alla after - that's a direct question. From the time you started preparing the log, how contemporaneous were the notes with the events?

A. Within a day or two. Maximum two.

20 Q. And on October the 17<sup>th</sup>, what direct involvement did you have in relation to the Nikityuks leaving Rankin Way?

A. I didn't have any direct relations. I  
25 received a phone call from them again later in the evening say there was a confrontation. They were outside, and they were basically outside. They have to go somewhere, so I called Dorothy, but there was no response. And then I called the shelter, just their main line, and I explained to them that  
30 there are two people and they - Dorothy's been working with them, and so they said that in this situation, because it's a couple, they need to go to Salvation Army. They'll host them

for the night, and that's what I conveyed to Alla and Valentin. I gave them the address and told them where to go, and that they need to bring an ID. And they told me they were going to go back and get their personal belongings. I personally thought it was not advisory in them to do so. It could be unsafe, but they said they needed their toothbrush and, you know, so they still went back.

Q. And on the - that day of October the 17<sup>th</sup>, did you know ahead of time that they were going to move out on that day?

A. No, no, of course not. It, again, came unexpectedly.

Q. And in that log entry, there's an item that says, "Daughter called me, and the office, and other people looking for them." I only want to talk about calling you. Did - when you say daughter, who are you referring to?

A. That's Svetlana.

Q. And did she call you on the day the parents moved out, or was that....

A. The next day - next morning.

Q. So, that log entry, even though it's the 17<sup>th</sup> of October....

A. Must have been the - get on the 9 - on the 18<sup>th</sup>.

Q. And what do you recall of that discussion?

A. She called me saying that her parents left, that they were not okay. Again, referring to other people, you know, brainwashing them or putting ideas into their heads, and that she doesn't understand why people interfere, why they don't mind their own business. She knows that Lika - like that her mother was babysitting Lika's kids for free, and she never interfered even though she's not okay with that, but why then

people don't mind their own business. She was under the impression that I couldn't be involved as a worker, so she said I know you're not allowed to get involved, but I just want you to tell me when you come to work if they're in the English classes. If they're there, basically at the mall. I said to her that I will - if I see them, I will tell them she's been calling and she is looking for them, and if they wish to call her back they will. And she said no, no, don't tell them I've been calling, just call me back and tell me they're there. So I told her that if she's concerned, I can provide her with information about where - who she can talk to, you know, in that situation. And she said no, no, she doesn't want to involve anybody.

Q. So, during that conversation, you said a lot of the discussion. Is that something you remember clearly, or....

A. Yeah, I remember clearly 'cause it was, again, you know - I don't know what to - because it was special, but again, something...

Q. Did....

A. ...out of the ordinary.

Q. And during that discussion, did Mrs. Danilov make any personal accusations against you?

A. No, no, she was under the impression that I wouldn't be allowed as a worker to get involved. So, she actually - that's specifically what she told me.

Q. So, she made no accusations?

A. Not at that time, no.

Q. Can the witness be provided with the second green binder please? And I direct you to Tab E(3). And we see this is a letter from the Barrie Police Service of March the 8<sup>th</sup>, 2012, referring to an attendance at the police station on

October the 9<sup>th</sup>, 2011. Did you go to the police station in Barrie on that date?

A. Yes, with Alla and Valentin Nikityuk, and we were advised to do so by the shelter. That they need to because Svetlana was looking for them, and they needed to report that they were safe, and that was advised to go to the police and report that they're not missing. That they're safe.

Q. And what was your role in that attendance?

A. I came with them. My role was to support them in communication, or interpretation mainly. And so they needed to declare that they're safe.

Q. And was there a complaint filed with the police about abuse?

A. No, that wasn't the purpose of the report. The purpose was to let police know that they're not missing. They're safe and they do not wish to be contacted.

Q. And at that time, did you have any discussions with the Nikityuks about reporting abuse to the police?

A. No, they made it very clear to all of us that they do not want to disclose that.

Q. You mentioned, or we discussed, one call that you had from Mrs. Danilov. Is that the only call you had from Mrs. Danilov in October?

A. No, there were multiple calls and she was using Valentin's cell phone. Sometimes she would call from her phone, sometimes she would call from Valentin's phone, and she would call frequently. Like she would call three times in the morning, three times in the afternoon. But it was initially like around the timeframe October 18<sup>th</sup>. I spoke with her a couple of times, but again, I didn't respond to every single call because I was on the road. I couldn't answer the phone.

Q. And so, what - when - so, let's break this

down. First of all, when you spoke with her, what was the purpose of the discussion? Did she call you, or you call her?

A. No, I never called her. She called me, yeah. The one time that - well, one time I described to her already  
5 when she was asking me to call her back if I see them in English classes. Then again when I picked up the phone, she was asking me if I saw them. I said yes, I saw them. I told them that you were looking for them. I gave them the message basically, and then she said so how do they appear to you? And I said what do  
10 you mean? Well, how were they? How did they appear? I said like, fine. Like, I don't know what to say, you know? And so yeah, that was the phone call - another phone call. But there was another phone call later then they moved.

Q. Before we go on to the other phone call, just a question. Did you deal with Mrs. Danilov in English or  
15 Russian?

A. Russian.

Q. Okay, so there's no language barrier?

A. No, no.

Q. In the phone call you mention, or in any other  
20 phone call, did Mrs. Danilov make any accusations against you?

A. Not after they left, no.

Q. And you mentioned that she tried to phone you on Valentin's cell phone. Can you explain that to the Court?

A. Well, she was using his cell phone to call me.  
25 I could see the number - his number on call display.

Q. How do you know it was her?

A. Well, when I picked up the phone, it was her.

Q. Oh, I see.

A. Yeah.

Q. And did she leave you any voicemails?

A. One time after they moved, after they took  
30

their belongings. That was October 24<sup>th</sup>, I believe. Just one second, when did they move? On the....

Q. And did you....

A. Yeah, there was another phone call demanding that I disclose the name of the social worker who helped them move, and that was more intimidating than - like the previous ones were not intimidating.

Q. And were they the only phone calls, or were there others?

A. No, I just missed calls. There were missed calls, but I was on the road. I couldn't answer the phone.

Q. And in - within the situation, did you become aware of calls that Mrs. Danilov placed to other people?

A. Yes, one day - okay, now to find the date, sorry. 'Cause it's call back in the day. One day I was on my way to the office, and in the hallway, two students approached me. Two Russian-speaking students approached me and said that Svetlana's been following them. They didn't know anything about Alla and Valentin's situation. I never discussed it with them. I would never disclose it to them. They...

Q. That's as far as we need to go.

A. ...came up to me....

Q. Certainly one or two of those will be called to give...

A. Yeah, yeah ok.

Q. ...evidence, but....

A. So yeah, I've been approached by the students. They were expressing the concern that they've been receiving calls from Svetlana, and they were concerned.

Q. And just though, for the sake of clarity, in volume number two, if you could go to the very, very last document which is Tab F(17)?

A. Okay, just one second. I don't see "F" in here, I'm sorry.

Q. It's the very last document in the binder.

A. Oh, okay.

5 Q. Do you recognize the handwritten document in that tab?

A. I'm probably not in the right place.

Q. F(17)...

A. It's not there....

10 Q. ...it's the very last document in the tab.

A. Seventeen?

Q. Yeah, it's the very last tab. No, other way.

A. Maybe it's a different....

15 Q. No, I can actually see it. That document you have there, the white sheet?

A. White sheet?

Q. The flat piece of paper in front of you. Put your right hand down. There.

20 A. No, this is from County of Simcoe, it's not....

Q. Oh, you're looking in the wrong binder.

A. I only have "D" in here.

Q. You're in the wrong binder, sorry.

25 A. Yeah, mhm. Is there another binder or do you think it's here? Okay, yeah. F(17)?

Q. My apologies.

A. Okay, yeah, mhm.

Q. So there's a handwritten document with a...

A. Yeah, yeah.

30 Q. ...Russian translated - just want to ask you, do you recognize this document?

A. Yes.



Q. And what is it?

A. It's Yulia Malycheva's letter or note regarding the phone call she received from Svetlana.

5 Q. And she's going to be one of the witnesses we're hearing from.

A. Yes, she will be, that's correct.

Q. Now, we know that the Nikityuks went back to the house at Rankin Way to remove their possessions. What involvement did you have in that process?

10 A. I had no involvement whatsoever in that process.

Q. To your knowledge, did anybody else from the YMCA have any involvement on that moving out day?

A. Not from YMCA, no.

15 Q. And to your knowledge, which organizations were involved in that move out?

A. The Barrie Women's Shelter, specifically Dorothy Archer, the transitional service worker. She was assisting with that move.

20 Q. I'd like to take you to your log at October the 27<sup>th</sup>. And there's an entry, "I received a call from Svetlana, but did not respond. Later, she called me again and left a voicemail saying, 'I need you to call her urgently.'" Is that one of the calls that you mentioned earlier on, or is that  
25 another call?

A. Yeah, that was the call. I didn't talk to her personally. Again, I was on the road and I saw the call, but I checked the voicemail later, and yeah. That was the voicemail. She demanded I give her the name of the social worker who helped  
30 her parents move, and if I don't do so, she's gonna - urgently, like if I don't do it right away, she's going to go to the police. And when I saw Dorothy, I did tell her about that -

that I received such a phone - voicemail from Svetlana, and then Dorothy followed up with Svetlana later at her discretion.

Q. On the next entry, October the 28<sup>th</sup>, you wrote, "My office informed me that Svetlana has been calling the office, demanding the name of the social worker." Can you explain what that information - what information was given to you?

A. That probably was Ruth who told me that. Yeah, they also received phone calls - similar phone calls asking for the name of the worker who helped the parents move.

Q. And I've already asked you, but I want to make this absolutely clear. In that timeframe, did either of the Danilovs make any complaints about you personally?

A. No, no. No complaints about me personally.

Q. And in any of your discussions with Mrs. Danilov, did she accuse you of influencing her parents?

A. No. There was no comments about me or my involvement with them made to me personally.

Q. And if I can take you to Tab B(28). Have you seen this letter before?

A. Yeah, I've seen it before.

Q. And when did you first see this letter? For the record, this is the letter of October the 26<sup>th</sup>, 2011.

A. When it came to the office, Susan Green shared this letter with me.

Q. And we can obviously read the entire letter into the record, but does this letter contain any allegations against you personally?

A. No, I don't see allegations against me in this letter. The first time I remembered was - about me was when they saw my name as a representative on the Revenue Canada. It was probably - it appeared on the website online, and that's

where they - the first - that was the first complaint that I was involved. Again, it was addressed to Susan Green, our director. But that came later.

5 Q. But just to keep things in sequence, and I apologize to directing you to the other binder. If you can look at the other binder and go to Tab F(16)? Do you recognize that document?

10 A. Yeah, that's the letter - Valentin's letter that - I'm not sure if November 2<sup>nd</sup> - I know that he wrote one letter for the lawyer.

Q. Well, if you look at the fax page, the Russian version of the letter.

A. Yeah, mhm.

Q. It - there's a name Victoria Matrylanko (ph)?

15 A. Oh, okay. That's a lawyer. Yeah, that provided us with the names - that provided with several names, it was one of them.

Q. So my question to you is did you have any involvement in writing that letter?

20 A. No, he wrote the letter. And actually, I didn't translate the letter 'cause it went to a Russian-speaking lawyer.

Q. So, you had no involvement at all in writing....

25 A. No.

Q. And the - but we have a certified translation. I'd like you to look at the last paragraph on the first page in English, and....

30 MR. MAE: I'm not sure Your Honour, whether she needs to read it into the record in English, but I can tell - say in advance, the question is, is whether this is consistent with her understanding

of what was said to her by the Nikityuks. So, I don't know if you want it read into the record.

THE COURT: Well, this is the letter that he sent to the lawyer.

MR. MAE: That's correct.

THE COURT: On November the 2<sup>nd</sup>, and you're just asking if that information sent was consistent with what she was told?

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

THE COURT: All right. If you want to just read in the pertinent parts so she can answer the question, I guess that'll help.

MR. MAE: Certainly, I'll read in.

MR. MAE: Q. The letter provides this:

When living together, we were not involved in the financial affairs. When we asked questions, we received evasive answers. We ate together, they subscribed to Russian TV, and had it in the living room for us. Let us use the internet and the car. We went to doctor's appointments with Svetlana, as we do not speak English. Often she responded with disdain whenever we asked questions, and did not allow us to do anything around the house. They made all the purchases themselves without our involvement. We fought and argued in the house. The atmosphere became tense. We were not allowed to do anything on our own. There were all sorts of complaints towards us. We constantly irritated them. They were critical of ours friends and shows, which we watched on Russian TV. This summer,

5 during another argument, Svetlana grabbed  
Alla (her mother), by her arms, shoulders. I  
was afraid that she might grab Alla by the  
neck. Alla's hands were bruised. Pavel  
constantly cussed when we talked to Alla. I  
broke down, and said that as soon as we  
receive a pension, I will buy a ticket, and  
fly away to Russia, and live homeless. Pavel  
grabbed a plate, and threw it at a wall.  
10 Then he took a glass and threw it on the  
ground at my legs, and said the next one  
would be tossed at my head. I went upstairs  
after the incident, and tried to avoid them,  
if possible. After that, they unsubscribed  
15 from Russian TV, I started watching TV on the  
internet a few days later. Out of order, end  
of page.

20 So, my question to you Ms. Skybin is - or firstly, you've  
already answered the one. You have no involvement in preparing  
that letter?

A. No.

Q. The information that's summarized in that  
letter by Mr. Nikityuk, is that consistent with what was being  
presented to you?

25 A. Yeah, all these things were mentioned when  
they disclosed what was going on. It was also consistent what  
Alla said on those two occasions that I refer - I remember back  
in the day and before then, August 23<sup>rd</sup>. So, it's all  
consistent.

30 Q. And within this timeframe, November the 2<sup>nd</sup>,  
you were still helping the Nikityuks as part of your position,  
is that correct?

A. Yes, yes.

Q. And at that time with what you've heard, the shelter was involved. You mentioned Victim's Crisis. Did they have legal counsel at that time?

5 A. Yeah, we referred them to Community Legal Clinic. They helped them with Equifax, but then they said because it's a family matter, they would really have to go - like, there is even no such a thing. But it would still belong under the family law, the Community Legal Clinic does not  
10 provide help with that. So, they needed to apply for Legal Aid certificate and get a lawyer to assist them further and, you know, and so that's when we referred them to Legal Aid Ontario. And again, assisted in finding a lawyer who would be able to help them further.

15 Q. And I'm going to take you to document B(39), which is a letter from the Community Legal Clinic addressed to you, 21<sup>st</sup> November, 2011. Do you recognize that letter?

A. Yes, that was basically the service provider, the Community Legal Clinic at the time. And that was a summary  
20 of what's been done and yeah. So yeah, of course I received that document.

Q. And in that letter, there's sentence which I'm sure the Court would be interested in hearing about. Mr. Cuffbert (ph) wrote to you, "Please note: I would caution Mr.  
25 and Mrs. Nikityuk about making any verbal charges that could be interpreted as slanderous." What do you understand when you read that comment?

A. Well, that they should refrain from making accusations that are not true - false, making false accusations.

30 Q. And at the time you received that letter, did you have an understanding of what slander was?

A. Yes.

Q. And what was your understanding at that time?

A. That they should be careful that they do not say anything false, or that it's not spreading, I guess, information that's not true.

5 Q. And did you take that comment as being directed to you as well?

A. No, no, it was more of a - no, it was more for Alla and Valentin to be careful in what they're saying, and also that they do not just become emotionally charged, you know, about the situation.

10 Q. And when the Nikityuks told you about the abuse which we've heard in this court, what level of assurance did you have? Or why did you believe them?

A. Why did I believe them?

15 Q. Yes.

A. Well, Alla showed me those bruises, and they were reporting very specific instances. They - I knew them before as clients and, you know, students, as people. So, I had not reason not to believe them. Also, I could not really verify that with Svetlana and Pavel because of confidentiality in place. And it was consistent also with the indicators and their state - like, their demeanour.

20 Q. Now, you continue to act in as an interpreter for them. Were you asked to do that, or did you just stick with the program?

A. Yes, no, I've been asked. Yeah, I've been asked by organizations who are assisting them. I've been asked by social housing to attend a meeting with them to interpret. Sorry, I was specifically asked to come and interpret, and saying that, the organizations that I've been asked to come with them to interpret. There was no interpretation available.

30 Q. And if I can ask you to look at document C(1)?

We see an email addressed to you from Better Barrie Shelter,  
December the 5<sup>th</sup>?

A. Mhm.

Q. Do you recognize that email?

A. Yeah, I do.

Q. And what was requested of you in that email?

A. Mostly to come as an interpreter for the  
appointment - for the legal appointment.

MR. MAE: Your Honour, I'm looking at the time. I  
thought I was going a lot quicker than that, so  
we've skipped past the, I believe, the usual time.

THE COURT: All right, we'll take our afternoon  
break now, and then we can continue.

MR. MAE: Thank you, Your Honour.

CLERK REGISTRAR: Order please.

R E C E S S

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

CLERK REGISTRAR: Order please. All rise.

THE COURT: Good afternoon again.

CLERK REGISTRAR: Court is now resumed, please be  
seated.

THE COURT: Yes, Mr. Mae?

MR. MAE: Q. Ms. Skybin, you mentioned earlier on  
that you were approached by two students at the YMCA. What did  
you ask the students to do after you spoke with them?

A. I asked them if they want to put it - if they  
could put it in writing. Lika said no because she didn't want  
to get involved, and then Una (ph) said yes of course. But I  
brought them to our director because there was a concern of  
harassment, and we're obligated also to report such things. So,



our director approached HR for consultation and...

Q. Okay, that - yeah.

A. ...oh okay, you don't need the full story.

Okay.

5 Q. Because after that, you're not involved. I just wanted...

A. Okay.

10 Q. ...to know what you did. So, I'm going to ask you now to turn to Tab C(5). And this is an email of December the 6<sup>th</sup>, 2011. Do you recognize that email?

A. Yes.

Q. And did you write that email?

A. Yes, I did.

Q. And who did you write that email to?

15 A. To Ulana Domazar who is a family lawyer.

Q. And what was the purpose of this email?

20 A. They needed consultation for the - Legal Aid Ontario approved a certificate only to get legal opinion about their case, and so I was trying to get them the legal - that legal opinion.

Q. Now....

A. And again, that her name came through Bev Juneau who's the legal advocate of the women's shelter.

25 Q. And correct me if I'm wrong, in this email, do you mention the Nikityuks and Danilovs by name?

A. No. That's background information about the case.

30 Q. And this is one of the alleged defamatory letters. Were you satisfied that the contents of that email were true?

A. Yes.

Q. And I've asked you this question, but I have

to ask it in relation to each letter. What was the source of the information that went into that letter?

A. Again, the Nikityuks were the source of information and all the other pieces that were discovered during the process of assisting them.

Q. And I believe you just touched the point, but what was the actual purpose of writing this letter?

A. To see if Ulana will give them a consultation. And then, based on the consultation, provide legal opinion - a letter of legal opinion, whether this case deserves, basically funding for a lawyer.

Q. And in writing this email, did you intend to cause any harm to the plaintiffs?

A. No.

Q. And in writing this email, were you acting with any form of malice?

A. No.

Q. And did you write this email, or seek these services in anticipation or the expectation of any financial reward?

A. No, it's a part of my job.

Q. Now, we're into December of 2011, and just very quickly and generally, what services were being provided to the Nikityuks in December?

A. They already applied for soc - well, they were already living in social housing. They had their place, but again, with the - any services like social assistance is based on income and income information. So, in that period of time, they were still on many accounts that were joint accounts. Some of them they didn't even know about, and also with Ontario Works, they received one cheque, and then they got a cheque from the Danilovs. It was sent to our office. They didn't know what

to do with the cheque, and they were advised to first speak with the lawyer because of - there was no formal agreement in place. So, they were pursuing basically legal help to arrange for such, you know - you then agreement on mediation or - but they were  
5 not prepared to deal directly with the Danilovs because of trust issues. So yeah, they were - and there was a lot of different things that were coming from, you know, that situation where there was a cheque, they informed the social housing that they received income. Then the social housing informed them that  
10 that cheque had stopped payment. They already wrote out the cheque to Ontario - to social housing, but obviously it wouldn't go through because there was no money in the account. So many of these kind of issues, you know?

Q. And what was your involvement? What was your  
15 role? Were you providing advice or....

A. No, no, no advice, but communication in this case from Nikityuks to social services, or social housing based on these, you know, different aspects of income - like, well, what I just described. So no, purely communication, but no  
20 advice. No.

Q. And who was providing the Nikityuks with advice and representation at that time?

A. What in terms of - like, what advice? They didn't really need any advice. Oh, they were still seeking -  
25 yeah, legal help, but they were - it's a process, so they needed to get that legal opinion - letter of legal opinion, that took some time. You know, then they had to apply for Legal Aid. Basically like they were still not receiving much help - legal help, so we were trying to get them that legal help.

Q. And were you personally, or anybody from the  
30 YMCA, giving them legal advice?

A. Not advice, no. We were trying to find that

legal help for them because not much free help is available out there.

Q. Okay, so let's now go to Tab C(19). Do you recognize that letter?

5 A. Yeah, that's a letter of support from me for the internal review of Ontario Works.

Q. And that's December the 20<sup>th</sup>, 2011. Is that when wrote it?

A. Yes, yes.

10 Q. And the letter I noticed is addressed to, "Whom it may concern." So, who did you send this letter to?

A. This letter went together with the package for internal review to the tribunal - first, sorry, internal review is with Ontario Works. So, to whom it may concern because there  
15 was no specific person to address it to, but this was only attached as one piece of the supporting document for the internal review.

Q. And did it go to any other organization?

A. It went to Community Legal Clinic. They -  
20 actually, we referred them - for internal, we referred them to the Community Legal Clinic and they asked for letters of support, for all the documentation. They had to prove their case, and so we've been asked to provide such a letter. Ruth asked me to write the letter because I was mostly involved with  
25 them. But there was - we had a case conference with women's shelter, with crisis services. Ruth, myself, Alla, and Valentin, and also they - when we wrote the letter on their behalf, we - Ruth had it translated and then they signed that they agree with everything. That it says it's true reflection  
30 of what they were going through, and so - and also Ruth asked me to write a letter of support.

Q. And again, I ask you the question that I asked

you earlier. The - what was the source of the information that went into this letter?

A. It came from our clients and basically, on those few months of working with them and on their case. And  
5 pieces of information came from my log, as well.

Q. And one specific piece of information you dealt with - we dealt with earlier on, but I'd like to ask you again. In this letter, in the fourth paragraph, you wrote, "On the weekend, their granddaughter came for a visit from Toronto,  
10 and they showed her the bruises too."

A. I thought that - what - that...

Q. Wait, I haven't asked the question.

A. ...was the case. Oh, sorry. Yeah, sorry.

Q. We now know that was wrong.

A. Based on the evidence, yes.

Q. Was that intentional on your part?

A. No, no, it was not intentional. As I said, Alla shared that information with me right after she showed me the bruises and what was going on in the house. And because she  
15 said they told the granddaughter, I thought they told her what they just told me, you know? And she knew that something, you know - so that was not intentional, but it was my understanding of what was told - which has been told to me.

Q. So you didn't put that in the letter to add  
25 any weight to everything else in the letter?

A. No, it was a reflection of what's been said to me as I understood it - the case to be.

Q. And if you'd have suspected that that information was not correct, would you have written it?

A. No, of course I wouldn't be putting it there.

Q. And when writing that letter, were you  
30 intending to cause any harm to the Niki - the Danilovs?

A. No.

Q. And did you hold any ill will towards them?

A. No, it was a letter of support for Alla and Valentin.

5 Q. Now, if I can direct you to page C - Tab C(21). Do you recognize that document?

A. Yeah, that was put together by Ruth Miller, but she had it translated and verified with Alla and Valentin that everything we put in here is how - that we correctly  
10 understand this. These are exactly the facts, and they confirmed and signed.

Q. So, tell me about the - and before we get into the specifics of the letter, what involvement did you have in relation to this letter being prepared?

A. I didn't have any involvement. I was just at  
15 the case conference with our agency and two external agencies, and we also were on the phone with the Community Legal Clinic during the referral process. And I provided - like from their file, the list. If you see, there are somethings that were on  
20 file. I provided those documents as attachments.

Q. Did you translate - did you do a verbal translation between the Nikityuks...

A. No...

Q. ...and Ruth Miller?

A. ...she did Google translate, and as much as it  
25 sometimes can be funny, it's close. Like it's pretty close.

Q. And we see on the third page of that letter, there are two signatures. Do you recognize those signatures?

A. Yeah, that's Alla and Valentin's signatures.  
30 They basically confirm that the content of the letter is true. They agree with this.

Q. Now, we mentioned earlier on the social

housing. The Nikityuks also applied for Ontario Works assistance.

A. Yes.

Q. What involvement did you have in that process?

5 A. I only referred them - and I don't even remember, I don't think I referred them as it came as a result of the shelter's information that they can ask for social assistance. I didn't personally refer them. And then, I think the only involvement I had is to place a phone call to arrange  
10 for an appointment for them. That was my only involvement. So, once the appointment was given to them, they went on their own, and I wasn't part of that.

Q. Did you provide the Nikityuks with any authorization, or did you request them to list you as a next of  
15 kin on their Ontario...

A. No, no...

Q. ...Works application?

A. ...I've never even - I didn't know about that at all until this court.

20 Q. And if I can - if you could show the witness, it'll be Exhibit 1. It'll be the one with the Tab 168.

A. Fifty-eight?

Q. Yeah, 168.

A. Oh, 168.

25 Q. So this is the Ontario Works application. We see in the bottom left-hand corner, you're named as next of kin. When did you first see this document?

A. I've actually never seen this document before, so....

30 Q. And I've already - did you authorize anybody to use you as next of kin?

A. No, nobody asked me. I've never heard of it,

as I said. You know, this was a - I don't even know how that came to be. The only reason I can think of is that, you know, communication. But the next of kin is a separate category, it's not just contact person. So no, I have no knowledge of this.

5 Q. And in relation to the Ontario Works application, did you provide any advice to the Nikityuks?

A. No, I didn't

Q. Did you encourage them to apply for Ontario Works?

10 A. No, that was given - that was presented to them as an option by transitional services.

Q. And did you have any involvement in compiling the financial information for the Ontario Works application?

15 A. No, no, I wasn't a part of this at all. Not at the appointment, not at the decision making, nothing.

Q. It's been suggested that you helped the Nikityuks hide pertinent bank account information, or financial information from Ontario Works. What do you have to say about that?

20 A. I can't comment. I have - I don't know what to say.

Q. So why can't you comment? Did you do anything like that?

A. No, I didn't do anything.

25 Q. And now, this is where we have to jump around because there's a document in another brief which is in the Nikityuks' - which is Exhibit 2, Tab 9. Do you have the document in front of you?

A. Yes, I do.

30 Q. And do you recognize that document?

A. Yes, I do.

Q. And what is that document?



A. That's the application for social housing.

Q. And whose handwriting is on the document?

A. So, partially it's mine, and then I see it must be Dorothy's with her contact information.

5 Q. And in box number one under applicant, there's a box that say, "Persons to contact in your absence or at act as an interpreter must be completed," and has your name.

A. Yeah, yeah.

Q. Did you put your name in there?

10 A. Yeah, with their permission. They asked for if they needed to communicate something to them to communicate it through our organization. The language barrier - due to language barrier.

Q. And who asked you to put your name in the box?  
15 You said they?

A. Yeah, Alla and Valentin asked. When we asked them - well, we were asking them all this information, and they said can you put your organization because we wouldn't even know who's calling from where if they were to contact us.

20 Q. And when you say we, who was the "we?" When you said when we were dealing with Alla and Valentin, so who was the "we?" You and who else?

A. No, I mean they - Alla and Valentin said that they would not know who is calling them from which organization and for which purpose. If somebody called them on the phone and  
25 needed to explain or ask them something, they would not be able to understand. So, they didn't want to miss any important communication, and they requested that our organization, specifically me, for language - for communication purposes was  
30 put on the contact - person to contact - organization to contact for communication.

Q. And what involvement did you have with the

social housing application? Did you - were you advising the Nikityuks on that?

A. I wasn't advising, they were in the office and we just started to - we were asking them for each field, and they provided information and put it in here.

Q. And....

A. And Dorothy was there too, and she filled out the portion for - like you can see it on page 65.

Q. And that's the "we" I was asking about...

A. Yeah, yeah...

Q. ...thank you.

A. ...Dorothy was from the shelter - from the women's shelter.

Q. So, did you provide the Nikityuks with encouragement to apply for social housing?

A. No, they were prepared to leave, and they - that was provided as an option because they qualified.

Q. And I asked you a question a moment ago, and I'll ask it again. With respect to dealing with social housing, did you advise or assist the Nikityuks to hide any information?

A. No, no, they were - we were very specific. I was very specific in that whatever information they had, they needed to disclose, and they were very honest about it. When they received any income they received thought, they knew about - they disclosed it right away. I know about it because I was helping them to send information.

Q. So, we're now at the point. We're in December going across to the next year. So, just in summary as we've done, in December and January, can you explain to the Court in very global terms what the continued assistance being provided to the Nikityuks was during that period?

A. Again, it's what we would do for any client.

If they came for an appointment, or they requested some help. They had medical appointments, sometimes they needed to arrange interpretation with the hospital, or they needed to know how to get there 'cause it was in another city. So, we provided them  
5 with bussing information. Like one time, I called Red Cross about transportation, but they figured they could take public transportation; it was more convenient. So, things like that. And any communication, if they need to submit new income information, we would help them fax it to the social housing or  
10 to Ontario Works because it's a fluent process. Like it's, you know, a lot of those things are based on your current income. It's monthly, so sometimes you have to submit it as of, you know, as you - based on current status, right? Or the current situation. So that type of assistance.

15 Q. So, I'd like to now jump ahead to January the 20<sup>th</sup>. And I'm going to show you a letter at Tab D(10), which is in the green volume one, please. So do you have that in front of you?

A. Yes, I do.

20 Q. And do you recognize that document?

A. Yes.

Q. And what is that document?

A. It's a fax to Ulana Domazar who prepared the letter of opinion for them - for Alla and Valentin.

25 Q. So, you actually wrote this letter?

A. Yes.

Q. And it's addressed to Ulana Domazar, lawyer. We've mentioned her name earlier on, but who is she or who was she?

30 A. A family lawyer in Barrie, and her name was given to us by Bev Juneau who's the legal advocate at the women's shelter.

Q. And what was the purpose of this fax?

A. That was - that's providing more facts as they were - like as those documents arrived and information was available, or became available. It's to provide her with more details or more information, and also the documents that were brought - or sent to Alla and Valentin, as they were requesting those documents from revenue and banks. And so, as they came - as they started coming, we shared them with the lawyer.

Q. And what was the source of the information in that communication?

A. Well again, it's came - information came from Alla and Valentin, and from the documents that were sent to them upon their request.

Q. And the information in that letter, did you believe it to be true?

A. Yes.

Q. And what was the basis of your belief that the information was true?

A. Well, I saw those documents too, and they brought it to my attention. Quite often they would come once they discovered something, or they - something came to their attention, they could come and share that information.

Q. And this is one of the defamatory - alleged defamatory letters. The - I believe the specific comment that is regarded as defamatory is, "They never received a penny from either return or federal provincial benefits the government issued in their names. The only income they had access to was their foreign pension, reported under line 115 of the return." You refer to the return. Was that a tax return?

A. Tax return - income tax return, yes.

Q. And you looked at the tax return at that time?

A. Valentin analyzed his own returns, and he came

and he would point out different things that were not true. So, Valentin and Alla would look at their own documents, and then would tell me what they discovered.

Q. But did you look at the documents as well?

5 A. I don't think I looked at them in detail. Like, they had them - I faxed them to other agencies, like lawyers primarily, but I didn't have a need to analyze those documents. It wasn't my role, really.

Q. And so what was your role?

10 A. My role was to assist them in accessing that legal help that they needed, and so these documents were sent to the lawyer whose help they were seeking.

Q. And did you circulate this? In fact, I should've asked you this with the other document. Did you  
15 circulate any of these documents to anybody else other than the recipients?

A. No, no, of course not.

Q. And I apologize for the repetition on the questions, but if there was anything in this letter that was  
20 untrue, would you have written it?

A. No.

Q. Were you acting maliciously when you wrote this letter?

A. No.

25 Q. Did you write this letter in the expectation of receiving any type of money or compensation...

A. No.

Q. ...or reward?

A. No, it was a part of my job.

30 Q. Now, we've just got to the end of January, and we need to just summarize the month of February before we get to the next defamatory letter. Can you advise the Court generally

what was going on in February?

A. After - I don't quite remember. Like maybe I should look at the log, but I know that Ulana did write a letter of opinion, and then again, the Community Legal Clinic said they would have to apply for Legal Aid again. I think they did try to apply, but there was no response or something like that. And they kept asking that they do want to negotiate some sort of agreement, and there was really nothing else available. We had a paralegal who was asking - who was telling us before, like before - it had no connection with the Nikityuks, but we had a paralegal come into the office offering her services pro bono to any clients who are newcomers who may need some free help. And so, I told them that there is one person who you may talk to, you know? I don't know if she'll be of much help, but - and they said yes please. I did help them to apply to the mediation centre online. Maybe two, because there is one in Barrie, and there was no response from there either. And they kept asking that, well, we need that legal help. So, I referred them to this paralegal, and they were also being assisted by the Community Legal Clinic, so - then the connection was made between the paralegal and the clinic, again, about the issue of negotiating the agreement with the sponsor.

Q. So just on the subject of lawyers and paralegal, can you remember the name of the paralegal?

A. Yeah, Christina Fernandez.

Q. And was there another lawyer involved in assisting the Nikityuks at some time?

A. Joanna Kuzaketachu (ph), she was working for the Community Legal Clinic. Yeah, she met with them as well in person.

Q. And I....

A. Is assisting them.

Q. I apologize for circling back. The Nikityuks at some stage cancelled their powers of attorney.

A. The initial stage, yes.

Q. Were you ever appoint as an...

5

A. No.

Q. ...attorney for them?

A. No.

Q. At any stage?

A. No, never.

10

Q. So, you mentioned Christina Fernandez. She was a paralegal. If I can ask you to go to - actually, before we go to anything, what specifically was she helping the Nikityuks with? Can you recall?

15

A. Yeah, she was trying to negotiate - connect with Danilovs to negotiate an agreement. Like, basically like sponsorship - agreement to continue sponsoring them. They were trying to - they were seeking support from their sponsors, but they wanted to do it in a legal way. They specifically requested help to get an agreement - legal agreement in place, and to put it through Family Responsibility Office so that they would not have to deal directly with the sponsor.

20

Q. And in your dealings with Ms. Fernandez, were you providing her with instructions, or were you acting as a translator for....

25

A. No, I was an interpreter. I just provided her with background information. She met with them directly, and in person, I interpreted. And then I put her in touch with the Community Legal Clinic because they were already working on their financial assistance, and they have the informations. So, they then communicated directly. Again, with the release from the clients.

30

Q. And I'd ask you now to go to document D(25).

And this is not one of the defamatory letters, but I just want to - did you - do you recognize this email?

A. Yes.

Q. And you wrote this email?

5 A. Yes, that was the summary of what disclosed in the meeting. And of the documents, yes.

Q. And....

A. I did write the email.

10 Q. And this is an email of February the 21<sup>st</sup>. And the contents of this email all relate to financial matters.

A. Yes.

Q. And....

15 A. Because of the - because they were trying to reach financial - like that agreement, or the support through the agreement, and that's why there are finances in here.

Q. And we see at the next tab a letter from Fernandez Paralegal Services to NLC Lawyers. Do you know who NLC Lawyers were?

20 A. No, no, I had no involvement in this letter or anything to do with this.

Q. They - NLC Lawyers weren't lawyers acting for the Nikityuks.

A. No, no, we - no, we don't know who those lawyers are.

25 Q. And the next - sorry, the tab at Tab 28 is an email dated February the 28<sup>th</sup>, 2012. Do you have that in front of you?

A. Yes, I do.

Q. And do you recognize that email?

30 A. Yes.

Q. And did you write that email?

A. Yes, I did.



Q. And who did you address that email to?

A. To Christina Fernandez.

Q. And this is one of the defamatory - alleged  
5 defamatory emails. Firstly, what was the purpose of writing  
this email?

A. Again, to provide her with the information  
that the clients wanted her to have to be able to understand the  
specifics of the situation.

Q. Now, in - before I go further, the source of  
10 this information came from?

A. From Alla and Valentin, and the documents that  
they provided.

Q. At paragraph two, which is apparently one of  
the offensive phrases, you wrote, "Pavel and Svetlana already  
15 found out where they live. They harassed everyone, and somehow  
found out. That's not an issue anymore." So, what do you mean  
by harassed everyone?

A. They were looking for information from  
different places, different people to find where they live, even  
20 though Alla and Valentin specifically declared that the - that  
report to the police, that they do not wish to be contacted.  
And they were reassured by social housing that their address  
will remain confidential, and they will never release it to any  
third party, so - but - like, I'm not saying who released that  
25 address, but they found out anyway.

Q. And what was the source of your information  
for that?

A. I think that they - Alla and Valentin came and  
told me that they received a letter from them, from the  
30 Danilovs...

Q. No, I mean the...

A. ...at their new address.

Q. ...they harassed everyone.

A. They harassed everyone is because they've been calling the clients, they've been calling me for the information.

5 Q. And....

A. And they've been calling YMCA, they demanded we tell them where they live.

Q. And then in paragraph three - at the end of paragraph three, which is the other alleged defamatory clause, there's a reference to the Danilovs withholding the Nikityuks' investments, and it goes on to say, "Ultimately, they did not involve Alla and Valentin, but rather control their finances, kept the money for them, and took advantage of their situation, no English, and knowledge of Canadian banking system." Again, what was the source of that information?

A. It came from, again, the discovery after the - all these months of documents being released or provided, and Valentin coming and pointing out those details right off the facts as they discovered them in those documents.

20 Q. And....

A. And there's their understanding was of what happened with their finances.

MS. CHAPMAN: Sorry, there's parts of that that I'm not catching 'cause it's very quiet.

25 THE COURT: Just give that answer again if you just speak up a little bit, please.

A. Yeah, that came through the evidence that Valentin - that once the documents were coming in and he was analyzing them, he pointed out the different facts and details, and then he put together, with his personal knowledge - with his understanding of what happened to their finances, and to the money they brought. What happened basically in their situation.

MR. MAE: Q. And with this letter, and with all of the other letters, the comments you made - what checks did you make in terms of verifying the information was correct?

A. Well, it was consistent with all of the documents that came in. It was consistent with what, you know, there were specific documents that that information came from.

Q. Would you have written this email to Ms. Fernandez if you thought the contents were not true?

A. No, no, I wouldn't have.

Q. And this email, did you circulate it to anybody else other than Ms. Fernandez?

A. No, it was just - it was specifically addressed to her, and came - went to her, and there is no CC to anybody.

Q. Did you intend to cause any harm to the plaintiffs?

A. No, it was information for the lawyer to - guess who wasn't - who needed all the information available.

Q. And were you acting out of some type of spite or malice...

A. No.

Q. ...towards the Danilovs?

A. No.

Q. And again, did you write this letter in the expectation of receiving any form of compensation?

A. No.

Q. Now, that brings us to the end of the defamatory letters on the pleadings. So, I'd just like to ask you about events from March until the UCs (42845) being involved with the Nikityuks. So first one, you - we already know from your log that you continued assisting them until September 2012. And what - generally, what type of assistance were you providing

during that time period?

A. It's, again, correspondence if necessary. It's phone calls for appointments, so just in general whatever they came with. Whatever request they had, immediate, you know, needs and - like with any other client.

Q. And....

A. And it's also visible through my log for all the - through all the entries, so what type of assistance was provided. There was some interpretation, again requested.

Q. Sorry, you said interpretation?

A. Yeah, yeah.

Q. And again, were all those services part of your job, or was that out of your friendship?

A. No, no, it's a part of my job. I provided same services to other clients.

Q. Now, throughout your assisting the Nikityuks, were you being supervised by your superior at the YMCA?

A. Yes, yes, through the whole process, yes. And she was providing them with assistance when I wasn't involved.

Q. And was that consistent from the time you first involved your superior?

A. Yes, it was very consistent. They were fully supported by both settlement counsellors.

Q. And so, you weren't doing any of these things without supervision or on your own account?

A. No, it was all within the scope of my job description and my office, and it was down from our office. So, it was transparent and I put the information in the file that was easily accessible, and whenever my colleague and superiors, you said, opened the file, she could see what's been done and so it was - all the information was easily available.

MR. MAE: Your Honour, I'm pausing just looking at

time. I probably have 10, 15 minutes maximum left. Would you like to keep with the flow of the evidence, Your Honour? Or do you want us to break now and come back tomorrow?

5 THE COURT: I think it would be good to break now, come back tomorrow, and you can finish up.

Hopefully refreshed, the witness will be refreshed.

MR. MAE: Thank you, Your Honour.

10 THE COURT: And I think that we should try to keep to that timeline if possible.

MR. MAE: I will certainly - it's 10, 15 minutes at the outset.

15 THE COURT: All right, well we'll finish that up tomorrow, and then cross-examination will follow.

MR. MAE: Thank you, Your Honour.

CLERK REGISTRAR: Order please.

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

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1602.  
Certification

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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 November 15, 2016, held at 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811\_01\_20161115\_085946\_\_10\_MULLIGG.dcr, which has been certified in Form 1.

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, 2017

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Spencer Edgar

(Signature of authorized person)

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WEDNESDAY, NOVEMBER 16, 2016

THE COURT: Good morning Mr. Mae.

MR. MAE: Good morning, Your Honour.

THE COURT: We'll have some time for you to finish  
5 your questions of Ms. Skybin.

MR. MAE: Thank you, Your Honour. I indicated  
yesterday 15 minutes. Maybe slightly longer than  
that, but we're talking minutes rather than hours,  
Your Honour.

10 THE COURT: That's always the risk of leaving  
things 'til the next day.

MR. MAE: It is indeed.

THE COURT: Nevertheless, I thought that the  
witness needed a break because it was a long day  
15 for her, and I'm sure for all of us.

MR. MAE: Absolutely, Your Honour.

CLERK REGISTRAR: Ms. Skybin, just a reminder that  
you're still under oath.

20 YANA SKYBIN: RECALLED

EXAMINATION IN-CHIEF CONTINUED BY MR. MAE:

Q. Could the witness be shown the plaintiffs'  
documents brief which contains Tab 128? And this would be  
25 Exhibit 1.

MR. MAE: I don't know which volume it would be  
Your Honour, probably 2, at Tab 128.

MR. MAE: Q. You have that in front of you, Ms.  
Skybin?

30 A. Seven-eighty-eight, the page?

Q. No, 128 please.

A. Yes and then - yeah, it is 128.

Q. You have it there?

A. Yeah, mhm.

Q. Do you recognize that document?

5 A. Well, it's the LinkedIn account - my LinkedIn account.

Q. And on your LinkedIn account under the heading, "Yana Skybin skills and expertise," there's an item there for Canadian immigration law. Can you explain how and why that's on your LinkedIn page?

10 A. It says skills and expertise. You choose the fields you are knowledgeable in or knowledgeable about, and that's one of them.

Q. And did you give the Nikityuks any immigration law advice?

15 A. No, no, that's not what this is about. I know immigration law, Canadian specifically...

Q. Yes, can you explain that please?

20 A. ...Canadian immigration law. Yeah, but I'm not a lawyer, so I wasn't giving the legal advice on immigration.

Q. Thank you. And the date on the LinkedIn account is 2013 at the bottom right-hand corner. Is that a correct date for the printout?

A. I didn't print it out, so I can't comment.

25 Q. It's been suggested by the Danilovs that you knew that the contents of the alleged defamatory letters written by you were untrue. What do you have to say about that?

A. Again, everything was shared with me I believed to be true, and that's reflected in my letters.

30 Q. And it's also being suggested by the Danilovs in their evidence that you twisted facts to paint a bad picture of them. What do you have to say about that?



Yana Skybin - in-Ch (cont'd)

A. Again, everything that was told to me was what was shared with me, and I believed it to be true.

Q. And if it's the case that any content of those letter - or those letters are not true, how would you categorize that?

A. I'm not sure I understand, like....

Q. I'll rephrase. We know from yesterday the indication with respect to the bruising shown to the granddaughter, which you said was a mistake. So, if there's anything else in any of the letters that is not 100 percent accurate, what would you say in defence of that?

A. Well, that's what I understood was told to me.

Q. Now, you mentioned yesterday that you were acting as an interpreter for the Nikityuks.

A. Correct.

Q. Were there any other interpreters appointed for them?

A. No, we had interpretation service available at some point, not initially. But when I approached them - it's Bridge Translations, and when I approached them - 'cause I did give the Nikityuks the number thinking they could access that service when they were out for appointments, and apparently it was only available for settlement purposes only. So, we could only use it in the office, not the - we couldn't give it to the client to be used out in the community. So unfortunately, you know, that wasn't available. Then Ontario Works had their own interpretation provider, so if the community partner or agency had access to interpretation services, they did provide it. The majority of them didn't...

Q. So....

A. ...at the time - at that time.

Q. So with Ontario Works, what - were you acting

as an interpreter?

A. No, no, 'cause they had their own interpretation service available to them.

5 Q. Sasha Green, does that name ring a bell to you?

A. Yes, mhm.

Q. And who is she?

A. She's the daughter of Susan Green who was our director at the time.

10 Q. And did she have any involvement in the Nikityuks?

A. Yes, when Alla and Valentin requested for their pension to be transferred to their accounts, or to be deposited into their accounts from Russia, Valentin's pension came into the account, but Alla's didn't. And Alla had no access to the account where the pension was deposited, so because already there was a relationship breakdown - I'm not sure, I guess Susan asked Sasha to write a letter on their behalf requesting that the pension be returned to them, which was the case. It was returned to them.

Q. And what does Sasha Green do for a living?

A. She's a lawyer.

Q. And so she assisted the Nikityuks?

A. Yes, she assisted them in requesting for the pension to be returned to Alla.

Q. We touched upon yesterday - I'm now asking you to give the evidence - Yulia Malycheva, when and how did you first find out that she saw bruises?

A. Well, it was already in May when....

30 Q. May of which year?

A. May of this year, during the proceeding - the trial, when Alla mentioned that she remembered showing the

bruises to Yulia, and that's when I was made aware that she showed them to Yulia.

Q. And that was the first time you...

A. Yeah, yeah, mhm.

5 Q. ...became aware of that?

THE COURT: Mae, can we just be a bit more specific about that name you're using? The spelling for the record?

10 MR. MAE: Yulia Malycheva. It's Y-U-L-I-A M-A-L-Y-S-H-E-V-A. I believe that's the correct spelling.

THE COURT: Thank you.

A. Yes.

MR. MAE: Thank you.

15 MR. MAE: Q. So Ms. Skybin, did you take any steps which interfered with the relationship between the Nikityuks and the Danilovs?

A. No, I had nothing to do with their relationship.

20 Q. Did you intend to interfere with their relationship?

A. No, again, I had absolutely nothing to do with their relationship.

25 Q. Did you encourage the Nikityuks to leave their home?

A. No.

Q. Did you encourage the Nikityuks to split up with their family?

A. No.

30 Q. Do you know what a conspiracy is?

A. Yes.

Q. And what's your understanding of conspiracy?

A. When you make a plan that's like against somebody else. You plot something together.

Q. And was that your understanding in 2011?

A. Well, of course. I come from the Soviet Union, I know what conspiracy means. Like - sorry.

Q. So, did you have any conspiracy? Did you conspire with the Nikityuks in any way?

A. No.

Q. Did you have any intentions that the Nikityuks would breach any agreements that they had with the Danilovs?

A. I wasn't aware of any other agreements - breaching agreements, it's only the sponsorship agreement that was in consideration at that time. I wasn't aware of any other agreements.

Q. So, did you encourage the Nikityuks to breach that agreement?

A. No, breaching? No, like I meant that I was aware of the sponsorship agreement in place. It was the only agreement I was aware of, but I never encouraged them to, you know, breach it.

Q. Did you conspire with the Nikityuks to do - for either you or them, do anything unlawful?

A. No.

Q. Did you put the idea of an abuse claim into the heads of the Nikityuks?

A. No, no. The abuse took place, I didn't put that idea in their head. It was disclosed to me.

Q. And in 2011, did you believe that the Nikityuks had been abused?

A. Yes. Sorry, which date?

Q. 2011.

A. Well, when they disclosed it to me, yes.

Yana Skybin - in-Ch (cont'd)

Q. And we've touched upon this, but just in terms of wrapping up, what checks did you make, or on what basis did you have the belief that they've been abused?

A. Their story, the bruises that I saw with my  
5 own eyes, the demeanour, and they were very specific descriptions of the situations they were in. And those things didn't stop after a month, like even when they came back in September and into October before they left, everyday they were reporting new situations that would match the same, you know,  
10 indicators of abuse. So, they were very specific and they were disclosing that to - not just to me, but also to other people who were working with them. And in - because I was interpreting, that story was repeated in many different places in terms of the lawyers, you know? Wherever they were called  
15 for an appointment, so it was always the same story. So it never was any different, so I had no reason not to believe them.

Q. The - in - under cross-examination, Mr. Danilov described Alla as a good actress. What do you say about that?

A. I knew Alla for many years now, and she's a very nice - in my opinion, she's a very nice person. I've never seen her - like basically - like I cannot say that I would ever doubt her character. She's very open, she's very trustworthy from my point of view. I never had situations where I would  
25 think otherwise. Not a single one.

Q. Did the Nikityuks offer you any form of reward for assisting them?

A. No, they knew our services were free, and they were available for immigrants, and the access that was for  
30 clients.

Q. And of course, that's within the context of your role as a settlement counsellor. Did they offer you any

reward outside of your role as a settlement counsellor?

A. No, they - we already had a social relationship, and it was - that was all it was, you know? That never changed, so the - what happened didn't change that aspect  
5 of the relationship. There was no need to please me in any way with, you know, like - no, absolutely they didn't try do anything above and beyond. It was just continued on the same note.

Q. At any stage in the process, did you have any  
10 bad intentions, ill will, or malice towards the Danilovs?

A. No, I have no interest - personal interest. I have my own life, you know? And I have a rich life, so I have no need for, you know, drama or, as you said, conspiracy. I have three children and I'm busy and involved in the community,  
15 so I have a very rich life.

Q. And in a short sentence, what was your intent when you was assist - when you were assisting the Nikityuks?

A. My intent was to help them. They were in a difficult situation, they came for service, and we would give  
20 that service to any client and they were no exception.

Q. Did you provide them with any advice or guidance whatsoever to prevent, not to tell the truth, or hide assets?

A. No, never. I always encouraged them to always  
25 be truthful and disclose everything truthfully, and they actually followed it. They were always on board in terms of - they would come forward and tell us if there was anything different in their income, or - they were very good that way. Their communication skills are - I mean, in Russian, but in  
30 general, their communication are very good. They're very responsible people.

Q. The assistance you provided to the Nikityuks,

was that in accordance with your role as a settlement counsellor?

A. Yes, absolutely.

Q. And in the assistance you provided them, did you follow what you believed to be correct protocols?

A. Yes, as I said, you know our job is such that we deal with multiple needs. So, there's no one specific protocol for each of those needs, but there is an overall best practice, and of course, we have policies in place. So, I followed the policies and the best practices in our organization. There's no such a thing as a specific protocol to deal with their specific situation, 'cause everybody's situation is different. You can't have protocols for every single situation. But yeah, definitely the policies and the best practices.

Q. And when you provided those services, were you supervised by your supervisors at the YMCA?

A. Yes, they were fully aware of the situation, and I shared - any concerns I shared with my direct supervisor, and also Alla and Valentin came to see her when I wasn't in the office. So she had direct involvement with them as well. And the file was transparent, as I said. We both have access to it, and everything that's been done was put in the file so there was nothing to hide. There was nothing done outside of that scope of that role.

Q. And, perhaps this is an obvious question, but why did you help the Nikityuks?

A. Again, I said that they were in a difficult situation. They came, they requested help, and in my position, I need to respond. I need to respond appropriately and accordingly to what my job description entails.

Q. And would you have done the same thing for any

other YMCA client...

A. Yeah, yeah, absolutely...

Q. ...that walked in?

A. ...and I did, so - and I continued to do - to  
5 work in my role the same way. Yes, helping people when they  
come and ask for help.

Q. Thank you.

MR. MAE: Your Honour, I have no further  
questions.

10 THE COURT: Thank you, Mr. Mae. Ms. Chapman, do  
you have some questions?

MS. CHAPMAN: I do.

CROSS-EXAMINATION BY MS. CHAPMAN:

15 Q. Good morning, Ms. Skybin.

A. Good morning.

Q. First, I'd like to ask you about attending  
examination for discovery. Do you remember having to attend and  
give evidence under oath?

20 A. Yes, of course.

Q. And do you agree that took place on April 10<sup>th</sup>,  
2014?

A. I believe so.

Q. Okay, so approximately two-and-a-half years  
25 from today previously. Yes?

A. Yes.

Q. And do you recall the evidence that you gave  
under oath on that day?

A. Well, I don't know what you mean. I recall I  
30 gave evidence, yes...

Q. Yes.

A. ...on that date.



Q. And you believe at the time, you were telling the truth when you gave that evidence at the discovery?

A. Yes, to the best of my knowledge. Yes.

5 Q. And do you recall at the discovery stating that the Nikityuks were not friends?

A. Yeah, I already explained at the time my notion of friendship. Like...

Q. So....

A. ...do you want me to explain it?

10 Q. No, but your evidence at that time was that the Nikityuks were not friends. And so, is your explanation because at that time, you didn't understand what the word friend meant?

A. No, I had my notion of friends which is, in my culture, a friend is somebody very close, somebody you've been through difficult times with, somebody you rely on, somebody you'd die for. In that - my understanding of friendships, no they were not friends.

Q. You....

20 A. They were social acquaintances and clients. So, that's why - no, they were not friends. I wasn't friends with them.

Q. But you now realize that that is a friendship, and it was a friendship?

25 A. Once it was explained to me that in Canada, friendship means different things, then yes. As social acquaintances, they're friends. Yes, in Canadian terms.

Q. You've been in Canada approximately 20 years?

30 A. Yes, but I am from our own culture and friendship - I take friendship seriously, so I don't just use words lightly.

Q. And you have a Master's degree, correct?

A. Yes.

Q. You earned that degree here in Canada?

A. Yes.

Q. And you were taught in English?

A. Yes.

Q. But you didn't understand the word friend?

A. No, I do understand the word friend. I explained to you the notion of friend that I - in my understanding. You're using the specific word that I have a specific notion for, which I explained to you, and that in my understanding of friend, they were not my friends.

Q. And do you recall at the examination giving evidence that you never - there were no road trips with the Nikityuks?

A. No, I don't recall such a thing. I did not take trips outside of the province or to a different city with them. No, there were no road trips of that kind. I didn't go on vacations with them.

Q. If we could provide the witness with a copy of the transcript from the examination for discovery, please?

THE COURT: They ought to look like that, Madam Registrar.

MR. MAE: Your Honour, I'm not seeing that a copy of the transcript is going to the witness. I have my copy, but it just means that I can't read along.

THE COURT: I have a copy as well. Madam Registrar....

MR. MAE: And is it that Madam Registrar does have a copy...

CLERK REGISTRAR: Yes, I do.

MR. MAE: ...oh wonderful.

MS. CHAPMAN: Q. If you could turn to page 54, please. And we're going to look at the last question on that page which is question 287. The question:

5 QUESTION: Okay, do you remember going out just for road trips on weekends with Nikityuks?

Q. Answer is at the top of page 55:

A. No road trips, no.

Q. But you did give evidence yesterday that you did, in fact, go on road trips with Nikityuks.

10 A. I disclosed everything in this transcript regarding my trips with Nikityuks. So, I didn't go with them on weekends. Like, I didn't hang out with them if that's what you're asking me. I disclosed which trips or what - where I went with them, and disclosed this here as well.

15 Q. Right, but your initial answer was that no, you did not go out on any road trips...

A. No, if you...

Q. ...with Nikityuks.

20 A. ...look further, I'm saying I went to Cranberry Fest in Bala, so I am describing where I went with them. But no, I didn't hang out with them on weekends.

Q. So....

25 A. My answer was to a specific question, and I clarified after I was asked again where I went with them. I clarified what type of activities I was engaged with them. So, you're asking me about a very specific question.

Q. Right, and....

A. My answer was to that question.

30 Q. And you don't see going to the Cranberry Festival or African Lion Safari as hanging out with Nikityuks on the weekends?

A. No, I wasn't hanging out with them. Like, it

- again, I don't know what exactly you're asking me.

Q. You were having a personal relationship with the Nikityuks outside of the YMCA?

5 A. Yes, okay. That's what you're asking me, yes I did.

Q. And in regards to your relationship with Svetlana, you stated at the examination when asked:

QUESTION: Did you ever invite Svetlana to your home?

10 Q. You stated:

ANSWER: No.

Q. Do you recall that?

A. Again, you would have to point me out, because there's probably more to that.

15 Q. Okay, let's have a look at page 64 of the transcript. It's question 366:

QUESTION: Did you ever invite Svetlana to your home?

ANSWER: No.

20 Q. But you gave evidence yesterday that you had, in fact, extended an invitation to your home to Svetlana.

A. I never intentionally invited Svetlana to my home, so that evidence is about only one occasion which had nothing to do with inviting her to my home. It was an alternate  
25 plan to our plans to go to the park. It was an *ad hoc* invitation that, you know, was not planned. So I know I never invited her to my home like to have - to celebrate something, to have a meal together, I never planned such an invitation.

30 Q. Would you agree with me that the question doesn't set out details? The question asks you whether you ever invited her to your home, and your answer was no.

A. Then at the time, I probably didn't even

remember about that occasion.

Q. And it goes on at question 367:

QUESTION: Did you ever ask her to help you somehow?

Q. Your answer was:

ANSWER: No.

Q. But isn't it true yesterday you gave evidence that you had asked her some questions about Russian pensions and transferring them to Canada, correct?

A. Yeah, but in my understanding of this question, is somehow I asked her to help me personally with something, and I didn't. I didn't ask her for any personal help with anything.

Q. And question 368:

QUESTION: With anything?

Q. So now counsel's clarifying:

QUESTION: Did you ask her for help with anything?

Q. And your answer:

ANSWER: No.

A. Then at the time, I probably didn't recall those specific things you're asking me about now. Like if you asked me specifically or show me something that's - the events took place a long time ago, I can't recall every single detail of either the events or their relationship of the correspondence. So in my best knowledge, I answered truthfully.

Q. But yesterday, being two-and-a-half years after this examination, you now recall that there was a time you invited Svetlana to your home, correct?

A. Yes, because I've seen a lot of documents in stand, and a lot of documents were produced here, and I was familiarized - I was familiar with them, yes.

Q. And you also now recall two-and-a-half years

later, there was a time that you asked her for some assistance.

A. It wasn't assistance, it was sharing information. That's different. I was asking her for assistance.

5 Q. And then at question 369:

QUESTION: And don't you remember calling her personally?

ANSWER: No.

10 Q. And again, yesterday you gave evidence that you did, in fact, speak with Svetlana about some personal matters over the telephone. Is...

A. She called me.

Q. ...that correct?

15 A. She called me. Mostly she called me, and again, it wasn't a - really a personal relationship.

Q. Did you ever telephone Svetlana?

A. Probably. If you asked me when, I can't tell you. I don't remember.

20 Q. Question 370:

QUESTION: Did you want to socialize with Svetlana? Just on social occasions out of respect to each other?

Q. Your answer:

A. No.

25 Q. Question 371:

QUESTION: And you never asked her to socialize with you?

ANSWER: Hmm, no.

Q. But you did socialize with Svetlana.

30 A. Sort of. Not personally, as I explained, we were going to the Y and there were other ladies who - we went together. And yes, we did extend the invitation to Svetlana,

but it wasn't a personal relationship. It was - I don't know how you would call it. Again, social network or - yeah and Svetlana....

Q. You were socializing.

5 A. Yeah, but it's - again, if you ask me if we were friends, no, no. We were not friends. Nothing of the kind. So, socializing in a group environment and, as I said, one time we went to church because she wanted to go, but it was coming from her, and I responded to that request. I'm always open, you  
10 know, if somebody wants to go somewhere like church, I'm happy to go. Like, I've been asked by other people and I took them to church, so there is nothing unusual, but it's not - doesn't entail me socializing with Svetlana.

Q. But when you were going to the Y with some  
15 other Russian ladies to swim, you're not working, correct?

A. Yes.

Q. You're spending some fun time with friends...

A. Yes.

Q. ...correct?

20 A. Yes.

Q. That's socializing.

A. Yes, so as a part of that, Svetlana was - yes, a part of the socializing...

Q. Okay, so let's look at...

25 A. ...I've kept all my life.

Q. ...sorry, were you finished?

A. Yes, mhm.

Q. So let's look at question 373, which is on the  
next page, 65:

30 QUESTION: You never asked Svetlana to translate anything to the parents?

ANSWER: No.

Q. But you'll agree, yesterday you gave evidence that you, in fact, did ask her to translate the initial confidentiality agreement for the parents. Is that correct?

A. A lot of these questions were twisted, and even if you look down here, that - even that contradiction raised on - at 376, that I was asking to help translate YMCA documents....

Q. Ms. Skybin, did you ask counsel asking you these questions to rephrase the question?

A. Yes, I did. I asked him specifically to refer to what he means by me asking her to translate YMCA documents, or whatever document he meant, and he clarified.

Q. But in relation to the other questions we just went over on page 64, did you, at any point, ask counsel to clarify his question?

A. Yeah, and he did, and I responded to that on page 66, Tab 7 about the confidentiality statement. I did answer that question.

Q. I agree, you asked for clarification on the confidentiality, but did you ask for clarification in relation to whether you were socializing with Svetlana?

A. Well, whatever's here is here, so if....

Q. But you gave a direct answer, "No."

A. In my understanding, I was not socializing with Svetlana.

Q. We're going to put that aside for a few minutes, and let's have a look at your log, which is in Exhibit 1(B), Tab 137.

A. Can you please repeat the tab?

Q. One-three-seven.

THE COURT: Counsel, I'm going to look at the same thing, but I find it in Exhibit A(1) of the



document brief.

MS. CHAPMAN: Sure, but I will have some questions for the witness relating to Tab 137(A), which unfortunately, is only in Exhibit 1(B).

5 THE COURT: All right. I just want to be consistent in my approach, because I've started to mark up...

MS. CHAPMAN: Sure...

THE COURT: ...this one.

10 MS. CHAPMAN: ...I think it's fair to use that as the first reference, but I would suggest also pulling 137(A).

THE COURT: I have that - I have that here too.

MS. CHAPMAN: Okay.

15 THE COURT: So I've got them both in front of me.

MS. CHAPMAN: Q. So Ms. Skybin, you gave evidence that this log was created on or about October 12<sup>th</sup>, 2011.

A. Yes, according to the records.

20 Q. And I understand you restored your notes between August 19<sup>th</sup> and October 12<sup>th</sup>...

A. Yes, correct.

Q. ...from your memory?

25 A. No, there would be - the August notes, yes. But then going forward as of October 4<sup>th</sup>, that would be like - probably I had some notes regarding that...

Q. Handwritten notes?

A. ...that I would use. Handwritten possibly, yeah. I can't....

Q. Where are those notes?

30 A. I don't keep notes on file. I use sticky notes on my notebook to make notes if I need phone numbers, or if I need to remember to do something, like more of a to-do

checklist. And I don't put them in the file.

Q. So, you have clients disclosing to you physical abuse in their home, and you don't keep your handwritten notes. Is that correct?

5 A. For that, no. There were no handwritten notes about the abuse, there were handwritten notes regarding to-do checklists, or contacts that I would put in my notepad, or on my stick note.

10 Q. When you met with the Nikityuks on August 23<sup>rd</sup>, did you take handwritten notes?

A. No, I didn't.

Q. None?

A. Not regard - no, because they wish not to do anything about it.

15 Q. But Nikityuks would have told you not to do anything at some point during that appointment. So, you have a client reporting physical abuse to you, and you don't take any notes. That's correct?

20 A. I can't recall taking notes on that particular appointment, so I can't comment.

Q. So, if you didn't take notes on August 23<sup>rd</sup>, when you create this log on October 12<sup>th</sup>, 2011, you do so from your memory, don't you?

A. Yes, correct.

25 Q. And what about the August 19<sup>th</sup> entry? Is that also from memory?

A. That's a background, yes. That's from memory. Background information to the following information - to the information that follows.

30 Q. In the September 30<sup>th</sup>, 2011 entry, is that from memory?

A. Yes, that's...

Yana Skybin - in-Ch (cont'd)

Q. So you had no notes?

A. ...what's been reported to me. As I said, I don't recall taking notes, but I just can't remember specifically about those at that particular date.

5 Q. How did you recall the specific days from your memory?

A. They came for an appointment, so I would have it in my database.

10 Q. And the August 19<sup>th</sup> date, that's not something you would have in your database, so how would you recall that? That that's the specific date that Svetlana had phoned you.

A. 'Cause it was - there's the night before I had my birthday party, so it was easy to remember. Those are all very close to the events that took place.

15 Q. Your evidence yesterday, I believe you said you're in the office two days per week?

A. Yes.

Q. And how many clients do you see in any given day?

20 A. Varies. I can see seven, I can see three. It depends if I'm in the community, maximum two.

Q. And do you see clients very - like, usually when you're in the office, are you meeting with clients?

25 A. Yes, of course. I have booked appointments and sometimes I get walk-ins, yes.

Q. So between August 23<sup>rd</sup> and October 12<sup>th</sup>, approximately 6 weeks had passed, correct?

A. Yes.

30 Q. And you would've seen quite a number of clients during that six week period.

A. I would have to check the database for how many clients I saw. I can't comment on that.

Q. But you were dealing with more than the Nikityuks during that period?

A. Yes, of course.

5 Q. And yet, you say you can recall all of these events...

A. Yes.

Q. ...in detail from your memory?

A. Yes, I do. And those were not just the only time that they shared the information. That information was  
10 shared over time again and again with providers - service providers.

Q. But you would agree that the log is intended to set out what Nikityuks shared with you on each of those individual dates, correct?

15 A. Yes, correct.

Q. Not a summary of what they provided to you over time.

A. No, that's correct. Yeah, what was told to me I put in so that I wouldn't forget.

20 Q. Now yesterday in your evidence, I - correct me if I'm wrong, I understand that the log at Tab 137, or in the green brief at A(1), I believe it is, is your log, correct? That you created and updated. The one that you're looking at now.

25 A. Yes, that's my log. That's correct. I did - I do keep notes, but then they can easily get lost between documents, so that's why I put it in one document so that it's easier for me just to add entries, as opposed to just have different pieces of papers stuck between the documents in the  
30 file. So, that was for that purpose that the log was created, to keep track of - and there was a lot of involvement, so to keep track of every single action taken, not to lose track of

that.

Q. And I apologize, it's actually 137(A) in Exhibit 1(B) that matches Tab A(1) in 2(B). So, the first log at Tab 137 is what I believe you refer to as Ruth Miller's log.

5 A. Yeah, it's not a log. It's her notes of her involvement with the Nikityuks. That's correct.

MR. MAE: Your Honour, I'm getting confused here. The - when the witness was examined yesterday, we dealt with the log in our productions. I  
10 understand what my friend's doing, she's referring to 137. I'm not necessarily sure that we're following which document she's referring to, because there are actually - there are two logs as we know, and I'm not necessarily sure that in 137  
15 and 138, they're actually split up in the correct way.

MS. CHAPMAN: Okay, so I will try - unfortunately I made my notes on our document brief, but I will try and refer the witness to 2(B). If we could  
20 maybe switch out the exhibit she's looking at.

THE COURT: All right, 2(B)'s the green volume?

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

THE COURT: And it's volume one of the green volume. At this point, I don't know what the  
25 differences are, but maybe we'll hear more about that. But for now, we're just going to look at....

MS. CHAPMAN: Yes.

A. 2(B)?

MS. CHAPMAN: Q. It's 1(A).

THE COURT: 1(A), right at the beginning.

A. Oh, okay.

MS. CHAPMAN: Q. Pardon me, A(1) and A(2). Those are the two separate logs.

A. Separate logs? Yeah, those are Ruth's notes at 2 - Tab 2 is Ruth's notes, and the Tab 1 are my notes.

5 Q. Okay, and were Ruth's notes made in the same Word document that you kept your log?

A. No, she typed them up on her computer, and printed them out, and put them in the file.

10 Q. And we can go through each entry individually, but why then are some of the entries exactly the same as your entries in your log?

A. Can you specifically refer to...

Q. Okay.

A. ...the entries?

15 Q. Okay, so there - the way in which this log was served in the affidavit of document has been changed now that it's in the trial brief. So, let's come back to that and....

20 MR. MAE: Sorry Your Honour, but let's not come back to it. You recall from the previous trial, I said, categorically, that the way the document was put in the affidavit of documents was a mistake at my office, and I offered my apologies to the Court and everybody else. More to the point Your Honour, like in these proceedings, a request to admit the authenticity of the logs was served, and it's been referenced several times in these proceedings. So, I'm not really sure where the editorial comment has come from or is going.

25 We've already explained why the two documents were in the same tab.

30

THE COURT: All right. Ms. Chapman, if you need a few minutes to review this on your own or with the

benefit of counsel, I'm happy to do that. I do see - and I don't fully understand what this is - where the problem arose, but I could probably get there if you took me through it. But in the green volume, we've got a log at Tab 1, and something that looks quite different at Tab 2.

MS. CHAPMAN: Right. I think I would rather just put it aside, I'll have a look at the break, and address another area relating to the log...

THE COURT: All right, thank you.

MS. CHAPMAN: ...if that's fine.

THE COURT: So, now we're back to A(1)? We're looking at A(1)?

MS. CHAPMAN: Yes, we're looking at Ms. Skybin's log at A(1).

MS. CHAPMAN: Q. And Ms. Skybin, were you the only one with access to this Word document?

A. Yes, but it was printed and put in the file, so whoever was working on the file would see the note.

Q. But nobody had access to the electronic version...

A. No, no.

Q. ...of the log? So, let's look at the entries on the log. On August 23<sup>rd</sup>, 2011, your second statement in the log, "They asked for information about subsidized housing."

A. Yes.

Q. So with regards to the meeting on August 23<sup>rd</sup>, your first statement relates to their request for subsidized housing.

A. Yes, they asked for information.

Q. You didn't think it was important to address the physical abuse being an issue first?

5 A. I did ask them why they would want to live separately, and they disclosed the abuse. The abuse was disclosed after I questioned them about why they would want that.

Q. But initially, when they came into the meeting with you, they said we'd like to talk about socialized housing?

A. They wanted information about - yeah, how to apply for social housing.

Q. And at what point did Alla start crying?

10 A. After she disclosed the bruises and Valentin shared the story of how they happened. And at that time, she started crying, saying how - who can live like that, and Valentin shared the story.

Q. And what do you mean by disclose the bruises?

15 A. She showed them to me.

Q. Do you recall what kind of shirt she was wearing?

20 A. Yes, it wasn't long sleeves. They were kind of short sleeves, but she lifted them up and she showed me - she showed the arms.

Q. And do you recall the evidence that you gave at the examination for discovery on the bruising?

A. Yes.

25 Q. And do you recall saying that the bruises were five centimetres in diameter? In size? Do you want to have a look at that? If we can put the transcript....

A. I have the transcript.

Q. You have it there? Okay, good. Page 108, please. Starting at question 631:

30 QUESTION: And you said that these two bruises or multiple bruise?

ANSWER: No.



QUESTION: They were five centimetres apart?

ANSWER: In size.

QUESTION: Or they were five centimetres in size?

ANSWER: In size, each of them was about....

5 Q. And unfortunately, you and counsel keep cutting each other off. Question 634:

QUESTION: In diameter?

ANSWER: In diameter, yeah. Around. Maybe.

10 Again, I can't remember exactly each of those bruises, but there were multiple bruises on both arms of her body. They were visible, like if you would not mistaken them for anything else.

A. Yes, so that's exactly what happened.

Q. Five centimetres in diameter?

15 A. No, like I don't know. I'm not a doctor, you know? And it was very brief, I could - I'm only seeing what I'm seeing - what I saw, which is I saw the bruises. They were on her upper arms which is in the - where I showed, shoulder area. Like, upper arms. And there were multiple bruises, and I saw  
20 them. So they were not minor, they were not like - I didn't have to come close and examine them, I could see them from where I was sitting.

Q. And yesterday your....

25 A. So I can - I don't know exactly in diameter in size. You didn't ask me, you know? Like I can't tell you exactly, you know, because I did not measure them. I didn't take a ruler, you know? Like - so I don't know.

Q. We can go back, but it was you that said they were five centimetres. You...

30 A. I was guess...

Q. ...used that language.

A. ...I was trying to guess, like okay, how would

you describe them? But in reality, I don't know exactly. I only know what I know, so there were - they were - they looked like from fingerprints. There were like a few of them on her upper arms, and I could see them from where I was sitting, and  
5 it was right across from her.

Q. You used the word fingerprints, and you used that word yesterday to describe...

A. Yes.

Q. ...these bruises, but you didn't use  
10 fingerprints at the examination for discovery to describe the bruises. You described them as large bruises, five centimetres in size.

A. No, five centimetres is not a lot, and they were not large. They were multiple - yeah, so on her arms, but  
15 they were visible, so I could see them from where I was sitting. They were not small. They were not - I don't know, they were not large, but they - I could - they were visible. So, that's what I'm trying to say, but I don't know the size of the bruises. I didn't measure them.

20 MR. MAE: Your Honour, I'm going to rise. If we're on page 180 of the transcript, the attention should be drawn to question 613 and the answer of 613, because it's there in the transcript. The question is:

QUESTION: How did they look like?

25 ANSWER: They were from fingers or punches. That was one big bruise.

QUESTION: Just describe them.

ANSWER: No, it wasn't one bruise. It was a few bruises, maybe five centimetres in range [in  
30 range] on both arms, and they were a grey, yellow, green colour.

MR. MAE: In range.

MS. CHAPMAN: Q. But then the questions from there clarify what is meant in range, and counsel asks you:

QUESTION: In size?

Q. And then he clarifies:

QUESTION: In diameter?

Q. And you said:

ANSWER: Yeah, around maybe. Again, I can't...

A. I was guessing...

ANSWER: ...remember exactly.

A. ...and yeah, and then I'm still saying that. I didn't take the ruler and measure then, and I can't tell you specifics.

Q. But you didn't say that the finger - pardon me, the bruises looked like fingerprints at the examination for discovery.

A. I'll show you. The last question was what they look like, and I was trying to describe them as best as I could. But obviously, you know...

Q. You were in the courtroom....

A. ...I got confused with all these diameters and centimetres and like....

Q. But you were in the courtroom for Alla Nikityuk's evidence, correct?

A. Yes.

Q. And you heard her describe these bruises as being bruises from fingerprints on her arms.

A. But she told me what caused the bruises back then on the 23<sup>rd</sup>. She told me what caused the bruises. She told me it was from grabbing her...

Q. But before you...

A. ...and shaking her.

Q. ...you describe them a different way. You

5 didn't use the word fingerprint until you heard Alla's evidence, correct?

A. I don't know, like they were - I describe it still the way I described it then. I saw what I saw, and I'm  
5 trying to describe it. I'm not describing it any other way.

Q. So, you have clients in your office at the YMCA disclosing physical abuse to you, correct? On August 23<sup>rd</sup>...

A. Clients...

10 Q. ...this is what happens.

A. ...oh okay, you are talking about these clients. Yes, sorry.

Q. Yes, the Nikityuks.

A. Clients, I have many clients. Yes, okay, mhm.

15 Q. They're in your office on August 23<sup>rd</sup>?

A. Yes.

Q. They tell you that Alla's been physically attacked by Svetlana.

A. Was, yes.

20 Q. And you see these bruises with your own eyes was...

A. Yes.

Q. ...your evidence, but you don't take any pictures?

25 A. No.

Q. You didn't ask anyone else in the office to come and sit in on this meeting to be a witness to this information?

30 A. No, it was very spontaneous and she was emotional, and I was more concerned about her state and about, you know, the information shared than about, you know, thinking of what you just told me. I was with the client in the moment,

and listening to what she had to say.

Q. But you were aware enough that you provided them with literature on elder abuse.

A. After the discussion, we had a discussion.  
5 And after that, yes, I gave that to them to - like, for educational purposes.

Q. And you gave that literature to them on August 23<sup>rd</sup>?

A. Yes.

10 Q. And would you agree that elder, and elderly person who may be abused, is a vulnerable adult?

A. There is a difference. Any person who is abused is vulnerable in a sense that they're being abused, but they're not vulnerable person. I know the definition of a  
15 vulnerable person. I have my own daughter, a vulnerable person. So like, it's not the same.

Q. You did not see the Nikityuks as vulnerable?

A. No, they were not vulnerable. They had clear mind, they were independent, they had no capacity issues  
20 whatsoever, they could make their own decisions, and they were adults with clear minds. So no, I didn't see them as vulnerable in a sense that needed protection.

Q. So then, why provide them with literature on elder abuse if they're not vulnerable? If they can take care of  
25 themselves?

A. For informational purposes because of what Alla said that they were basically taken for the sake of ease, that they wouldn't convince that a granddaughter could give it a try, and they will just try to stay low. So basically, their  
30 situation was not about vulnerable adults, it wasn't bad. It was that they've been in an abusive situation that were - they kind of continued - they were willing to continue by adjusting

their ways to reduce the abuse, but somehow taking it upon themselves. That somehow that what they were doing probably caused it, you know? And that's also a common mistake, or common misunderstanding on the part of the people - the victims, or people who are being abused. So - and I did explain to them that those kind of actions are not acceptable in Canada, and they didn't have to just keep it to themselves, but they didn't want to talk to anybody because they knew that that could cause other problems to the family, and they didn't want to harm them.

Q. You said to reduce the abuse. There'd only been one account - alleged account of physical attack on Alla, correct? They never told you anything other than about that specific attack in that August 23<sup>rd</sup> meeting?

A. No, they did. They - Valentin described another situation when Pavel was throwing the plate at the wall and at his feet, and so when they said that they just can't live like that, they want to live on their own. There were other things that were going on besides - it wasn't just one occasion or one specific that was - yeah, that was a physical assault, but the abuse was not limited to physical.

Q. And did Valentin show you pictures of the damage to the wall from these plates that had been thrown at him?

A. Not at - on that date, but later, I think he had a picture of the wall with the hole in it that he - yeah, he brought in.

Q. When did he show that picture to you?

A. I can't recall, maybe it - I know that I saw it, but I can't recall it and when and - or maybe in the summer appointment. Can't tell you.

Q. But you recall Valentin showing that...

A. Yeah, he mentioned that...

Q. ...picture to you?

A. ...he took a - actually, I asked him if he - they took pictures, and he said he took a picture of the wall, and so yeah. Later - maybe I even saw it in production, I'm not  
5 sure. But he did mention that he took a picture of the - earlier when I was working with them, he did mention that...

Q. So you're not sure if you saw...

A. ...that he had a picture of the wall.

Q. ...the picture from Valentin, or if...

10 A. Yeah, that's what I'm trying to...

Q. ...you saw in the productions.

A. ...see, 'cause there were so - no, like I've seen so many things and productions that I might have seen the picture in the productions, but he told me about - I asked him  
15 specifically did you take a picture? And said yeah, I took a picture. And so, I knew - well - or he told me there was a picture.

Q. When did you ask him if he took a picture?

A. When he told me of that occasion.

20 Q. On August 23<sup>rd</sup>?

A. Again, I don't know if it was exactly on August 23<sup>rd</sup>, or...

Q. So did you....

A. ...the 30<sup>th</sup>, so it could have been between  
25 those two - like, either in one of those appointments.

Q. Are you sure about that?

A. Well, he told me about - he did say about the attack as well. Like not the attack - not the direct attack, but the throwing of the plate and of the glass, yes. And when I  
30 asked him if he took any pictures, he said yeah, actually I took a picture. I have it.

Q. But your notes don't mention a glass. Your

notes only allege that, "the son in yal - [pardon me], the son-in-law yelled at them too, and threw a plate at them that ended up making holes in the wall in the living room."

A. Yes, that's what was told to me. Yes.

5 Q. Did they speak about a glass also being thrown?

A. Maybe not a glass specifically, but he said he threw a plate at the wall, and then he threw - he said another one at the feet, so - like later, it was clarified it was a  
10 glass, but at the time, yeah. He mentioned the plate specifically, and then he said one into the one - one at his feet. And he said the next one will go into your head.

Q. And all of that was told to you by Valentin at the August 23<sup>rd</sup> appointment?

15 A. Yes, if it's here, then it was on the 23<sup>rd</sup>, yes.

Q. No, it's not. It only refers to plates being thrown at a wall.

A. But that incident - yes, was disclosed at the  
20 same time.

Q. But you didn't record that in your notes.

A. What did I not record in my notes? That's the same incidents of throwing the plate at the wall, and after Valentin said that I had enough, I'm going to leave, and to stop  
25 him, like that was the measure used against him. So, it's the same incidents we're talking about.

Q. And Valentin told you that entire story on the August 23<sup>rd</sup> meeting?

A. He told me that at some point. So if it  
30 wasn't on the 23<sup>rd</sup>, then it was on the 30<sup>th</sup>. So, I would have to read my notes to recall the exact date, but that was shared with me. That incident was shared with me.



Yana Skybin - in-Ch (cont'd)

Q. So, you asked them whether they took pictures of the wall. Did you ask if they took pictures of Alla's bruises?

A. No, I didn't ask them about the bruises. I  
5 didn't ask them about taking pictures.

Q. You didn't ask them about taking pictures of the wall?

A. No, he - no, I already answered that question. He specifically said he had a picture of the wall. I didn't ask  
10 them if they took the pictures of the bruises. We didn't discuss that.

Q. And you didn't think it was important to make any note or photograph of these bruises?

A. As I told you, it's not our typical protocol.  
15 We don't really deal with reporting, so no. And she - Alla was so distressed, that my first concern was just to be there for her, and to let her speak about it, and let it out. So, that's normal. Like, we have - that's why we keep Kleenex all the time. If people disclose abuse, usually it's very emotional,  
20 and they cry a lot. They may, you know, like - it may take an hour sometimes just to listen to what they have to say. We don't interrupt, we just be there for them and listen. So, my first concern was not to run somewhere, just to be there for her and let - and give her space, and let her, you know, like speak.

Q. So did the YMCA have a protocol to deal with  
25 reports of elder abuse?

A. No, we don't have such a protocol.

Q. In 2011, you did not have that kind of  
protocol?

A. We still don't have a protocol about dealing  
30 with elder abuse.

Q. And so, there was no protocol to apply the

child abuse protection protocol to situations of elder abuse?

A. That's not the same thing. No, child protection is not elder abuse.

5 Q. So, you weren't to treat reports of elder abuse any differently than anyone else reporting to you, as an adult...

A. Yes.

Q. ...that they have abuse in their home?

A. That's correct, yes.

10 MS. CHAPMAN: This might be a good time to take a break, Your Honour.

THE COURT: All right, we'll take our morning break now. Thank you.

MS. CHAPMAN: Thank you.

15 CLERK REGISTRAR: Order please.

R E C E S S

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

20 CLERK REGISTRAR: Order please, all rise.

THE COURT: Good morning again.

CLERK REGISTRAR: Court is now resumed. Please be seated.

25 MS. CHAPMAN: Q. Before the break Ms. Skybin, we were talking about whether YMCA had a policy regarding reports of child abuse, and do you recall being asked about this at the examination for discovery?

A. I don't recall. Like if you show me, I can go to that discussion.

30 Q. Sure. So, the questions begin on page 114 of the transcript. And just to give the Court a complete picture, I would start at question 669, and you're asked:

Yana Skybin - in-Ch (cont'd)

QUESTION: What other resources you use at YMCA just on elderly abuse, or just any abuse? Are there any other guidelines or publications?

Q. Your answer:

ANSWER: There are very specific situations [pardon me], and none of - like, not all of them would have the same protocol. So, it depends on the situation. And in this situation, the two individuals are adults who we referred to the services in the community that help people in situations like that.

Q. And next question:

QUESTION: Are there any guidelines? You said protocol. What kind of protocol? What do you have at YMCA to address abuse, or what did you mean by protocol?

ANSWER: We have a child protection act.

QUESTION: Yeah?

ANSWER: That we have training on. We received that training recently. There is one of the protocols we do have in place.

QUESTION: And to use this protocol when it comes to elderly people as well? To vulnerable people?

ANSWER: That is correct, except I receive the training in all of us. That came into effect only like, recently. Like we literally received our training two, three months ago.

Q. So, was there a protocol in place to apply to elder abuse situations?

A. No, there was no protocol in place for elder abuse situations.

Q. So, the protocol you're referring to here,

that came into effect sometime in early 2012. Right? You said it...

A. 2013.

Q. ...came into effect....

5 A. 2013.

Q. Oh, pardon me. Sorry, yes. Early 2014, this is April 2014 you're giving this answer, right? And you say that you received your training two or three months ago.

10 A. Yeah, I received formal training on child protection. That has nothing to do with elder abuse.

Q. But would you agree that your answer said that when it comes to elderly people, as well to vulnerable people, that this is the protocol to be applied?

A. Vulnerable people. That's different.

15 Q. So, even though - would you agree Nikityuks are elderly? You gave them information on elder abuse, correct?

A. Yes.

Q. But that does not make them vulnerable?

20 A. No, there's a difference. We can be of any age and you can be vulnerable, and you can be elderly and you are not vulnerable, so....

Q. So, then why would you give them information about elder abuse if you didn't think they were in a vulnerable situation?

25 A. No, it's a difference. They were in a vulnerable - they were in a situation of abuse, but that does not make them vulnerable adults. There is a very specific definition of elderly - sorry, of a vulnerable person.

30 Q. And what do you believe a vulnerable person is?

A. A vulnerable person is a person who cannot make decisions on their own, and who are in need of supervision,

protection due to the capacity issues.

Q. But isn't someone who has a daughter exercising control and power over them, are they not vulnerable?

A. Well, that's a power and control situation.  
5 That's different. It can be also present in a situation of marriage where one spouse controls another, but that doesn't mean that the other spouse is not capable. Exercising control does not entail somebody has no capacity to manage...

Q. We're not talking about capacity...

A. ...their own affairs.

Q. ...we're talking about whether Nikityuks were vulnerable, and you gave evidence that you believed that they had no access to their finances, correct?

A. Because they were not given that access.

Q. And does that not make them vulnerable?

A. Like, in which sense?

Q. That they have....

A. That they dependent on somebody else, yes.

Q. Yes, so they tell you that they have no access  
20 to their finances, and they have to depend on Svetlana and Pavel. So that made them vulnerable, didn't it?

A. They were not happy about that situation. They wanted to change it, and they were not - there was no cooperation on....

Q. And not only do they not have access to their  
25 finances, but Svetlana and Pavel control everything, right?

A. Yes, correct. According....

Q. How they spend their money?

A. No, I don't know about that, but according to  
30 them, they wanted to have their own money, yes. They wanted access to their own pensions and they wanted to spend them as deemed necessary. I don't know about them having control of

every aspect of their spendings. That I don't know.

Q. Okay, well let's look at your log entry from September 30<sup>th</sup>, 2011. It's Tab A(1) in Exhibit 2(B). And mid-paragraph, you write, "They showed me a list of deductions from  
5 their pension. The daughter and son-in-law made for computer use, TV, food, gas, other things for when Valentin's daughter visited."

A. Yes, so what is your question?

Q. So they did - they did tell you that they  
10 didn't have funds available to them, but that they were given a list of how their money was being spent.

A. That's a particular situation when their pension that came to an account they didn't control. Basically, without their consent, was deducted for expenses that Svetlana  
15 and Pavel seemed necessary, or they believed they could take out of their pension without their consent.

Q. And if that were true, that would not make Nikityuks vulnerable?

A. I don't understand the question.

Q. If their adult children - if they don't have  
20 access to their money, and their adult children are saying this is what you got for your pension this month, and this is what you've spent it on, here's the list, that doesn't make them vulnerable.

A. That makes them controlled, but in which sense  
25 vulnerable. They've been controlled.

Q. And Svetlana warned them that there's just  
enough food in the fridge, and if they need anything else, they should buy it themselves.

A. And what is the question?

Q. They're not vulnerable in that situation?  
30 They're telling you we have no access to our funds, and there's

just enough food in the fridge. You didn't see Nikityuks as vulnerable?

A. They told me they want to live their own lives separately, so that they could manage their own affairs, because  
5 they were not happy with the situation of being controlled.

Q. We're going to come back to your log, but let's have a look at the elder abuse pamphlets that you provided, which is in Exhibit 1(A), Tab 93. And just to be clear, I understand your evidence is you gave this pamphlets to  
10 Nikityuks during your meeting on August 23<sup>rd</sup>, 2011.

A. Yes, and then it was given to them again by Bev on October 5<sup>th</sup>. Same pamphlet.

Q. And it was translated...

A. Yes.

Q. ...for them into Russian, and they could  
15 understand...

A. Yes.

Q. ...the information. And so, they've had this pamphlet for over four weeks when they come to see you on  
20 September 30<sup>th</sup>, and report these other issues to you, correct?

A. Yes.

Q. So, let's have a look at what the types of elder abuse are. So, starting on page 589, "Physical abuse. First, physical assault, such as slapping, pushing, or beating  
25 an older person." Nikityuks had reported to you that there was a physical assault.

A. Yes.

Q. Next, "Forced confinement in a room, bed, or chair." Nikityuks reported to you that they felt they were  
30 confined to their bedrooms.

A. No, not physically confined. They chose to stay out of the way, not to encounter confrontation, so, you

know, displeasure.

Q. And that Svetlana blocked the bathroom door.

A. Yeah, when she was yelling at Alla, and Alla tried to, you know, get away and she would keep the door open so she wouldn't get her own space. Basically...

Q. And that's what....

A. ...to get away from her.

Q. Right, and that's what Nikityuks report to you on September 30<sup>th</sup>.

A. Okay...

Q. Do you have the log?

A. ...September the 30<sup>th</sup>, I don't - can't tell exact date, but that was report - yeah, that they mentioned it might not have been on the 30<sup>th</sup>...

Q. Okay, so....

A. ...so I'm not sure.

Q. Could we also provide the witness with Exhibit 2(A), because I'm going to refer back to your log as you go through these, Ms. Skybin. So, you need to keep 1(A), but also have 2(A) available. The green binder with tab...

MR. BORNMANN: 3(A).

MS. CHAPMAN: Oh, pardon me. 3(A).

THE COURT: So just to be clear, we're look at the log and the pamphlet together?

MS. CHAPMAN: Yes.

A. Yes, that's right, that was reported to me on the 30<sup>th</sup>.

MS. CHAPMAN: Q. Okay, so now let's turn to page 590 in the pamphlet. We can skip sexual abuse. There was no reports of sexual abuse, correct?

A. No.

Q. "Financial abuse. One: forcing an older



person to sell personal property." Did the Nikityuks tell you that they were forced to sell their personal property?

A. No, they....

5 Q. They had sold the property in Russia in order to be able to come to Canada, correct?

A. Yeah, they didn't tell me they were made to sell the property, that you just - they said they sold all their property and moved here for good. They said they transferred the funds to Svetlana that - yes, that's correct.

10 Q. And the second bullet, "Stealing an older person's money, pension cheques, or possessions." You referred to this as financial robbery in one of your correspondences, correct?

15 A. I'd refer to - yeah, I mean that was the wording, but it was not just withholding pension. It was more than that.

Q. Right, they use the word stealing. Would you agree that is similar to robbery?

20 A. When they moved, they gave new Power of Attorney to Svetlana, and then they discovered that there were two accounts. TD - like, investment accounts in their names - just their names, and Alla and Valentin. And then the funds from those accounts were moved after the date they moved, and they basic - technically speaking, the children were - had no  
25 authority to access those accounts. They did, and so that's - and Alla and Valentin were blamed by Ontario - not blamed, but the Ontario Works said those are your accounts, and we don't know if you didn't move those account - that money, and are hiding now somewhere. So, that's technically stealing, you  
30 know? They stole their money.

Q. We're going to come to that, but...

A. Sure.

Q. ...you'd agree that there was an element of stealing, or some sort of robbery had been alleged to be - that had occurred. That the Danilovs had took a Nikityuk's money.

5 A. What they were saying is that withholding, and also controlling the money.

Q. But they had told you they didn't have access to their pension funds, correct?

10 A. Yes, correct. It was - they were given printouts usually, and then they had to request cash, which was given to them in a couple of days if they needed what they were requesting. But then, in the later events, there were deductions made without their consent.

15 Q. And you write in your September 30<sup>th</sup> entry, "The daughter had full control of their finances including pension."

A. Yes, correct.

Q. But yesterday, you gave evidence that Alla had a TD access card.

20 A. She had an - yeah, she had a card. I don't know if it was a Nexus card or if it was a credit card, but yes, that's correct. They had cards that, again, were given to them by the children, and they were told what to use them for, and Alla - so she reported that they were given some other card. They didn't open it, but it was, again, opened in their name, 25 and they were given that to use again. I don't remember for which purpose, so they were being told which card to use, for what purpose, and even the cards were opened without their involvement.

30 Q. But you would agree they had cards to use, and they used them with you?

A. They didn't use them with me, no. I don't know where they used them. With me, they used their cards with

me? No, they didn't use them with me.

Q. I'm not saying they used them for you, but did you ever see them use those cards when you were out with them, for example....

5 A. No, I didn't see them use the cards. It's when they were already looking into their finances. Whatever cards they had, they requested information about what accounts they had, because they didn't have any knowledge about those accounts, or what was even in those accounts. I never saw them  
10 using cards or what type of cards or - no, I have no knowledge of that.

Q. But you're specific in your entry on September 30<sup>th</sup>. You say, "She gave them a PC card, and said they can deduct \$200."

15 A. That's what they told me. That's what they disclosed to me.

Q. So, you knew on September 30<sup>th</sup> that they did have access to some bank cards, and to money.

A. What was reported to me is what I reported.

20 Q. So would you agree that statement that you write on September 30<sup>th</sup> - or you later write as a statement for September 30<sup>th</sup>, that there was a PC card, and Alla or Valentin had used it.

A. They had a card that was - yeah, that they  
25 could use to - I guess to deduct whatever was available.

Q. So, if we go back to the pamphlet on page 590, the third bullet point under financial abuse, "Committing fraud, forgery, or extortion." Right? And at some point, you say Nikityuks told you that they understood the property in Innisfil  
30 was to be registered in their name.

A. That's what they believed at the time was the case, as they've been told.

Q. But to their surprise, it was not...

A. Yes.

Q. ...and so their money hadn't gone where they expected.

5 A. Well, maybe the money's gone there, but it wasn't their house. So, the money's gone into somebody else's house.

Q. And the next bullet point, "Misusing a Power of Attorney." And they also allege that, correct?

10 A. Yes, correct.

Q. That Svetlana misused her Power of Attorney.

A. Yes, correct, because a Power of Attorney is not meant to be making decisions on somebody's behalf if the person who holds the Power of Attorney is supposed to consult with the person they're doing. And it's supposed to be in the benefit of the person, not to benefit themselves. That's a misuse of the Power of Attorney, yes.

Q. And how do you know that the Power of Attorney was using to benefit Svetlana?

20 A. Well, opening - even though the credit cards or card in their names that they had no knowledge of, and they just given the card and never been asked.

Q. And do you recall the evidence that Valentin Nikityuk gave when we went over those credit card statements, and he had made some purchases using those credit cards, and he agreed that those were his purchases?

A. And?

Q. Do you recall that evidence...

A. Yes.

30 Q. ...from May? So he was using his cards. He had access to funds, correct?

A. Yes.

Q. The next type of elder abuse, "Neglect. Abandoning and older person or withholding food and health services." Would you agree that Alla telling you there's just enough food in the fridge was essentially telling them you eat  
5 this, this is it?

A. No, that wasn't the purpose. Basically, it was still considered emotional abuse of - like, they were put down and quite often, and that was one of those situations. When they were told you eat too much, you've already eaten up  
10 your money, nothing here is yours, and, you know, like basically we provide nothing. If you need more, you would have to purchase yourself. That was in the context of basically putting them down.

Q. And the second bullet point under neglect,  
15 "Deliberately failing to give a dependent, older person what they need." And so, did Nikityuks make allegations against Danilovs that they didn't give them what they needed?

A. They....

Q. A safe home?

A. No, they didn't make such allegations. The  
20 safe home, yes. They didn't feel safe in that home. They actually said that if they hadn't moved, something bad would have happened. They were convinced of that. And they - so - but - sorry, there were threats. Constant threats, which is  
25 again, a mean of control of telling them we'll take away your keys, you know, and making fun of them. So, that's a part of the emotional abuse.

Q. What were the constant threats?

A. To take away the keys, you know? Even they  
30 didn't like the fact that they were hanging out with friends, and so - also, making fun of them, like making derogatory comments deliberately, you know? To make them upset, to provoke

them...

Q. And this is what...

A. ...that was reported...

Q. ...Alla and Valentin are telling you?

5 A. ...that's what Alla and Valentin were telling us, yes.

Q. And the other form of abuse, mental abuse. First bullet point, "Humiliating, insulting, frightening, threatening, or ignoring an older person."

10 A. That's exactly what I was describing, yes.

Q. And the second bullet point, "Treating an older person like a child."

A. Yes, that too. It was even the fact that Svetlana was looking into declaring them incompetent. She was  
15 telling them that taking them to senior home and saying this is where you're gonna move. Basically threatening them that if they don't stop looking for alternate arrangement - living arrangements, they'll end up in a senior home.

Q. So, you'll agree Nikityuks had the opportunity  
20 to review this in Russian for approximately four weeks?

A. I have no knowledge of that if they actually read it.

Q. But they did come back and see you four weeks after you gave it to them in Russian, correct?

25 A. Yes, I gave them the resource in Russian, and they had an opportunity to contact all of those places that would be dealing specifically with elder abuse. So, they had access to that information. When they came back, they said that when they were leaving, they did not want to move out. They  
30 said that they'll make adjustments to their own behaviour, stay low, and stay out of way and we'll keep peace in the family. But when they came back, they said peace didn't last, and they

reported all those things that I listed there, and they said they're deliberate - now they're determined to move. Now they do want to move, and they asked for that referral that I offered them on the 23<sup>rd</sup>...

5 Q. Right.

A. ...to the shelter.

Q. So, they reported all the things that are listed here. That's what they did on the September 30<sup>th</sup> meeting, correct?

10 A. Yes.

Q. The list of deductions you say they showed you, this was a paper document?

A. Paper document, yes...

Q. And you...

15 A. ...printout.

Q. ...reviewed it?

A. I saw it.

Q. Did you....

A. Yes, I saw it.

20 Q. Do you know whether we have a copy here in the materials?

A. I'm not sure, I can't say...

Q. Do you recall what was on that document?

25 A. ...we have a copy. Yeah, it's like an invoice, and it had entries and then amounts, and then the balance on the bottom.

Q. And would you call the items computer use, TV?

A. Repair. Computer repair \$80 per hour sometime that - and then....

30 Q. You didn't write repair, you wrote, "Computer use." Are you saying it's....

A. For the repair. It was for the repair.

Q. TV, gas, and other things. Food, gas, and other things for when Valentin's daughter visited?

A. Yeah, yeah, that's right. So, there were deductions for - basically for the extra expenses, I guess, incurred while his daughter was visiting.

Q. Right, so not the basic requirements that a sponsor is required to provide to the Nikityuks, correct?

MR. MAE: Your Honour, I'm not sure that she can answer that question.

MS. CHAPMAN: Q. You refer to these as extra expenses?

A. I'm not in a position to judge, you know, basic requirements or not. Like, that's - I'm describing only what was taken from them without their consent, that's all.

Q. And in your statement regarding the daughter having full control of the finances, isn't it true they actually had joint bank accounts? Svetlana and the Nikityuks?

A. You'd have to ask Alla and Valentin...

Q. You don't know this?

A. ...about their own finances.

Q. Did you - was Svetlana's name on the bank accounts that you assisted Nikityuks in closing?

A. I didn't close any accounts. I acted as an interpreter, so I can't comment on what was on those accounts.

I wasn't personally closing their accounts. I'm not a...

Q. Did you ever...

A. ...teller or....

Q. ...attend the bank with the Nikityuks for the purpose of closing bank accounts?

A. I was present as an interpreter. I interpreted for the Nikityuks and for the bank representative. I was not personally doing anything with their accounts.



Q. But as an interpreter, you would hear and understand what was being said by the bank representative to the Nikityuks, correct?

5 A. Yes, but I - now I can't comment on the specifics of accounts, because it was not my accounts. I have no knowledge of them.

Q. But you would have translated the bank representative's information to the Nikityuks in those meetings.

10 A. Yes, correct. But you're asking about specifics, and I cannot give them to you because I don't know who...

Q. Okay, so....

A. ...was on which accounts, and I have no knowledge of that.

15 Q. Let's have a look again at your log. It's page - sorry, I have to go back. It's your entry for October 7<sup>th</sup>, 2011. The third bullet point, "Went to TD Bank, got a printout of accounts, financial information."

20 A. Yeah, Alla and Valentin - I went with them to the TD Bank that they had. They had a card for that, and they asked the bank what - for information about those accounts that they had in their names.

Q. And what did they learn about those accounts at that meeting?

25 A. I think at that meeting is when they've been told there were investment accounts in their names, and there was money in those accounts.

Q. And was there a joint chequing account?

30 A. I can't - I don't remember. I don't know. I can't tell anything about the day, I don't remember.

Q. And that entry, October 7, 2011, it too, was made after that actual meeting took place, correct?

Yana Skybin - in-Ch (cont'd)

A. Which actual meeting?

Q. Well, I understand you started the log on October 12<sup>th</sup>, 2011.

A. Yes, so it must....

5 Q. So, you would've went back to make this...

A. Yes, yes...

Q. ...October 7<sup>th</sup> entry.

A. ...so I would probably - I probably had just my appointments in my database, and also brief notes, and I  
10 restored them from that. That's correct.

Q. And so, when you made the Octboer 7<sup>th</sup> entry about attending the bank to deal with some joint accounts....

A. There - and I - that's not what I said. I said they learned at that appointment that there were investment  
15 accounts in their own names, not joint, and that there were funds, and they just asked for the account information for the, I guess, statement.

Q. So, knowing that information that you learn on October 7<sup>th</sup>, right? About these accounts in their name, you  
20 still make the entry on September 30<sup>th</sup>, 2011 that they have no access to their finances including pension?

A. That's what they reported to me, and they didn't have access to their pension. It was deposited into their account that they didn't know anything about. They had to  
25 request that from Svetlana. So what did I know? I didn't know anything at that time.

Q. Well, on October 7<sup>th</sup>, you attend TD Bank, you know they have a TD access card. What made you go to TD Bank?

A. They had a credit card, and when they asked  
30 about what accounts they have in their names, that's when the representative told them that there is an account in their names, and told them what it is, and they obtained information

about it. So, it had nothing to do with pension or joint accounts.

Q. Okay, we're going to put the log aside for a moment. We'll come back to this. Let's talk about your  
5 birthday party on Saturday, August 20<sup>th</sup>. You gave evidence about that party yesterday, correct?

A. Yes.

Q. And yesterday, Mr. Mae asked you, "During the party, did everything seem normal?" And your answer was, "They  
10 held themselves together." You were referring to Nikityuks?

A. Yes, yes. No, they were not completely themselves, but they were taking it really well. Yes, they - everything seemed normal from that point of view.

Q. So, was everyone at the party happy?

A. It's a social gathering, people are happy at  
15 social gatherings. They're not - I don't know what - how they feel inside, but they, on the outside, yes. They are there for the purpose of celebrating and having, like, good time.

Q. And you thought Nikityuks were having a good  
20 time at your party?

A. I could tell they were - something was bothering them. But yeah, they pretended to, like - they were communicating, they were there, right? Like so, they came and they were fully present. Let's put it this way.

Q. And do you recall the evidence you gave at the  
25 examination about the birthday gift from the Nikityuks?

A. Yes.

Q. And your evidence, we can go to it if you'd like, but you said, "I did not receive money from Nikityuks."  
30 Do you recall making that statement at the discovery?

A. I would have to look at it again because there were many questions at the discovery. It was very confusing.

So which part is that?

Q. Sure, so it's page 90, question 512:

QUESTION: And you said before, or whatever, just  
- did you ever receive any gifts or any money from  
Alla or Valentin Nikytuk?

A. Yes.

ANSWER: I did receive small gifts. I did not  
receive money from Nikityuks.

QUESTION: And when did you receive small gifts?

ANSWER: Um, when they came to my birthday, there  
was a collective gift with other people there, and  
they brought chocolates to the office, which I  
shared with everybody in the office. Um, there  
was one time that Alla bought - brought a small  
vase. Again, I don't know what the occasion was.  
Like, those were the gifts. Mostly chocolate.

A. That's correct.

Q. Yesterday, you said that you now know they  
contributed to a gift of money.

A. Yes, it was a gift. A collective birthday  
gift, yes.

Q. How many birthday cards did you receive at the  
party?

A. A couple. Two.

Q. Two? And I believe you said one had \$50 cash?

A. Yes.

Q. And one had a \$50 gift card.

A. No, I didn't say that. I don't remember the  
amount. It was a gift card, I just can't recall the amount -  
exact amount.

Q. But there were two cards, and Nikityuks name  
was on the card with the cash.

Yana Skybin - in-Ch (cont'd)

A. Yeah, with the cash. That's correct.

Q. Anyone else's name on that card?

A. I can't recall, but I thought at the time that they - that \$50 was they - their - it basically came from them personally.

Q. And your evidence yesterday was that you later opened these...

A. Yes, that's correct.

Q. ...birthday cards.

A. Yeah, I didn't open them at the time, and I never do really open them right away. I just put them aside - the gift aside, and then look at them later.

Q. But on discovery, when you gave your evidence, you were of the belief that the collective gift was a gift card.

A. Yeah, I couldn't recall exactly because it was spontaneous. Again, like I remember there were two - there was a gift card, and then there was an envelope, and that's what I recalled at the time.

Q. So let's have a look at that. Page 92, question 525:

QUESTION: That was a gift card?

ANSWER: A collective gift card, yes.

QUESTION: And you don't know what the amount was? (inaudible) Fifty dollars.

Q. So, did you know the amount of the gift card was \$50? You said today you don't.

A. No, I don't know, because I'm confused between the - I don't exactly remember those - that - those exact facts, you know? So I know there was \$50, like 20, 20, and 10. And there was a gift card, and I don't remember the amount - exact amount on the gift card. It was possibly \$50, like I just can't tell you exactly. But...

Q. But you'd agree you did...

A. ...I can't remember.

Q. ...not address that you, in fact, got two gifts at your party.

5 A. Yes, that's 'cause that's what I remembered at the time, and that's what I recalled.

Q. And now, two-and-a-half years later, you recall something different?

10 A. Because of the evidence given, and I actually talked to my friends and asked them what was given to me at that time, and they helped me with the details. What they remember.

Q. Isn't it true, at the party, Alla tells you we need to talk to you about something?

15 A. Yes, they said we need to come and see you in the office.

Q. And isn't it true that she had been asking about social housing, and what would be involved in applying for social housing well before that August 23<sup>rd</sup>...

A. No.

20 Q. ...appointment?

A. No, no, never.

Q. Because Danilovs' evidence is they were talking about it almost daily at home, wanting social housing, and Yana knows a way. What were they talking about?

25 A. I can't...

Q. Do you have any idea?

A. ...comment, I wasn't a part of those conversations.

30 Q. So, you never had conversations with Nikityuks prior to August 23<sup>rd</sup> about social housing?

A. Me, the Nikityuks, or the Danilovs, no. No conversations about social housing. Nobody ever called me

asking about it. Nothing of the kind.

Q. They actually told the Danilovs that you were a specialist. You know how to get around the waiting list, but you don't know where they got that information from?

5 A. I can't comment on something I wasn't a part of. I've never heard them say that. Not to me. And when they were talking to me, they wanted information about social housing, they never asked me to somehow help them get it in such a way that would avoid, you know, the compli - like, the wait  
10 list. Like, they never presented it that way to me personally.

Q. Did you have the kind of relationship that you had with the Nikityuks with any of your other YMCA clients?

MR. MAE: Your Honour, relevance?

15 THE COURT: Ms. Chapman, do you wanna express to the Court if that's a relevant inquiry?

MS. CHAPMAN: Whether she had a personal relationship with other YMCA clients? I think that is relevant to the issues.

MR. MAE: Well Your Honour, just saying I think  
20 it's relevant doesn't make it relevant. There has to be some foundation.

THE COURT: Ms. Chapman, do you wanna elaborate a little bit?

MS. CHAPMAN: Sure. I'll come back to this.

25 THE COURT: All right.

MS. CHAPMAN: Q. Ms. Skybin, you've given evidence that your role with Nikityuks through the YMCA was as an interpreter. When they were dealing....

30 A. No, with my role with YMCA is a settlement counsellor.

Q. Yes, but...

A. Interpretation is a...

Q. ...in dealing....

A. ...part of my job, if it's needed.

Q. So, being in an interpreter for a client is part of your job if it's needed?

5 A. Yes. Interpretation is used to assist communication.

Q. Sorry, I didn't hear that.

A. Interpretation is used to assist communication.

10 Q. But, isn't it the practice of YMCA to refer clients out for interpretation purposes?

A. No, we have also interpretation provided to us, so we'll always access interpretation with clients who do not speak the language through which translation. We don't refer them anywhere. We use interpretation to work with them. We refer them to other organizations for specific needs, but we don't refer them for interpretation. We have our own interpretation services available to us.

20 Q. So, I'd like to have a look at Tab 1(B) - pardon me, Exhibit 1(B), Tab 126.

A. 1(B)?

Q. One-twenty-six. And would you agree this appears to be a printout from the YMCA newcomers' services website?

25 A. Yes, correct.

Q. Okay. And that would be the department that you work in as a settlement counsellor?

A. Yes, correct.

30 Q. And under settlement services, it states:

Our settlement staff team assists newcomers to Canada to settle and adapt to life in Barrie and throughout Simcoe County through



Yana Skybin - in-Ch (cont'd)

the following services:

(1) Assistance in completing forms [which you did with Nikityuks].

(2) A range for interpreters and translators.

5 A. Yes, for communication purposes, yes we do have access to interpreters.

Q. But it doesn't say to act as an interpreter or translator.

10 A. It doesn't say that in those very words, but if their client requires a translation, we will help them find a certified translator to trans - to have their documents translated. We will send - scan the document, and send them to the translator, and assist again in that process. So, if necessary, we provide - like, if we speak the language, we  
15 provide that ser - not the translation, but the interpretation. Or, we will use an interpreter on the phone to communicate with the client in their language.

Q. And so what...

A. If it's - again, if it's available.

20 Q. ...happens - what happens with a client where there is not a settlement counsellor who speaks their language?

A. We would access Bridge Translation over the phone, and we would speak to them through the interpreter. I have many Arabic clients now. I don't speak Arabic, and I use  
25 the interpreter, and I help them the same way as I help Nikityuks in my role as a settlement counsellor. I still do it - all the paperwork, and assistance, and referrals, and I communicate to them through the interpreter.

30 Q. And so, if we look at the next Tab 127, which is, correct me if I'm wrong, your job description as a settlement counsellor with the YMCA.

A. Right.

Q. And anywhere in this document, does it say that it is part of your job to provide interpretation...

MR. MAE: Sorry...

Q. ...or translation?

MR. MAE: ... Your Honour, forgive me for rising. This document is the job description from June 2012. The job description that was applicable in 2011 is found at, my productions, Tab F(1).

THE COURT: So, what you're saying is this is a subsequent, different....

MR. MAE: It's clearly dated at the top, Your Honour, June the 12<sup>th</sup> - June 2012. We're dealing with events in 2011.

THE COURT: I don't know if there's any difference, but we'll let Ms. Chapman look at that document as well.

MS. CHAPMAN: Do you have that one in front of you? There appears to be a difference. In the 2011 version, it says that....

MR. MAE: Sorry Your Honour, it's not the 2011 version. It's actually the September 2008 version...

MS. CHAPMAN: Pardon me.

MR. MAE: ...that was applicable in 2011.

THE COURT: Just want to make sure she has F(1) in front of her, first of all. Do you have that?

A. The one that was just pointed out to me?

THE COURT: Do you have F(1)?

A. I have it here, yeah. Sorry...

MS. CHAPMAN: Sorry, we need to have...

A. ...it's a different one?

MS. CHAPMAN: ...a look at 3(B). Exhibit 3(B).

A. Then it's a different one.

THE COURT: It's the other green volume. F(1), I believe.

A. F(1)? Yes, mhm.

5 MS. CHAPMAN: Q. And so, under "Program," it says on this 2008 version that you would, "Assist newcomers and refugees with orientation, translation, interpretation, information needs, counselling needs, and employment requirements."

10 A. Yes, correct.

Q. So, that's since changed?

A. Not really, there's not much of a change except for employment. We would refer to the career centre, yes. The employment is - we don't do as much anymore. It's not  
15 a part of our contract, but everything else is still relevant.

Q. You have both versions in front of you?

A. Oh no, sorry. To just clarify, my job description hasn't changed over the years.

20 Q. Would you like an opportunity to review Tab 127?

A. For what purpose, sorry?

Q. Well, it appears that the job description has changed as of June 2012.

A. I don't even know where it comes from. It's  
25 what - it's not something that is....

Q. Were you provided with an updated copy of the job description?

A. No, no, my job description hasn't changed. I've been hired in 2009, and I've been working as a settlement  
30 counsellor. The only role that changed is I'm no longer in the community as much. I still travel to Midland, that's the only piece that remain. But, I'm mainly in the office in Barrie now.

That's the only change. And I started part-time, and I was offered the full-time position in I believe it was still 2009. September or October. So, that was the only change. And under the agreement, we no longer did do the employment because of the change in - there was a big change with Employment Ontario, so now we are referring to the employment centre for employment needs. So, that's the only change in my job description over these years.

Q. So then, you would be surprised by the fact that the June 2012 version of your job description no longer includes translation interpretation?

...OBJECTION BY MR. MAE

...SUBMISSIONS BY MS. CHAPMAN

...SUBMISSIONS BY MR. MAE

R U L I N G

MULLIGAN, J. (Orally):

All right, I am allowing Ms. Chapman to ask these questions. Some of what you are saying may be issue for submissions, but the position as hired involved translation. We see that clearly in the document.

Perhaps, that means other individuals hired later did not have to have those skill sets. Obviously, in this multicultural society, it will be impossible for the YMCA to cover every language internally, and I think she has already told us in her evidence that in some dialects, she has to use an interpreter over the phone to communicate with other people.

MS. CHAPMAN: Q. If we can go back to your log, Ms. Skybin, which is Exhibit 3(A), Tab A(1). Let's talk about the events of October 17<sup>th</sup>. Your log states that you got a call from Alla and Valentin at night, saying they are outside because of confrontation. "Daughter discovered that the couple closed the joint account, was very mad with them. I called the women's shelter and then the Salvation Army, and made arrangements for an overnight stay at a motel downtown Barrie." When did you make this log entry?

A. Probably the very next day when I was in the office, or maybe - like yeah, within a day or two, but not on the same day obviously, 'cause I was at home at that time. Is it 17<sup>th</sup>? So if the next entry's the 19<sup>th</sup>, it would be done on the 18<sup>th</sup>.

Q. Okay, and so when you make reference to, in the last bullet point, "On October 19<sup>th</sup>, Yana will take them to No Frills to get some groceries."

A. Yes.

Q. You would have made that on the 18<sup>th</sup>?

A. Yes, correct.

Q. And who picked up Nikityuks on the evening of October 17<sup>th</sup>, 2011?

A. My knowledge, it was Iryna Lavreka.

Q. And Irena is a friend of yours?

A. She's a friend of Alla and Valentin's.

Q. Not a friend of yours?

A. But she's also a friend of mine, yeah.

Q. And she was actually at your birthday party?

A. Yes, but I didn't ask Irena to pick them up.

They called her themselves, so it wasn't me who was asking Irena to pick them up.

Q. So they made their own arrangements?

5 A. Yes, I only called Dorothy. As soon as they called me, I called Dorothy. She didn't up, and I called the shelter and that's what they told me; that they need to go to Salvation Army because they're a couple, and they'll host them for the night. And that's what I conveyed to them, that they need to do - there - she - they made the arrangements.

Q. And so, when did the Nikityuks first see the apartment on Blake Street?

A. Again, it would be in the log.

10 Q. Well, on your October 17<sup>th</sup> entry, on the second page, third bullet point, "They viewed the apartment at 1 Blake Street. They accepted the offer, will come to sign lease on Friday, October 21<sup>st</sup>."

15 A. That must have been then on the 18<sup>th</sup>. They must have seen the apartment the very next day.

Q. Why do you say the next day?

20 A. After they left, 'cause if it says here that they went to view the apartment. Even prior to that, they had an opportunity to view a different apartment at a different building, so - but they chose not - like, they didn't like that place. It was too far from the bus stop, and so I guess that opportunity was available to them to view the other apartment the next day.

25 Q. Who made the arrangements for them to see Blake Street?

A. Dorothy Archer from the transitional services.

Q. And did you act as an interpreter?

30 A. Yes, I did act as an interpreter. I'm trying to think if they went together with Dorothy, but if it's - it would be here too.

Q. Did you attend with them?

A. I know she was there - yes, I was there.

Yeah, I attended with them.

Q. So, on what day did you go with Nikityuks to see the Blake Street apartment?

A. On the 18<sup>th</sup>. It appears to be on the 18<sup>th</sup>,  
5 according to the log.

Q. What in that log gives you the information that it's the 18<sup>th</sup>?

A. Because if the events took place on the 17<sup>th</sup>, and that was evening, then the next day was the 18<sup>th</sup>.

Q. So, when were arrangements made for the  
10 Nikityuks to see the Blake Street apartment? The same day that they saw the apartment?

A. Dorothy would have arranged for that, yeah. So, if - it says here they wanted to see whatever Dorothy  
15 arranged, yes. That was - I don't know if it was arranged on that same day, or prior to that, but that was the day they could go and see. Dorothy was making all the arrangements with the housing.

Q. Right, but you were involved in all those  
20 arrangements because you were acting as an interpreter for Nikityuks.

A. Only when they were present at specific appointments or like, they went there, not - I didn't call anybody, so Dorothy was making all the calls. Like, I wasn't  
25 involved in that.

Q. Right, but if the Nikityuks were to meet or speak with Dorothy, you were involved acting as interpreter.

A. Not every time, they were also meeting on their own because she would pick them up, and again, don't ask  
30 me about specifics, but sometimes they - I wasn't present, they met on their own with Dorothy. Basically, not on every single meeting I would be present.

Yana Skybin - in-Ch (cont'd)

Q. Do you know whether Dorothy speaks Russian?

A. No, she doesn't.

Q. Yesterday, you gave evidence that when you spoke with the Nikityuks on the evening of October 17<sup>th</sup>, they were outside, but advised you they had to go back in to get their personal items.

A. Yes.

Q. And you heard the evidence of Svetlana Danilov, and of Nikityuks regarding the confrontation they had in the entryway of the home on October 17<sup>th</sup>?

A. Yes.

Q. And that they had bags with them?

A. I don't know about - and what does the question, sorry? Like I've heard the evidence, but what is the question to me?

Q. Right, so the question to you is, you understood differently that they had to go back in the home and retrieve their items, even though they had left because of confron - because of a confrontation?

A. I don't know at which point they called me. When they called me, they said they were outside, and they - like, they were basically determined to leave at that point, and they needed to know where to go. And then they told me but we're going to go back and get our toothbrushes and personal belongings. So - but, at which point that took place in comparison to the evidence, I can't tell you. I'm like, telling you what I know. Like, what I experienced.

Q. Okay, let's have a look at some of the correspondence that you send on behalf of Nikityuks. So, I'll ask you to turn to Exhibit 1(A), Tab 139.

A. Which tab?

Q. One-three-nine. So, we looked at this email



yesterday when you gave evidence, and it's an email you sent to Anthony Cuffbert (ph) at the Community Legal Clinic, October 4<sup>th</sup>, 2011. And in the second paragraph, you say:

I have a case of elderly abuse. It's a couple. They were sponsored by their daughter and her husband, and transferred all their assets to the daughter's account before arriving. The daughter and spouse used the funds to build a house, and made investments that the daughter is now managing.

Are those statements true?

A. That's what Alla and Valentin told me.

Q. And aside from what Nikityuks told you, whatever - what other evidence did you have that those statements were true?

A. I didn't have any other evidence except for what they've told me they believed was the case, or what they've been told by their daughter.

Q. Yesterday, you mentioned that you had been provided documents in support of their story.

A. That's later.

Q. Okay, not in relation to these statements.

A. No. Oh, well, that's - the documents came later.

Q. And so, were you concerned making these statements to a lawyer about a client with only what the client has told you? No documents supporting the allegations.

A. Would I - was I concerned?

Q. Yes.

A. No, I wasn't concerned. That's what the clients told me, and that's what I communicated to the lawyer I was trying to refer them to.

Q. And you didn't....

A. It's a description of what they've told me.

Q. And you didn't take any steps to ensure that those statements were true?

5 A. No, I didn't.

Q. And in paragraph two, "Now it's full-blown abuse, with physical attacks, threats, and financial robbery." Is that your language you're using in this letter?

10 A. Yeah, based on the - again, what's been disclosed.

Q. And would you agree physical attacks mean there's been more than one physical attack?

A. There's been at least two.

15 Q. Which is the grabbing of Alla? Is that correct? Is that one of the two?

A. Yes.

Q. And what's the second?

A. And threatening to throw a plate at Valentin.

Q. Threatening to throw a plate?

20 A. Yes.

Q. And the financial robbery. What were you referring to?

A. That was the financial - that they would take their money without their consent.

25 Q. And you go on in paragraph three, "The daughter and her husband say they have nothing. No rights, and they'll never move out." Where did you get that information?

A. Again, from what the clients told me - they've been told.

30 Q. And had you written those statements in your log at some point?

A. Like, I think we just went through that.

Yana Skybin - in-Ch (cont'd)

Q. Did you say they have nothing? No rights?

A. I don't know if I put it in my log, but that's what Alla said. That they've been told numerously that nothing here is yours, you've already eaten up your money, and so on. So yes, based on the words of what she described.

Q. But again, these are your words.

A. No, those are the words that were communicated to me by the clients. Not - like, that was communicated to me by the clients and I put it in writing.

Q. So, you're saying that Alla or Valentin said to you we have nothing? We have no rights? They made those statements to you, and you just repeated them?

A. That they have no right to choose, yes. They wanted to - whatever their wishes or what they wanted was not - yeah, it was completely ignored, and basically were told no, you're gonna do what we're telling you, yes.

Q. And in the last sentence, "And how can they remain safe in the house where the daughter constantly harasses them?" So where did you get that information from?

A. Again, every day they would report different situations of harassment.

Q. Like?

A. Like she would basically not be happy that they go out, she would threaten to take the keys, she wanted to control who they hang out with, she would, again, pursue them and, you know, she took her mother to the doctor to basically do the assessment on her. And Alla was really concerned about that, and she discovered her on her floor looking through her medical files, and she told her it was for her when, you know, clearly it was not anything to do with Alla's wishes. So, that they will stay where they are, you know, or they will go to the senior's home. So, all those threats are harassment.

Q. But yesterday, you gave evidence that when Svetlana initially contacted you, she did so because she wanted her parents to learn English, right?

A. Yes, correct.

5 Q. And she more or less said she was overwhelmed. It was a lot to take care of her parents, to go to the grocery store with them, to go to doctor's appointments with them. Do you recall that?

10 A. I don't recall those exact words, no. She said that she learned about our services on the internet, and she wanted to know what we offer. I explained what we offer, and she was very happy to hear we have English classes, and she said it would be nice if they could go to English classes and learn some basic English.

15 Q. And did she tell you why she wanted them to learn some basic English?

A. I don't remember exact words, but they would be able to, you know, have language skills. Be able to communicate on a basic level.

20 Q. Okay, let's look at the next tab please, 140. Again, you're writing to Mr. Cuffbert (ph) at the Community Legal Clinic, this time on October 14<sup>th</sup>, 2011. And the last line of the first paragraph, you state, "The situation at home escalates, but they are still managing to stay low and out of  
25 harm's reach. It may all change drastically, though."

A. Yeah, in any situation of abuse, that's a very sensitive stage at which, you know, things can get out of control very quickly, and end badly, so that's true.

30 Q. But after the August 23<sup>rd</sup> meeting, where Alla and Valentin tell you about the physical attack and the plate throwing, had they told you about any other physical confrontations they had had with Danilovs?

A. No, there was a lot of pressure put on them, and every day - and humiliation. Every day, they were more and more, you know, like kind of - again, you know, more of those situations run. They were put down, and demands made of them.  
5 On one instance, they shared when Pavel put Valentin in the basement and talked to him about pressuring him to purchase burial insurance. And when Alla said I want to be a part of the conversation, he said no, you're not, you know, invited. And so, all of these things - and they state - they basically -  
10 yeah, they were staying in their rooms just to avoid those confrontations. So, that is a very dangerous situation to live in, because at any point, the situation can end up in a confrontation that would end up in more of a physical, you know, situation. So, that was a very sensitive situation for them.

15 Q. But you really didn't know whether it could change drastically.

A. I know from other cases it's a sensitive situation if, you know, if it's already that bad. And any confrontation - just because they were trying to stay - not to -  
20 stay out of confrontation, but if they were to lose it somehow, you know, to get emotional, to respond, we don't know what would have happened. They kept saying many times that, you know, we felt that it would have ended badly.

25 Q. But did you tell Mr. Cuffbert (ph) in this letter that they've already applied for social housing, and they actually went to see an apartment today on Amelia Street? Did you explain any of that to Mr. Cuffbert (ph)?

A. They were looking for - I don't know, whatever it says here...

30 MR. MAE: Sorry Your Honour, the email...

A. ...It says here....

MR. MAE: ...says what it says, and my learned

friend is actually missing the first two lines, which I believe answer that question.

A. Yeah, and it does talk about subsidized apartments that they....

5 THE COURT: Well, let's just back up and wait a minute until Ms. Chapman responds, but I thought Ms. Chapman - she said that the apartment viewing was on October the 18<sup>th</sup>. This is the email of October 14<sup>th</sup>.

10 MS. CHAPMAN: Yes, and the Nikityuks had viewed an apartment on Amelia Street on this date, October 14<sup>th</sup>. And Mr. Mae's quite right, it says that they viewed a subsidized apartment, but they needed to verify their income.

15 THE COURT: All right, so this wasn't referring to Blake Street?

MS. CHAPMAN: Not referring to Blake Street, correct.

20 MS. CHAPMAN: Q. And so, they needed an affidavit prepared for verification purposes, correct?

A. I guess, whatever it says here. It must have come from the - one of the requirements, or what was asked from them.

25 Q. And do you recall whether you acted as interpreter in preparing that affidavit?

A. No, I wasn't a part of that, but I was asked of them - I communicated to the Community Legal Clinic as this is what they - they've been asked for, but I don't recall....

30 THE COURT: I'm just going to have to ask you to speak up a little bit.

A. Oh, okay.

THE COURT: So we can all...

Yana Skybin - in-Ch (cont'd)

A. No, I don't....

THE COURT: ...hear what you're saying.

A. Yeah, I'm sorry. I don't recall specific affidavits, anything to do - no, I didn't act as an interpreter.

5 Q. Okay, let's turn now to Tab 142. And again, you're having ongoing email correspondence with Mr. Cuffbert (ph), and what's marked as "email six," Mr. Cuffbert (ph) writes to you:

10 As a precaution, you may want to consider whether police involvement is necessary at this time. The couple's daughter has been tipped off, and they may be moving money around as we speak to hide any breach of fiduciary duty, or worse.

15 And so, did you discuss that with the Nikityuks? The fact that they may want to alert the police to these issues regarding their money?

A. They have been offered the option, yeah. At the time of the move, they've been offered an opportunity to  
20 disclose and they chose not to, and then we met at the office with Dorothy and Ruth, and again, we went over their options. So yes, those options were offered and, like, were - they were advised of what options they have. But it was up to them what they wanted to do.

25 Q. So now, let's turn to Tab 146. And this is a letter from Mr. Cuffbert (ph) addressed to you, dated November 21<sup>st</sup>, 2011. And in the fourth last paragraph, he states, "Please note that I would caution Mr. and Mrs. Nikityuk about making any verbal charges that could be interpreted as  
30 slanderous." And so did you speak to Nikityuks about this letter and that statement?

A. Again, I can't recall what you're asking me

about, but we did caution them about not getting emotionally charged and, you know, not to do anything that would just come from them being upset with the Danilovs. So, we did caution. I can't tell you exactly if it came as a result of this letter or  
5 in the process. Yes, there was a discussion of, you know, being objective and refraining from any feelings of, you know, like how come, like how dare, and so on. So not to ever, you know, do any harm to the Danilovs.

Q. But what about telling the truth? Were they  
10 cautioned that they should be sure they're telling the truth?

A. Yes, they've - they - we were very specific. They know that they've been - at every point of the referral, they had a meeting. And at every of those meetings, they've been asked specific questions, and they've responded to them,  
15 and they've shared the information themselves, and so, like, all of the verifications were done by every single agency we referred them to. And we did caution them to, like, inform of any changes in income or in their situation. They were fully aware of it, and they were following that advice.

Q. Could we now turn to Tab 155, please? This is  
20 a client report to OW dated November 2<sup>nd</sup>, 2011. And you also make an entry in your log on that date. Do you have that log still there, Ms. Skybin?

A. I'll have it in a moment.

Q. It's Tab A(1). Are you at the November 2<sup>nd</sup>,  
25 2011 entry? Okay. And on the third bullet point, your entry states, "Valentin wrote up a story." What did you mean by that entry?

A. That was his Russian version - Russian story -  
30 like in Russian that basically - that's their story of what they wanted to disclose to the lawyer, and we faxed it to the lawyer - to two lawyers that are here - listed here in the entry.



Q. And....

A. That was for the purposes of getting legal consultation that was funded by Legal Aid certificate provided by the women's shelter.

5 Q. So this story, or this document - statement was not provided to Ontario Works?

A. Specifically, no. I did not - I don't know, maybe they brought that document with them. I can't comment, but my entry refers to the document in Russian that was then  
10 faxed to two lawyers for the purposes of consultation.

Q. But do you recognize the document at Tab 155?

A. Do I recognize it? It says, "Client report to Ontario Works as on" - no, I don't recognize it.

15 Q. And so, you weren't involved in translating this document?

A. No, no, I wasn't.

Q. And I believe yesterday, you said that you weren't involved in the Ontario Works application whatsoever.

A. No, I called to book an appointment. I was to  
20 - I called to book an appointment that then they had their appointment, and I wasn't a part of that. So whatever was discussed with Ontario Works, that was between them and Ontario Works.

25 Q. So, you never acted as interpreter on behalf of Nikityuks for Ontario Works?

A. I've never had meetings with Ontario Works and the Nikityuks, no.

30 Q. That's not what I asked. Did you act as an interpreter, whether it was over the phone, or you sat with Nikityuks in your office?

A. I - we called Ontario Works when they received letters, and I didn't act as an interpreter, I acted as a

counsellor, so I would call the case worker, and inquire what the suspension was about and if they needed to provide something to resolve the situation. We would - I would communicate it to the clients, and then we would fax it to the case worker. So, I acted as a settlement counsellor.

Q. Okay. Well, let's have a look at the Ontario Works log, which is at Tab 171 of Exhibit 1(B), the white binder.

A. One-seven-one? Okay.

Q. And page 969. There's some summary notes on this page, and in the second half, the last part of the paragraph, it states:

Yana Skybin from YMCA Simcoe Muskoka Newcomers Services called with the applicant to help translate. Applicant and spouse earn 1,900 every 3 months from a Russian pension. They're not able to receive any money, as they don't have access to the funds. The couple don't know what other funds they might be receiving.

So, you acted as an interpreter on that date?

A. In communication. It was communication, yeah, but I communicated that to the case worker.

Q. Right, as the interpreter on behalf of Nikityuks, you communicated their Russian statements to you in English?

A. Yes, correct. Yeah, in that case, yes, but again, it's my role as a settlement counsellor.

Q. And then if we turn to page 971, there's another entry. This one dated October 31<sup>st</sup>, 2011, and it reads, "Applicant has signed a consent with YMCA Newcomers Services in Barrie with Ruth Miller and Yana Skybin." And then it gives

some details.

A. Yes.

Q. So, you actually did have consent to correspond with Ontario Works on behalf of Nikityuks.

5 A. To communicate, yes. That's the only way we can communicate with external agencies on behalf of a client; if they provide that written consent.

Q. So you were involved in the Ontario Works application on behalf of Nikityuks?

10 A. Not the application itself.

Q. But in trying to obtain funding on their behalf, were you involved in that?

A. Okay, I didn't act - I didn't apply on their behalf to obtain funds. They applied, and then whatever communication would be sent to them by Ontario Works by the case worker, then yes, they would come and request assistance. We would call, find out what it's about, whatever explanation was needed would be provided through the consent, and so on. And that's - then it can go on and on and on, and as long as the people on assistance, there are always issues. They have to fill out income statements, or they need to request benefits, or they need to, you know, they got a letter of suspension. So yeah, in that capacity, I would be involved on an ongoing basis.

25 Q. So, if we were to look at the client report to Ontario Works that Mr. Mae showed you yesterday, which is in Exhibit 3(B), Tab 16.

A. Which one?

THE COURT: I think it'd be easier for all of us if we just refer to these as the green books, the red books, and the white books.

30 MS. CHAPMAN: Yes, perfect.

THE COURT: It's easier for staff...

MS. CHAPMAN: Of course.

THE COURT: ...it's easier for the witness, and it's much easier for me.

MS. CHAPMAN: Yes.

THE COURT: So...

MS. CHAPMAN: Very good.

THE COURT: ...what colour are we in?

MS. CHAPMAN: We're in green.

THE COURT: All right.

MS. CHAPMAN: And we're at Tab 16.

THE COURT: And that....

MS. CHAPMAN: Yes.

THE COURT: And that says the release of information? Am I at the right place?

MS. CHAPMAN: Sorry, no...

THE COURT: YMCA?

MS. CHAPMAN: ...it would be F(16). So, the very last Tab 16. I don't think you're quite there either, Ms. Skybin.

A. Oh, F(16). Okay.

THE COURT: Green book number two?

MS. CHAPMAN: Green book two, yes.

THE COURT: All right, and that seems to be a translated document?

MS. CHAPMAN: Yes, and just behind the translation and the affidavit regarding the translation, there appears to be the same document in Russian.

MS. CHAPMAN: Q. So, I'd like you to look at the Russian version.

A. Yes.

Q. And so, were you involved in any way in preparing this document with the Nikityuks?

5 A. Well, Valentin brought the handwritten, and I typed it up. So, word-to-word.

Q. So, he brought you handwritten in Russian?

A. Yes.

Q. And you typed it up...

A. In Russian, yeah.

Q. ...in Russian, and then it later was translated in English for Ontario Works.

10 A. I haven't done the translation, so I don't know who did that translation. It wasn't done by organization or - we didn't do the translation. This was faxed to the lawyer - Russian lawyer, so they didn't require translation.

Q. Okay, but this is the same story or document that Valentin wrote up, and you faxed on November 2<sup>nd</sup>, 2011?

15 A. Yes, to the lawyers. To the Russian-speaking lawyers, yes.

Q. And what happened to the handwritten version of that document?

20 A. He just had it, and he brought it, and he kept it. I didn't take it away from him.

Q. Okay.

A. We typed it up because it wasn't clear, and he asked also if I could just, you know, make sure the punctuation is correct, or that, you know, it's grammatically correct.

25 Q. So you did, in fact, assist Nikityuks in preparing that report to Ontario Works.

30 A. No, I typed it up, but I - like, you know, I could make sure the dots are in the right place, and there a brackets or whatever. But that's just to, like - purely whatever you want to call it. Proofreading, but I didn't change any of the story. Nothing was changed. His story was still his story, whatever he wrote on the piece of paper. And I asked for

clarification. I saw the writing was not clear - legible. But as it appears on the translation done in May of 2016, so I have no knowledge of this of the translation itself.

5 Q. No, but you do recall preparing the typewritten Russian version of that document?

A. Yes, again, he brought it in writing, and he asked to - for it to be typed up so that it's clear, you know? That he can read it. And if there's anything, like, the punctuation or, you know, that it will read neatly. That would  
10 be neat.

Q. But when I first showed you the same document in the white binder, at Tab 155, which is an English version....

A. Yeah, but I didn't prepare English version, and I didn't prepare client report to Ontario Works. That's  
15 wasn't - like it has nothing to do with me.

Q. But would you agree that is the same document? It's just an English version of the Russian letter.

A. Well, if you want to spend time comparing, then I can sit and compare the three pages of the document, and  
20 then I can tell you yes or no. That's - do you want me to do that?

Q. No, I don't think that's necessary. Let's go back to the white binder, Tab 156. And this is an email correspondence that you were referred to yesterday that you sent  
25 to Ms. Domazar on December 6<sup>th</sup>, 2011. And in the first paragraph, you write, "They transferred significant assets from Russia to daughter. The family used the funds to build a home in Innisfil, invest money in their private funds and business." So again, are you relying on what the Nikityuks tell you?

30 A. Yes, what they believed at that time. Whatever they believed or knew at the time, they told me is exactly what I'm saying.

Q. And you didn't think it was necessary to ensure the truth of those statements they made to you?

A. It wasn't necessary.

Q. And then in paragraph two, "The relationship gradually broke down on many levels. Primarily, it had a form of financial fraud and emotional abuse." Again, just based on what Nikityuks told you?

A. Yes, it's a summary.

Q. And they came to us with concerns over domestic violence. Later, they discovered that their Power of Attorney that they gave to the daughter, only because they did not communicate in English, has been abused numerously, and particularly in the field of finances.

A. Yes.

Q. And so, how had those Power of Attorney been abused? What did Nikityuks tell you?

A. That they were concerned they were - right away when they disclosed abuse and were - they meant to, you know, live independently, they said that they were really concerned that they gave the daughter the Power of Attorney, and she was using it without their - even consulting with them, and they have no idea how they've been used. So, that was their primary concern, to have that Power of Attorney revoked as soon as possible, because they were under the impression that that would not be - that the daughter will continue using them and, you know, and not in their benefit. So to say, not to benefit them, but for her own purposes. So, they've shared that information with us, and they were really concerned. That was their number one priority, to have that Power of Attorney revoked.

Q. And they did revoke them and there's been no issues, correct?

A. Well, as I reported earlier, there was an issue. The funds that were only available under their names  
5 were moved after they revoked the Power of Attorney. So, that's an issue.

Q. And then in the second paragraph, you talk about, "The Danilovs sending one cheque through our office with arbitrary amount that her and her husband came up with to cover  
10 their basic expenses for one-and-a-half months." Did you give that cheque to the Nikityuks?

A. The office gave them the cheque, yes, of course. They gave them the letter as soon as it arrived.

Q. And did you tell them not to cash that cheque?

A. No, I didn't tell them anything. We were  
15 trying to get them legal consultation because of their situation.

Q. And in the last sentence of that paragraph, "From financial point of view, they were involved in fraud."  
20 What evidence did you have that they were involved in a fraud?

A. In which - sorry, which paragraph is that?

Q. It's the last sentence in paragraph three. Just what Nikityuks told you, right?

A. Yes, yes, basically what I've described - yes,  
25 earlier.

Q. And to continue, "And at some point, the banks may investigate this further, or Revenue Canada." What information did you have that the bank or Revenue Canada would be investigating this further?

A. The manager at TD Bank asked them if they will  
30 go to - if they'll go to court, you know? And I said I have no idea, but he was very quick in obtaining all the releases on



file, you know, and he sent them all of those releases. I guess the bank was concerned that they may be liable. So that was one instance, and then the fact what was reported on the income, that again, was done without their knowledge, and they now have to declare or do the income tax for the next year that would be significantly different from the previous years, and they could only declare what they knew was true, you know? Again, Revenue Canada of course would flag that as inconsistent, and would challenge. So - but again, that wasn't the purpose of the inquiry into the consultation, that - the purpose was to get them a letter of opinion that this case deserved attention for funding from Legal Aid to be able to get a lawyer funded by the Legal Aid. Now I lost track, which tab are we on?

Q. We're on Tab 156.

A. Okay.

Q. And finally, in the last paragraph, you state, "The sponsor is an abuser. There is no trust, and no communication between the elderly couple and the family."

A. Yes, that's what it was.

Q. So, you knew that the Danilovs were abusers.

A. According to everything shared and described, yes, they were.

Q. But you agree you didn't say my clients believe the sponsor is an abuser?

A. No, I said what I said.

Q. And the fact that there's no communication between the elderly couple and the family, would you agree that's Nikityuks' choice? They didn't want to communicate with the family, correct?

A. I don't know what to say. Like, I can't comment on that. What do you mean? I don't know what they wanted or didn't want in term of communication. I know that

there was no communication due to trust issues, and they did not want to communicate because they were concerned that, again, they will be abused, you know?

Q. Right, so you must have known what they wanted to communicate. You were acting as their interpreter. You were communicating for them, right?

A. To who?

Q. Well, in this case, to Ms. Domazar.

A. But you're asking me about specifically communication between them and the children. I didn't communicate on their behalf to their children.

Q. No, that's not what I said. I said the statement that you make, is there's no communication between the elderly couple and the family.

A. Yes.

Q. And you would agree that it was Nikityuks who did not want to communicate with the family? It wasn't that the family was trying to not communicate with them, right?

A. I can't agree with that because it's kind of like - what exactly do you need me to agree to?

Q. The Nikityuks did not want to hear from the Danilovs. They did not want to communicate with them.

A. I can't agree or disagree.

Q. So, let's now turn to Tab 157. And this is a fax letter to social housing with an electronic signature of Alla and Valentin Nikityuk.

A. Yes.

Q. Did you assist them in preparing this letter?

A. Yes.

Q. And they state in paragraph two, that they, "were not in a position to use these funds up until now." They're referring to a cheque that the sponsor provided to cover

support. Did you ask them why they couldn't use those funds?

A. 'Cause they were seeking legal consultation. It was - they didn't know even what to do, and we were not in a position to advise them what to do, and that they needed legal  
5 consultation to have their representation regarding the sponsorship or the support.

Q. But they also needed money to live on, didn't they?

A. Yes, they - but again, they were waiting.  
10 They were seeking legal advice on the matter.

Q. And so, did they discuss with you that they had concerns that if they cash this cheque, they might not get any support from Ontario Works?

A. No, no, they just did know - no, they didn't  
15 express that concern to me. They only expressed the concern that they don't know what to do with it, because it's kind of just some amount, right? Like what - and then what does it mean? So, there was no communication or particular agreement. They were seeking consultation from a lawyer to advise them on  
20 what to do in their situation. Specifically, with, you know, the breakdown - the sponsorship breakdown.

Q. So, did they ask you to contact Danilovs and ask why they sent this particular amount?

A. No, they didn't ask me to contact the  
25 Danilovs.

Q. Let's go to the next tab please, 158. And this is now email correspondence with Sasha Green, who you confirmed earlier today is a lawyer, and you advised her, "Alla Nikityuk is a client." And then you go on:

30 She asked for her pension to be deposited into her new account, and did confirm with the Russian Pension Board that they received

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5 the info through fax. However, when this time came, it went to her daughter's account, as it used to, while they were living with them. The Russian board said they did not receive the fax.

Right? So, there was a concern that the Nikityuks had not gotten their pension, right?

A. Yeah, and that was the only source of income, really. Like, their own independent source of income...

10 Q. And....

A. ...they could rely on.

Q. It doesn't appear to be any issue relating to Danilovs trying to circumvent the pension payment, correct? The pension board is telling you they didn't receive a fax.

15 A. It says what it says, that the - they requested for the pension to be deposited into a different account, and the parent - somehow for Valentin they received the fax and followed the instructions, and for Alla they didn't. And then that's why her pension was not deposited into new  
20 accounts, so the change hasn't been made. So that says what it says.

Q. And then at the second paragraph, "She also gave them a cheque for the remainder of their September 2011 pension when they were moving out in October. However, when  
25 Alla deposited it, there was a stop payment on the cheque."

A. Yeah, that's together with the amount that was sent to the office.

Q. Right.

30 A. Like, they were given separately. One was sent in mail, and another was given to them by Svetlana when they were moving, when they were taking their belongings with the police. And so yeah, both of those cheques had stop payment

on them once Alla deposited them.

Q. Which Alla tried to deposit them a few weeks later, correct? Are you aware when Alla tried to make that deposit?

5 A. Whenever she deposited them, they - yeah, there was stop payment. Actually, she was told by the social housing that there was stop payment. She relied on that income, and then they called and said they could see in the system that they were stop payments, so the money would not appear in her -  
10 you know, that will not go through. So, that was how they came to that information - to the knowledge of that.

MS. CHAPMAN: Your Honour, this may be a good time to break.

15 THE COURT: All right, we can take our lunch break and come back at two-fifteen. Thank you.

MR. MAE: Your Honour, just before we rise, I raise an objection to a line of question on the basis of relevance concerning whether Ms. Skybin had any social relationship with other YMCA  
20 clients. I'm going to withdraw that object. I'm just going to let my friend know if she wants to proceed to ask those questions later on, she can. I was a little bit precipitous in my initial jumping up, but with...

25 THE COURT: All right.

MR. MAE: ...some reflection, if she wants to ask those questions, feel free.

30 THE COURT: That's fine, and my thinking was that Ms. Chapman may have had more to say about it, but I mean relevance is something for me to determine after I actually hear the issue. And of course, the Court can decide what weight should be put on

it. So, to rule something out prematurely I don't think helps anyone.

MR. MAE: And Your Honour, that's where it took me a little bit of time to get there.

5

THE COURT: All right, well that helps everyone, and you'll have more time over lunch to think about other things too.

MR. MAE: Hopefully. Thank you, Your Honour.

10

CLERK REGISTRAR: Order please. Court will recess until about two-fifteen.

R E C E S S

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

15

CLERK REGISTRAR: Order please, all rise. Court is now resumed, please be seated.

20

MS. CHAPMAN: Q. Ms. Skybin, we're going to go back to the white binder we were in before the lunch break, and if you could turn please to Tab 159, and on page 923, this appears to be a letter from the YMCA signed by you, dated December 20<sup>th</sup>, 2011.

A. Correct.

Q. You recognize this letter?

A. Yes.

25

Q. Okay. And so, let's have a look at some of the statements that you make in the letter, first at paragraph four, you say that, "They shared with me that the atmosphere at home is unbearable with threats, verbal and physical attacks, and constant arguments."

30

A. Yes.

Q. And so, that was still true as of December 20<sup>th</sup>, 2011?

A. As I mentioned earlier, their story never changed. That was still the story, yes.

Q. Okay, and the statement that you make at the end of that paragraph, "Alla showed me her arms and there were  
5 bruises on both arms."

A. Yes.

Q. "On the weekend, their granddaughter came for a visit from Toronto, and they showed her the bruises too." You've talked earlier - gave evidence yesterday that you were  
10 mistaken that they had shown the bruises to the granddaughter, correct?

A. Correct.

Q. And so, when did you learn that they had not shown bruises to their granddaughter?

A. I believe it was already when the trial - when  
15 they were giving evidence.

Q. So before that, you have never confirmed with Nikityuks whether they showed these bruises to their  
20 granddaughter?

A. No, I basically - when it was disclosed, whatever was disclosed, and I put in the log, and that was what my understanding was of what's been told to me.

Q. So, Nikityuks have in any way reviewed this letter with you or known what you were writing in the letter on  
25 their behalf?

A. No because that was - no, they haven't seen this letter in particular.

Q. Okay, so then you go on at paragraph five, "At this point, I informed Alla and Valentin that this was a case of  
30 abuse." And you gave them printouts about elderly abused translated into Russian with Google translate, correct?

A. Correct, yes.

Q. And at paragraph six, you say that, "By September 30<sup>th</sup>, 2011, the threats and yelling escalated."

A. Yes, it became basically almost daily - constant.

5 Q. So it had escalated from a physical attack.

A. It escalated in a sense that it did not get resolved, it escalated to be more frequent.

10 Q. "And the main reason for arguments and disagreement was money. The couple only had Russian pensions as their source of income in Canada." Who told you the main reason for the arguments in the family was money?

A. From what Alla and Valentin described, that they wanted to have more of independence. They wanted to have access to their own finances and manage their own finances.  
15 They want their own bank account, they - and that was not allowed, and that was the main reason for the arguments that led to them not wanting to stay in the family.

20 Q. And so, it wasn't that they wanted to have social housing?

A. They didn't want social housing, they wanted to move out because the situation in the home was not healthy.

25 Q. And on the next page at paragraph marked 10, you write at the second sentence, "She threatened the students by telling them she knows their addresses, and she knows they have children, pressing for release of information about the location of her parents." So, you're referring to Svetlana?

A. You mean referring to Svetlana's...

Q. Being the person...

A. ...who threatened?

30 Q. ...who's threatening...

A. Yes, correct. Yes.

Q. ...students. Okay, and I believe your



evidence was there were two students she had threatened.

A. From what I know now, is that the one student in particular was clearly concerned, and the threats - yeah, were ordered to that student. But we will have those people as witnesses, they can share their own story as to what, you know, what they've been told or what happened.

Q. But what did you know back in December of 2011 when you wrote this letter about these two students?

A. When they came, they expressed concern that Svetlana was calling them, and one in particular student was concerned because of those things were mentioned in the conversation. She was concerned for her family.

Q. And did she tell you what exactly Svetlana said to threaten her and her children?

A. No, she said - yes, I know what she told me. She said that - I don't know, we have a letter from that student. She put it in writing. She's...

Q. No, I'd like to know what the...

A. ...going to be a witness here.

Q. ...student said to you.

A. Yeah, she said that she was really concerned because she received multiple calls from Svetlana asking for where her parents were. She was convinced that she was hiding them in her house, and that she basically demanded they tell her the truth, and she was asking many questions about did you know how much they sold that apartment in Russia for? The student was very - like, I mean this lady was really puzzled about, you know, all these questions. She said I do not know where your parents are. She called multiple times, and in one of the calls, she said you better tell me the truth, because next time you'll be dealing with authorities. And also, she mentioned that I know where you live, I know you have children. This

person was concerned. She didn't understand what that meant, so she came to us because she wanted to express her concern for receiving such calls, and she didn't know what to do about that. She did tell Svetlana that if she's concerned about her parents, she should call the police. And she said if she sees them, she will tell them - or tell Svetlana. Yeah, so that was what has been told to me...

Q. So, which student...

A. ...by the student.

Q. ...told you that story?

A. Yulia Malycheva.

Q. And so, what did Lillia Fatykhova tell you?

A. Lillia said that she also received phone calls, but she said that Svetlana didn't allow herself to be as rude to her as to Yulia, because she said nobody would, you know - she said I wouldn't allow anybody to, you know, talk to me in this way. I just said I don't know anything about it and please don't call me.

Q. Did these two students come to see you together?

A. Yes, together. They came - they approached me in the hallway on my way to the office, and so they were both present.

Q. And told you their stories while the other one was there?

A. Yes, yeah, in each other's presence, yes.

Q. So, the threat then to these students and their children was essentially I know where you live? I know your address?

A. I don't know, I'm just saying what's been told to me, but I can answer what the nature of the threat was. Those are concerning statements.

Q. But here you throw - you wrote they were threatened. She threatened the students by telling them.

A. Yes, that's a threat. Like, they perceive it - the student, Yulia Malycheva in particular, perceived it as a threat. She was scared for her family.

Q. And then at paragraph 11, in reference to Nikityuks' last sentence, "They are honest, and at all times, their story was consistent and proven by documentation they provided." So really, you believed that they were being honest.

A. As I mentioned here, their story was always consistent, and also whatever they were describing and whatever documents they had, they provided. That also matched that story.

Q. And so, what documents were those? What did you see in a document...

A. The transfer of the...

Q. ...that support their story?

A. ...the transfer of the funds, then when the disclosure came of the income taxes that were done on their behalf, and things were claimed on the income taxes, that again, they said that wasn't the case. Then, those multiple bank accounts opened in their name that they had no knowledge of. The pension that they had no access to, so all of these things then were actually proven by those documents that were obtained by them.

Q. So, when they provided you with documents relating to the transfer of funds, you mean the funds that were transferred from Russia to Canada?

A. Yes.

Q. And so, did they also provide you with the documents that set out Alla agreed - had written in a document that those funds were present, or a gift?

5 A. I did not - there was no need for me to be investigating their documents. All I'm saying is that I've seen that documentation, and everything they were saying was also supported by the things that they have disclosed to, you know - sometimes were on file because we sent them to legal counsel.

Q. So, even though you as a settlement counsellor with the YMCA are representing to third parties your client's story to be true, you didn't think it was necessary to verify that information?

10 A. That's not my role.

Q. And finally, at paragraph 12, you say that, in reference to the Danilovs I presume, that they have, "Full control and debilitating power over their lives." And so, was that statement true as of December 2011?

15 A. December 20? No, because they already lived on their own. But the fact that they've been denied social assistance because of claim that they have high income, which they had no access to, was - yes, still the control was continuing, yes. The attempts were continuing.

20 Q. But did Nikityuks share with you that part of the reason why they were denied social assistance was because the Danilovs were advising Ontario Works that we have a sponsorship agreement, and we are supporting the parents?

A. So what is your question again?

25 Q. You stated that they were denied social assistance, so they had no income to support them. And you're basing that statement - or you tell me. What are you basing that statement on?

30 A. On what we had - what we have seen at the time, which is they were first paid initial assistance, and then they were denied on the basis of - because their file was referred to the fraud department, based on the fact that

Svetlana was writing to them that they are being supported by them as sponsors, and they also have high income that they're hiding, and so social assistance said we don't know who to believe, and therefore, we're going to suspend the file - this -  
5 suspend their assistance, and they were basically left with nothing.

Q. But they weren't left with nothing, because they did have access to joint funds in a CIBC account, correct?

A. I have no knowledge of that. I don't know  
10 without that...

Q. Okay.

A. ...anything to do with their joint account at CIBC.

Q. So, let's jump forward for a moment to Tab  
15 166. And this is an email correspondence between you and the paralegal you spoke about yesterday, Christina Fernandez.

A. Correct.

Q. And in the last paragraph of this email, you state, "I've attached the letter. Alla and Valentin told me  
20 they would like to retain you as their legal representative. They have about \$3,000 in their possession, and feel they should pay." How do you know they had \$3,000 in their possession?

A. Where does it say that?

Q. Tab 166, page 935. It's marked "email one."

A. Then that's probably what they told me.  
25

Q. Nikityuks told you that...

A. Yes.

Q. ...they had \$3,000?

A. Yes, at the time.

Q. Did that surprise you?  
30

A. No, like whatever they, you know - whatever they - like, why would that surprise me?

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Q. 'Cause they have no money.

A. You're talking about February 28, 2012?

Q. Yes.

A. That's two months, and I don't know at that  
5 time. They probably had \$3,000 in their possession.

Q. And you wouldn't be concerned where they would  
get \$3,000 from?

A. They probably told me where it came from. I  
don't remember, but they - whatever is here, that's what it  
10 says, right? Like, they said they declared they had \$3,000, it  
was their \$3,000.

Q. Would you agree that the Danilovs were  
providing them support payments by bank transfers?

A. I can't agree to that because I - not - like,  
15 if the clients, you know - it's their business, their finances.  
It's their lives. They tell me they have money to pay the  
lawyer, they - that's what I put in writing. It's not my job to  
question them on how you got the money. It's their money, it's  
their life.

Q. But you did have other knowledge, because  
20 you're corresponding with TD Bank, correct? On their behalf?  
You're meeting with Mr. Grube (ph) at TD Bank with Nikityuks?  
Throughout the fall of 2011, you're meeting with TD Bank,  
correct?

A. It was one time when they were looking into  
25 their accounts to see what type of accounts had their names on  
them, and what's been opened in their names. That's completely  
different period of time, and it's not throughout 2011. You're  
referring to specific - like a specific situation.

Q. Okay, so let's go back to your log then for a  
30 moment, which is the first green binder, Tab A(1). So, your  
entry on December 5<sup>th</sup> 2011, you write at the second point, "Went

to TD Bank, downtown Barrie. Spoke with the manager Mike Grube (ph), said the credit card was closed."

A. That was with Alla and Valentin.

5 Q. Right. That was a meeting at TD Bank, correct?

A. Yeah, December 5<sup>th</sup>, 2011.

Q. Okay.

A. And that's a follow-up to the previous meeting that they had.

10 Q. Did you also attend that meeting?

A. Yes, I did.

Q. So, on December 5<sup>th</sup>, this is your second attendance at TD Bank with Nikityuks?

A. Yes, and that was it.

15 Q. Okay, so then let's have a look at your entry - excuse me - on January 26<sup>th</sup>, 2012. "Attended a meeting at TD Bank with the manager Mike Grube (ph) as an interpreter."

A. Okay, so that must have been the second occasion. That was the first occasion, and that was the second  
20 occasion. You're right.

Q. So, there was - you're saying there was two meetings? 'Cause a moment ago...

A. I know that they....

25 Q. ...you said there was one meeting that you attended at TD Bank.

A. No, I said there were two meetings, but I thought one proceeded - but the - they - what I clearly remember is that they first went to a different branch, and they were told there were two accounts opened in their names, or two  
30 accounts with their names on them. And then later, when they inquired about - because the Ontario Works told them they do have income through in their accounts, so they needed to know

what accounts they even had. They had no knowledge of them. So, that's why they were referred to Community Legal Clinic, to inquire - like and the Equifax was sent back with limited information, so they were advised to go back to those banks they  
5 knew that there were accounts, and actually ask for specific statements. So, that was one meeting where they looked into their accounts, and they've been told by the bank manager that the accounts basically were empty. And then, they asked for - he said what do you want to do with them? And they wanted to  
10 close them, because they didn't want their names to be on any accounts they didn't open.

Q. But you had knowledge with regards to whether they had access to money by February of 2012?

A. Whatever knowledge I had would be whatever was  
15 disclosed to me, and then only as I was working with them.

Q. So, if we could turn now back to the white binder, Tab 164. It's page 932. And you're having correspondence again with Ms. Domazar on Monday, January 30<sup>th</sup>, 2012. And at paragraph three, Ms. Domazar is advising you that,  
20 essentially, she's discussing whether or not there would be funding from Legal Aid, and she said:

I would recommend funding, although at the same time, I would advise the area director that this is not a simple matter, and will  
25 likely consume quite a bit of time. This is almost always the case where the main issue is credibility i.e. who is telling the truth?

So, did you believe from reading this email that there were  
30 issues about who might be telling the truth, whether Nikityuks or Danilovs may not be telling the truth?

A. No, I didn't have any concerns coming across



this, because this was exactly the same concern Ontario Works had, and expressed that they didn't know who to believe. So no, it wasn't surprising in any way.

5 Q. Because it's hard - would you agree it's hard to prove an abuse without any direct evidence of that abuse?

A. There was enough evidence....

MR. MAE: Your Honour, I'm sorry, that's asking for an opinion.

MS. CHAPMAN: I'll withdraw my question.

10 MS. CHAPMAN: Q. Let's look at Tab 165. This is a *fac simile* letter that you sent to another lawyer, Joanna at the Community Legal Clinic, the first item you list here of documents here enclosing are letters from the police. What is that reference?

15 A. Those are the reports.

Q. Reports of what?

A. Police reports. One in Barrie when they declared that they were safe and did not wish to be contacted, and the second one from the Innisfil or South Simcoe Police when  
20 they were moving, and there was a report also available on file.

Q. And those were the only two police reports?

A. Yes.

Q. And then at item number nine, in reference to documents from TD Bank, in the last sentence, you state, "The  
25 bank manager, Mike Grube (ph), told them at the time the accounts were empty, and they requested to close them, as they did not want Svetlana to manipulate money under their names." What did you mean by manipulate?

A. The accounts were opened in their names, but  
30 the money was managed by Svetlana or whoever - I don't know. I'm not - sorry, I don't know if it was managed just by Svetlana, but obviously they were not the ones who put that

money there, who was using the money, or who moved it. So, they didn't want their names to be on the accounts they had no - nothing to do with.

Q. So, let's go back now to Tab 166.

MR. MAE: Your Honour, just one point effect.

These two faxes are out of chronological sequence.

The letter to the legal clinic was April the 13<sup>th</sup>,

and the fax of the email at 166 is February 28<sup>th</sup>.

THE COURT: All right, I'm making note of the dates as we go through. That's fine.

MS. CHAPMAN: Q. Okay, so we're now on page 935, and at item number 2, you state, "Pavel and Svetlana already found out where they live. They harassed everyone, and somehow found out. That's not an issue anymore." So again, in reference to harassed everyone, you gave evidence yesterday that you meant Yulia Malycheva?

A. Not just....

Q. We're going to go through them. Yulia Malycheva was one.

A. Yes.

Q. Lillia Fatykhova was two.

A. Yeah, Emma Tatrova (ph) was third.

Q. Who?

A. Emma Tatrova (ph)?

Q. But you didn't mention that name yesterday in your evidence.

A. She didn't come to me. She came to the office though, but I didn't personally - I've been told that she was at the office.

Q. And then you did mention yesterday that included the YMCA?

A. Yes, YMCA, yes.

Q. And you, Yana?

A. Yes.

Q. You said, "That's not an issue anymore." What did that mean?

5 A. I can't recall, but obviously the confidentiality piece was mentioned probably earlier regarding their leaving the address. Their current address and I guess that's because, you know, it was no longer - it was already known. It wasn't an issue, but I can't recall exactly what the  
10 comment referred to.

Q. So then, in the next paragraph, you reference that, "Yesterday, Alla and Valentin received a registered mail from Pavel with all their pension receipts, medication receipts, and investment statements." So, how did - do you know how  
15 Nikityuks received that...

A. By mail...

Q. ...package?

A. ...in their - yeah, their new address. That's how they learned that they know their address. They received it  
20 at their new address.

Q. And then in paragraph three, you go on, "So, Pavel and Svetlana need to know that the investigation might occur due to the fact that they are withholding those investments, and have not shared this info at the decision  
25 making stage." What are you referencing there? Are these the investments you say the TFSA accounts that Nikityuks were not aware of?

A. I'm not sure which ones in particular, but obviously there was a discussion the Nikityuks - regarding the,  
30 you know, maybe the investments that - I'm not sure, I can't comment exactly on which type of investments. Could be the investments, I'm not sure. I can't comment, sorry. I don't

wanna guess.

Q. Yesterday, you gave evidence about being an authorized representative for Nikityuks with CRA. Do you recall that evidence?

5 A. Yes.

Q. And I understand from the CRA letter we looked at, that you were authorized as a representative in the fall of 2011.

A. Yes.

10 Q. And I also understand that at some point, you had placed a call to CRA, and assisted Nikityuks in obtaining information regarding their notices of assessment.

A. Request for the income tax return to be mailed to the address, yes.

15 Q. And is It possible those requests were made in April of 2011?

A. No.

Q. When do you say those requests were made?

20 A. When after they processed the authorization, but both of them, it was different times. Different months even.

Q. So, if you were already on their CRA accounts as an authorized representative, why would you need to place this call with the Nikityuks to verify information?

25 A. I could not place a call without them first being - going through the - it was in the fall when they needed to obtain their income tax returns that they have never seen before, and they called. They didn't pass the interview - the verification interview, and the only solution that the CRA  
30 advised of is to make the representative form for the purposes of requesting those documents. So, that's what we've done according to their instructions, and it took a while to process.

Once it was processed, then we could place a phone call, and then finally they would send them - release them to them - to the Nikityuks. The phone call was placed because they could not request it themselves. They would not pass the verification  
5 interview on the phone.

Q. Even though a written request to appoint you as an authorized representative had been made?

A. It has been made in October. It was processed sometime in November, December, so we could only make that phone  
10 call after they processed them. Until then, they wouldn't speak with us.

Q. So, if we can go back to your log for a moment. I think I'm almost finished. And I'd like to look at your entry from July 27<sup>th</sup>, 2012. Are you there?

A. Yes.

Q. Okay. So, at the first point, you write:

Received a phone call from Valentin that someone from ODSP called him and asked for Svetlana's phone number. He gave it to them.  
20 Advised Valentin that it's not a good idea to give out this info considering he does not understand what the person on the phone is asking and telling him in English.

Do you recall having that discussion...

A. Yes.

Q. ...with Valentin?

A. Yeah, clearly.

Q. And did Valentin not know enough English to understand someone asking for Svetlana's phone number, and then  
30 to give it to that person?

MR. MAE: Your Honour, I believe the evidence was she's never spoken to them in English, so how

could she make that assessment?

THE COURT: Just want to repeat the question for clarity?

MS. CHAPMAN: Sure.

THE COURT: If she knows the answer.

5 MS. CHAPMAN: Q. So, with regards to Valentin, do you think that he understood enough English? He could give someone Svetlana's phone number over the telephone in English?

10 A. I don't know how much English he would understand. I know that he couldn't understand much, so that's why when he told me that someone called and asking for Svetlana's phone number, and he gave it to them, that raised a concern, 'cause we knew that he wouldn't understand much of the reasons. Like say - like, he might have understand the words  
15 Svetlana and the other words phone number, but what else been said he would have missed entirely. And because there was no way to know who called and who asked for this information, that raised a concern that I brought up with the Community Legal Clinic, and with my director as to what to do, and received  
20 advice.

Q. But from your entry, it appears that Valentin knew that it was someone from ODSP who called.

A. That's what he had told us, yes.

Q. But you weren't sure if that was true?

25 A. What he told me is what he told me. Like, I'm only recording what he told me that - he thought it was somebody from ODSP, but he couldn't make much of anything else.

Q. And you've never had any discussions with Valentin in English?

30 A. No.

MS. CHAPMAN: Your Honour, could I request just a short break to ensure I've covered all areas?

THE COURT: Yes.

MS. CHAPMAN: Thank you.

THE COURT: And then we'll return, you can finish your questions if you'd like. And I don't know if Mr. Mae may have some re-examination, but we'll come to that when we return, and if not, we may be able to deal with another witness. I don't know how your timing is for today, but....

MR. MAE: I certainly have a witness available. I'm certain I wouldn't finish with her today, and I'm in your hands whether you want me to start with that witness, or whether you just want to go at it with a clean slate at nine-thirty tomorrow. I'm in your hands on that, Your Honour.

THE COURT: All right, let's just see where we end up today to be sure, and then we can just address that issue. So we'll take our afternoon break now.

MS. CHAPMAN: Thank you.

CLERK REGISTRAR: Order please. This court will recess for 15 minutes.

R E C E S S

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

CLERK REGISTRAR: Order please, all rise. Court is now resumed, please be seated.

THE COURT: Yes Ms. Chapman, any more questions?

MS. CHAPMAN: I do have a few more questions. Maybe 10 or 15 minutes.

MS. CHAPMAN: Q. So Ms. Skybin, if we can go back to the second white binder, Tab 162, please.

A. Tab?

Q. One-six-two. It's page 930. And this is an email dated January 13<sup>th</sup> 2012. Do you recall who Rosemary Holt is?

5 A. Yes, she's with the Local Immigration Partnership of the County of Simcoe.

Q. And were you having a discussion with her about a possible re-evaluation of the sponsorship agreement?

10 A. No, the County of Simcoe requested that the Nikityuks have to declare the - either do the sponsorship re-evaluation, or declare sponsorship breakdown. And so, this was the person from the county who was the contact for the County of Simcoe. So, it was - the initiative came from the County of Simcoe.

15 Q. But you would agree that Danilovs were advising the YMCA and other parties that there was no breakdown in the sponsorship agreement, correct? They were prepared to support the Nikityuks?

20 A. Whatever is in the letter or whatever's in the correspondence, I can't comment. I would have to go back to that.

25 Q. Okay, so let's look at the letter that Ms. Danilova wrote to the YMCA. That is in the first white binder, binder - white binder one. So, at Tab - sorry, 71. Do you recognize this letter from Svetlana to the YMCA?

A. Yes.

Q. And had you seen this letter at the time that it was sent to Susan Green, the director?

30 A. I don't know at which point I saw the letter, but yeah, it arrived at our office.

Q. Right, but you would agree at paragraph two, Svetlana sets out that, "Under the sponsorship undertaking, I'm



responsible to provide them with monthly support," and that she was trying to provide your office with a void cheque to be given to the Nikityuks, correct?

5 A. The void cheque was basically the disclosure of the account where the pension went, and that they could access the funds there. So, that was the first time that information was provided, and as I recall, our office was very specific that we would not be mediating the process, so not to send us any further cheques, you know? Because we cannot manage 10 anybody's finances this way. So yeah, that was I think the last time the communication came through the office regarding any accounts that Alla and Valentin had.

Q. But you would agree that Svetlana was trying to advise the YMCA that there's a sponsorship agreement in 15 place, and we would like to provide the Nikityuks with support.

A. That's what the letter states, and that other email that you referred to had nothing to do with this.

Q. And there had also been a letter on October 20 30<sup>th</sup>, 2011. If you could turn to Tab 68? And this letter was signed by Pavel Danilov, written to Susan Green, director. And this is the letter that enclosed the support cheque for the period October 18<sup>th</sup> to November 30<sup>th</sup>, correct? You remember seeing this letter?

25 A. Yeah, and again, as I said, our office advised Pavel after he contacted the office not to be sending us any cheques.

Q. And is this the cheque that you state was not - sorry, that the Nikityuks could not cash?

30 A. This was the correspondence sent to our office, and there was an enclosed cheque that was given to Alla and Valentin on the same date. But that - we asked not to please involve us in further communication.

Q. And did you know whether they were able to cash that cheque that was provided for your office?

A. To my understanding, they cashed, they put it in, and there was stop payment on it. So, they did not receive  
5 the funds.

Q. When you attended the bank with Nikityuks, you interpreted while they opened new bank accounts, correct?

A. Yes, they wanted to open a new bank account so that they could request their pension to go into that account,  
10 and - yes, I was present at that time.

Q. And in order for them to open a bank account, is it true that both Alla and Valentin had to be present?

A. They were present, they were both present. I've never went to the bank without - I've never gone to the  
15 bank without them

Q. And they both provided identification to the bank representative to open that bank account?

A. I can't remember that part.

Q. And then finally, I just want to return to a  
20 moment to a question I asked earlier about your relationship with the Nikityuks.

A. Yes.

Q. Had you ever invited any of your other clients to your home for a birthday party?

A. Yes, I did.  
25

Q. And had you gone on road trips with any of your other YMCA clients?

A. I've socialized, yeah, with people who also have been my clients. I can't comment on road trips, but yeah,  
30 like picnics, gatherings, social events, yes.

Q. And these would be events outside of the YMCA...

A. Yeah, yeah.

Q. ...not YMCA events.

A. Yes.

Q. Russian-speaking clients, yeah. Russian-  
5 speaking community.

MS. CHAPMAN: Thank you. Those are my questions,  
Your Honour.

THE COURT: Mr. Mae, anything that - by way of re-  
examination?

MR. BORNMANN: Yes Your Honour, I have a few  
10 questions.

RE-EXAMINATION BY MR. MAE:

Q. Ms. Skybin, you were asked under cross-  
15 examination about the comment in your log with respect to abuse  
in Canada not being acceptable, and I'm paraphrasing your words.  
What did you mean by that?

A. What Alla disclosed, you know, like Svetlana  
grabbing her and shaking her up to the point of bruising her,  
20 that - in Canada, that's not acceptable to be done by anyone,  
even somebody you love deeply. In Russia and Ukraine, police  
would not even get involved because this would be considered a  
domestic dispute, unless somebody's killed, you know? So,  
there's a big difference in approaches, attitudes, you know?  
25 Towards such domestic violence situations, so that's what I was  
trying to communicate; that in Canada, domestic disputes and  
domestic violence are considered, you know, like serious matter.  
They are not to be taken lightly.

Q. And the elder abuse handout, which you gave  
30 and you were asked about this, why did you give the elder abuse  
handouts to the Nikityuks? What was the purpose?

A. The education - for education purposes.

Q. And in terms of the translations of those documents, were - which pamphlets were translated? Were the C-L-E-O pamphlet translated?

A. The information, the Ontario resource that I  
5 looked up, and with the information section of who to contact for specific help, that part was translated - Google translated, so that if they wish to, you know, contact - and they specifically some of them list that. If you don't speak the language, that it's available, you know, in your language.  
10 Interpretation could be arranged, so I wanted them to have the resources.

Q. So, the elder abuse handout with the drawing on the front, did you translate that document for them?

A. No, I can't remember. I don't - well, I  
15 didn't personally translate it. I made sure they had the resource information, and the numbers, and the explanations what all those organizations are in Russian so they could understand what they are. What the resources are.

THE COURT: I just want some clarification on  
20 that, because we already know that they did get the version translated.

A. Yes, that brought....

THE COURT: Just let me finish. But I wasn't sure  
25 if it was a government available translation for people of different languages.

MR. MAE: And that's why I was asking.

THE COURT: I don't think she understood...

MR. MAE: Sorry.

THE COURT: ...but I think she did say she didn't  
30 personally translate, if I understood.

MR. MAE: That's correct.

THE COURT: Is that right? You didn't personally

translate that?

A. No, I didn't personally translate it, yes.

THE COURT: So....

MR. MAE: I just wanted that clarified because, I'm making a statement here, but in the tab, we saw a Russian translation, so other pamphlets.

THE COURT: Yes, but she...

MR. MAE: And I'm....

THE COURT: ...she's already told us that this is the only one that....

MR. MAE: That's correct, I just wanted to understand.

THE COURT: The one that says elder abuse...

MR. MAE: That's correct.

THE COURT: ...on the front of it, we looked at that several times.

MR. MAE: Yes, Your Honour.

THE COURT: Okay.

MR. MAE: Q. You were asked specifically about your log entry on September the 30<sup>th</sup> concerning the financial information referencing that log. I just want to have you clarify, when you wrote the log on September the 30<sup>th</sup>, what was the purpose of you writing the log entries for - at any time, but specifically on September the 30<sup>th</sup>. Why were you keeping a log?

A. To record what's been reported to make sure that I, you know, capture everything that's been disclosed to me.

Q. You were asked about the translation services to Ontario Works, and you confirmed that you did provide some translation services. But was anybody else providing translation services for the Nikityuks with Ontario Works?

5 A. They had a translation - they had an independent translator through Bridge Translation arranged by Ontario Works for the appointment, and then when they did the application, and the eventually, if they had a question or a letter sent to them, then we would help them to communicate that. But we do that for all clients, even those who do speak English 'cause it's the system, right? It's the - it's not just the knowledge of the language, it's also the knowledge of the - all the requirements and, you know, like the specifics of how it operates - Ontario Works operates.

10 Q. So, how did - how and when did you know about Bridge Translation? Did you know it at the time?

A. I know of such an organization, but I haven't had dealings with them directly.

15 Q. Could the witness be shown....

THE COURT: If we could just explain that term since we're using it. It's not what I'm familiar with, Bridge Translation?

MR. MAE: It's a name of an organization, Your Honour.

20 THE COURT: All right...

MR. MAE: And....

THE COURT: ...maybe she could tell us that.

MR. MAE: Oh, yes.

25 THE COURT: Or more, or whatever she is - I don't know.

A. Sorry, I wanted clarity in terms of - in regards to the Ontario Works translation, or in regards to interpretation services available to us as settlement counsellors?

30 Q. Specifically, referring to the Ontario Works.

A. That was arranged by Ontario Works.

Q. And if I can have the witness shown the red binder, which I believe is classed as Exhibit 2.

CLERK REGISTRAR: 2(A) or B?

MR. MAE: 2(A), thank you sir. Tab 22.

5 MR. MAE: Q. You have that in front of you?

A. I do.

Q. If you go down to the section, the paragraph beginning October the 25<sup>th</sup>, 2011, it says, "Valentin and Alla attended the Barrie office with a translator from Bridge  
10 Translations to complete their verification interview." Were you that translator?

A. No.

Q. Under cross-examination, you were asked about whether you checked into the truth of the comments in some of  
15 the letters you'd written. Did you personally see enough evidence of abuse with your own eyes?

A. Yes, I did.

Q. And did you see enough evidence of financial documents with your own eyes too?

20 A. Yes.

Q. Come to that conclusion?

A. Yes.

Q. You were also directed towards the phrasing, the one letter where you refer to the sponsor was - the sponsor  
25 is an abuser. Did you have enough personal information to reach that conclusion?

A. Based on - yeah, the evidence. That conclusion was based on what I've come across personally by working with Alla and Valentin throughout these months.

30 Q. You were asked about the students who approached you at the Y with their complaints, and you indicated that Liliya didn't allow herself - sorry, Svetlana did not allow

herself to get rude. That was the phrase you - could you explain that a little bit more in terms of what you understood at the time of your discussion with Liliya, and what you've discovered since?

5 A. No, Liliya said that - it was Lika there who said...

Q. Oh, sorry.

A. ...that yeah, that she wouldn't allow somebody to bully her, basically. She would not allow somebody to be  
10 rude to her, and she just - that's why she didn't have multiple phone calls placed to her, as opposed to Yulia who was trying to be nice and, you know, was responsive, was answering, and she ended up with what she ended up with. And since then, like I know that - but we have Lika coming, and Liliya will be a  
15 witness, so since then, I discovered that she said Svetlana was more probing than - she wasn't rude, but she was probing for information of - like, in that conversation.

Q. So, when you were speaking to Lika and Yulia, it was at the same time in the same conversation?

20 A. Yes, in 2011.

Q. Yes. And as a consequence of that discussion, did you ask them to do anything, or tell them to do anything?

A. I asked them if they could put it in writing. Yulia said yes, and she did produce a letter of her own, and  
25 Lika said no, because she didn't want to get involved. But I did bring them both to our director because of the concerns they expressed, and we also do have a harassment policy in place in the workplace. So, I brought it up basically with my management, and then the management explored it further. And  
30 the advice was given to the students.

Q. So, you advised them. They didn't ask you for the direction to your manager?



A. No, I advised - I brought them to the manager, to our director, and basically they explained what it was about.

Q. And why did you do that?

A. Well, because of our harassment policy in place. Again, it's my obligation if something is reported of that nature, and they were our students. So, I - that's why I reported it to the management.

MR. MAE: Thank you, Your Honour. I have no other questions unless you have any.

THE COURT: I just want to get back to the Bridge issue, just for clarification for my purposes, because it's important that I understand. So, I just ask Mr. Mae and this witness, if Ontario Works was looking to you for - to her for assistance on translation, or if they made their own arrangements. I realize she may have translated things from time to time, but was Ontario Works relying on her? That's the question for her.

MR. MAE: I....

A. No, Ontario Works made their own arrangements for the pur - for that application appointment.

THE COURT: And that's where this Bridge company comes into play? Is that your understanding?

MR. MAE: That's my understanding...

THE COURT: All right.

MR. MAE: ...from the documents.

THE COURT: All right, I'll head for clarification. Does that raise any other issues for you, Ms. Chapman? About that issue?

MS. CHAPMAN: I'm not sure if you're referring directly to Tab 22 that Mr. Mae took us to.

5 THE COURT: It was just a general question about how Ontario Works would operate. I gather that they were not relying on this individual for translation services. That's my understanding from what I hear, although, obviously this witness may have translated other things from time to time in connection with that, but she was not the primary translator for Ontario Works. That's my understanding.

10 MR. MAE: And I think that you hit the nail on the head. Ontario Works had their own translator, as in that was their translator. Ms. Skybin's involvement, if any, was on the other side.

THE COURT: All right.

15 MR. MAE: But when needed out - and I believe my friend asked her about that in cross-examination.

20 MS. CHAPMAN: Right, right. So, Tab 22 addresses specifically a meeting on October 25<sup>th</sup>, 2011, in relation to the Social Benefits Tribunal. So, not social assistance - Ontario Works. So, that's my concern. There might be some confusion there about when Bridgepoint - pardon me, Bridge Translations attended the Barrie office with their own translator. There was....

25 THE COURT: Can you assist us, counsel?

MR. BORNMANN: Yes, Your Honour. So, the Bridges is the company that Ontario Works for County of Simcoe. The County of Simcoe administers Ontario Works...

30 THE COURT: Understood.

MR. BORNMANN: ...and they would use Bridge Translation Services when there is a dispute about

benefits, a decision that's made by the County of Simcoe, if it gets appealed to the Social Benefits Tribunal, which would result in a production of this package here. This is like a - this is equivalent to a disclosure package from the county, and it's the - it's Ontario Works' submission to the Social Benefits Tribunal.

THE COURT: Right, so it goes to another level. It went to another level beyond Ontario - beyond the Simcoe County's ability to deal with it. Ontario Works, it moved up to another level.

MR. BORNMANN: That's right Your Honour, but the notes that are being disclosed by Ontario Works at this tab are - these are Ontario Works' notes, and Bridges is Ontario Works' translator.

THE COURT: Sorry, thank you. I think that's - is that sufficient counsel, on that issue?

MS. CHAPMAN: Yes.

THE COURT: You can step down, thank you. A couple of scheduling issues that have just come to my attention that might affect us. First of all, I understand that there's an urgent injunction issue that has to be dealt with tomorrow by some judge, and the trial coordinator has spoken to me about it, and I will have to canvas another judge or two to see if anyone else is available to deal with this tomorrow morning. If I have to deal with it, it may just mean a later start tomorrow. This is a next party matter, but it has to be dealt with on the record. So, I'll check this out and come back in a few minutes, as to potentially a later start tomorrow. And on Friday, we are

5 short - we will be short a courtroom, and Regional Senior Justice Fuerst requires a courtroom to do criminal pre-trials, and these days, those matters take priority. So, potentially, we may have to let her use this courtroom for that purpose, and we will not have a courtroom available for us if that happens, and I will make further inquiries about that. The other judges are doing jury trials, so it's very inconvenient to have them step down for a day, and have the jury potentially extending those trials into further weeks beyond what's scheduled, so - because we do have potentially time for next week and the week beyond, it may work out. I don't - I don't like to do that, because I know that we're trying to get this finished.

10 MR. MAE: Your Honour, there - your comments quite have sight. During the break, I spoke with Ms. Chapman, and things may have changed by the - while we've been in Court, but one of our witnesses who we were teeing up to come on Friday, she's under a witness order and the order you made at the last adjournment. We emailed her, and we got a bounce back saying she's out of the office until the 24<sup>th</sup> of November. That doesn't mean to say - maybe it's just a standard thing, because she's awaiting to be called, but my assistant was trying to speak with her, but from my perspective, and I'm not sure it's something my friends from 15 20 25 30 the Community Legal Clinic would share, but it is what it is with - we're in the hands of the Court with respect to the use of the courtroom. But

5 there was a possibility that I might have been saying to you at some stage between now and Friday, we can do Friday morning 'cause we have a witness teed up for Friday morning, but Friday afternoon might have been a problem - might.

THE COURT: At least it's not a case where you had a professional witness booked for Friday and you have to call that person off. So, at least we're not putting...

10 MR. MAE: That's right.

THE COURT: ...your potential witnesses to that inconvenience. So, Ms. Chapman, you understand that we might have to be down...

MS. CHAPMAN: I do.

15 THE COURT: ...Friday, and something else could change within the building, and that may change. I'll know better tomorrow, in case one of the jury trials happens to settle or something like that. But at this point, we have a very full house.

20 MS. CHAPMAN: Understood, and obviously, we want to try and accommodate the witnesses so then they can come and, as Mr. Mae was saying, we were already having this discussion about....

25 THE COURT: Very good. Well, at least - I wanted to give you this early warning, and it seems that we may have a problem on Friday, but at least you know about it now, and it might work out not too unsatisfactorily with respect to Mr. Mae's witnesses anyway. I have more to say about that tomorrow, but it seems likely that we may not be able to do anything on Friday. Having said that, if I do have to do this injunction tomorrow, I

30

would just assume close court now, and do my reading and preparation, rather than calling a witness for a short period of time.

5 MR. MAE: Your Honour, I was going to suggest and request that anyways. But another matter, you may recall we canvassed yesterday with respect to the issue of closing arguments or written submissions. I'm not going to take it fully upon myself, I am not speaking for everybody, but I believe that we 10 may all be *ad idem* on the issue of not doing oral closing arguments, but doing written submissions with a relatively short time period, and then with the ultimate possibility, if there's anything you want clarified, come in back for a short hearing. 15 And I see Ms. Chapman nodding, and my friend from CLC.

20 THE COURT: All right, I'll - I'm happy to do that. We'll discuss the time to be given to counsel, and you may have submissions that you would like 20 days or what have you. So, I'll hear from you....

MS. CHAPMAN: No, no, that's what we're talking about. We will have very short timelines, but everything is fresh.

25 THE COURT: All right.

MS. CHAPMAN: To make these submissions...

THE COURT: Well, I'll be....

MS. CHAPMAN: ...and to reply.

30 THE COURT: Obviously, you've had several months to deal with the earlier part of the evidence.

MS. CHAPMAN: Yes.

THE COURT: So if shorter timelines are more

appropriate, then we'll do so.

MR. MAE: And I think the only thing in terms of timeline, whatever day we finish, just have to take into account weekends.

5

THE COURT: Well, we have claims and counterclaims here, don't we?

MR. MAE: There's only one counterclaim. That's from the CLC. I have no counterclaim.

10

THE COURT: So, we have to figure out who goes first in terms of when the submissions should come in, and response, reply, et cetera. So, I'll let you discuss that as a group about the matrix of dates, and Ms. Chapman would like to be - have it done earlier rather than later.

15

MS. CHAPMAN: Yes.

THE COURT: So, I'll let you have those discussions, and we'll just talk about that. But we'll stay - we'll say agree for now that it will be written submissions.

20

MR. MAE: Thank you, Your Honour.

THE COURT: And then we're not trying to squeeze in more dates for that within this civil sitting, or to actually finding dates months and months later, because my schedule is heavily packed for 2017. So, that's probably the way to go. So I will adjourn for the day. I'll simply have the registrar let you know in a few minutes if I'm going to start at nine-thirty or sometime later.

25

MR. MAE: Thank you, Your Honour.

30

CLERK REGISTRAR: Order please.

1724.  
Certification

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Form 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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(Date)

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Spencer Edgar  
(Signature of authorized person)



THURSDAY, NOVEMBER 17, 2016

THE COURT: Good morning everyone.

MR. MAE: Good morning, Your Honour.

THE COURT: Mr. Mae, you have another witness for  
5 today?

MR. MAE: I do, Your Honour. But maybe perhaps  
before we address the witness I can advise that  
counsel have agreed on a timetable for the  
closing arguments.

THE COURT: Great.

MR. MAE: I think Mr. Bornmann can actually speak  
to this. He circulated the email last night.  
Thank you.

THE COURT: Morning.

MR. BORNMANN: Morning, Your Honour. The  
15 timetable we discussed yesterday, Your Honour  
would see the Danilovs serving and filing by  
December 2<sup>nd</sup> and then the Nikityuks and  
YMCA/Skybin would serve and file by December  
20 13<sup>th</sup>. And the Danilovs would serve and file any  
reply by December 16<sup>th</sup>. And finally, the  
Nikityuks would serve and file any reply by  
December 21<sup>st</sup>.

THE COURT: All right, thank you. I wonder if I  
25 can get a copy of that in writing eventually,  
just so I can put that on the record when we  
adjourn for the final day.

MR. BORNMANN: I have that, Your Honour.

THE COURT: I'm going to have to unseal the  
30 courtroom for tomorrow's criminal purposes and I  
think you've already been advised that the  
interview rooms will be made available for you

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and you'll get a key so you can lock your materials in there for - for Friday and the weekend.

5 MR. MAE: Thank you, Your Honour. And in that case, to state the obvious answer, we're not here tomorrow we're....

THE COURT: We are down for tomorrow.

10 MR. MAE: So - so whatever we planned for tomorrow, then we'll have to address on Tuesday. Thank you, Your Honour.

THE COURT: But we're - but we're here Monday, aren't we?

MR. MAE: We are but about half the time for Monday because of the translators.

15 THE COURT: Oh - all right. So you're having to adjust your witnesses slightly.

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

20 THE COURT: And Monday I told you I have another matter to speak to at nine-thirty, but I should be available by ten o'clock.

25 MR. MAE: That - that would be fine. I'm not sure that we're gonna be here the entire day on Monday anyway, depends on the - even though we're gonna have four witnesses slated for that day. I - I can't imagine us going the whole day or even the lunch sitting.

THE COURT: Okay. And where does that leave you after that?

MR. MAE: Have witnesses for Tuesday.

30 THE COURT: Mm-hmm.

MR. MAE: And then - because of your - the combination of the one witness not being

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available and you - you not being available then,  
we - we can wrap up on Thursday...

THE COURT: All right.

MR. MAE: ...depending on the length of the  
cross-examination.

THE COURT: All right. Thank you. And Monday  
morning, of course I'll give you time to get the  
room re-setup once the criminal matters have  
vacated the room and it sounds like you don't  
have a completely full day anyway.

MR. MAE: That - that's good. Thank - thank you  
for that, Your Honour.

THE COURT: All right.

MR. MAE: So the next witness I'd be calling is,  
I believe Your Honour, is Fiona Cascagnette.

MR. BORNMANN: So Your Honour, I apologize to the  
court if I may have missed something, but you -  
you - you won't be sitting tomorrow?

THE COURT: That's right. We won't be sitting  
tomorrow because the courtroom's needed for a  
criminal matter and we are using every nook and  
cranny of this building during these sittings.  
So we won't have a room to go to.

MR. BORNMANN: Thank you, Your Honour.

FIONA CASCAGNETTE: SWORN

THE COURT: Good morning.

FIONA CASCAGNETTE: Morning.

EXAMINATION IN-CHIEF BY MR. MAE:

Q. Ms. Cascagnette...

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A. Yeah.

Q. ...what's your role at the YMCA?

A. I'm the vice president of Child and Youth Development.

5 Q. And you're here speaking on behalf of the YMCA organization?

A. That's correct.

Q. How - how long have you been at the YMCA?

A. I've worked for the Y for 26 years.

10 Q. And were you employed by the YMCA in 2011 when these events took place?

A. Yes, that's correct.

Q. And what was your role in 2011?

A. I was a vice president at the time of Child Development and Family Support Programs which included the Newcomer Services Program.

Q. Just to find out a little bit about you, what - what's your educational background?

A. I graduated from Laurentian University with a Honours Bachelor of Commerce in Sports Administration.

Q. And how long have you been at the Y - so long have you - you always worked at the YMCA?

A. Pretty much yeah. I - I started in high school and transitioned to full-time in '96 and that has taken on a number of different management roles within the Y over the years.

Q. So you're fairly familiar with the YMCA organization, its policies....

A. Yes. Yes.

30 Q. And in 2011, where - where were you based? Where was your office?

A. My office is on Grove Street, just in about

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Main Barrie Health and Fitness Centre - in Barrie.

Q. So - so that's not the same office as Newcomer Services?

5 A. No - just it's close, but not in the same place, no.

Q. And are you familiar about with the Newcomer Services office?

A. Absolutely.

10 Q. And I'd like you to describe the proximity of the various offices in the Newcomer Services unit.

A. Yeah, sure I can. As you enter there's a reception and a - or - a reception area where clients are greeted. Down one hall there's the English classes and then just to the right, there's a small little hallway through the - well on the - you keep going and off that hallway are the three 15 offices. So Yana's office, across the hall from her was Ruth, our supervisor and then just at the end of the hall was Susan, the director. All very close. Mm-hmm.

20 Q. And in terms of all very close, could you give an idea of in feet?

A. Oh like four feet. You can - you can hear - when the doors are open, you can hear what's happening in that little hub - I suppose you can call it.

25 Q. And - and do you - do you know that personally?

A. Oh yeah, I would go to the offices to meet with Susan; I'd be there when they were working.

Q. Just probably doesn't need any introduction, but the YMCA organization, what - what's it's mission statement?

30 A. Yeah I would say the overarching mission statement is really around in helping people grow in spirit, mind and body and ensuring that they - we have a healthy

community.

Q. And what about the Newcomer Services Division specifically, what - what was it - its objectives, what's its mandate?

5 A. It has - so there's two mainstreams in Newcomer Services. The first one would be English classes for individuals that need to learn English when they arrive in Canada. And then the second component is our Settlement Services Program where Newcomers, you may not be familiar with  
10 Canada in a way that our country operates and different systems operate, it allows us to be able to help them find their way and to become a contributing citizen in their new country.

Q. And I'd like - for the sake of completeness, if the witness could be shown Exhibit 1 of - I don't know which  
15 volume it'd be in, but it'll probably be volume 2, Tab 126.

THE COURT: That's the white volume.

MR. MAE: Yes, Your Honour. Actually mine is blue.

20 A. Sorry please - sorry, what was the tab number?

MR. MAE: Q. One twenty-six please.

A. Yes, I am there.

Q. You - you have that document in front of you?

A. Yep.

25 Q. And what - what is that document?

A. It seems to be a printout from our website, the YMCA of Simcoe/Muskoka's website and just describes the YMCA Newcomers Service Program.

30 Q. And would - would you agree with the - the definition of the Settlement Services on the website?

A. Yeah, absolutely.

Q. And as part of that same exhibit and this of

course in the plaintiffs' productions, three pages in is a page about Susan Green.

A. Yeah.

Q. Do you have that?

5 A. Yes, I do.

Q. Who - who is - or who - who was Susan Green?

A. Susan Green was the director of Newcomer Services at the time.

10 Q. And some - somebody that you were familiar with?

A. Absolutely. She was - she reported directly to me.

Q. And do you know how long Susan Green had been employed by the YMCA in 2011?

15 A. I did - yeah over 20 years.

Q. And is Susan Green still with the YMCA?

A. No, she retired.

Q. And do you know how long ago she retired?

20 A. I believe it was two years ago or three years ago.

Q. And cert - certainly back to the Newcomers Services Program, are - are there charges made to the clients at YMCA for using any of those programs?

25 A. No the program's free. It's funded by the Citizenship and Immigration Canada through federal funding.

Q. And in terms of the - the settlement counsellors...

A. Yeah.

Q. ...specifically Yana Skybin...

30 A. Yeah.

Q. ...well actually *[indiscernible]*, was Yana the only settlement counsellor in 2011?

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A. No, she wasn't. Within the Barrie office, Ruth Miller was also working within Settlement.

Q. And who - who - who was - who is - who was Ruth Miller?

5 A. Yeah so Ruth Miller was Yana's direct supervisor. She was the lead settlement counsellor so she had a role around oversight at Settlement Services. She would have reported to Susan Green. Within her role, she directly served Newcomers within Settlement, but was also responsible for the  
10 oversight of Yana.

Q. And to - to your knowledge...

A. Mm-hmm.

Q. ...how long had Ruth been with the YMCA in  
2011?

15 A. In 2011 it - it would have been over 20 years as well, the same as - as Susan. Yeah.

Q. And even - even though we've heard it from Ms. Skybin, I think it's helpful to hear it from the YMCA's perspective. Can you explain the role and the duties of a  
20 settlement counsellor?

A. Absolutely. So the settlement counsellors, your number one rule really when they meet with a - a new client is to complete a needs assessment, to identify, you know, where's that individual at, what do they need, you know, why'd  
25 they come and depending on that Newcomer, there's so many different things that they may require. So through that needs assessment, the settlement counsellor is then able to provide referrals or to provide information or education to help them. That can be connected to, you know, any aspect of being involved  
30 in our community socially, economically, culturally. As well there will be certainly help with completing forms where a Newcomer may not speak the local language certainly or may not



just even understand what's required in the forms in Canada. They would do that. And at times it would include interpretation for clients or connecting them to interpretation if we can't do it ourselves.

5 Q. And what about services that the YMCA could not provide that the client's needed?

A. Absolutely and that's where we would refer and so as settlement counsellors, you know I - I like to say that they're sort of the road - the roadmap, right. They're  
10 able to direct focus to the community agencies that exist in our community that - that can help people. And so they would provide either information so that they can access those services or help arrange those services for them.

15 Q. What - what is the YMCA's expectation as to the performance of the settlement counsellors - the employees?

A. You know, I think the number one expectation would be that they take the time to understand what their needs are. And the second would be that they respond to their issues and they - they accurately provide them the information that's  
20 needed within the community so that they can find what they're looking for and they can have a positive contribution to our community.

25 Q. Andspec - specifically, has Yana Skybins - in the chain of command set several people up...

A. Absolutely.

Q. ...what - what specific obligations would of she had according to the YMCA in dealing with the Nikityuks?

A. Specifically with respect to the Nikityuks, you know, we would expect as with all clients that she would be  
30 able to identify with their needs and respond to their wishes. Certainly within the Nikityuks' situation there could be a time when she needed to be able to consult and get some advice and so

she - she did speak with Ruth and - and she connected with Ruth when she needed some support and - just as a double check and certainly, you know, we would expect our staff, when there's something that maybe they're not familiar with, to be able to connect with someone else about.

Q. And to your knowledge, did Yana Skybin meet those requirements?

A. Absolutely - yeah. I think when you - when you look through some of the - the file you can even see that it's clear, that both Ruth and Susan had involvement in the Nikityuk file and it wasn't Yana solely working alone; that there was awareness in the office of what was happening and how we were supporting the Nikityuk family.

Q. And you - you read the - the entire Nikityuk file.

A. I did, yeah.

Q. And do - do you know when you read it?

A. I read it when we received the statement of claim.

Q. But you - you had some involvement with this file prior to the statement of claim?

A. Yes, that's right.

Q. And we'll - we'll come up to that in a moment.

A. Okay.

Q. But - in fact, we'll come onto it now.

A. Okay.

Q. When - when - when did you first become aware of the - the Nikityuks?

A. I believe it was in October of 2011.

Q. And how - how did you become aware?

A. There was a letter of complaint sent by the

Danilovs to the YMCA.

Q. And maybe we can look at that letter now too, the green volume...

A. Okay.

5 Q. ...green volume 1. And you need to go to Tab B28.

A. Yes.

Q. Now is that the letter you were referring to?

A. Yeah, this is the letter.

10 Q. And how and when did you first see this letter?

A. The letter was received at our main association office at the Barrie Health and Fitness Centre out at Grove Street and so I was provided it when it arrived by our executive admin assistant.

15 Q. And did you read that letter?

A. I did. I read that letter when I received it.

20 Q. And what action did you take as a consequence of that letter?

A. Yeah, so when I received that letter, that same day I went to my - went back to my office and phoned Susan. It was concerning when I read the letter that I needed to be able to follow up with Susan and find out, you know, where was this coming from. And so I called Susan; we had a good conversation on the phone. I felt quite comfortable that the information that Susan had and her knowledge of what we had done, both through the work that Yana had done with Nikityuks as well as Ruth, that we were managing a difficult situation for the Nikityuks and was quite competent that we were doing what we needed to be doing.

30 Q. And in - in this letter, did you see any

specific complaint about Yana Skybin?

A. I don't believe there is a specific reference to Yana. It does talk about YMCA staff as well as perhaps students - but no, nothing specific to Yana.

5 Q. So - when - when did you first become aware that Yana Skybin was involved in dealing with the Nikityuks?

A. Well I believe on that phone call, certainly due to the Russian translation, you know, Susan certainly would have told me that Yana was the lead on the file because she  
10 speaks Russian. So that would make sense why Yana versus Ruth was there. I wasn't aware that Yana was directly being complained about, I suppose, until the receipt of that statement of claim where she was named.

15 Q. And so you had some knowledge fairly on - early on in the process, what - what if anything did you do in October 2011 aft - after you found out about this letter?

A. Well, after having the conversation with Susan, there wasn't anything for me to do because we were quite confident that the team, although they were faced with a  
20 difficult situation, were doing the steps that we would expect. They were making sure that the Nikityuks had access to third party agencies that could support them through this time and that's what our role is. And so there wasn't any continued involvement of myself with the file after the complaint letter.

25 Q. Now we'll come back to your involvement later on in the process, but I'd like to talk about the YMCA written policies...

A. Sure.

30 Q. ...in 2011. What written policies were in effect in 2011 for dealing with elder abuse?

A. There wasn't a written policy specifically about elder abuse.

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Q. Was there a written policy for dealing with abuse to adults generally?

A. Not a general adult abuse policy, no.

5 Q. So - so what policies or policy did you have in effect in 2011 for dealing with any form of abuse?

A. We had our Child Protection Policy.

Q. And did you have personal knowledge or involvement with the Child Protection Policy?

A. Yeah.

10 Q. And was the Child Protection Policy something to be used for dealing with a situation with elder abuse?

A. It - it could possibly. The time where we would consider using the child abuse protocol would be where an adult's considered to be a vulnerable adult.

15 Q. And what's in your lexicon is a vulnerable adult?

A. A vulnerable adult would be someone who is unable to protect themselves or is requiring protection because they're unable to protect themselves.

20 Q. And could - could you be a little bit more specific with that?

A. Absolutely. I think, you know, there's certainly adults living in our community who don't have the mental capacity to be able to make decisions for themselves, to  
25 protect themselves if they find themselves in a situation of abuse. And so for those adults, we would hope that our staff would take reasonable steps to ensure that they're protected. Similar to a child who, you know, based on the law, in the situation of a child, is deemed to require an adult to be able  
30 to take those steps for them.

Q. And what about capable adults?

A. A capable adult? A capable adult is

suffering from abuse is - is able then to decide what they want to do about that abuse themselves.

Q. And in the YMCA letter, would a capable adult necessarily be a vulnerable adult or vice versa?

5 A. No.

Q. And I'd like you to explain why you had no written policies for dealing with elder abuse.

A. Well I think when we look at some of the policies we do have it's connected to our legislation. And so  
10 one of the reasons we have a child abuse policy is because we are legislated as a - a provider of licence childcare and serving children, that we are required to have one. There is a legislation in the province of Ontario that requires that certain policy. I think the other thing we need to consider is,  
15 in all facets of the YMCA we - we provide a real variety of service. When you consider the Y, it's not just Newcomer Services, there is Employment Services, health and fitness, aquatics and so forth. And so when you consider, you know, when would we create a policy, it would be important that we can't  
20 possibly have a policy for every thing that might happen and so, in absence of policy, we would look to certain things that exist within our community. And so there may be guidelines or expectations from other organizations that we would then follow.

Q. So - so how would staff be made aware of how  
25 to deal with a situation - specifically let's - let's talk about our elder abuse.

A. Sure. Yeah. So elder abuse is something within Newcomer Services as well as honestly within our Employment programs often that's brought to our staff's  
30 attention and so we do have resources available to staff that are shared with them by the Y so that they can become educated themselves around what's available in the community for adults

who are suffering from an abusive situation, to be able to share that information with the adult and then allow that adult the decision of how they want to proceed based on their own wishes.

5 Q. And in terms of the information that's available for the staff...

A. Yeah.

Q. ...what type of information is it - is - in what format is the information?

10 A. Yeah - so in some situations it's written and there's sort of physical documents. You know in our - I would say - I would call them the Community Division of our Y, Employment, Newcomer Services where we're acting at a - in a certain counselling role, in those situations it's actually quite public, you know, it's available on a - on a display in  
15 the space where the people come so you can sort of take the pamphlet and provide it. In the age of technology we certainly also have access through our programs through the Ontario Government of access to resources that we can then print off and provide to our - a client.

20 Q. And you have in front of you the - the green volume...

A. I do.

Q. ...can you turn to Tab A3?

A. Yeah.

25 Q. We see a - an elder abuse handout or pamphlet.

A. Yeah.

Q. Is - is this one of the types of information that was available?

30 A. Yes.

Q. And if you go through - I hope yours is paginated - is - is yours paginated?

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A. Yes it is.

Q. Okay. If you could go to page 39.

A. Yes - yeah.

Q. Again, is that one - one of the pamphlets  
5 that would have been available?

A. Yeah, that's right. This is sort of an  
example or - or it is, actually, I believe that it came from the  
- from that time that be accessible through the Ontario  
Government's website.

Q. And how - how do we - this information, how -  
10 how does it gel with not having written policies?

A. Well this is where - you know where isn't a  
written policy. This is an opportunity for staff to be able to  
educate themselves around what's a reasonable expectation based  
15 on documents that have been created by, you know, what I would  
say is reputable - the Ontario Government's document, around how  
to respond and that we would expect them to use that information  
to guide their steps.

Q. And what - what about staff training,  
20 particularly Yan - Yana Skybin? What - what type of training -  
what's available?

A. Like over our training - training?

Q. Yes.

A. So a new employee - when Yana was hired, she  
25 would have participated in the new staff orientation which is a  
- an overview for the Y, that I believe she did at the - the  
Barrie Health and Fitness Centre. I would provide her an  
overview of YMCA Policies and Procedures and a better  
understanding of the Y. Within her department, she would have  
30 had a number of different training opportunities provided to her  
within the Y, but often through community agencies that were  
providing different training opportunities and professional



development.

Q. Okay.

A. In addition I think the other important thing to note with a position like settlement is there's a period of  
5 time for new staff where they do a lot of job shadowing. It's really hard to - to teach somebody, you know, every possible thing that may be communicated to you by a Newcomer. Even as we consider the changing environment of immigrants to our country and so a lot of the - the process in how we work with a new  
10 client would have been done through job shadowing with Ruth to be able to learn sort of what are the - the steps that we do.

Q. And - and in terms of what you just described...

A. Mm-hmm.

Q. ...is that standard policy for the YMCA with  
15 new employees in - in those roles?

A. Yeah.

Q. And to your knowledge, what direction is provided to YMCA employees for addressing a situation they've  
20 never seen previously?

A. I think the thing that we stress with our employees is, you know, when they come across something that they are not sure what to do, that their first - first avenue really is to potentially research it if it's something that they  
25 can learn about. The second piece would be to go to their supervisor and ask if their supervisor can support them. But it really depends on - you know a never - never before seen situation could be something, you know, critical or serious, or it could be - and I - the only example I can come up with is,  
30 you know, a Newcomer wants to learn ballroom dancing and our settlement counsellor's not sure who does that, so I would expect that they're not gonna go to their supervisor, they're

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gonna go research online and find ballroom dancing and provide them their information. If the - it was serious nature where, you know, they were - I'm sure they couldn't find information and they felt that it was critical, then they would inform their supervisor immediately.

Q. But going back to 2011...

A. Yeah.

Q. ...in terms of the YMCA, how - how would of the YMCA expected the situation and the Nikityuks to be addressed?

A. We would have expected it to be addressed just as it did - as it was.

Q. I'd like to talk about the guidelines which are provided to YMCA staff. What - what guidelines back in 2011 were provided to staff with respect to their general conduct?

A. Well our - our Human Resources Policies and Procedures where it includes the expectation of how staff work with each other and work with their members, participants, clients. As well, there's the Oath of Confidentiality which details how we maintain confidentiality and respect the information that's provided to us.

Q. And you - you mentioned Human Resources Policy, could the witness be shown green volume 2?

A. Thank you.

Q. And I - I'd like you to turn to Tab F14.

A. Yeah.

Q. Do - do - do you recognize that document?

A. Yes, this the Human Resources Policy at the time that we - from 2008.

Q. And was this document provided to all Y - YMCA employees?

A. Yes. So upon hire, staff are provided a copy

of the Policy and Practices document.

Q. And I'd like you to turn to page 1 having the numbered page.

A. Yes - yes - yes.

5 Q. This section on Code of Ethics.

A. That's right.

Q. Could you explain that to the court?

A. Yeah, absolutely. I think the - the thing that's important to consider about a Code of Ethics is that we will always ensure that how we work and the work we do is conducted with integrity and honesty. It's about making sure that when we're working with each other that we maintain professional - professionalism and that we're honest and that we essentially are ethical. Yeah.

15 Q. And is - is that reaffirmed generally to the YMCA employees from time to time?

A. Yeah, I think as well when you consider the YMCA core values, I would say that's the one thing that helps staff understand how we would put the Code of Ethics into action. One of our core values is honesty and how we - we work together. It's important to us and those values are often reaffirmed with staff.

Q. And was - was that the practice - and the same in 2011?

25 A. Absolutely. The - the core values are longstanding and haven't changed in many years.

Q. And I'd like you to turn to the last page of the - the document.

A. Yeah.

30 Q. Paragraph 13.0, do you have that in front of you?

A. Yeah.

Fiona Cascagnette - in-Ch

Q. And the confidentiality - is - is it the confidentiality provision you were referring to?

A. Yeah, that's right.

5 Q. And just - just to summarize for - for the point of your evidence, what were - what were, in 2011, the obligations of confidentiality owed to YMCA clients?

A. And so the expectation is the information that's shared with YMCA will be maintained to be confidential and that we'll utilize that information to support the client.  
10 We won't share that information unless we get the permission of the client to share that information or if we're required to under - under law, then we would of course have to.

Q. And was that applicable to Yana Skybin?

A. Absolutely.

15 Q. And for - for the record, could you read in the - specifically the last sentence of that provision and explain what you understand that to mean?

A. Sure. "In the event that confidentiality is breached, disciplinary action, up to and including dismissal,  
20 will occur." And so as a leader within the Y, in the event that we have identified there's a breach of confidentiality with an employee, that we would consider that situation and the - the behaviour of that staff would be reviewed following a performance management expectations which could include  
25 something as simple as a reminder of the policy and a - and a written memo. It could also include termination depending on the specific situation.

Q. Okay. And is - is - I'll hold that question.

A. Okay.

30 Q. Back in 2011, did the YMCA have any policies on staff members receiving gifts from clients?

A. No.

Fiona Cascagnette - in-Ch

Q. Now you - you - you've heard evidence and you're aware that Yana Skybin has received any birthday gift from the Nikityuks.

A. Yes.

5 Q. And also we need to go back to 2011.

A. That's right.

Q. Would that have caused you any concern in 2011?

A. No.

10 Q. And why - why not?

A. I don't think that receiving a birthday gift or a personal event would have been a concern at all.

Q. And what if Ms. Skybin had received a gift within her role as a settlement counsellor?

15 A. I don't think that that would have raised concern either. There's certainly situations where our clients are very thankful. They want to express their thanks by providing a gift and so, certainly there's clients today still that provide a gift of thanks.

20 Q. And - and - of course we're talking general terms.

A. Absolutely.

Q. And back in 2011, what - was it still the same that clients would express their gratitude during office 25 hours to staff by bringing gifts?

30 A. Yeah. And I think there's many different examples of that. There's times when, you know, that there might be an occasion, Christmas is coming up and somebody might bring a box of chocolates and the box of chocolates is put out and they share them amongst the clients and staff.

Q. And back in 2011, would you have generally had any concerns about clients receiving personal gifts from -

as in for - for birthday or Christmas from - from clients?

A. No.

Q. And when did you first become aware of Yana Skybin having received a birthday gift from the Nikityuks?

5 A. I think it was the day before we had the examination and discovery.

Q. And - and how did you become aware of that?

A. I think that the - at the time our legal counsel asked us about whether or not Yana had received a gift  
10 and I didn't know if she had received a gift.

Q. And who - who confirmed to you that she did have a gift?

A. Who confirmed to me?

Q. Yes. Who - who told you Yana had a gift -  
15 had received a gift?

A. Was - I think it must have been through discovery that our legal counsel - counsel found that out. And so then asked me did you know Yana received a gift, I'm like I don't know. So I had asked Yana and Yana didn't remember and  
20 then when asked specifically about a birthday gift she did remember she received a birthday gift.

Q. Did that cause you any concerns?

A. No.

Q. What - why not?

25 A. 'Cause it was a birthday gift. It wasn't - wasn't a big deal. It was a personal birthday celebration that she received a gift at.

Q. Back in 2011 - or indeed now, did the Y have - YMCA have any written official policies about staff having  
30 social relationships with clients?

A. No.

Q. What - why not?

5 A. I think it's a bit impossible to consider that in a community serving agency with so many different departments and functions, that our family members, our friends, our social acquaintances would be - be any way involved in the Y. And so it's impossible for us to think that you would be unable to have a social relationship.

Q. And so back in - I'm getting you to go back to 2011...

A. Yes.

10 Q. ...and in 2012 when you became more involved in this file, did you, on behalf of the YMCA, have any concerns about Yana Skybin's social relationship with the Nikityuks?

A. No.

Q. And why not?

15 A. Because they were part of the very small Russian community and there's no reason why you can't have a social relationship. I think it's important and we would stress with employees that they need to understand that they need to do their work in the work environment and there's no evidence to suggest that Yana didn't perform her duties with respect to her settlement counsellor work within the Y and - and within the scope of her role at the Y. And so there isn't a concern and she would have had a social relationship.

25 Q. I'd just like to - sorry go back to the confidentiality issue. You - you have in front of you, do you still have volume 1 or do you have volume 2?

A. I think I have volume 2.

Q. Sorry if the witness could be given green volume 1?

30 A. Thank you.

Q. All right. I'd ask you to turn to Tab A9?

A. Yes.

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Q. Do you have that document in front of you?

A. I do.

Q. And what - what is that document?

A. It's a review of our privacy statement and  
5 our statement of confidentiality that we ask Newcomer Service  
participants to sign.

Q. And was it common place to have people at  
Newcomer Services sign such a form?

A. Yes.

10 Q. And what - what was the purpose of having  
them sign this form?

A. Part of the purpose was that they would  
understand that the YMCA has both the privacy statement and  
statement of confidentiality so that they can feel some trust,  
15 comfort that we're going to respect those things.

Q. And can you now turn to Tab C4?

A. Yeah.

Q. Do - do you recognize that document?

A. Yeah.

20 Q. And what - what is it?

A. It's a Release of Information form to use  
when a settlement counsellor needs to connect with another  
agency and provide information. We get - seek permission from  
the client to be able to do that and they sign this form.

25 Q. And can - can that permission from the client  
be obtained in any other way?

A. No.

Q. Can - can a client give verbal permission?

A. Yes, they can give verbal permission.

30 Q. And what if a client doesn't give verbal or  
written permission for a settlement counsellor to contact  
another agency?



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5 A. Then we wouldn't contact the other agency. I think there are some circumstances where we would, where we're required by law, but otherwise, no we wouldn't.

Q. And those - those situations required by law,  
5 what are they specifically?

A. The situation today, if we're in a court of law, anything that's covered within legislation or where we feel that they're breaking a law, we would certainly then be responsible to report that.

10 Q. And if the client doesn't want the YMCA to release information, does - does it release information?

A. No.

Q. And would that be applicable to capable  
adults?

15 A. Absolutely.

Q. And would that be applicable to children under the Child Protection Policy?

A. Sorry, can you ask that question again?

20 Q. What - what - you - you mentioned the exceptions in terms of the law...

A. Right. Yes.

Q. ...would - would that be the case with a child?

25 A. Yeah, the exception with respect to Child Protection on Release of Information is if we have a concern about a child, we would go ahead and release that information to Child Protection Services without the permission of somebody - yes.

Q. And what about vulnerable adults?

30 A. It'd be the same thing. Where we feel that somebody falls within the - our scope of a vulnerable adult, that we would, if we felt necessary, we would release

information.

Q. And just - just by example with respect to the Release of Information, can you turn to Tab C12?

A. Yeah.

5 Q. I apologize - C15.

A. Mm-hmm.

Q. And we have a different Release of Information form, to the one you just seen. Was it - was it standard practice for every staff for the Release of Information forms to be signed?

A. Yeah, that's correct.

Q. And so if you go to Tab 16...

A. Yeah.

15 Q. ...and Tab 15, in our instance we have them signed by both Nikityuks.

A. In Tab 16, 17.

Q. Oh sorry, yeah I...

A. Release of Information.

20 Q. ...16 and 17, I apologize.

A. Pardon?

Q. I apologize. I - you're right, 16 and 17.

So....

A. Tab 12 is, but 16 and 17 were not.

Q. No, I'm looking at Tabs - Tabs 15 and 16.

25 A. They're - they're not Release of Information.

Q. Oh I think you're in the wrong section C.

A. Yeah.

Q. It's B - B15.

A. B.

30 Q. Yeah, B - sorry. Did I say C?

THE COURT: You did say C.

A. I don't know. B12 is a Release of

Information - yes there are more.

MR. MAE: Q. Yes.

A. Yes.

Q. Yes.

5 A. Okay. So we're on...

Q. So....

A. ...B15, 16, 17 - oh there are many - yes.

Q. So - so from the policy perspective, we - we see that the forms are signed by both the Nikityuks?

10 A. Yes.

Q. And...

A. That is correct.

Q. ...is that standard procedure?

A. Yes.

15 Q. Have you ever the met the Nikityuks?

A. Yes.

Q. And when - when did you meet them?

A. I would have met them at Newcomer Services sort of community events we have for a Thanksgiving dinners, Christmas events and I would often go up and see them - not specifically them, but they would be at those events.

Q. And within your - your sphere...

A. Yeah.

Q. ...having - having met - met them, did you - did you regard them as vulnerable?

A. No.

Q. Did you regard them as capable?

A. Absolutely.

Q. When the Nikityuks first presented their situation to Yana Skybin, specifically referring to bruising...

A. Yeah.

Q. ...we - we know from the evidence of Yana

Skybin did not take a photograph...

A. Yes.

Q. ...of the bruising. From the YMCA's perspective, what - what is the YMCA's perspective on that?

5 A. We wouldn't take pictures of bruising.

Q. And why - why not?

A. It's not our role, it's not our responsibility to investigate those sorts of things. Our role would be to ensure that the person knows that if they chose they can report abuse to the police. That information was made  
10 available to the Nikityuks and they chose not to.

Q. From - from the YMCA's perspective, should Yana Skybin have dealt with the Nikityuks under the protocol for vulnerable adults?

15 A. No. The Nikityuks aren't vulnerable.

Q. Should - from - again from the YMCA's perspective, should Yana Skybin have taken it upon herself to simply report this matter to the police?

A. No, because it would have been against the clients' wishes.  
20

Q. And what would have happened if Yana Skybin had taken it upon herself to be a Good Samaritan and report it to - report matter to the police without specific instructions?

A. Yeah in that sort of a situation, if you were  
25 - if we were aware that that happened, we would review it and - and Yana would likely have been - had some form of performance management - a review of the expectation, possibly a written memo. Can't speak specifically about a hypothetical situation, but it would be against what our expectation is and so there  
30 would be follow up with the employee.

Q. And I'll ask the same question then, with - with respect to whether Yana - if, if Yana had taken upon

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herself to report the situation to the Nikityuks' doctor?

A. She didn't have permission to share that information with the doctor, so no.

Q. So would it have been the same ramifications?

5 A. Absolutely.

Q. What about the fact - or what would have happened in 2011 if Yana had taken it upon herself to take any steps contrary to the Nikityuks express wishes?

A. We would have met with Yana. We would have done a review of what actions she took that were incorrect and we would have put it through the performance management process which, again as I've stated includes, you know, meeting with the employee, providing any education, training, correction to them, potentially putting that in a written memo form. Depending on the severity of what it is, it could lead to termination.

15 Q. And again from the YMCA's perspective, being somebody in the hierarchy above Yana...

A. Yeah.

20 Q. ...should Yana have contacted the Danilovs after receiving the complaint by the Nikityuks?

A. Wouldn't be appropriate to - to contact them at all. I think that's clear through, not only our Release of Information, if she went off just the steps of protocol.

25 Q. What - so turn - turning now generally in terms of 2011 or - or specifically that - Yana Skybin, what's the process for formal - sorry - does the YMCA have a formal process for staff reviews and appraisals?

A. Yes.

Q. And what - what is that process?

30 A. So it is a formal process. It's done on an annual basis. It ranks in with our fiscal year and so at the beginning of the year in July, goals are set with employees for

that year and then halfway through the year - six months-ish [sic] timeframe, the supervisor and the employee meet together to discuss their progress, their performance connected to the goals but also to the job description and the general duties.

5 And then at the end of the year, there's a final performance review meeting where again the employee and their supervisor sit together, discuss the year, discuss successes and discuss any concerns. All of those meetings are documented and signed off, not only by the employee and the supervisor, but the supervisor  
10 once removed. And those are maintained in our staff personnel files in human resources.

Q. And where - where do you fit into that process?

A. In some reviews I would have been the  
15 supervisor once removed. So I think for - for Yana specifically, I think her - the year that Ruth had retired, I would have been the supervisor once removed for - for Yana. As well, I think - although my signature might not have been on them 'cause there's a real big space for the supervisor once  
20 removed, the performance management process as I would have done Susan's performance review, we would have a meeting and she would provide me of the completed reviews from her department. I would read those and then submit them to human resources with the - the final performance ratings.

25 Q. Can the witness be given the green volume 2, please?

A. Green.

Q. Green volume, sorry.

A. That's okay. Thank you.

30 Q. I'd like you to turn to Tab F7.

A. Yes.

Q. You have that there do you?

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A. I do.

Q. And do you recognize that document?

A. Yes.

Q. And what - what is it?

5 A. It's Yana's performance review for the period of July 2012 to June 2013.

Q. And there's a signature on that, supervisor once removed, is that you?

A. Yes, that's correct.

10 Q. And in terms of being the supervisor once removed...

A. Yeah.

Q. ...what's the process for dealing with these appraisals?

15 A. So the employee and the reviewing manager, their direct supervisor, they have their meeting, they develop their - the goals or they review the performance progress or the annual performance depending on the meeting and then these reviews are provided to the supervisor once removed. The  
20 expectation is that the supervisor once removed, myself in this situation that year, would read the information and if I had any questions or concerns that I would follow up with the direct supervisor to update or make changes. If I feel - if I felt that it wasn't - didn't include everything it needed to or - I  
25 was going to say something here....

Q. And so did you review these documents carefully?

A. Yeah, absolutely.

30 Q. And I'd like you to turn to page 2. It's not the second page, it's the page number 2 at the bottom. And there's a section in there - well - well first the - what was the overall review with Yana's performance in - in that year?

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A. It was positive. There was - wasn't concerns innogated [sic], there's some examples within the review where has demonstrated strong performance, effective performance.

5 Q. And that particular year I see under the section problem solving judgment this comment in - in that - the reference is Alla and Valentin. Well firstly, who - who would have written that comment?

10 A. I believe that that is connected to - this is the year where there was a change when Susan had retired and there was a bit of a change. So I'm just looking to see - it's the - that's not the mid-year. Yeah, so there - this is the final year, so the final at that time looks like it was done by Linda Schut (ph) who was Susan's replacement.

15 Q. Well let's go to the - the year before.

A. Okay.

Q. July 1<sup>st</sup>, 2011 to June 30, 2012.

A. Do you know what tab that's in?

Q. That's the previous tab, Tab 7.

A. That would make sense. Yes. Okay.

20 Q. Your - your signature is not on this - actually your signature is on this document.

A. It is, yes.

Q. Where is your signature?

A. Pardon?

25 Q. Where is your signature on this?

A. It's right on the bottom.

Q. Not - not in any box?

A. No, it's not.

Q. And....

30 THE COURT: Sorry, you're at Tab 6, aren't you?

A. Yes.

MR. MAE: Yes. Did I say 7?



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5 THE COURT: You did, yes. Right after you did 7,  
now we're at 6.  
A. We're in 6.  
THE COURT: We're in back - we're going  
backwards?  
MR. MAE: Yes we are, Your Honour. I apologize.  
A. Yes.  
MR. MAE: I was looking at the tab number as  
10 opposed to thinking of the one I had....Q. So the July 1, 2011  
to June 30<sup>th</sup>, 2012...  
A. Yes.  
Q. ...you - you had this appraisal at the time?  
A. I did.  
Q. And did you - did you review it?  
15 A. I did, yes.  
Q. And when you did this appraisal...  
A. Yeah.  
Q. ...were you then aware of the complaints made  
by the Danilovs?  
20 A. Yes.  
Q. And as I - as I see from this that the - the  
review was undertaken by Ruth Miller...  
A. Yes.  
Q. ...and supervisor once - once removed, Susan  
25 Green?  
A. Yes.  
Q. And then it came up through the chain to you.  
A. Yes.  
Q. In terms of - in terms of signing this, what  
30 - what - was your signature on it just a function or was it  
anything else?  
A. I expect when I explain the performance

management process I talked about how at the end of the year I would meet with my director of reports and they would submit their reviews. Those reviews, when they come to me, I read them and then the performance ratings actually go to Human Resources for consideration for merit - for our annual merit process. And so my signature would have identified that I had done that process and submitted the rating to HR around their performance.

Q. And I'd like you to turn in that document, specifically to page 6.

A. Yeah.

Q. And I draw your attention to the section interpersonal skills.

A. Yeah.

Q. And specifically the comments - who - who would have written those - those comments?

A. They would have been completed by Ruth.

THE COURT: I just want to be sure I'm finding what you're talking about here.

MR. MAE: Page - page 6, unless - I'm referring to page 6, it's the printed page 6 on the bottom right hand corner of the document. The page heading says "Mid-Year Review", top form.

THE COURT: I've got three, development plan on page 6. Is that the right page?

MS. CHAPMAN: There are two page 6's.

MR. MAE: There are indeed. The second page 6.

A. So there are.

THE COURT: Yes.

A. That's interesting.

THE COURT: All right. Part 4, mid-year review. I'm with you now.

MR. MAE: Q. So who - who would have made those

comments?

A. Ruth would have completed the review.

Q. And Ruth - Ruth Miller's given evidence in these proceedings.

5 A. Yes, that's correct. She was her direct supervisor.

Q. Now the mid-year comment, when - when would that have been made?

10 A. I think if you go back the signature raise - it would have been January 2012 was the meeting, so would have likely been completed sometime early January.

Q. And for - for the record, could you read out that comment?

15 A. Yeah, it indicates "Yana worked effectively to coordinate the assistance required by [indiscernible] this couple experiencing abuse with several - several agencies including shelter support services, SupportLink, food bank, Legal Aid and lawyers."

20 Q. And based upon your knowledge, which clients did that - is that referring to?

A. I would expect it refers to the Nikityuks based on the timing. I can't guarantee that, but I would expect that.

25 Q. And the final assessment date of this performance review was in June 2012?

A. Yes, that's correct.

Q. And as the person that ultimately signed off on this, would anything in that review that caused you any concerns?

30 A. No. In - in fact, it indicates that Yana did a - did a good job and met the expectations that we would have of the Y.

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Q. Now, you mentioned earlier on that you came back into this situation, I believe when you said the statement of claim was received.

A. Yes, that's it.

5 Q. Well explain - explain to the court at that time, how you became involved and what you did.

A. So the Y received the statement of claim, I believe it was in April of 2012. Mike Rowe (ph) at the time was our VP of Finance and Human Resources. And so when the  
10 statement of claim came in - when the statement of claim came in, the CEO and everyone met and he identified that Mike and I would do a review of the claim connected to the file. And so we set up a meeting with Yana and Susan and went to the Newcomer Services office. We took the information that we had on file  
15 from the Nikityuks file which demonstrated quite clearly that there was a lot of involvement of Yana, some involvement of Ruth certainly and a bit of involvement with Susan. We felt that the actions that the Y took through reviewing the file, the referrals, the processes, that we hadn't done anything wrong.  
20 And at that point we provided the statement of claim and the information required to our legal counsel.

Q. And when you say we...

A. Yeah.

Q. ...what - what do you mean by we?

25 A. Yeah, I can - I can hardly understand that. So we would have been Mike and I initially.

Q. But I mean the we haven't done anything wrong.

A. Oh we - yeah we - we - we the Y. Okay so  
30 when I consider the word we, I would consider the YMCA as an organization as - as well as Yana specifically as the settlement counsellor and named in the claim. We didn't believe that Yana,

who was named in the claim, had acted outside of the scope of her job in settlement. So we were not concerned.

Q. And we know from the file that the YMCA continued providing services to the Nikityuks after that date.

5 A. Yes, that's correct.

Q. Now, I'd just like to circle back to the October the 26<sup>th</sup> letter which you saw.

A. Yeah.

Q. There was no reply sent to the Nikityuks...

10 A. Yes.

Q. ...or sorry, the Danilovs, was there?

A. No there wasn't.

Q. And can you explain why there was no reply?

15 A. After Susan and I had our conversation and we - the both of us felt very comfortable with what we had done, we didn't feel that it was appropriate or required to follow up with the Danilovs based on the circumstances.

20 Q. I'd like to move on to the claims against the YMCA. Could - could the witness be shown a copy of the Trial Record? If there's no spare copy I can pass up mine.

THE COURT: I have this one here which is a little - in a little better condition. You can have mine.

MR. MAE: I apologize, Your Honour.

25 THE COURT: I'll use - I'll give her this one for the time being.

MR. MAE: Oh that'll be ideal, thank you.

A. Thank you.

30 THE COURT: The actual Trial Record has become unbound, it would be a disaster to try and open it. So she's looking at the copy that Ms. Chapman provided the other day.

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MR. MAE: Perfect.

A. Thank you.

MR. MAE: Q. Could - could you turn to the first  
section which is the amended statement of claim? Do you have  
5 the in front of you?

A. Yes, I do.

Q. I'd like you to turn to paragraph 57.

A. Yes.

Q. Have you seen that document previously?

10 A. Yes.

Q. And paragraph 57 relates to specific claims  
against the YMCA organization. So I'd like to take - take you  
through them and get your position on those claims.

A. Okay.

15 Q. So the first one....

THE COURT: Mr. Mae, I have to take a break to  
speak to another judge about another issue. If  
you don't mind, we could take our morning  
break...

20 MR. MAE: *[Indiscernible]*

THE COURT: ...and return to this question when  
we return. Is it of any assistance if the  
witness looks at this during the break or would  
you rather that she didn't do that?

25 MR. MAE: She - she - she's seen it many times,  
but I have no problem if you have no problem,  
Your Honour.

THE COURT: I don't have a problem. Ms. Chapman  
is that fine?

30 MS. CHAPMAN: Yes.

THE COURT: It saves us - saves us some time.  
All right. Thank you. The witness is going to

keep that with her. If she wishes to - to be prepared for the questions that Mr. Mae will get started on. Thank you.

5 R E C E S S

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

MR. MAE: Thank you, Your Honour.

THE COURT: You read the statement of claim?

10 A. Yeah.

MR. MAE: Q. And we're - we're at paragraph 57...

A. Yes.

15 Q. ...allegations made against the YMCA. So the - the first allegation under 57 is that the "YMCA failed to ensure that their staff provided the services that they were sought to provide." What - what - what's your position on that allegation?

20 A. I believe that we did ensure our staff provided the services that they were said to provide. When you look at what was done, exactly what we would have expected to be done.

Q. And for clarity, who - who asked - asked the YMCA for - for the services?

25 A. The services - the Nikityuk were their clients. They were the people who came forward and provided their wishes and their requests and the needs to Yana and she supported them.

30 Q. Fifty-seven B, "Failing to ensure that their staff were maintaining appropriate boundaries during the counsel they provided to the patrons of the YMCA." What - what do you say about that?

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5 A. I believe that we did maintain appropriate boundaries. When I consider Yana and her work directly with - with the Nikityuks as well as the supervision and involvement of Ruth as her supervisor, we did ensure that appropriate boundaries were maintained.

Q. And you've already said though that there was no written policy to prevent staff...

A. No.

10 Q. ...from socializing. So how - how does that fit - fit in with the evidence you just gave?

A. Well I think the important thing is that Yana acted in her role as a settlement counsellor and Ruth acted in her role as supervisor as well as a settlement counsellor to support the Nikityuks. They did that appropriately within the expectations of their job.

Q. The next paragraph, "Failing to ensure that their staff not provide unqualified legal advice to their patrons." What - what's the YMCA's position on that?

20 A. We didn't provide unqualified legal advice, in fact what we did is what we would expect our staff to do was to ensure that the clients had access to legal advice and we worked in order to be able to have the Nikityuks get their own legal advice. We didn't provide the legal advice.

Q. And based upon your review of the file...

25 A. Yes.

Q. ...did you see that the YMCA had referred the Nikityuks to legal counsel?

30 A. There's good evidence in the file of looking at by communications requesting Legal Aid and certain communications to lawyers so that the Nikityuks could access our legal advice that they wanted to get.

Q. And is - is the YMCA a legal advice provider?



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A. No.

Q. The next section, it comes in conjunction with the previous one, "Failing to protect the patrons from the harm that comes from the exercise of unqualified, unsolicited legal advice." So let's break that down into two parts.

A. Yes.

Q. What - what you say about the suggestion as to protecting patrons from the harm that comes from exercising unqualified legal advice?

A. Well we didn't provide unqualified legal advice and so....

Q. And then we have the word unsolicited. Are - are you aware that YMCA were asked to provide legal advice?

A. We were not asked to provide legal advice and we didn't provide legal advice. We - we certainly were asked to connect them to legal advice which is what we did.

Q. And - and how do you know that?

A. How do I know that? I know that from when you review the file and when you look at the information that the Nikityuks requested that and - and Yana was able to link them through to legal advice. And I - I'd have to look at the file to be sure, but I believe that there was involvement of - of other staff at the Y to support them getting access to legal advice. But we didn't provide legal advice, it's not our job.

Q. The - the next section, paragraph E is "Failing to ensure that the staff follow proper policies and procedures when allegations of abuse arise." What's your position on that?

A. I believe when you consider the - the documents from the Ontario Government and the - the expected information that we would provide, we followed the steps, we - Yana, when we review through each one of them we - we did those

and we allowed the Nikityuks the - the ability to choose what they wanted to do and when they did choose that they wanted to live independently, we - we supported and linked them in with agencies that could help them.

5 Q. And in respect of not having any formal, written policies for dealing with elder abuse, how - how were those two - that point connect with your evidence?

10 A. Well I think earlier and when I was speaking about policies and it's impossible to have a written policy for everything, we're not required legally to have that policy. And so in absence of that written policy our staff refer to protocols or information that's available to them and that's what Yana did and - and Yana followed those to support the Nikityuks.

15 Q. Paragraph F...

A. Yes.

20 Q. ..."Failing to ensure that a proper complaint was made to the authorities to investigate such allegations of abuse." My same question, what - what's the YMCA's position on that?

25 A. We don't have a responsibility to ensure that the authorities are notified. We have a responsibility to ensure that we follow the wishes of our client and our client did not want the involvement of the police. And so we did not make a complaint and we should not have made a complaint.

Q. The - the last one, paragraph G, "Failing to prevent Yana from behaving in a way that breaches her ethical duty to the clients' of the YMCA"...

A. Yes.

30 Q. ..."and the Minister of Citizenship and Immigration as the office in which she employed is fully funded - funded by the Minister of Citizenship and Immigration." What

- what do you say about that?

A. Yana didn't breach her ethical duty. Yana acted as we would expect any settlement counsellor to act based on the situation that was communicated and the wishes that were  
5 communicated by the Nikityuks. And so I don't believe that she did breach any ethical duty.

Q. And there's a reference in there to the Minister of Citizenship and Immigration...

A. Yes.

10 Q. ...how - how was the Newcomers program funded?

A. It's funded through - it's - it's actually funded in two ways, but the Minister of Citizenship and Immigration, we also have a small stream of - at that time, we  
15 had a small stream of provincial funding. The Settlement Services program is funded by - federally through the Minister of Citizenship and Immigration. It's a funding agreement I believe that's a three year term and we apply, receive funding and the funding guidelines would include certain expectations of  
20 what we're providing: Settlement Services, English language classes. Then there's an expectation that we would provide those services as we received that funding.

Q. And if - what is your position of Yana breaching any alleged ethical duties to the Minister of  
25 Citizenship?

A. None at all. It would - it would be very similar to the expectation that we would have. She would work within the scope of her role as a counsellor and that is what Yana did.

30 Q. You've been present for a part of this trial and you've heard - it's not in the claim itself, I need to address it because of the categorization. The - the overall

claim against the YMCA is being classed as one of negligent supervision.

A. Yes.

5 Q. What - what - what do you have to say about an allegation of negligent supervision?

A. I think when I considered how the Newcomer Services department is and was at that time, structure - there was significant amount of resource and I say resource not only from a - a paper perspective, but a human resource perspective.  
10 Ruth Miller had over 20 years of experience as a settlement counsellor. She trained and oriented and coached and supported Yana in her role. Yana had a number of years' experience as well. And so when I consider that relationship from a supervisory relationship - and it may seem silly, but the  
15 proximity of the offices and the - and that they are so close and they had an ongoing relationship. The other thing I think that's really important to consider when I think about the supervision of - of Yana, is that the - the files are accessible to both settlement counsellors. And so Yana wasn't working in a  
20 - in a bowl, in a different community with, you know, two meetings a year for performance review. It was a - a dynamic environment where there's a lot of communication and discussions and involvement. And so it's difficult for me to understand how that level of supervision would be considered negligent.

25 Q. Okay. In terms of the level of supervision - let - let me ask two questions. YMCA Simcoe/Muskoka in 2011...

A. Yes.

Q. ...how many employees roughly would you have had....

30 A. My guess would be - maybe just under a thousand. Yeah. A lot.

Q. And in terms of the expectation of

supervision by the direct supervisor, did you expect - or did the YMCA expect Ruth Miller to look at every piece of correspondence written by Yana Skybin?

A. No. Not at all. I'd be impractical.

5 Q. Has Yana Skybin ever been disciplined by the YMCA as a consequence of her involvement with the Nikityuks?

A. No.

Q. If the YMCA found that Yana had breached any of the obligations, what steps would have been taken?

10 A. We would have implemented a performance management situation. That process is clear. We would have identified what happened and we would have identified an - an appropriate follow up which I already indicated could be anything from, you know, a documented memo up to termination.

15 Q. Is Yana Skybin still employed at YMCA?

A. Absolutely, yes.

Q. And what role is she employed in?

A. She's in the same role as the settlement counsellor.

20 Q. You're aware that the Danilovs are seeking damages of 7.9 million dollars?

A. Yep.

Q. Do you have any comments or observations about that claim?

25 A. I think I'm having a difficult time understanding that. We - originally I believe when the first statement of claim came in, damages indicated a \$100,000. I believe that was changed to \$200,000 and then somewhere along this process it was increased to 1 or 2 million. And then very  
30 - very close to the onset of the trial, in the spring sittings, it was 7.9 - I think 9 - 7.9 million dollars of damages and it's difficult to understand.

Q. And what - what do you say overall about the damages?

A. I don't believe that the YMCA or Yana did anything wrong. That we - we shouldn't be held responsible for any damages that might have resulted from something that happened to them. We didn't have any involvement or cause that loss.

MR. MAE: Just one moment, Your Honour. Excuse me Your Honour, if I can just step away from the counsel table for one moment?

THE COURT: Yes.

MR. MAE: Thank you. Your Honour, those are my questions.

THE COURT: Ms. Chapman are you ready to ask the questions now?

MS. CHAPMAN: Yes.

A. What do you want me to do with this?

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. Ms. Cascagnette...

A. Yes.

Q. ...first of all, can a capable adult be vulnerable?

A. A capable adult could find themselves in a vulnerable situation. Sure.

Q. And so possibly be the definition of being vulnerable.

A. No, not based on the YMCA's definition of a vulnerable person. No.

Q. Okay. So let's have a look at that definition.

A. Okay.

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two. Q. You'll need binder - the green binder, number

A. Thank you.

Q. And sorry...

5 A. That's okay.

Q. ...I think it's Tab F13.

A. Yeah.

Q. And you're familiar with this document?

A. Yeah.

10 Q. Would Yana Skybin have been familiar with  
this document?

A. These are the March 2007 ones, so....

...OBJECTION BY MR. MAE

15 R U L I N G

MULLIGAN, J. (Orally):

20 All right. I think she had been asked whether it  
was provided this part of a standard package.  
Whether she - her knowledge of what Ms. Skybin  
knew or did not know, not something she can  
answer to.

MS. CHAPMAN: Q. I'll - I'll rephrase my  
question.

25 A. That's fine.

Q. Will this document be available to YMC - YMCA  
employees?

A. Yes.

30 Q. And as an employee it would have been  
available to Ms. Skybin?

A. I expect so.

Q. And could you turn to page 2 of 17?

A. Yep.

Q. And you agree there's a list of terminology here...

A. Yes.

5 Q. ...in this document?

A. Yes.

Q. And can you read the definition of a vulnerable adult please?

10 A. Absolutely. "A vulnerable adult is a person age 16 years or older who may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation."

Q. Based on what you know about the Nikityuks...

A. Yes.

15 Q. ...would you agree that the Nikityuks were vulnerable adults?

A. No.

Q. And why not?

20 A. The Nikityuks were able to travel independently. I understand that they drove to and from the English class. They were able to participate in English class. They had developed relationships. I understand that they made some friends within the program. They were able to communicate effectively with - with Yana, their settlement counsellor and  
25 communicate their need. So no, I wouldn't indicate them to be vulnerable.

Q. Based on what you know, would you agree that the Nikityuks were unable to protect themselves against harm or exploitation?

30 A. No.

Q. Were they unable to protect themselves against the physical attack from their daughter, Svetlana?



A. Just because they got attacked doesn't mean they're vulnerable. So, no.

Q. You wouldn't agree that a physical attack would be defined as a harm?

5 A. I think if you can - maybe I can just maybe provide an example. I might end up having a physical attack against myself. That puts me in a vulnerable situation that I have found myself in a place with a person who has attacked me. That doesn't mean that I'm unable to protect myself. It means  
10 that I then have an ability to decide what I'm going to do about that. Am I going to call the police and say, hey I was just in a back hallway I probably shouldn't have walked down, I - I would like to report this or I can chose, you know, what that wasn't so smart, I shouldn't have found myself in that position,  
15 I'm not gonna bother. Just because somebody is a victim of an assault, doesn't mean they're a vulnerable person based on this definition.

Q. And so what if we went a step further and that adult did not have access or control of their finances.  
20 Would they be vulnerable in that situation?

A. That doesn't make them vulnerable. Sure it's a vulnerable situation, but it doesn't make that person a vulnerable person. Because that person who has identified, hey I don't have access to my finances, I want to do something about  
25 this, I'm going to go through step A through C to gain control of my finances. I understand that that's what the Nikityuks did. That they wanted to have control of their finances and so they went to different places to get that for themselves. They were able to make those decisions. So no, I don't think that  
30 makes them a vulnerable person. No.

Q. And so if it's true that the Danilovs had somehow exploited the Nikityuks...

A. Yeah.

Q. ...by stealing their money as has been  
alleged...

A. Okay.

5 Q. ...would the Nikityuks be vulnerable in that  
situation?

A. Again, I think what's important is that, yes,  
that's a vulnerable situation, but the Nikityuks had the ability  
and demonstrated the ability. They communicated effectively  
10 with Yana about what they wanted to do. They have successfully  
transitioned to live independently. They're capable adults that  
were able to navigate the system in order to be able to get the  
help they needed. That's not - just because somebody might take  
your money and use it against your wishes, doesn't mean you're  
15 vulnerable. It - it is a vulnerable situation. Absolutely.  
But that doesn't mean that they then are no longer capable. It  
doesn't make sense.

Q. So the fact that the Nikityuks required  
Yana's assistance...

20 A. Mm-hmm.

Q. ...because of a language barrier...

A. Yeah.

Q. ...and because of the other situations we  
talked about...

25 A. Yeah.

Q. ...you still do not believe that makes them a  
vulnerable adult?

A. No. In fact they were able to find someone  
who was able to communicate with them in Russian so that they  
30 could understand what they needed to do and the organizations  
they needed to work with in order to be able to gain  
independence. If the same situation happened to me and I find

myself in another country where I can't speak the language, just because I can't speak a language doesn't make me vulnerable with this definition. It means that I now need to figure out a way to be able to communicate - because I'm still a capable, competent adult. If you don't speak my language, I now need to figure out, okay how am I going to be able to speak to you. Well Yana was one of the people that was able to help them with the communication.

Q. Okay. So let's take your example, you're in a different country, you don't speak the language and I'm selling you something. Right. I know you don't speak the language. Couldn't I take advantage of you? Aren't you vulnerable in that situation?

A. I think this is the same sort of situation as you consider me being as a capable person in a back alley getting assaulted. Sure. It makes me in a vulnerable situation, but based on the definition of this, it doesn't mean that I am a vulnerable adult and unable to make the decisions myself. That same situation you've provided me, I would go okay, I don't know if I wanna buy this because I don't speak your language. And so I may then choose to not buy it or I may be like yeah, sure it's only, you know, \$10. Maybe I'll go ahead and buy this and realize wait a minute I just wasted my money. Well that's my own fault because I'm a capable person. Just because somebody ends up in a situation where they've been exploited or - or abused, doesn't mean that they're incapable of making their own decisions which is what this is focused on, somebody who's unable to understand and unable to make their own decisions. And the Nikityuks don't fall within that category.

Q. Okay. Where in the definition does it use the word incapable?

A. It doesn't use that word, you're right.

Fiona Cascagnette - Cr-ex  
Ruling - Mulligan, J.

Q. And what about unable to understand, is that written in the definition?

A. It's not. It was a use of a word of me trying to better explain the differences around somebody who finds themselves [*sic*] in a vulnerable situation and somebody who we would define as.

Q. And so if the YMCA didn't believe the Nikityuks to be vulnerable...

A. Mm-hmm.

Q. ...a vulnerable adult as defined here, then I suspect this policy, you would say, would not apply to them.

A. No, it wouldn't apply to them.

Q. So in terms of protecting a vulnerable adult and the steps that would be taken as required by this policy, did not apply to the Nikityuks.

A. No.

Q. And I understand that this policy was updated...

A. Yeah.

Q. ...in February 2014. It was updated.

A. Yeah it was updated. Yes.

Q. And there were some changes....

...OBJECTION BY MR. MAE

R U L I N G

MULLIGAN, J. (Orally):

You flagged the issue, so I am going to allow the question and then we will deal with it. Let me hear the answer.

MS. CHAPMAN: Q. That was actually my question, was it updated?

A. Yes.

Q. And - so based on your answers today, would there be any mandatory requirement by the YMCA or - or Yana Skybin as settlement counsellor to report an allegation of abuse to you or the supervisor?

MR. MAE: Sorry in - in 2011 or now?

MS. CHAPMAN: Q. Sorry, in 2011.

A. No.

Q. At the time that the events took place.

A. No.

Q. There was no obligation on Yana to report this allegation of abuse to a supervisor?

A. I'm sorry. She would have - she would have reported to her direct supervisor, sure.

Q. Right. And you heard the evidence, you've been here and you've heard that Ms. Skybin did not do that on August 23<sup>rd</sup> when this allegation was reported to her, correct?

A. Yes it wasn't required because there wasn't any action to be taken.

Q. Okay. So let me clarify. If a client reports an allegation of abuse to a settlement counsellor, in what circumstances would they report to their supervisor?

A. The circumstances would be where we're starting to include other external agencies and whether it needs to be a cooperation because remember Ruth is the supervisor, was also involved where, you know, if Yana wasn't in the office, Ruth would be the backup. And so where we're starting to include other agencies, it would be important for that to be reported so Ruth was aware.

Q. And so the fact that Ms. Skybin did not report to Ruth until October 12<sup>th</sup> - pardon me, not October 12<sup>th</sup>, but in early October, that's suitable in your opinion.

Fiona Cascagnette - Cr-ex

A. It's not of concern, no.

Q. And is it any concern that Ms. Skybin didn't maintain any of her notes or records from the August 23<sup>rd</sup> or September 30<sup>th</sup> meetings with the Nikityuks?

5 A. No, I think the expectation is that, again we're referring the client that we're connecting them to resources, we're providing them information. We don't generate a - a daily log.

10 Q. You gave evidence earlier today about the Release of Information forms.

A. Yes.

Q. And you - and you said that the client can give either verbal or written permission.

A. That's right.

15 Q. And it appears the Nikityuks gave written permission on a number of occasions.

A. Just based on her file.

20 Q. And I believe you said that there are two circumstances where the YMCA can break that confidentiality. One would be if - if they were required by law.

A. Yes.

Q. And the second would be if where a client is breaking the law, is that correct? Would you agree that making false allegations of abuse would be breaking the law?

25 ...OBJECTION BY MR. MAE

THE COURT: Well it's an academic question because you're putting it to her as a proposition, not with anything specific in mind. Is that - is that how I understand it?

30 MS. CHAPMAN: Sorry, repeat that.

THE COURT: It's an academic question because at least how you've phrased it because you've asked

her about something in theory, I think.

MS. CHAPMAN: In theory, yes.

THE COURT: So I think we can hear the answer,  
but we'll deal with objections or....

5 ...OBJECTION BY MR. MAE

THE COURT: Well she can elaborate on the answer.

MR. MAE: Certainly, Your Honour.

THE COURT: Those legal claims can't be answered  
by this witness.

10 A. Can you ask the question one more time...

MS. CHAPMAN: Q. So...

A. ...for me?

Q. ...if a client makes a false allegation of  
abuse in theory, based on the evidence to be about breaking  
15 client - client confidentiality...

A. Yeah.

Q. ...would a client - you can do so where the  
client is breaking the law.

A. Yes.

20 Q. Would the YMCA have an obligation to disclose  
that information?

A. I honestly don't know if making a false  
accusation is breaking the law 'cause I'm not an expert in the  
law. Some examples that I could provide - I actually don't even  
25 know if I can provide an example. There have been examples  
around where a - there's a police investigation and the police  
come to us based on an active investigation that they're doing  
that we would provide information. Children's Aid Society is  
another example where we would do that. I really don't have -  
30 don't have an example where we have provided information where  
it's come that we have identified someone's breaking the law.  
I'm sorry. I don't....

Fiona Cascagnette - Cr-ex

Q. At the time that Ms. Skybin received the birthday gift from the Nikityuks...

A. Yeah.

5 Q. ...was there a policy in place relating to cash gifts?

A. No. There was no written policy on gifts.

Q. Are staff members allowed to accept cash gifts or gratuities from their clients?

10 A. Gratuities - so we do have a [sic] expectation with respect to gratuities that you are - which is a conference centre, clients - clients - wouldn't be called clients, but people who stay at Geneva Park often will leave cash in the rooms like you would at a hotel - their conference centre. And so at that facility we have established that the  
15 practice is those get donated to the YMCA - we're a charity and so those funds do get then put back into our charitable action. So that would be an example, I suppose, of a practice with respect to gratuities.

20 Q. Would you agree that Svetlana Danilov - Danilova was the client of the YMCA?

A. No, I don't believe she was a client before. I don't know. I think she might have been a member, I'm not sure.

25 Q. Are you aware that she initially made contact with the YMCA on behalf of her parents?

A. I believe that's what was presented in evidence - yeah.

Q. Were you aware of that before the evidence was stated?

30 A. I think I do - I think I did know that through - through the process of this trial. I didn't know that in 2011 - no.



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5 MS. CHAPMAN: Your Honour, could I request an early lunch break and I don't believe that I would have many more questions of Ms. Cascagnette, but I'd like the lunch to speak to my clients.

THE COURT: All right. We'll take our lunch break now and come back at let's say two o'clock. It's already one o'clock.

10 MR. MAE: Your Honour, our witness for this afternoon, she's teed up I believe for...

THE COURT: For two o'clock.

MR. MAE: ...2:00 p.m.

THE COURT: All right.

15 MR. MAE: Well I - I just wonder within that - not to put Ms. Chapman's toes to the fire, but just wonder how long she may be because if we're going to come back in an hour, go for five minutes and then adjourn again....

20 THE COURT: So - all right. So, do you want to give us a time estimate?

MS. CHAPMAN: Likely not more than 15 or 20 minutes at the....

THE COURT: So what if - what if we come back at quarter to two, that might....

25 MR. MAE: Well we - we can - try to reach the witness to see if she can come earlier, that's why I was....

THE COURT: For two o'clock, would that work?

30 MR. MAE: Two - two is when she's coming anyway. But we'll - we'll try to reach her to see if she can come a little bit earlier just to - to assist the court. And I - I suspect my - my college Mr.

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Thomson's dealing with that witness. We're not going to be too long with her this afternoon, so there's probably gonna be a fairly early finish today.

5 THE COURT: All right. Then why don't we just come back at two o'clock...

MS. CHAPMAN: That's fine.

THE COURT: ...and you can deal with completing with this witness and be likely one more witness.

10 MR. MAE: Thank - thank you, Your Honour.

THE COURT: One more thing I didn't talk to counsel about, is we talked the timetable, we didn't talk about the agreement as the length of your submissions. So I think that's something you should discuss as a group if you haven't...

15 MR. MAE: Yes.

THE COURT: ...so there's some mutual agreement.

MR. MAE: And in terms of that - that issue too, does Your Honour have any preference? I - I can tell you I'm not - I can only speak for myself, but we have things drafted and if I was filing this factum in front of the Court of Appeal, they would point me to the 30 page limit and say...

20 THE COURT: Yes.

MR. MAE: ...you need leave. I - I suspect that the submissions, particularly on the law of - because that's where we're at at the moment, we're - we're gonna be fairly lengthy and we don't want to burden the court, but at the same time we maybe don't want to feel constraints. So what - what - what's Your Honour's pleasure in terms of....

30

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THE COURT: Well obviously you may have different categories that you want to touch on, the fact there are different areas of law, but I don't know what - what discussion you had with Ms. Chapman about her....

MR. MAE: We - we - we haven't. So yes we will have that discussion.

THE COURT: That's a good idea because I don't want to receive a hundred pages from one counsel, ten from the other because they thought they were constrained to something or - or thirty pages, so....

MR. MAE: That - that's....

THE COURT: I'm not at this point deciding on the limits, but just so there's some reasonable limits established for - for my benefit.

MS. CHAPMAN: But would you be agreeable to the next - or over that 30 pages given the number of legal issues that we do have to...

THE COURT: Yes, I don't mind that...

MS. CHAPMAN: ...cover?

THE COURT: ...but as long as I know and you each know what - what the expectations are...

MS. CHAPMAN: Okay.

THE COURT: ...from the other side, because I don't want one side to think their allowed to do 30 pages and the other person provides 60 pages. So as long as you had that chat.

MR. MAE: Certainly, Your Honour. And - and [indiscernible] I assume the answer to this is yes, but a long time ago I was told not to assume, would - would Your Honour require

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electronic copies as opposed to paper copies?

5 THE COURT: Well I generally rely on paper, but if you want to provide electronic as well I can do that. But I - I usually - when I get an electronic copy I tend to print it out anyway.

MR. MAE: So in - in that case then, it was an unsafe assumption on my part.

10 THE COURT: All right. So I'm also going to ask Madame Registrar to indicate the colour of the binders on the exhibit list just for continuity so that we have that on the record: white - the white, green and red for the various exhibits that we done. So you'll see that in the next version from Madame Registrar. So with that in mind, do we agree to adjourn 'till two?

15 MS. CHAPMAN: Yes.

MR. MAE: Thank you, Your Honour.

THE COURT: We'll come back at two o'clock.

20 R E C E S S

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

THE COURT: Mr. Mae you're continuing. Sorry Ms. Chapman, do you have any more questions?

25 MS. CHAPMAN: I do, I have a couple of questions. Just a few questions.

A. That's fine.

30 MS. CHAPMAN: Q. Before the break you gave evidence and when I asked you whether Svetlana was a client, you said well she may have been a member, what's the difference between a YMCA client and a YMCA member?

A. YMCA member would have been used in the

context of if they pay fees to participate in our health and fitness programs. So I have a feeling - I believe that Svetlana had participated in some of our - like aquafit programs or things at the Innisfil YMCA. A client would be somebody who has an agreement through our Settlement Services program to receive service specific to Newcomer Services.

Q. Do we have a copy of Ms. Cascagnette's transcript from her examination for discovery?

A. Thank you.

Q. Could we go to page 18 please?

A. Yep.

THE COURT: I don't have a copy in front of me, but maybe it's not necessary.

MS. CHAPMAN: I'm gonna read out the question and answer.

THE COURT: All right.

MS. CHAPMAN: Q. So the question's at the bottom of page 18, number 67...

A. Yeah.

Q. "And do you require counsellors to collect evidence of such abuse?" Your answer, "It is not our job to confirm whether or not a disclosure of abuse is true. We are not the experts. That is why we refer in the cases of children to the Children's Aid Society. And in the event that I found out through our systems at the Y about an adult disclosing abuse, we refer to the agency that can confirm that. We are - that is not our responsibility." Do you know which agency confirmed the abuse in Nikityuks' case?

A. I think when I was speaking about this I was specifically speaking around adults as it relates to our policy which would be a vulnerable adult and I think we've already established earlier today, that we didn't feel that they were

vulnerable adults.

Q. And so in - in the next question, which I'll read again, question 68: "So just for the future purposes, the children, what you do regarding children is irrelevant, but you testified before that pretty much you try to apply the same procedures to adults - to vulnerable adults as your guidelines to children. Right? That's what was said?" Answer: "Around the expectation that the staff have a duty to report where they feel that a vulnerable adult is at risk, yes." So the YMCA's position is that the Nikityuks were not vulnerable adults, correct?

A. That's correct.

Q. And so there was no need to report.

A. Correct.

Q. And - so it wouldn't matter to the YMCA whether the story of the Nikityuks was true or not because another agency would make that determination, correct?

A. Well in the situation of the Nikityuks, they provided information that resulted in Yana identifying that they may need a resource or they may need information as to where they could go to get support. And that's what they did - that's - that's what Yana did around providing that information to them. It isn't her job to decide whether or not what they are saying is true. Now I believe that Yana did see the bruises, that's what's been reported to me and so - it doesn't matter either way because it's not our decision to investigate.

Q. Very good. Those are my questions. Thank you.

THE COURT: Thank you Ms. Chapman. Mr. Mae, re-examination?

RE-EXAMINATION BY MR. MAE:

Q. Two questions, you're asked in cross-examination as to whether there was an expectation - or you answered with respect to gratuities being shared...

A. Mm-hmm.

5 Q. ...would that expectation extend to personal gifts?

A. It wouldn't extend to personal gifts, no. It was an example for - from a staff perspective.

10 Q. And you were asked about Ms. Danilov [sic] being a - a member of the YMCA. If you'd have known in 2011 when you received the letter from Ms. Danilova in October that she was a member of the YMCA, would that have made any difference to you...

A. No.

15 Q. ...the way you handled the matter?

A. No because they - the way they handled the matter was between us and the agreement we had to serve the Nikityuks.

20 MR. MAE: Thank you, I have no other questions. If Your Honour has any.

THE COURT: No thank you, Mr. Mae. You can step down.

FIONA CASCAGENTTE: Thank you.

25 MR. MAE: And - so Your Honour, my friend Mr. Thomson will have the - be taking over.

MR. THOMSON: Thank you, Your Honour. Our next witness is Kim Clark, who is in the hallway right now.

THE COURT: All right.

30 MR. THOMSON: I can run out and get her - get her quickly.

CLERK REGISTRAR: Kim Clark, Kim Clark, you're

required in courtroom number one please. Kim Clark to courtroom number one.

MR. THOMSON: Thank you.

5 KIM CLARK: SWORN

EXAMINATION IN-CHIEF BY MR. THOMSON:

Q. Thank you. Good afternoon, Ms. Clark. Can you start by telling us what your occupation is?

10 A. I am a victim service worker.

Q. And where - where do you work?

A. Barrie and Area Victim Services.

Q. Can you tell us a little bit about your organization?

15 A. We work with victims of crime and tragedy offering referrals, practical assistant.

Q. Are there any other - crime and tragedy is that a - a broad spectrum?

A. Yes.

20 Q. How long have you worked there?

A. Thirteen years.

Q. And have you ever held any other positions within that organization?

25 A. I have. I was the coordinator of a program called SupportLink.

Q. Can you tell us a little bit of the SupportLink program?

30 A. The SupportLink was geared towards people who were at risk - we did a lot of safety planning. We also had cell phones - preprogramed cell phones that we - that we gave to our clients.

Q. Pre-programed?



A. To 9-1-1, sorry.

Q. Thank you. And you told us about the mandate. How many clients if - if you could estimate for us do you think you would see per month now or then?

5 A. Probably between 20 and possibly 50.

Q. Thank you. And I believe you mentioned it, but can you just tell us again what diff - what the different types of services your organization provides beyond the cell phone and safety planning you just mentioned?

10 A. Victim Services or SupportLink?

Q. Victim Services.

A. We can make applications for counselling. We - there is money for funeral costs. There are a whole range of things that we can apply for financially.

15 Q. Your organization, if someone discloses abuse to you, what is - do you have a protocol?

A. We do. If they are children we are obligated to contact CAS if they have not already been contacted. If it is a vulnerable senior, we encourage them to con - contact  
20 police if their safety is at risk or we contact them ourselves.

Q. Sure. And to engage your organization services, what must be disclosed to you or how must organization be contacted or approached?

A. It can be a self-referral and we get  
25 referrals from officers, we get referrals from shelters - many different sources.

Q. If somebody comes to you with some kind of disclosure or issue, does your organization undertake any independent investigation?

30 A. No, we do not.

Q. Clients are taken at face value?

A. That's correct.

Q. Is there a particular reason behind that?

A. That's just our mandate.

Q. The co-defence in this action, the Nikityuks, have you ever met them before?

5 A. Yes, I have.

Q. And when did you meet them?

A. October of 2010.

Q. If I can direct the witness' attention to the white binder number 1, Tab C9.

10 A. Sorry, I didn't bring my glasses so it's gonna take me a minute.

Q. No problem. Oh sorry - my binder is white. I actually meant the green binder, not the white. That's the - my apologies. Just so my green binder is white. Sorry about  
15 that.

THE COURT: Volume 1?

MR. THOMSON: Volume 1 - yes.

A. C - sorry?

MR. THOMSON: Q. C9.

20 A. Yep.

Q. This is a letter on Victim and Crisis Assistance letterhead...

A. Correct.

Q. ...appears to be written by you, is that  
25 correct?

A. Yes, it is.

Q. In this first paragraph it states - mentions Mr. and Mrs. Nikityuk by name, it says that you gave them a phone on October 10<sup>th</sup>, 2011.

30 A. Correct.

Q. Your previous answer was you met them on October 10<sup>th</sup>, 2010.

A. I'm sorry, it was '11.

Q. Thank you. And how - when you first met the Nikityuks, how were they referred to you?

5 A. The referral came from Yana Sky - Skybin from YMCA.

Q. Okay. And can you comment on your recollection of the clients at the time - your recollection of this time in general?

A. The referral?

10 Q. No your - just your memory in general about this period of time, these particular clients.

A. Honestly, I cannot.

Q. Okay. Do you have a particular reason that these - that this is not a standout for you in your memory?

15 A. Probably - since then I've probably seen close to a thousand clients. There are very few occurrences that stand out and this just was not one of them.

Q. And do you recall any of the services you provided to the Nikityuks during that time?

20 A. I believe that they received a safety plan and a 9-1-1 phone.

Q. In the - in your letter as - as - that we're looking at Tab C9 refers to a 9-1-1 emergency phone...

A. Correct.

25 Q. ...what is a 9-1-1 emergency phone?

A. A cell phone pre-programmed to only get 9-1-1.

Q. And what - what kind of situations are those phones given out?

30 A. If someone shares that they are at risk, they do not have a cell phone - basically it.

Q. And it goes on to talk about, also in that

same paragraph, it mentions safety planning.

A. Mm-hmm.

Q. Can you tell us a little bit about safety - about safety planning the organization does?

5 A. Certainly. It varies on each victim and depending on whether they're still living - currently living with the abuser, whether they're in their own place. So if they were in their own place they would be securing it with doors and windows, don't open your doors unless you know who's on the  
10 other side. They had a cell phone. We would - I would give them direction on how to use their cell phone. Keep that with them, keep it charged. Familiarize themselves with the area so they know if they use a cell phone, they may only have time to give a location, so - things like that.

15 Q. You meet with the Nikityuks, do you feel in your experience that they were capable to make their own decisions?

A. I believe so - and the reason I say that is if I did not believe so, I would have suggested other avenues.

20 Q. And were you ever concerned that any part of the Nikityuks story that they brought to you was fabricated?

A. I don't believe so, no.

Q. Have you met one of the other co-defence in this action, Yana Skybin?

25 A. I have.

Q. And when did you meet her?

A. I - the first time I met her would have been October 10<sup>th</sup>, I believe, 2011.

30 Q. So you had never worked with her in a professional capacity before that?

A. No.

Q. And did you - what was the context of your

meeting of Ms. Skybin?

A. She contacted me to meet with the Nikityuks.

Q. For what reason?

A. They had a safety risk issue.

5 Nikityuks?

A. Yes, I did.

Q. And did she be - appear to be acting within her role as a counsellor and interpreter?

10 A. Yes.

Q. Where her interactions professional?

A. Yes.

Q. Did you have any concern about how Yana - Yana, pardon me, was managing the allegations that were brought to you?

15 A. No.

Q. Was Yana ever involved in any the decision making with respect to preparing the safety plan or the decision to give out a [sic] emergency cell phone?

20 A. No, that was not her decision to make.

Q. And have you worked with Yana since this time?

A. Yes, I have.

Q. In what context?

25 A. I have referred a - a number of clients to her. We've also had her train our volunteers - come and speak to our volunteers.

Q. With respect to immigration services?

A. Immigration - yeah.

30 MR. THOMSON: Your Honour, I would just ask for just 30 seconds to confer with Mr. Mae here.

THE COURT: Yes.

MR. THOMSON: Your Honour, those are all my questions. Thank you.

THE COURT: Ms. Chapman, do you have any questions for this witness?

MS. CHAPMAN: I - I do.

MR. MAE: Sorry - sorry, Your Honour.

MR. THOMSON: Sorry Your Honour, I apologize.

MR. MAE: It's - my - my apologies.

THE COURT: Yes, late breaking news Ms. Chapman.

MR. MAE: My - my apologies, Your Honour.

MR. THOMSON: Those are all my questions. Thank you.

CROSS-EXAMINATIN BY MS. CHAPMAN:

Q. Hello Ms. Clark.

A. Hello.

Q. I believe that you stated in your evidence that you don't recall the Nikityuks particularly?

A. I'm sorry, I don't.

Q. But you do recall Yana working with the Nikityuks?

A. I do.

Q. And so could you maybe explain how you had a...

A. Certainly.

Q. ...a memory of her working with the Nikityuks?

A. That's the only reason that I remember this case when I met Yana. I believe she was a - she was very professional and she would also be a great asset to victim witnesses.

Q. Okay. Thank you.

Danilova v. Nikityuk et al.

THE COURT: Nothing further? All right. You can step down, you are excused.

KIM CLARK: Thank you.

MR. THOMSON: Your Honour, we have no more witnesses for today.

THE COURT: All right. I think that will complete things until Monday, if I recall correctly? On Monday I will be speaking to another matter, so counsel you probably don't need to get here until ten o'clock or so and you'll probably need a few minutes to set up the room before we begin. And it sounds like we'll be hearing from witnesses on Monday and Tuesday and possibly finishing on Thursday. Is that the roadmap you see so far?

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

THE COURT: All right. And counsel you're gonna discuss with themselves the potential length of their submissions, but we can leave that until the next - next time. Oh Mr. Bornmann do you have some - speaking for the group?

MR. BORNMANN: Yes, Your Honour. We had an opportunity to confer over lunch and agreed that the factums would be limited to 60 pages and the replies to 10 pages, Your Honour with your permission.

THE COURT: Okay. All right. And if you don't mind giving me next week those dates in writing just so I can give those to my judicial assistant who can walk - watch from the command, make sure that we send out reminders if something is - is late.

MR. BORNMANN: Yes, Your Honour.

THE COURT: So I don't think there's anything else we can do usefully. We'll adjourn then until Monday morning.

MS. CHAPMAN: Thank you.

MR. MAE: Thank you.

MR. BORNMANN: Thank you, Your Honour.

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M A T T E R   A D J O U R N E D

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1797.  
Certification

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

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I, Lauren Burch, certify that this document is a true and accurate transcript of the recording of Danilova v. Nikityuk et al. in the Superior Court of Justice held at Barrie, Ontario taken from Recording No.3811\_01\_20161117\_090324\_\_10\_MULLIGG.dcr, which has been certified in Form 1.

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\_\_\_\_\_  
(Date)

\_\_\_\_\_  
L. Burch

(Signature of authorized person)

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\*This does not apply to the Rulings which have been judicially edited.

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MONDAY, NOVEMBER 21, 2016

THE COURT: Good morning everyone.

MS. CHAPMAN: Good morning.

MR. MAE: Morning, Your Honour.

5 CLERK REGISTRAR: Court is now resumed, please be seated.

THE COURT: Yes counsel, sorry about the delay, but the earlier matter this morning was delayed due to weather issues for one of the counsel from out of town. So, Mr. Mae or Mr. Thomson, what are your plans for today? Oh, sorry. Mr. Bornmann?

10 MR. BORNMANN: Good morning, Your Honour.

THE COURT: Yes.

MR. BORNMANN: Last week, Your Honour had asked that we - timetable that had been agreed upon from counsel, with respect to the fact that it be put in writing.

15 THE COURT: All right, thank you.

MR. BORNMANN: I have a piece of correspondence that I've provided to my friends, and with your permission....

THE COURT: Yes, I could receive a copy of that. Yes, sorry Mr. Thomson, do you have witnesses for today?

25 MR. THOMSON: We do, Your Honour. I thought I would just give you a bit of a primer on where we're at with our witness list.

THE COURT: Yes.

MR. THOMSON: We have four witnesses scheduled for today, certainly. None of which we expect will be too lengthy. We are making efforts to potentially get a witness who's maybe scheduled for tomorrow

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5 to come make themselves available this afternoon,  
if we can fit that in timing wise. Other than -  
otherwise, we'll call two witnesses tomorrow, and  
then, to be determined, potentially another  
witness Thursday. But certainly, at least four  
today and two tomorrow, if the one for tomorrow  
can't come this afternoon.

THE COURT: All right. Thank you for that.

10 MR. THOMSON: Thanks. Well then, in that case,  
we'll call our first witness. She's Yulia  
Malycheva. Still outside the courtroom.

CLERK REGISTRAR: Yulia Malycheva, you're required  
to courtroom number one, please. Yulia Malycheva,  
courtroom number one.

15 MR. THOMSON: We also have a translator with us  
here today, Your Honour.

THE COURT: Good morning.

IRINA FILIPPOVA: Good morning.

20 MR. THOMSON: Perhaps we could have her sworn in  
while we wait for Yulia to....

THE COURT: Yes, if you'd come forward madam, and  
give us your name for the record, and Madam  
Registrar will....

25 CLERK REGISTRAR: And the language you'll be  
translating?

IRINA FILIPPOVA: Russian and English, please.

CLERK REGISTRAR: Do you wish to swear on the  
Bible?

IRINA FILIPPOVA: On the Bible, please.

30 IRINA FILIPPOVA: INTERPRETER SWORN - Russian/English

CLERK REGISTRAR: Thank you.

THE COURT: Ms. Filippova, were you here last time six months ago? I'm just trying to recall....

THE INTERPRETER: No, this is my first appearance...

THE COURT: All right, very good.

THE INTERPRETER: ...in this measure, Your Honour.

THE COURT: Mr. Thomson?

MR. THOMSON: Thank you, and our first witness, Ms. Malycheva is here.

THE COURT: Would you like her to remain close by for this witness?

MR. THOMSON: Yes, please...

THE COURT: All right.

MR. THOMSON: ...for this witness.

CLERK REGISTRAR: Do you wish to swear on the Bible, or make an affirmation of oath?

YULIA MALYCHEVA: To affirm.

YULIA MALYCHEVA: AFFIRMED

(Testifying through interpreter - Russian/English)

CLERK REGISTRAR: Thank you.

MR. THOMSON: Thank you.

THE COURT: So Mr. Thomson, just go slowly so that we can allow for the translation.

MR. THOMSON: Yes, Your Honour.

EXAMINATION IN-CHIEF BY MR. THOMSON:

Q. Good morning, Ms. Malycheva. Thank you for being with us. Just begin by telling us what your profession is.

A. Good morning. I work for a company. I am a software tester.

Q. And do you know the - one of the defendants in this matter, the Nikityuks?

A. Who exactly are the Nikityuks?

Q. Alla and Valentin, both of them. Alla and  
5 Valentin, both of them.

A. Yes, of course.

Q. And how did you meet them?

A. We met at a school for the language - at the English language course at YMCA.

Q. And when did you meet them?  
10

A. In February 2011.

Q. And did you spend time together socially?

A. Yes, we became friends and spent time together socially.  
15

Q. Did you spend time together with them in the summer of 2011?

A. Yes.

Q. During this time, were you ever told about any issues they were having?  
20

A. No.

Q. Did you spend any time with Alla during that summer, the two of you?

A. We spent time all together: Alla, myself, Valentin, my husband, and my children.  
25

Q. And did Alla or Valentin ever tell you about any troubles at home?

A. I don't exactly understand your question. Prior to?  
30

Q. During that time in that summer 2011.

A. In August, we were at the park, and Alla shared with me a problem - a family problem.

Q. Can you tell us more about that family

problem?

A. Yes, we were at the park. We're enjoying our time, and Alla complained to me that she had serious problems with her daughter in the family.

5 Q. What kind of problems?

A. Well first of all, she showed me bruises on her arms, and told me that her daughter attacked her at home.

Q. What did those bruises look like?

A. They looked like fingerprints.

10 Q. And where were they located? Could you explain it so we can....

A. Above elbows, but below the shoulder joint.

Q. And what was Alla's demeanour during this conversation?

15 A. When she shared it with me, she was extremely upset, and she was crying a lot.

Q. Have you ever met the plaintiffs in this matter, the Danilovs?

A. No, never.

20 Q. Have either of the Danilovs ever contacted you?

A. Yes, Svetlana, the daughter of Alla and Valentin, called me.

Q. And when did she call you?

25 A. She called me a couple of months after that conversation with Alla.

Q. And what was said?

30 A. Her first question was she wanted to know where her parents were. For some reason, she was certain that they were at our house. And when I said that they're not here and I don't know where they are, she, for some reason, was certain that I was lying. And even - and even threatened me a

little bit by saying that next time, she would call the police. She'd - she would go to the authorities. Next, she was asking the following questions: whether I know that her parents are not entirely, psychiatrically healthy - mentally, and if I start  
5 helping them, I will regret it. Then she asked some gibberish about how much - whether I know how much money they have, how much they sold their apartment in Russia for. Would she imply that I want their money or what?

Q. Why did you find the call threatening?

10 A. I - well, first of all, I didn't like - well, she didn't call just once. I don't know how many times exactly because it was five years ago. I remembered the following phrases: I know where you live, and I know how many children you have. In this very phrase, I felt threat for my family.

15 Q. Did you tell anyone about this call?

A. Yes, when I came to school the next day, I told about it to Yana, and to the school's director. I think her name is Susan.

Q. And did you make any notes about this call?

20 A. Yes, Susan, the director, advised me to immediately write a letter while everything was still fresh in my memory.

Q. Can the witness be shown the green volume two, Tab F(17)? I think - I'm not sure which document that we're  
25 looking for. Tab F(17), it should be the last document in the binder. It's the very last document in the binder.

A. Where am I supposed to look for it?

Q. The very last tab. The very last tab in the binder.

30 THE COURT: Mr. Bennett, will you assist? It's the very last page.

MR. THOMSON: Q. And if you flip to one, two, the

third page, is this the letter you wrote?

A. Yes.

MR. THOMSON: Your Honour, we have the letter here, and a certified translation at the front of this tab. For the record, would you like the witness to read in the letter, or are you satisfied with the document as it is?

THE COURT: We have it in the exhibit, I don't think it's necessary to read it unless counsel think it's useful. All right, so it's not necessary for her to read it...

MR. THOMSON: Thank you.

THE COURT: ...to us.

MR. THOMSON: Q. Ms. Malycheva, in this note, you don't describe seeing the bruises. Why not?

A. Yes, that's correct. At that moment, why I wrote the letter? I was concerned about only one question, one problem. I was concerned about my family. This letter was not meant to be a complaint about the relationship between parents and children in that family.

Q. When Alla told you about the incident with the bruises, what did she tell you happened?

A. She said that Svetlana attacked her, shook her, grabbed her by her arms.

Q. Prior to this trial beginning, did you ever talk to Yana, or anyone at the YMCA about seeing the bruises?

THE COURT: Mr. Thomson, just before we go there, is there a date on the letter, or have you asked....

MR. THOMSON: I believe it's undated, but....

MR. THOMSON: Q. Ms. Malycheva, is there a date on this letter?



A. I don't see it.

Q. Okay. Do you recall when you wrote this? How long....

A. Approximately two months after Alla had  
5 complained to me about the conflict. It must have been  
somewhere in October. September, October, somewhere there, but  
I don't remember exactly when.

Q. Prior to this trial beginning, did you ever  
talk to Wa - pardon me, did you ever talk to Yana or the YMCA  
10 about having seen the bruises?

A. But of course, she was the first one whom I  
approached, and then she took me to Susan so that I can tell it  
to her.

Q. When was that?

A. The same time. Either September or October.  
15

Q. At the - after - at the time of the phone  
call?

A. After the phone call. I remember that we were  
- the classes had already started, so it must have been either  
20 September or October.

Q. Had you ever spoken to Yana or the YMCA about  
actually the bruises themselves? Not the phone call.

A. Yes, I can't recall.

Q. Do you know Yana?

A. Yes.  
25

Q. You are friends?

A. Yes.

Q. Do you speak with her regularly?

A. Yes.

Q. Has Yana ever said anything malicious about  
the Danilovs?  
30

A. Never.

MR. THOMSON: Your Honour, it'll just be one moment to review a note here. Those are all my questions, Your Honour.

THE COURT: Yes Ms. Chapman, do you some questions?

MS. CHAPMAN: I do.

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. You're welcome to have a seat if you wish.

You don't have to stand.

THE WITNESS: Okay, I'm good.

Q. If we could go back to your statement, I think you still have it in front of you, at Tab F(17)? And in the first phrase, in the translated version, it reads, "Last year in fall, month [with a question mark]?" Is it possible that you made this statement in the spring of 2012?

A. I don't see the date here, so I can't say for sure.

Q. Right, but it does have the language, in your letter, "Last year in fall."

A. Right now, I can't - right now, I can't answer this question. It has been five years.

Q. But would you agree, based on that language, you wrote this sometime in 2012?

A. There is no date. I can't say anything.

Q. You spoke about Alla telling you in August of 2011, that her daughter, Svetlana, had attacked her.

THE INTERPRETER: The date?

Q. In August of 2011.

A. I did not say 2011.

Q. Okay, so when did you have this conversation with Alla?

A. I met with them in October 2011. It couldn't have been August at any rate.

Q. Just for ease of our conversation today, could you please wait for the translator to translate?

5 THE WITNESS: Okay.

Q. Thank you. So, maybe I misunderstood. Could you tell us when Alla told you about her daughter attacking her?

A. In August. It must have been 2012, since I met them in 2011. Don't confuse me.

10 THE WITNESS: Please.

Q. Okay. I'm not trying to confuse you. Do you recall where this conversation took place?

A. Of course, in a park. Killbear Park.

15 Q. And you had gone to Killbear Park with the Nikityuks?

A. Yes.

Q. So, I'd like to now have the witness look at the first volume of the white binder, Tab 89. And I will give you the page number, just a moment.

20 A. Can somebody help me?

CLERK REGISTRAR: What?

Q. It's Tab 89.

THE INTERPRETER: I can't open it.

THE COURT: Ms. Chapman, the page number?

25 MS. CHAPMAN: Five-six-four.

THE COURT: Five-six-four? That's the last page in that tab, isn't it?

MS. CHAPMAN: It is.

THE INTERPRETER: Nice.

30 MS. CHAPMAN: Q. Do you recognize these photographs?

A. Yes, of course.

Q. And is this the trip to Killbear Park you took with Nikityuks?

A. Yes.

Q. Yes, and would you agree that that was on 5 October 2<sup>nd</sup>, 2011?

A. Was - well, that's wonderful that there is a date here. Again, it has been five years. I'm sorry, forgive me, I can't give you exact dates. I can remember the events that took place, not the dates. I'm sorry.

Q. And that is you in the second photograph with Alla?

A. Yes.

Q. And so, is this the park visit that Alla showed you the bruises?

A. Yes.

Q. And this is also when Alla told you about the attack, that Svetlana had attacked her?

A. The same day, not at the same time when the pictures were taken, because everybody's very happy in the 20 pictures. We were there for sufficiently long time.

Q. Let's talk about the telephone call you had with Svetlana.

A. Yes.

Q. And Svetlana - you agree she was looking for 25 parents?

A. Yes.

Q. And did she advise you that she was going to file a missing person's report?

A. No.

Q. And so, did she ask you whether if the police were to contact you, that you felt comfortable speaking English to the police officers?

A. I don't remember. I don't think that happened.

Q. And how many times did you and Svetlana actually speak on the telephone?

5 A. As I already said, I don't remember how many times exactly, but it was several times.

Q. And was that in one day, or over a few day?

A. I don't remember.

10 Q. You said that you've - you spoke with Alla in May of 2016, is that correct?

A. I don't understand the question.

Q. Did you speak with Alla in May of 2016?

A. Well, I have - I talk to Alla very often. What do you mean by May 2016?

15 Q. Were you speaking with Alla after this trial had commenced in May?

A. We talk all the time.

Q. Have you spoken with Alla about this trial?

20 A. I sometimes ask her how things are during the trial. What happens.

Q. And so, she's discussed the trial with you?

A. No.

Q. Has she told you what's been happening in the trial?

25 A. No.

Q. And did she talk to you about the bruising on her arms?

A. Of course.

Q. And what did she say?

30 A. That her daughter attacked her, shooked her, grabbed her by her arms, and she showed me the bruises.

Q. But since this trial has commenced, have you

had discussions with Alla about these bruises?

A. Of course not.

Q. And what about with Yana Skybin?

THE INTERPRETER: Skybin?

Q. Skybin.

THE INTERPRETER: Yana Skybin?

Q. Yes.

A. No. I only told Yana about the story once, when Alla had told me about it. I never discussed this again.

We have other things to talk about.

MS. CHAPMAN: Your Honour, in order to get through some of this evidence, I'd like to give the witness a copy of her will say statement.

MR. MAE: Your Honour....

MS. CHAPMAN: And maybe if we could, we should ask the witness to step out before we have this....

MR. MAE: Well, it's a simple point. The witness wasn't involved in preparing the will say statement. However, having said that, put it to her. I have no problem.

THE COURT: Is it in English or Russian?

MR. MAE: It's...

MS. CHAPMAN: It's in English.

MR. MAE: ...in English, Your Honour.

THE COURT: All right, and....

MS. CHAPMAN: But I'm sure that the translator could assist in terms of the statement that I would like.

THE COURT: You're just going to refer to certain points of it, I guess? You're going to refer to certain parts?

MS. CHAPMAN: Yes, one or two points that...

THE COURT: All right.

MS. CHAPMAN: ...is in it. So, to assist the Court, I have a copy for the witness that redacts the evidence of other YMCA witnesses. You can see it's been blacked out. But, I have full copies for counsel and for yourself, Your Honour.

THE COURT: All right. Mr. Mae, do you have a copy of the blacked out portions so you'll be satisfied that - as to what's being seen?

MR. MAE: My friend hasn't - well, if she's only showing the part of the statement to the witness, that's in the will say statement. But as Your Honour will appreciate, these will say statements, they're not signed by the witness, and they're a statement of anticipated evidence based upon what was conveyed to us. But as to say, I'm not objecting to the statement being put to the witness.

THE COURT: All right, so if you'd pass that up to the witness through the translator?

MS. CHAPMAN: This is the witness copy. Do you need copies?

THE COURT: And just for the record, which page are we...

MS. CHAPMAN: Yes.

THE COURT: ...turning to?

MS. CHAPMAN: It's the bottom of page five, and actually, the statement I'd like to refer the witness to is on page six.

THE COURT: So would it be useful if the translator read those - pick your paragraphs you're referring to - and translated, I should

say? They're numbered paragraphs.

MS. CHAPMAN: Yes, sorry. I just misplaced my version. So, at paragraph number 11.

5 THE COURT: So Madam Translator, if you would just translate that...

THE INTERPRETER: Yes.

THE COURT: ...for the witness?

THE INTERPRETER: What is the question?

10 MS. CHAPMAN: Q. Is that statement true? Is that something that you told to Mr. Mae?

MR. MAE: Sorry, Your Honour, categorizing - told Mr. Mae, I've...

MS. CHAPMAN: Sorry.

15 MR. MAE: ...never met this witness before today. I've never spoken to this witness. So....

20 MS. CHAPMAN: Q. So, maybe before I ask the question, I will ask whether you spoke with someone from Mr. Mae's office, is that correct? In order to attend here today and give evidence, you had some discussions with someone in Mr. Mae's office.

25 MR. MAE: Your Honour, can I just make life easy for my friend? Due to the language barrier, I can tell the Court that the information came through Yana Skybin, because I cannot communicate with this lady in her language.

A. We corresponded in writing

30 MS. CHAPMAN: Q. Okay, sure. So, after having read paragraph 11, do you agree that Alla contacted you in May 2016?

THE INTERPRETER: Sixteen. Oh, I'm sorry, sixteen.

A. How should I understand the word contacted?



Q. Did she telephone you?

A. We call each other very often. What it mean she called me in May 2016?

5 Q. So, it's quite likely you spoke with Alla at some point during the month of May, 2016.

A. I don't remember what happened in May 2016.

Q. And did you read on, at paragraph 11, were you asked by someone whether or not you had seen Alla's bruises?

A. Could you please repeat the question?

10 Q. With reference to the statement at paragraph 11, had someone asked you whether you had seen Alla's bruises?

A. Well, again, I have to repeat the correspondence with Mr. Mae. Maybe those questions were in letters, I never discussed it by phone.

15 Q. Yana translated those letters for you?

A. Well, sometime Yana, sometimes myself.

Q. You can read English?

THE WITNESS: Yes.

A. Yes.

20 Q. And can you write English?

A. Yes.

Q. So, you didn't need Yana to translate these letters for you?

25 A. Yeah, I asked her to translate it the proper way, because my writing skills are not very good.

Q. So, when Yana was translating these letters, was that the first time you spoke to her about having seen Alla's bruises?

A. No.

30 Q. So, when had you first had that conversation with Yana?

A. Immediately after Alla had complained to me

about this. I came back to school in fall, approximately - maybe in September or October, and I told about this. Yes, to Yana and Susan.

5 Q. Did you and Yana speak about the evidence at this trial?

MR. MAE: And before - sorry, Your Honour, before the witness answers, that was a very global question. Perhaps my friend should clarify?

THE COURT: You mean for date?

10 MR. MAE: Yes, Your Honour.

THE COURT: Put it into his own?

MR. MAE: Yes, Your Honour.

THE COURT: Ms. Chapman?

15 MS. CHAPMAN: Q. So to clarify, since May of 2016, have you and Yana Skybin discussed this trial?

A. No, we don't talk about it.

Q. Except in preparing the evidence that you would give here today?

THE COURT: Was that a question or a statement?

20 MS. CHAPMAN: It's a question.

MS. CHAPMAN: Q. You agree she assisted you in corresponding with Mr. Mae's office?

25 A. Yes, she did help me because I needed - she helped me to write those letters in proper English. Exactly right.

Q. You gave evidence that Yana never said anything malicious about the Danilovs.

A. Could you please repeat the question?

30 Q. Yes. You gave evidence that Yana never said anything malicious about the Danilovs.

A. No, never.

Q. What does malicious mean to you?

at all.

MS. CHAPMAN: Those are my questions for the witness.

THE COURT: Ms. Chapman, just for a minute, if we could go back to paragraph 11.

MS. CHAPMAN: Yes.

THE COURT: Obviously, this will say statement's not an exhibit, but did we read it into the record? Because obviously she - it was translated into Russian.

MS. CHAPMAN: Yes.

THE COURT: But did we actually put....

MS. CHAPMAN: No, I did not read it in.

THE COURT: Would that be useful?

MS. CHAPMAN: Sure.

THE COURT: Because it's - it was....

MS. CHAPMAN: It may actually be useful to make this an exhibit, at least a Court copy because I may come back to it in terms of other witnesses being called today.

THE COURT: All right, first of all, let's just - if you wouldn't mind just...

MS. CHAPMAN: Deal with paragraph 11?

THE COURT: ...read that into the record.

MS. CHAPMAN: Sure. So, the paragraph that I put to the witness is as follows:

"Until she was contacted recently (May 2016) by Alla, she had not been asked by, or discussed with Yana Skybin or the YMCA about her having seen the bruises on Alla's arms."

Thank you.

5 THE COURT: I say to the witness, Ms. Chapman has no further questions, but Mr. Thomson may have some.

MR. THOMSON: Your Honour, just a couple.

THE COURT: Mr. Thomson?

RE-EXAMINATION BY MR. THOMSON:

10 Q. Ms. Malycheva, just a couple questions for you. Are you nervous here today?

A. A little bit.

Q. Can you tell us, are you certain that Alla showed you the bruises?

A. Of course.

15 Q. And you're certain that you spoke to Svetlana on the phone?

A. Of course.

MR. THOMSON: Thank you, those are my questions.

20 THE COURT: Thank you, you can step down. Mr. Thomson, Ms. Chapman, did you want to talk with this issue of making this an exhibit for whatever limited purpose it may....

25 MR. THOMSON: Yeah Your Honour, maybe if I could just have a moment to consult with Mr. Mae? We have no issue with that, Your Honour. Our next witness is....

THE COURT: Is there a copy that we need to pass up?

MS. CHAPMAN: Sorry, Your Honour.

30 THE COURT: For this - did you want make this an exhibit?

MS. CHAPMAN: Yes.

THE COURT: And is there a copy that you want to

pass up as an exhibit copy? Is it blacked out or not? The one that you want to make an exhibit.

5 MS. CHAPMAN: So, I have an un-redacted - a complete copy that could enter as an exhibit, but if I put it to any of the other witnesses, I would have - and I can show those to Mr. Mae, redacted copies of those statements.

10 THE COURT: All right, we'll deal with that as we go along, but we'll make this un-redacted copy an exhibit for whatever use we might be able to make of it. Madam Registrar, exhibit number?

CLERK REGISTRAR: Nineteen, Your Honour.

THE COURT: Exhibit 19, thank you.

15 EXHIBIT NUMBER 19: Copy of Statement - produced and marked.

MR. THOMSON: Your Honour, our next witness is Iryna Laverka. I believe she's outside the courtroom.

20 CLERK REGISTRAR: Iryna Lavreka, you're required to courtroom number one, please. Iryna Lavreka to courtroom number one.

CLERK REGISTRAR: Do you wish to swear on the Bible, or make an affirmation of oath?

THE INTERPRETER: On the Bible, please.

25 CLERK REGISTRAR: Place your hand on the Bible, please.

IRYNA LAVREKA: SWORN

(Testifying through interpreter - Russian/English)

30 CLERK REGISTRAR: Thank you.

THE COURT: Good morning.

EXAMINATION IN-CHIEF BY MR. THOMSON:

Q. Thank you, Ms. Lavreka. For clarity, we just let the translator translate when question when I ask, just so you know exactly what you say, I do know that you speak English.

5 THE WITNESS: All right.

Q. You told us your name, could you tell us your job?

A. I am a school bus driver.

10 Q. And do you know one of the co-defendants in this matter, Yana Skybin?

A. Yes.

Q. And how did you meet her?

A. Many year ago, I was visiting an elderly - a - an elderly lady at a hospital. That woman was from Ukraine. That woman was in a very difficult situation, and during that visit, I met Yana. There were people there from the organization, and Yana helped me to give information about this woman as an interpreter.

20 Q. And do you know when that was? How long ago?

A. In 2009.

Q. And do you know the other co-defendants in this matter? The Nikityuks?

A. Alla and Valentin.

Q. And how did you meet them?

25 A. At YMCA's recreation centre at the swimming pool.

Q. And did you attend Yana's birthday party in the summer of 2011?

A. Yes.

30 Q. And where was that?

A. At Yana's house.

Q. And the Nikityuks were there as well?

A. Yes.

Q. Did you give Yana a gift?

A. I don't remember, quite possibly, yes.

Q. Would it have been a valuable gift?

A. No.

Q. Do you know if the Nikityuks gave a gift?

A. I don't remember at all. I don't know.

Q. How would you characterize gift giving in your culture?

A. I would describe it by the following phrase: what matters is not the value of the gift, but the attention.

Q. Okay. Did you and Yana spend time together socially?

A. Yes.

Q. Did she ever talk about her work?

A. No.

Q. Do you think you would remember at the birthday party if a large gift was given? An expensive gift?

A. Had there been something particularly large, expensive, I think I would have remembered.

Q. Did you spend any time socially with the Nikityuks?

A. Yes.

Q. In the summer of 2011, did you see them at your booth at the 400 Market?

THE INTERPRETER: What market?

Q. 400 Market.

A. Yes.

Q. Can you tell us about your conversation or their demeanour that day?

A. I cannot name the exact day or recall the exact words, but every time they visited me at my booth, Alla

5 | tried to smile more. To say positive things. But if I asked  
her alichka (ph), how are things? How is life? She would smile  
through tears, and say everything is normal.

Q. Back to Yana, did she ever talk about the  
5 | plaintiffs to you? The Danilovs? Did - do you....

A. We never spoke about the subject.

Q. Do you know the Danilovs?

A. We met at the swimming pool as well, with  
10 | Svetlana.

Q. Did the Nikityuks ever describe any issues to  
10 | you?

A. In what time period?

Q. In around this time, summer of 2011.

A. No, no details or other situations were  
15 | described.

Q. What about in general?

A. Only after I picked them up on the street in  
the evening in October.

Q. And what did they say then?

20 | A. We did not have enough time for a conversation  
because they were in a state of shock. They were stressed, they  
looked lost. In general, they were afraid for their life.

Q. Why do you say that?

A. Because that situation was very tense.  
25 | They're not young people, and it was not acceptable for them.

Q. Would you have considered Yana a professional?

A. I think she is a professional of high level.

Q. Was she always polite and respectful?

A. Yes.

30 | MR. THOMSON: Those are my questions, Your Honour.

THE COURT: Ms. Chapman, do you have some  
questions?



MS. CHAPMAN: I do.

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. Good afternoon.

A. Good afternoon.

5 Q. You gave evidence regarding Yana's birthday party. Do you recall whether Yana opened her gifts at the party?

A. No, I don't remember.

10 Q. So, you're not sure exactly what gifts Yana received at that party, correct?

A. I can't understand. Gifts from who?

Q. Well, from any of the attendants, but more specifically, from the Nikityuks.

15 A. No, I don't remember that the presents would be opened.

Q. Or birthday cards. Do you recall if birthday cards were opened?

A. I did not concentrate at what she was accepting or what she was opening.

20 Q. So, you really don't know what value of gift Nikityuks gave to Yana, correct?

A. Of course, I can't even comment on this.

Q. And is it true you picked up the Nikityuks on October 17<sup>th</sup>, 2011?

25 A. Yes.

Q. Who contacted you to pick them up?

A. They called me so that I could pick them up on the street.

Q. Who specifically? Do you recall?

30 A. No, I don't remember that.

Q. And do you recall the conversation? What did they say?

A. I don't remember the exact conversation because I, myself, was in shock from the fact that they ended up on the street.

MS. CHAPMAN: Those are my questions, thank you.

THE COURT: Mr. Thomson?

MR. THOMSON: No questions.

THE COURT: Thank you. You can step down, thank you.

MR. THOMSON: All right, Your Honour, we have two more witnesses, but maybe we could just take a quick break, and confirm that they are here and ready?

THE COURT: All right, and will we continue to require the translator?

MR. THOMSON: Yes, for one of the - at least one of the two more. Perhaps for both of them is easiest.

THE COURT: All right, so we'll take a 15 minute break and then return?

MR. THOMSON: Yeah, thank you, Your Honour.

CLERK REGISTRAR: Order please.

R E C E S S

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

CLERK REGISTRAR: Order please, all rise.

THE COURT: Good afternoon.

CLERK REGISTRAR: Court is now resumed, please be seated.

MR. THOMSON: Your Honour, before we call our next witness, I'll just update you on the latest witness scheduling. We have - the next witness is

5 Liliya Fatykhova, and she'll be called to the stand next. I don't anticipate she'll be too long, after which our fourth witness for the day is still going to be a little bit of time. So perhaps, I'd suggest that we take a lunch in the meantime after our first witness, and then the witness we had intended to call today - the fifth witness for today, we are now going to revert that witness to tomorrow, and have two witnesses tomorrow.

10 THE COURT: All right.

MR. THOMSON: So, I suspect given - depending on how long our fourth witness takes, it might be a bit of an early afternoon.

15 THE COURT: All right, so you have one before lunch that you're suggesting, and one after lunch?

MR. THOMSON: One before lunch, and one after lunch. That's right.

20 THE COURT: All right. Initially, you told me there'd be four today and two tomorrow. That's still....

MR. THOMSON: That's still the plan, yes.

THE COURT: All right. So, you'd like to call that witness now?

25 MR. THOMSON: Yes, she's actually here in the courtroom.

THE COURT: All right.

MR. THOMSON: Liliya Fatykhova?

30 CLERK REGISTRAR: Do you wish to swear on the Bible, or make an affirmation without?

LILIYA FATYKHOVA: Affirm.

CLERK REGISTRAR: Affirm?

LILIYA FATYKHOVA: AFFIRMED

(Testifying through interpreter - Russian/English)

CLERK REGISTRAR: Thank you.

THE COURT: Did we get that spelling on the  
5 record?

MADAM REPORTER: Yes.

THE COURT: All right, thank you.

MR. THOMSON: Thanks.

10 EXAMINATION IN-CHIEF BY MR. THOMSON:

Q. You can sit if you'd like. Just for the  
record, you've told us that your name is Liliya Fatykhova. Do  
you also go by Lika?

A. Yes.

15 Q. And that's spelled L-I-K-A?

A. Yes.

Q. And your husband is Alex Severin?

A. Yes.

Q. Who will also be a witness at this trial?

20 A. Yes.

Q. Ms. Fatykhova, do you know the defendants Alla  
and Valentin Nikityuk?

A. Yes, I know them.

Q. And how did you meet them?

25 A. We met at Lake. That is an English language  
study program at YMCA.

Q. Thank you. And do you know the plaintiffs,  
Svetlana and Pavel Danilov?

A. I have never met them before.

30 Q. Did you know that Alla had a daughter,  
Svetlana?

A. Yes.

Q. Have you ever spoken to either of Svetlana or Pavel?

THE INTERPRETER: Svetlana or?

Q. Svetlana or Pavel.

5 A. Never with Pavel, but Svetlana called me once.

Q. When did Svetlana call you?

A. I cannot say for sure, it was many years ago.

Q. Do you know what phone she called you on?

What phone you received the call on?

10 A. I don't remember. It was either my home number, or my cell phone.

Q. Do you know where she got your phone number?

A. No idea. I have never given it to her. I have never met her before.

15 Q. So, had you ever spoken to her in person or on the phone before this telephone call?

A. No.

Q. Did you know who she was?

A. I didn't understand your question.

20 Q. Did - when Svetlana called you, did you know who she was?

A. Yes, Svetlana introduced herself to me.

Q. And what did she tell you during this phone call?

25 A. She asked me whether I knew where her mother was. She was concerned. She said that her mom had some sort of mental problem, and that was the reason for her concern about her mother not being at home. That she left, that she had left.

30 Q. Okay. Did you tell anyone about this phone call?

A. I don't remember exactly, but I think that I spoke with Yulia, and after that, we spoke with Yana - well,

it's not like we spoke. I just said that Svetlana called me as well.

Q. Okay. And so you know Yana Skybin? The other co-defendant?

5 A. Yes.

Q. And how do you know - how did you meet Yana?

A. In YMCA.

Q. Has Yana ever said anything to you about Pavel or Svetlana?

10 A. No.

Q. Your relationship with the Nikityuks; would you consider yourself friends?

A. I would say so.

Q. When you - were you aware that the Nikityuks had left the Danilovs' home?

A. When Svetlana called?

Q. Anytime around that time.

A. I think I learned about it later, but based on Svetlana's called - based on Svetlana's call, I understood that Alla had left the house.

Q. Did you have any interactions with Alla or Valentin after they moved out?

A. Of course.

Q. Can you explain a little bit?

25 A. Sometimes I helped them when it's necessary as an interpreter - as a medical interpreter, because they speak no English.

Q. In working with - in knowing Yana, how would you characterize her as a professional?

30 A. Yana is a very honest, decent, and compassionate person. Ready to help if you have a problem.

Q. When you told Yana about the phone call, was

this at the same time as Yulia?

A. I think so.

Q. And did you speak to anyone else at the YMCA?

A. No.

5 MR. THOMSON: Okay. Those are all my questions,  
Your Honour.

THE COURT: Ms. Chapman, do you have some  
questions?

MS. CHAPMAN: I do.

10

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. You only spoke with Svetlana on one occasion?

A. I think so.

Q. And had she called you?

15

A. Yes.

Q. And was that before or after she had spoken to  
your husband?

A. This is the first time I hear about this.

20 Q. Do you know what time of day it was when you  
spoke with her?

A. Not sure.

Q. Did Yana assist you in preparing for trial  
today?

A. No.

25 Q. At some point, did she assist you in making a  
statement as to what evidence you would present today?

A. No.

30 Q. So, I'd like to provide the witness with a  
copy of her will say statement. And as with the earlier  
witness, the other witness statements have been redacted from  
the witness version.

THE COURT: So, we're talking about Exhibit 19 in

part?

MS. CHAPMAN: In part. Page five.

MS. CHAPMAN: Q. With the assistance of the translator, could you review the statements made on page five,  
5 please?

A. I'm not sure about this one. I've never heard this.

Q. Which number are you referring to? Paragraph number six?

10 A. Yes, yes.

Q. So, do you recall making the first five statements that the translator has read?

A. Yes, but I don't remember when the phone call took place.

15 Q. And who was that phone call with?

A. I remember that she called me, yes. But I don't remember when she called me.

Q. But to prepare this statement, this document, did you speak to someone about your phone call with Svetlana?

20 A. Yana called me, and told me that the Court wants to see me.

Q. And when was that call?

A. I don't remember.

Q. Spring? Summer? Fall?

25 A. I don't remember.

Q. A month ago?

A. No.

Q. Six months ago? Do you know whether this trial had commenced?

30 A. I don't know.

Q. But you agree, you made the first five statements anyways to - sorry, to Yana in a telephone call?



A. Yes.

Q. Okay, so let's look at statement number six. It reads, "Danilovs said that the Nikityuks were not okay, 'and they did a bad thing.'"

5 MR. THOMSON: Your Honour, I mean before you answer the question, I'm just curious this is not in evidence, this is just a will say statement provided between the parties. These quotes are not in evidence as testimony from the witness.

10 THE COURT: All right. She was just being asked though, she may have said these things, so you can pursue this area.

MS. CHAPMAN: Yes, thank you.

15 MS. CHAPMAN: Q. Did you say either of those two things to Yana?

A. It can be understood in different ways. Mentally not in order, and not okay mean the same thing.

Q. To you?

A. Yes.

20 Q. And what about "They did a bad thing," did Svetlana say that to you in this telephone call that you had?

A. No.

Q. Could you finish reading the...

THE INTERPRETER: Sure.

25 Q. ...other paragraphs, please?

THE INTERPRETER: The interpreter is trying to find out the right word for the word "probing."

30 A. Number 10, I'm not entirely understanding it. Read it to me again. I didn't know anything about the assault - assault.

Q. So, Alla had never shared with you anything about an assault?

A. No.

Q. And so, is it safe to say that these words were not your words in that conversation with Yana?

A. I don't think those are my words.

5 Q. And do you recall, were you speaking Russian with Yana on the telephone?

A. Yes, yes, we always speak Russian.

10 Q. And so, if Yana had never spoken about Danilovs with you present, you wouldn't know whether she's ever spoken negatively about them.

THE INTERPRETER: I'm sorry Your Honour, the interpreter is not...

MS. CHAPMAN: Sure.

THE INTERPRETER: ...asking the question.

15 MS. CHAPMAN: Q. So, you would only know if Yana has spoken negatively about Danilovs if she had spoken to you about them, correct?

A. I don't understand entirely. It's very convoluted.

20 Q. Did the Nikityuks speak to you regarding any mistreatment of them by the Danilovs?

A. We talked about it, but without getting into much detail. I simply knew that they left their house because of the mistreatment.

25 Q. But you didn't know what that mistreatment was?

A. No.

MS. CHAPMAN: Those are my questions for the witness.

30 THE COURT: Thank you. Mr. Thomson, any further questions?

MR. THOMSON: Your Honour, no question, I'd just

like for the record to make one comment about the will say statements in that this is anticipated evidence shared....

5 THE COURT: Well, why don't we just let the witness step down, because she doesn't need to....

MR. THOMSON: Sure, yes.

THE COURT: We don't need to translate that.

MR. THOMSON: Yes, thank you, Your Honour.

THE COURT: Thank you, you're excused.

10 MR. THOMSON: Your Honour, my only comment was that this is anticipated will say evidence shared between the parties, not, for example, discovery testimony offered by the witness in the course of the litigation.

15 THE COURT: I understand that yes, my view is it has limited value unless the witness adopts it as their - what they said, or their understanding of it. That's not - they're not bound by what's written in there in terms of the way it would be on a sworn statement, for example.

20 MR. THOMSON: Thank you.

THE COURT: Is that fair, Ms. Chapman?

MS. CHAPMAN: Yes.

THE COURT: Is that a fair analysis?

25 MS. CHAPMAN: That's fair.

THE COURT: But if they adopt the statement, then it becomes their evidence.

MR. THOMSON: Understood, thank you, Your Honour.

30 THE COURT: Does that complete the testimony for this morning?

MR. THOMSON: I think that concludes our witnesses for the morning. Again, we will have one brief

witness to return to this afternoon, and two tomorrow.

THE COURT: Should we come back at two-fifteen, or later? Is that sufficient time?

MR. THOMSON: I think at two-fifteen is sufficient.

THE COURT: All right, so we'll adjourn until two-fifteen. Thank you.

CLERK REGISTRAR: Order please. Court will recess until two-fifteen.

R E C E S S

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

CLERK REGISTRAR: Order please, all rise.

THE COURT: Good afternoon.

MS. CHAPMAN: Good afternoon.

CLERK REGISTRAR: Court is now resumed, please be seated.

THE COURT: Mr. Thomson?

MR. THOMSON: I think we mentioned before our lunch break, we only have one more witness for this afternoon. Before I forget, perhaps I'll mention on the record, if we could have the sealing order reinstated...

THE COURT: Yes.

MR. THOMSON: ...overnight?

THE COURT: We can seal the courtroom so you can leave your materials here.

MR. THOMSON: Thank you, Your Honour. With that done, our next witness - our final witness for today is Alex Severin, just outside the courtroom.

CLERK REGISTRAR: Alex Severin, you're required to  
courtroom number one, please. Alex Severin to  
courtroom number one.

5 THE COURT: We'll have to check, Madam Registrar,  
with the trial coordinator to see whether we  
should - can leave it sealed on Wednesday, or if  
other courts need to use it. So, we can check  
that again tomorrow counsel?

10 MR. THOMSON: Yes, Your Honour. And I suppose the  
other half of that is we will confirm with you  
tomorrow whether or not we even need to come back  
for Thursday for our final witness.

THE COURT: Very good, thank you.

15 CLERK REGISTRAR: Sir, do you wish to swear on the  
Bible, or make an affirmation without?

ALEX SEVERIN: Firmation [sic].

CLERK REGISTRAR: Affirmation?

ALEX SEVERIN: Yeah.

CLERK REGISTRAR: Okay.

20 OLEG SEVERIN: AFFIRMED

A. Aka Alex. Business name, I go by Alex.

THE COURT: All right, you can sit down if you  
wish, sir.

25 A. Thank you.

EXAMINATION IN-CHIEF BY MR. THOMSON:

Q. Thank you, Mr. Severin. Can you start out by  
telling us your occupation?

30 A. I'm an IT recruiter.

Q. And as an IT recruiter, what types of clients  
do you work with?

A. I work with financial institutes, software development companies, insurance companies, consulting companies.

5 Q. Can you tell us a little bit about the process of matching a worker with an employer?

A. Sure. When we get a requirement from one of our clients, that they're looking for an IT specialist, they provide us with a set of skills that are required in order to do the job, and my job is to identify top three, four best  
10 candidates, in my opinion, for the role, and submit them to the clients. After that, I'm waiting for the client to provide me with a positive or negative feedback, who they would like to see for a formal face-to-face interview.

15 Q. Okay, and how many people do you talk to on an average day?

A. I would say anywhere between 10 to 20 people daily, at least.

20 Q. Okay, and what would you - what percentage of those people do you think would be from the Russian community?

A. Twenty-five, thirty percent.

25 Q. Do you know the defendants in this action? Alla and Valentin Nikityuk?

A. Yes, I do know them.

30 Q. Do you know the defendant Yana Skybin?

A. Yes, I do.

Q. How do you know Yana?

A. When we moved to Barrie, my spouse was looking for a school - English school to help her to improve her English skills, and Yana was working at YMCA, and she helped Lika to -  
35 my spouse to get into the school, and with some other programs for our kids and for Lika.

Q. And do you know the plaintiffs in this matter,

Pavel and Svetlana Danilov?

A. No, I do not.

Q. Do you recall mister - speaking with Mr. Danilov, Pavel Danilov, about a job?

5 A. I do not.

Q. Do you think there's a particular reason you wouldn't recall this?

A. I'm talking to a lot of people daily. I might have spoken to him, I might not. I just do not recall because I'm talking to many people daily.

Q. If you did speak with him, would you have known who he was?

A. No, I wouldn't have the slightest idea.

Q. And if you had spoken with him, would you know he was related to Svetlana by marriage, or to Alla and Valentin by marriage?

A. No.

Q. If you did speak to him, is there - would there be any specific reason he wouldn't have been selected for a job?

A. If I spoke to Mr. Danilov, the reasons for me not to follow up with any candidate usually are not the right technical skillset, higher salary expectation, poor communication skills, logistic - location-wise is not convenient for a candidate. There are many reasons why when I'm talking to people, I do not follow up because of those reasons, and if I even submit the candidates that I think are good and my client thinks that they are not, I'm getting negative feedback from the client. There is no reason for me to continue with the candidates.

Q. And so if you spoke to Pavel on the phone, at the time, would you have known he had anything to do with the

Nikityuks?

A. No.

Q. Have you ever spoken to his wife Svetlana on the phone?

5 A. Yes, I did.

Q. Can you tell us about that?

A. When we moved to Barrie, Svetlana asked me to help her daughter to get a job. She was fresh out of school - a person. I agreed to help if I could, and I was talking to Anastasia as well. She sent me her résumé, so I asked Anastasia what her inspirations are, where she wants to work, how much money, location. I got all the information like I do with all of my candidates, and I didn't have any jobs for her at the time, because she was junior, and I usually work with the senior roles. And three weeks after our conversation, she sent me an email saying she's got an offer from RBC and she accepted it. That was it.

Q. So, prior to this trial, if you had spoken to Mr. Danilov on the phone, would you have any knowledge whatsoever about his relationship with the Nikityuks?

20 A. No, I would not.

Q. Did Svetlana call you on just the one occasion?

A. I think so. I don't recall ever talking to her again. And again, it was such a long time ago, but I think it was only once.

MR. THOMSON: Those are my questions.

THE COURT: Ms. Chapman, do you have some questions?

30 MS. CHAPMAN: I do.

CROSS-EXAMINATION BY MS. CHAPMAN:



Q. Good afternoon.

A. Hi.

Q. You gave evidence that you don't recall speaking with Pavel Danilov in the spring of 2015, that's correct?

A. Yeah, I don't remember.

Q. And so, you don't recall the possibility that you may have spoke to him, and he advised you that he lived in Innisfil, and you said oh I live in Barrie?

A. Yeah, I might. I don't recall specifically that his name was Pavel or last name Danilov. I'm talking to a lot of people. I might have talked - spoke to - talked to him on the phone, might not. I'm not saying that I didn't, I just don't remember.

Q. Right. Did you speak with someone in order to prepare for your evidence for the trial today?

A. No. Well, I had - I've been told that I'm going to be called as a witness, and that's pretty much it.

Q. So, if I could provide the witness with a copy of the will say statement. And again, it's been redacted to just have Mr. Severin's statements available to him. So, please take a moment. If you could read those, they start on page four. There's eight statements...

A. I can see six.

Q. ...in total. Yes, so there's two more on the next page.

A. Ah, okay. Okay.

Q. Do those statements look familiar to you?

A. Yeah.

Q. And did you have a conversation with someone about this information?

A. Well, the questions were - I was asked these

questions and - about my relationship with the whole trial and everything, and that's exactly what I said.

Q. And so, who asked you those questions?

5 A. First, I believe Yana called me and asked those questions.

Q. Yes?

A. Yes.

Q. And so, did you speak with anyone other than Yana about giving this information at trial?

10 A. No, the lawyers contact me and ask me if I be willing to be a witness and provide - and repeat that - the information that I given to them. I said sure.

Q. Okay, so you mean the information that you had given to Yana?

15 A. Yeah.

Q. And when did you have that discussion with Yana? Do you recall?

A. Recently? I don't know. Three, four months ago?

20 Q. Possibly in the summer of 2016?

A. Yeah, possibly.

Q. Could you have a look, please, at paragraph 7. It states, "Under no circumstances did he hang up on the phone, because Mr. Danilov is the Nikityuks' son-in-law."

25 A. Uh-huh.

Q. So, what does that statement mean?

A. That means that the - when I was asked is there a possibility that you did not want to help, or once you learned who you talking to on the phone you hang up, and you  
30 decided not to help because of the relationship, I said it's not because I didn't know that then. I would never do that anyway. That's probably what it means.

Q. Okay. So really, you don't recall whether you may or may not have hung up on Mr. Danilov...

A. Yeah.

Q. ...correct?

5 A. Exactly.

Q. And so, were you surprised when Yana was asking you these questions, given that...

A. Yes.

Q. ...you knew nothing about this?

10 A. Yes, I've - I wasn't even aware that something like that could come up, and I didn't even know that they related somehow, because I didn't know those people.

Q. And so, are you now familiar with the accusations Nikityuks are making...

15 A. I'm not familiar with accusation.

Q. ...against Danilovs?

A. I know that there's a trial, and I know that - there's a trial, and - I don't even know what the whole thing is all about, to be honest with you. It's - I didn't - to be  
20 honest with you, I know that there's some, if I'm not mistaken, some dispute between parents and children. To what extent, I don't know what they trying to divide, or what they trying to do. What I wanted to do here, is to come and to tell the truth. That's exactly what it is, that if I've spoken to Mr. Danilov, I  
25 would never hang up because of the relationship, because I had no clue, and if I didn't follow up with Mr. Danilov, if I spoke to him, the reasons would be more professional rather than anything else. That's pretty much it.

Q. So, Mr. Danilov has given evidence that you  
30 did speak in the spring of 2015...

A. Okay.

Q. ...and that you had a possible job for him,

and you agreed to email that job information to him in three minutes.

A. Okay.

5 Q. And he said as soon as he told you that his name was Pavel Danilov...

A. Okay.

Q. ...you hung up on him, and never sent that correspondence. But you have no recollection of any of that...

A. No.

10 Q. ...correct?

A. No, and - I'm sorry, I don't. I don't.

Q. But if you had known any of the details related to the dispute between the Danilovs and Nikityuks, would that have affected him as a candidate?

15 A. No.

MR. MAE: Your Honour, I'm sorry.

MR. THOMSON: It's a hypothetical question, I'm sure the witness can - supposedly he was thinking at the time, given what he knows now?

20 A. No, but I can answer it.

MR. THOMSON: Go ahead.

THE COURT: I'll allow it.

A. If I've known Mr. Danilov prior to the whole thing, I would probably would, you know, would not call him or  
25 would call him. My job and my decision to call a candidate, first and foremost, based on the skillset that the person represents. I go actually on the internet, and I'll look for those people on the job boards, in my own database, through my own network, through the LinkedIn. I identify 10, 15 people  
30 that, based on their profile, looked like good people. Could be potentially a fit for the job, and I call them. When I talk to those people, the last thing on my mind - the personal or

anything else. I want to make sure that the person is - meets all the criterias that my client has asked me to do. And there's a number of candidates I talk to for 5, 10, 3, 4 minutes. And if I feel, with my intuition, with my gut feeling, that those people are not a good fit, I usually cut the conversation short, and never call them again. That's my job as a recruiter. I might not be the greatest recruiter, but that's how I do business. So, if I knew Mr. Danilov, logically speaking, if I knew everything that's going on, I would probably wouldn't even touch that because it's just none of my business, right? And I wouldn't call Mr. Danilov if I knew that something's happened in between the parents, but the - probably the reason that I did call him. Probably even speaks about that I had no idea who he is, and what is going on, if anything.

Q. And in terms of speaking with Svetlana on the telephone, you don't recall specifically her calling your phone looking for her parents?

A. No. Did she? Was she talking to me?

THE COURT: Well, you just have to answer the questions.

A. No, I don't recall.

THE COURT: Ms. Chapman....

A. I don't remember.

THE COURT: Ms. Chapman gets to ask the questions.

A. Yeah, I'm sorry.

Q. Very good. Those are my questions, thank you.

A. Thank you.

THE COURT: Any re-examination?

MR. THOMSON: No questions, Your Honour.

THE COURT: Thank you sir, you can step out.

ALEX SEVERIN: What do I do with this?

THE COURT: Just leave it there for now, thank

you.

ALEX SEVERIN: Thank you.

THE COURT: Mr. Thomson?

MR. THOMSON: Your Honour, those are our witnesses  
5 for today. I thought we said we have two  
scheduled for tomorrow, but short of any  
housekeeping matters, that's everything from us  
today.

THE COURT: All right, we'll deal with those  
10 matters tomorrow, and then we can speak about  
Thursday if - depending on your - what you predict  
for Thursday.

MR. THOMSON: Thank you, Your Honour.

CLERK REGISTRAR: Order please. Court is now  
15 adjourned for the day.

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

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 November 21, 2016, held at 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811\_01\_20161121\_085236\_\_10\_MULLIGG.dcr, which has been certified in Form 1.

20

, 2017

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Spencer Edgar

(Signature of authorized person)

25

30

November 22<sup>nd</sup>, 2016

THE COURT: Mr. Mae.

MR. MAE: Your Honour, the next witness Ruth  
Millar.

RUTH MILLAR: (SWORN)

EXAMINATION IN-CHIEF BY MR. MAE:

Q. Mrs. Millar, were you an employee at the  
YMCA?

A. Yes.

Q. And what position were you employed in?

A. I was settlement counsellor in the last two  
years I think I worked I was also the supervisor.

Q. And how long were you at the YMCA?

A. Twenty-three years.

Q. And when did you retire?

A. June 29<sup>th</sup>, 2012.

Q. And what roles did you have while you were  
at the YMCA during that period of time?

A. I basically - I was the settlement  
counsellor until Yana was hired.

Q. In terms of your educational background and  
qualifications, do you have any formal qualifications?

A. I have a bachelor degree in science  
nursing, BScN. I worked as a public health nurse and I  
through the years I worked as settlement counsellor. I  
was - I went to as many conferences and courses as I  
could to be able to do the job effectively.

Q. Dealing with events prior to your  
retirement, how clear is your memory of events in the  
year 2011/2012?

A. It's relatively clear. There are things I  
will remember and things I will not.

Q. Has anybody discussed with you the evidence  
which is being heard in this court during this trial?



A. No.

Q. So you were a settlement counsellor. Can you give the court an overview of the settlement services, newcomer services?

5 A. The job of a settlement counsellor was to do information and referral and assist clients to access services as was required in order to help them to settle in Canada.

10 Q. Was there any charge made to clients for those services?

A. No.

Q. In 2011, where were you physically based?

A. Barrie.

Q. At which location?

A. The Bayfield Mall.

15 Q. Was Yana Skybin located at the same office?

A. Yes, she was when she worked in Barrie, but she does an itinerate so she went to Collingwood, Midland, Orillia and Innisfil as well.

20 Q. When Yana Skybin was hired initially who provided her with her on the job training?

A. I did.

Q. And can you give an overview the type of training you provided to her?

25 A. I advised her about what kinds of things we needed to do. She sat in with me for - to see how I dealt with clients and she was given orientation as far as doing her stats and things like settlement.org and so on so that she would know what resources were available to you in the community.

30 Q. Prior to being with the Nikityuks, had you have any experience with Yana or dealing with any types of abuse situations?

A. Yes, there was a lady - at least one person who we dealt with - that she dealt with and worked with

the shelter in Orillia.

Q. And what about you, have you dealt with abuse situations before 2011?

5 A. Yes. I had a very close relationship with the staff - with the legal advocate at the shelter, Barrie shelter and with Dorothy who's the housing person. We worked regularly because in immigration there's always the issue of power. When you first come, you don't have a lot of power and so that's the opportunity for abuse is - is there.

10 Q. So would you say that abuse, or dealing with abuse situations was regular?

A. Yes.

15 Q. In terms of the training you provided to Yana, did you give her any advice or information as to how to deal with situations that were unusual?

20 A. To be quite truthful, I can't remember that far back. That was a long time ago, but on - every abuse situation involves information and referrals. So those would be quite standard no matter what the situation would be.

25 Q. And you indicated you were her supervisor were you Yana's supervisor?

A. Yes.

Q. And did you have somebody supervising you?

25 A. The person who did my performance review was Susan Green.

Q. In 2011 how far away was your physical office to the one used by Yana?

A. It was closer than we are.

Q. Closer than I am.

30 A. Yes.

Q. And what about Susan Green's office where was that?

A. Susan Green's office was in between. Do my

office was here, Yana's was here across the corridor and Susan Green was right here.

Q. So you said that the offices were across the corridor, how wide would you say the corridor was?

5 A. Six feet.

Q. And when Yana was in the office - how often would you speak with her?

A. How often would I speak with her? I would spoke with her every day she was there.

10 Q. Would Yana come to you with questions as to how to deal with matters?

A. Yes, but she was fairly competent too she handled things well.

15 Q. And you touched upon earlier on the role of a settlement counsellor or settlement services. Is that the role that Yana held?

A. Yes.

20 Q. I'd just like to ask you a little bit more detail. Can you explain to the court what obligations Yana would have had specifically in dealing with the Nikityuks in her role as a settlement counsellor?

25 A. In her role as - her obligations would be to provide them with information about settlement topics and there was a list about those settlement topics. If they came to her with any problems or concerns that were - she would advise them about agencies in the community or people that they should talk to in order to provide information and services that would assist them in  
30 whatever their needs were.

Q. Was it part of a settlement counsellor's job to provide legal advice?

A. No; we would refer them to get legal

advice.

5 Q. And going back to 2011, do you have any knowledge as to whether Yana provided legal advice to the Nikityuks?

A. My understanding was that we - she referred them to the legal advocate at the shelter who then would provide that kind of information.

10 Q. And did you provide any legal advice to the Nikityuks? I'm sorry?

A. I'm just repeating your question. Only in the sense that - no, no. I referred them to the community - we refer them to the community legal clinic for that kind of advice.

15 Q. Could you explain to the court what, if any, obligations of confidentiality Yana would have had or you would have had in dealing with the Nikityuks.

20 A. There' a confidentiality agreement. There was a paper that we could only talk with people outside without - only with their expressed written approval. So if we wanted to talk to someone then we needed them to sign a release that was specific to what was involved.

25 Q. In dealing with the Nikityuks, did Yana come to you at any stage for guidance or assistance?

A. Yes, we talked about what we - what we should do.

30 Q. And so dealing with general questions, in dealing with the Nikityuks, to your knowledge as her supervisor, did Yana do anything that went beyond the boundaries of her role as a settlement counsellor?

A. No, I don't think so.

Q. Were the steps taken by Yana consistent

with what you would have done in the same situation?

A. Yes, I believe so.

Q. How did you first become aware of the Nikityuks?

A. They came - when they came to English class, my recollection from my notes was that they - they wanted to hear about - actually their daughter wanted them to be able to meet some people who were their age who were Russian speaking so I assisted them in finding a lady who would do that.

Q. In terms of the problems that the Nikityuks were having, do recall when that was first brought to your attention?

A. I can't really say specifically because it's not documented in the file, but I was aware fairly early on, probably the end of September beginning of October.

Q. And would that have been 2011?

A. I would think so.

Q. Do you recall if you gave any - Yana any advice at that initial stage as to what she should do or not do?

A. We discussed and she said what she was doing and it was appropriate so.

Q. Did you ever give her any advice to keep a log?

A. I think so, but that's appropriate in any case as far as - as far as keeping - keeping records, we're supposed to keep records in any case of we've - what's happened with clients.

Q. You mentioned Susan Green previously, was

she involved in dealing with the Nikityuks?

5 A. Well, she's the - she was the English language link coordinator so her responsibility was to place them in class and do those kinds of things. So she was aware of the family. She was the one that asked me if I would have asked the Nikityuks if they could provide a ride for someone else in English class who lived in Innisfil.

10 Q. And after the Nikityuks had complained about the situation in which they found themselves, do you recall if Susan Green was involved in the process at that time?

15 A. She would have been aware, let's put it that way. That's my belief anyways, that's what I remember at this point.

20 Q. Can I have the witness be shown the green binder, Volume I? And you have before you the green binder. If I can you firstly to find with your thumb the large green Tab B.

A. B.

25 Q. And in that section I'd just like to go to Tab 23. You have a letter there in front of you dated October the 25<sup>th</sup>, 2011.

A. Uh huh.

Q. Do you recall seeing that letter previously?

A. Yes. This is a standard letter.

30 Q. And what would have been the purpose of this standard letter?

A. Just to indicate that a student was attending in English instruction for newcomers. It could

be used to get bus - student bus tickets.

Q. And that letter is signed by Susan Green.

A. Yes.

5 Q. And can you go to Tab C11? Do you have that document in front of you?

A. Uh huh.

Q. It's a letter dated December the 13<sup>th</sup>, 2011.

A. What is it supposed to be?

10 Q. It's a letter on YMCA head paper December 13<sup>th</sup>, 2011. You still might be section B. You need to go forward to C.

A. Hang on. Am I in B or C? C, okay. I need to go C11?

15 Q. Yes, please. Thank you.

A. I'm in the wrong place. Okay, yes.

Q. And do you have that letter in front of you?

A. Yeah.

20 Q. Is that a letter you've seen previously?

A. Yes.

Q. And we see the letter signed by Susan Green. Could you explain the purpose of that letter?

25 A. That letter was given to people who were on Ontario Works to report their attendance at school. It was given to the student who gave it to their Ontario Works worker.

30 Q. Do you recall having ever had any dealings with Susan Green specifically with the Nikityuks and problems they had reported?

A. Yes.

Q. Can you give some details whatever you can

remember?

5 A. When we were having discussions about referrals and about the - about their Ontario Works entitlement, we would - we discussed together and agreed to what - how would we would proceed as she was part of - I believe she was part of that conversation.

10 Q. Thank you. You mentioned earlier on that you met the Nikityuks. Did you deal with them personally in 2011 after they reported their problems to the YMCA?

A. Yes.

Q. Now, you don't speak Russian, do you?

A. No.

15 Q. So in terms of communicating with them, how or what - did you communicate with them?

20 A. Okay. The way I would have communicated with them as I would have gone to Google translate and typed in what my question to them and then translate and ask them to repeat it and ask did they understand and they would - they would advise yes or no.

Q. Do you have any recollection of whether you had any conversations with them in English?

25 A. Yes, I had conversations with them in English because I had to ask them, do you understand. So I would say it in English and then we would type it into Google translate so it was clear and if I was having issues and Yana I could find somewhere out there because she was itinerating, then I would get her on the phone as well and she would interpret that way.

30 Q. Now, you have the green binder in front of you, can you go back to the beginning of the binder to section A and go to Tab 2.



A. Uh huh.

Q. Do you have that document in front of you?

A. Yeah.

Q. And do you recognize that document?

A. Yes.

Q. And the document has multiple pages maybe just to quickly flick through them just to confirm before I ask you what the document consists of.

A. Okay.

Q. Can you tell me what these documents are as the case may be?

A. They're notes from their file.

Q. And whose notes are they specifically?

A. I believe they're mine.

Q. In terms of belief, maybe we can just look through them a little more closely. The first note you have there is October the 27<sup>th</sup>.

A. Uh huh.

Q. There's some handwriting on the left hand side of the page.

A. Yes.

Q. Do you know whose handwriting that is?

A. Yeah, that's mine.

Q. And I see some Russian in the middle.

A. Uh huh.

Q. Is that something you would have prepared?

A. Yes.

Q. And was that with Google translate?

A. Yes.

Q. Let's go to the next page. Do you have October the 31<sup>st</sup>, 2011?

A. Uh huh.

Q. And there's some writing on the left hand side of the page, do you recognize that handwriting?

A. Uh huh.

Q. And whose handwriting is that?

A. That's mine.

Q. And the notes for October 31<sup>st</sup>, 2011 are they your notes?

A. I believe so.

Q. And just as a general premise, when you were preparing notes, so you had a date, for example October the 31<sup>st</sup> 2011, how long after the event would you be preparing these notes?

A. The same day.

Q. And would that be consistent with all of your notes?

A. Pretty well, yes.

Q. So if we go to the next page. There's an entry November the 3<sup>rd</sup>, 2011.

A. Uh huh.

Q. Is that - is that your note?

A. Yeah.

Q. And all we're doing is just confirming they're specifically they're your notes. The next page is another entry for November the 3<sup>rd</sup>. Do you have that?

A. It looks like exactly the same thing before. No it isn't.

Q. It's slightly different.

A. Slightly different.

Q. Is that your note as well?

A. It looks like mine; let's put it that way.

5 Q. The next one I believe in the copying sequence - they seemed to be copied out of order and I do apologize. And the next one, is that dated the 22<sup>nd</sup> of December?

A. Uh huh.

Q. And same question, is that your note?

A. Yes, it looks like my note.

10 Q. The next page, December the 20<sup>th</sup>, do you have that?

A. Uh huh.

Q. And there's some writing in the left margin, is that your handwriting?

A. Uh huh.

15 Q. And would that be your note?

A. Yep.

Q. The next page December the 13<sup>th</sup>, 2011.

A. Uh huh.

20 Q. And there's writing in the left hand side of the margin, and is that your handwriting?

A. Yes.

Q. And is this your note?

A. Uh huh.

25 Q. And we're going to come back onto this note in a moment, but go to the next page. We have entries for December 15 and December 16; notes in the left hand side, are they your notes?

A. Uh huh.

30 Q. Next page November the 15<sup>th</sup>, 2011.

A. Uh huh.

Q. Is that your note?

A. Yeah.

5 Q. And same question with respect to the  
handwriting.

A. Uh huh.

Q. And then we have the next page April 16<sup>th</sup>,  
2012.

A. Yeah.

Q. Very short entry and there's some writing  
on the left hand side of that, is that yours?

10 A. Uh huh, yeah.

Q. And then the last page because they were  
copied out of sequence is December the 22<sup>nd</sup>, 2011 which I  
believe we've already seen. So I won't ask you the same  
question twice. So with respect to the notes, why did  
you keep notes?

15 A. Why did I keep notes? That's part of the  
job to indicate what we had done and accomplished so that  
we could proceed forward to plan. That's the way I  
always kept my notes.

20 Q. In addition to the matters set out in these  
notes, did you have any other involvement in dealing with  
the Nikityuks? Did you write any letters or emails?

A. Whatever I would have done I would have put  
it in the file.

25 Q. I'd like you to go to firstly to - sorry,  
when you say whatever you would have done, you would have  
put in the file, does that mean writing letters, sending  
emails and your notes?

A. Yes, I believe so.

30 Q. Can you go to Tab B29?

A. B29.

Q. Do you have that in front of you?

A. Uh huh.

Q. And do you recognize that document?

A. Again, this is a letter, do I need to be behind it? No, I need to be behind it?

5

Q. Sorry, are you at B29?

A. B29.

Q. It should be a fax of October 27<sup>th</sup>.

A. Uh huh.

10

Q. You have that?

A. Uh huh.

Q. Did you write that fax?

A. Yes.

15

Q. And can you explain to the court the purpose of that fax?

A. Well, in order for Ontario Works to be able to speak with Yana and myself, they required a release and we also required a release in order for us to be able to talk to them as well for the Nikityuks. So we obtained a release from the Nikityuks to allow us to be able to speak to Ontario Works about their situation.

20

Q. And if we go to Tab C - sorry, B41. Do you have that document in front of you?

A. Uh huh.

25

Q. And what is that document?

A. It's an email.

Q. Dated 29<sup>th</sup> of November 2011.

A. Uh huh.

Q. And did you write that email?

30

A. Yes, I would have written that.

Q. And it's addressed to Bev at Barrie Shelter, who's Bev?

5 A. Bev is the legal advocate that Yana referred them to for assistance.

Q. And what was the purpose of you communicating with Bev on this occasion?

A. We were asking for her advice about what to do with the letter.

Q. And which letter specifically?

10 A. Actually no, basically should they cash the cheque, that's what it was about.

Q. And I see your email is copied to Dorothy.

A. Uh huh.

Q. Who's she?

15 A. She's the housing support person at the legal - at the woman's shelter.

Q. And I see also you copied it to Yana Skybin.

A. Yes.

20 Q. If you can go to Tab C10. Do you recognize that document?

A. Yes.

Q. And that's a letter - or a fax dated December the 13<sup>th</sup>, 2011. Did you author that fax?

A. Yep.

25 Q. And it's addressed to community legal worker Krista DeVroom. It's a very brief letter, can you explain what you were doing at that time?

A. I was providing them with the information about their Ontario Works entitlement issues.

30 Q. Can I ask you then to go to C17? And do you have that letter dated December the 16<sup>th</sup>, 2011?

A. Uh huh.

Q. Did you author that letter?

A. Yes.

Q. And could you explain to the court the purpose of that letter?

A. This was - we had were - referred the Nikityuks to community legal clinic about their Ontario Works entitlement and this was the documentation that we sent them to assist them in handling their case.

Q. And if you overleaf to C18. There's another fax there December the 20<sup>th</sup>, 2011. Do you have that?

A. Yes.

Q. And did you write that fax?

A. Yes.

Q. And could you explain the purpose of that fax?

A. That was - was to provide the information to the lawyer further to their case.

Q. And lastly with the documents just for a few minutes, if you could go to C20. Do you have that document?

A. Uh huh.

Q. It's also a fax dated - or a letter dated December the 20<sup>th</sup>, 2011. Did you author that letter?

A. Yep.

Q. And what's the purpose of that letter?

A. This was the information about their internal review request. There were further documents about that. It's a long time ago.

Q. I'm actually going to take you to those documents shortly so you don't need to trouble yourself

to find them just yet. So would it be fair to say that you were involved in assisting the Nikityuks?

A. Yes.

5 Q. And after you became involved in the situation, did you take the time to review the steps that Yana Skybin had taken prior to your involvement?

A. I was already aware of what she had done so it wasn't a matter of reviewing, this was the next step in the process.

10 Q. Were you satisfied with the steps that Yana Skybin had taken?

A. Yes.

15 Q. Have you at any time instructed Yana Skybin to destroy or alter her own notes?

A. No.

20 Q. I'd just like to take you back now, and I'm sorry for making you flip back and forth to your log or your notes at Tab at A2. And specifically I would like you to go to the entry of December 13<sup>th</sup>, 2011. You have those notes in front of you.

A. Uh huh.

25 Q. These notes relate to - appear to relate to a meeting which took place on December the 13<sup>th</sup>, 2011. I've asked this previously, but I'll ask it again. Can you recall when you would have prepared this note?

30 A. I probably would have done at the time we had the meeting, it would have been that day but very likely I sat at my computer as we had the conversation and listed these.

Q. I would like to draw you specifically to a couple of things. First of all, can you tell the court



who would be present at that meeting?

A. Well, it says - it says here that Yana, myself, Dorothy, Kim Clark, Alla and Valentin were there.

5 Q. Would you have any independent recollection of that meeting or would you just be relying upon your notes?

A. I would say I'm relying on my notes at this point.

10 Q. I'd like you to look at paragraph 10. There's an entry there that says for letter internal review list each decision letter and why we don't agree with it and list every decision date. Does that ring any bells or can you elaborate upon -

A. Which, which?

15 Q. Paragraph, bullet point 10.

A. Ten. That would have been what I was advised by - I don't have an independent memory of that situation.

20 Q. Okay. What about number 14 to write a letter for internal review with Ontario Works Simcoe County? Does that - can you explain that?

25 A. My guess is that - my recollection, this is a long time ago and that's a lot of detail. Would have been that they would have - that the Nikityuks would have needed to have written a letter to explain which is what was done on the 20<sup>th</sup>, I guess. That would be my guess as to what that would be.

30 Q. And do you - did you assist the Nikityuks in writing any letters?

A. Yes.

Q. And can you recall now any detail of

assisting with them with the letter?

5 A. We discussed it. Yana - they came in for the appointment and Yana was the interpreter and they told their story and I typed.

10 Q. You typed. Can I ask you to go to C, section C Tab 21? Actually before we go to 21, let's go to C17. We saw this letter earlier on, the letter December the 16<sup>th</sup>. Can you go back of that - firstly we have some enclosures. Number one it says to follow the letter requesting an internal review and supporting documents.

A. Uh huh.

15 Q. An internal review form. If you can go to the back of that document. And I do apologize the pages are not numbered.

A. You want me to go to the end of this particular -

20 Q. Of that section, yes, please.

A. Uh huh.

25 Q. We see a letter from Valentin and Alla Nikityuk. It's actually dated December the 19<sup>th</sup>.

A. So where is this in 17?

30 Q. It's in 17 near to the back. So if we go from the back. The last page you should have is a fax cover sheet.

A. Uh huh.

Q. And then before that three pages is a letter.

A. Uh huh. Oh yes, right.

Q. Is that the letter that you drafted?

A. Yes, I imagine that would be the case.

5 Q. And for the three pages before that there's a Russian translation.

A. Yep.

Q. Is the Russian translation something that you did?

A. Yes, we would have done it that day. We would have taken it and put it in Google translate and it would be translated.

10 Q. And in fact if we look at the third page of that Russian translation, I believe there's a reference to Google translate on the last page.

A. Yes.

15 Q. And then if can go forward to C21. Let me ask you a question first. Who was the Russian translation given to?

A. Community legal clinic. I would imagine that would have - and well, Alla and Valentin would have that too. They would have been given that.

20 Q. And -

A. That would be my - that would have been my practice would be to give them the information that we've done.

25 Q. Now, the information that went into the letter, you already indicated that it came from the Nikityuks, can you explain as best as you recall how the information came to you; how you were able to type the letter?

30 A. Well, we were all in the same room. They sat and told Yana their story and I typed.

Q. So basically you were the secretary.

A. Well, yes, sometimes I would - probably I

could have answered I would have - can you tell me what happened next, that kind of thing, but on the whole basically they were telling their story.

Q. And if we go to Tab C21.

A. Uh huh.

Q. There's a further version of the letter dated December the 20<sup>th</sup> and three pages in we see that it was signed by the -

A. Nikityuks.

Q. - Nikityuks. Do you have any personal recollection of the signed copy?

A. Not quite. Did I remember the signed copy?

Q. That's correct.

A. It's a long time ago, I see it here in the file. I couldn't say that I could see it in my mind's eye at this point.

Q. Perfect thank you. That's a letter written by the Nikityuks or typed by you, can you explain again what the purpose of that letter was, what -

A. The purpose of the letter was to explain their situation in order to be able to make an appeal of their denial of Ontario Works because they were sponsored so the purpose was to show that the sponsorship was broken and therefore they would be eligible for Ontario Works.

Q. Can I ask you now to go back to section C, Tab 19? Do you have that document in front of you?

A. Uh huh.

Q. And it's a letter on YMCA head of paper dated December the 20<sup>th</sup>, 2011 and it's a letter written by Yana Skybin. Do you recall having ever seen that letter

previously?

A. I think so. It's a long time ago.

5 Q. And if you overleaf to Tab C20 is a letter, which you've already identified from December the 20<sup>th</sup> and there's an attachment reference in it, the letter request an internal review and supporting documents as sent.

A. Uh huh.

10 Q. Do you know if that letter written by Yana would have been one of the enclosures with your fax?

A. Unless I wrote it, I couldn't say for absolute certain, so at this point I can't tell you.

15 Q. Okay. In terms of being Yana's supervisor, did you review each and every letter or email she ever authored?

A. No.

20 Q. And specifically in view of the Nikityuks, did you review each and every communication that she had authored?

A. No.

Q. Why not?

25 A. Because she's a professional, independent settlement counsellor and it was her responsibility as part of her job description to do those things.

Q. Would it have been standard practice for you to review everything that she did?

A. No.

Q. And again, why not?

30 A. Well, number one, it was physically impossible to do that, but number two she was hired to do those kinds of things and you know performance review and so on, one might look at things, but the day-to-day

5  
responsibilities of the job she need to go forward with.  
So I also was a settlement counsellor and so I had my own  
case load as well. So it was physically not feasible to  
do that, but from a professional perspective she was  
capable and responsible to carry out and do those things  
herself.

Q. And in 2011 were you satisfied with her  
capabilities?

A. Yes.

10  
Q. You mentioned earlier on that you had  
interaction with the Nikityuks. Did you believe their  
story? Did you believe their complaints?

A. Yes.

15  
Q. And obviously not being able to speak  
Russian, why and how can you say that?

A. Well, I guess we had the - well, there was  
no reason for them to - let me think about this. They  
were lovely people who had issues and this was not  
unusual for things - for people to have such things.  
20  
There was no reason not to believe them, and Yana we  
discussed this and Yana explained it to me what happened.

25  
THE COURT: I just want to raise one potential  
issue of one witness providing testimony that's  
oath helping for another witness.

MR. MAE: I agree Your Honour.

THE COURT: It's not really appropriate unless  
there's some specific reason for that.

30  
MR. MAE: No, no, Your Honour. I'll just ask  
the question in a slightly different way.

Q. What was the Nikityuks' demeanour like when  
you were dealing with them?

5  
A. When it came to writing the letter, they were very upset. It was a very disturbing situation for them to be able to have to say these things.

Q. And you recall that now specifically?

A. Yes. As a matter of fact, Yana said that we need to stop because Alla is so upset about saying these things that she needs time to compose herself.

10  
Q. And that's something that you physically recall from being in the room?

A. Yes.

Q. You mentioned Yana quite a lot. Did Yana say anything to you hostile or malicious about the Danilovs?

15  
A. No.

Q. Based upon your interaction with the parties, did it appear to you that Yana was encouraging the Nikityuks in any way?

A. No.

20  
Q. Based upon your personal observations as her supervisor, how would you describe Yana's approach and sentiments to the - sorry, not the sentiments, her approach to the situation?

25  
A. It was quite measured actually. She thought about exactly what needed to be done in order to assist them and proceeded to do so with them.

Q. And do you recall having discussions with her about that at the time?

A. Yes.

30  
Q. Have you ever met the Danilovs in 2011?

A. I might have seen Mrs. Danilova in passing but otherwise no.

5  
Q. Were you contacted by Mrs. Danilov or Mr. Danilov about the Nikityuks?

A. I think there was one point where - it was the business about introducing them to another Russian speaking lady, but otherwise, no I was not involved.

10  
Q. You're aware, are you not, that Mrs. Danilov was seeking information as to the whereabouts of her parents after they left home?

A. Yes.

15  
Q. Do you have any comments as to whether Yana or anybody from YMCA should have revealed that information to her?

A. We - when they first came to us, we signed the confidentiality list - form and it says we cannot give information about them about their expressed written approval. That includes sponsors. So if you and if they did not give our approval, we could not give that information.

20  
Q. In 2011, were you aware that Yana Skybin had a social relationship with the Nikityuks?

A. Yes.

25  
Q. Did you have any problems with that as her supervisor?

A. No, not really. She's lived within the Russian community so there's no reason why she would not know a number of people in that community.

30  
Q. Did the YMCA have any written policy in effect prohibiting staff members from socializing with their clients?

A. Not that I'm aware of.

Q. Back in 2011, was there a written policy in



effect at the YMCA for dealing with situations of elder abuse?

A. Not that I'm aware of. Let's put it that way.

Q. So what was the practice or the protocol for dealing with any complaints of elder abuse?

A. Well, the policy would have been to refer to the shelter especially if it was female, to legal advocate to get information and advice and to move forward from there.

Q. And what type of information was available at the YMCA for dealing with those situations?

A. It would be CLEO pamphlets.

Q. And when you say CLEO, what -

A. Community Legal Education Ontario provides a wide array of pamphlets on these kinds of legal issues.

Q. And are those pamphlets freely available for your staff members?

A. Yes.

Q. And you have in front of you still the green binder, can you go back to Tab B3? Sorry, A3, A3.

A. I would also say that since we were in the internet age, that all these pamphlets are available on line so that would also be the - A3, is that what you said?

Q. That's correct, thank you. Is that the pamphlet that you were referring to?

A. Yes, that's one of them, yeah.

Q. And you say one of them and in fact I was going - if you can go to page 39 and I appreciate my friend doesn't have a paginated copy so I walk over to

take him to that page. The document from the Province of Ontario what you need to know about elder abuse is that another -

A. Yes.

Q. - document that was available?

A. I would think so. I can't say absolutely because that's a long time ago.

Q. In terms of staff awareness of the resources, generally how was staff made aware that these resources were in the office?

A. They were given to them. When these kinds of things would arise, and we would look at them now, and we would distribute them to the appropriate people.

Q. And you mentioned internet resources, did the YMCA have any specific internet availability or online resources for information?

A. Oh yes, it was a very large part of how you gave resources to people. There was settlement.org which is a website for immigrants. There was the CLEO websites so all those were available. All of us had training in terms of 211 information and referral so we would be able to find them based on that or based on our - based on our experience at workshops or whatever.

Q. We know in 2011 the YMCA had a child abuse policy. Is that a document would have been familiar with in 2011?

A. I don't remember.

Q. You don't remember. Were you familiar from 2011 familiar with the phrase 'vulnerable adults'?

A. Somewhat.

Q. And what did you recall, what was your

5  
understanding in 2011 as to what a vulnerable adult would have been?

A. Vulnerable adult would be someone who had difficulty making decisions or was - had - was vulnerable to having people abuse or use them. That would be my....

Q. And back in 2011 would you - did you view the Nikityuks as being vulnerable adults?

10  
A. Only in the sense if they didn't speak English otherwise they were quite capable of deciding and making their own decisions about life.

Q. I'd like to jump back to the role of settlement counsellor but specifically - sorry generally staff obligations. Do you recall in 2011 whether there was a staff code of conduct in the YMCA?

15  
A. No.

Q. You don't know. Was there any written policy in 2011 to your knowledge with respect to staff receiving gifts from clients?

20  
A. There was a meeting and a discussion that we would not, but I don't remember seeing it absolutely in writing.

Q. Back in 2011 were you aware that Yana Skybin had received - sorry, I'll rephrase it. If a staff member in 2011 specifically Yana had received a birthday gift from - or a personal gift from the Nikityuks would that have caused you any concern?

25  
30  
A. Probably not. Sometimes people gave us gifts and the problem was how to be gracious in saying no. All right. And sometimes it would - you just accepted it as that.

Q. While you have that document in front of

you, if you can go to Tab A9. Do you recognize that document?

A. Yes.

Q. And what is that document?

A. That's the statement of confidentiality and privacy statement.

Q. And that's what you were referring to earlier on in your evidence?

A. Yes. Every client when they arrive sign this paper.

Q. As Yana's supervisor, when Yana took the complaint of abuse from the Nikityuks, should she have taken it upon herself to report the matter to the - to any authority such as the police?

A. No. That would in the responsibility of the person.

Q. Should Yana have taken it upon herself to contact the Nikityuks' doctor?

A. Well, without their expressed written approval, we could not have done any of those things.

Q. When a YMCA patron complains of abuse, and shows evidence of the abuse to the YMCA counsellor, was it the YMCA's - sorry, did the YMCA counsellor have any obligations to preserve that evidence such as take photographs?

A. No. That would be the client's responsibility.

Q. I'd just like to talk about Yana's - sorry, was Yana subject to performance reviews?

A. Yes.

Q. And who would have conducted those

performance reviews?

A. Initially Susan Green and then when I became her supervisor, I was responsible.

5 Q. And the performance reviews, is that something that was specific to Yana or specific - or across the board with YMCA?

A. It's YMCA policy.

10 Q. And how often are the performance reviews conducted?

A. Every six months.

15 Q. And is the performance review a formal process?

A. Yes.

20 Q. And tell us what you can recall of a typical performance review, how it would be conducted?

A. There's specific forms and ratings and discussions and samples given. And I would prepare those and then we would sit down and review it together and discuss - discuss the ratings, and in the end she would sign or she would sign if she had any comments to make.

25 Q. When you conducted a performance review with an employee what do you do with it or what did you do with it next?

A. Handed it off to my supervisor, Susan Green.

30 Q. And in general do you have any specific or general recollections of performance reviews you did with Yana in 2011/2012?

A. They were quite positive. She showed especially one of the examples was the Nikityuk case and how she handled that.

5  
Q. Can the witness be given green binder Volume II? You have that, do you? If you could go to section F4.

A. Yes.

Q. You have that in front of you?

A. Yep.

Q. What is that document?

A. Yana Skybin's performance review.

10  
Q. For which periods?

A. July 1 2009 to June 30 2010.

Q. And there are multiple signatures on that front page, do you recognize any of them?

15  
A. Yep. I recognize, mine and Susan Green's in particular.

Q. And I see that next to your signature, there are three dates, November the 18<sup>th</sup>, 2009, February 2<sup>nd</sup>, 2010, July 9<sup>th</sup>, 2010. What are the significance of those dates?

20  
A. Well, as it says it was objective setting review and performance progress and overall annual performance.

25  
Q. Can you go to the next page, page 2? The comments section, is that - are they comments that you would have authored at the time?

A. Yes.

30  
Q. And help me with this; in this section problem solving and judgment, you wrote, 'She has helped Korean woman who left an abusive relationship to find community resources for her children.' That's something that you were aware of at that time or is that something that Yana would have told you she did?

5  
A. I was aware of it, but she also would have told me.

Q. Can you go to page 6? This is section headed values assessment; do you have that?

A. Uh huh.

Q. The comments on that page, are they comments you would have written at the time?

A. Yes.

10  
Q. And I'll draw your attention to the boxes responsibility and caring, could you read those out for the record please?

15  
A. 'Yana asked for clarification of our procedures and usually plans her time wisely to make the best use of her mileage account. Yana listens carefully to clients and advocates with other agencies and organizations to help clients find the best solutions for their situations.'

20  
Q. So that was your performance review in that period 2010.

A. Yes.

Q. Let's go to Tab 5. Do you recognize that document?

A. Yep.

25  
Q. And what is this?

A. It's the next performance review for the following year on July 1 2010 to June 30 2011.

Q. And again, just for the sake of clarity was it your signature on the reviewing manager's signature?

30  
A. Yes.

Q. I'd like you to go to page 2. Well, actually, let's go back. We have the date July 9<sup>th</sup>, 2010

January the 7<sup>th</sup>, 2011 and June the 17<sup>th</sup>, 2011. And on page 2 under the problem solving and part of it has been redacted to four names. Can you read out the unredacted part of your comment?

5

A. Under problem solving?

Q. Yes, please.

A. 'Yana worked with clients such as to access and problem solve with multiple agencies. Her ability to speak Russian is a real asset.'

10

Q. And when you wrote that comment, is that something that you would be aware of during that time period personally?

A. Yes.

15

Q. And if we then go to Tab 6. What is that document?

A. That's the next year's, July 1 2011 to June 30 2012 her performance review.

20

Q. And again, I see your signature on the documents.

A. Yep.

Q. That is your signature?

A. Uh huh.

25

Q. And we have three dates, July 22<sup>nd</sup>, 2011, January 13<sup>th</sup>, 2012 and January 26<sup>th</sup> 2012.

A. June.

Q. Sorry, June 26<sup>th</sup> 2012.

Q. And so you undertook that performance review?

30

A. Yes.

Q. And can you go to page 2?

A. Uh huh.



5 Q. Under problem solving and judgment again, you wrote these comments?

A. Yes.

Q. And can you read out the problem solving and judgment comment, please?

A. 'Yana worked with clients such as Alla and Valentin to access and problem solve with multiple agencies. Her ability to speak Russian is a real asset.'

10 Q. As her supervisor, is that - is that an opinion that you held at the time?

A. Yes.

Q. And this first section when would that be prepared in relation to the performance reviews? Was it the beginning, middle or end?

15 A. How do you mean; beginning or end?

Q. Okay. We have the dates next to your signature. When would those comments be put into the form?

20 A. It would have been done in January and if it was the overall performance review, it would have been June 26.

Q. So that was the mid-year performance.

25 A. If that was the mid-year one, then it would have been done June - January 13.

Q. Can you go forward to page 6? Strangely the form has two page 6's. So it would be the -

A. The last page 6?

Q. Yes. The one again with similar comments.

30 A. Yes.

Q. And there's a section there on interpersonal skills. Could you read that out, please?

5 A. I'm not sure I'm seeing what you're asking me.

Q. For some strange reason there are two pages numbered six. The one I'm looking at has part four mid-year review.

A. Oh part four, mid-review, yeah, okay.

Q. And interpersonal skills. Could you read that out?

10 A. 'Yana worked effectively to coordinate the assistance required by a high needs couple experiencing abuse with several agencies including shelter support services, support link, food bank, legal aid and lawyers.'

15 Q. And that was part of the formal review?

A. Yes.

Q. As her supervisor, if Yana had taken any missteps or acted inappropriately, would that have been reflected in her performance review?

20 A. Yes.

Q. And you touched upon it before you looked at the document, but in terms of her appraisals, her formal appraisals, how did you rate Yana's overall performance?

25 A. Excellent.

Q. Now, we know that Yana continue assisting the Nikityuks in 2012, but she was then removed as their settlement counsellor, do you know anything about that?

A. That was a decision made by Susan Green.

30 Q. Were you consulted in that decision?

A. Was I consulted? Well, it meant that I had to take the client on.

5  
Q. And do you know why the decision was made to remove Yana as their counsellor?

A. It was about that time that the letters were received from the Danilovs, but that - that's - it's my - I can't say specifically that that - I believe that would be the basic reason why.

10  
Q. After the Danilovs had complained to the YMCA, was there any investigation undertaken in respect to Yana's actions?

A. Well, we were already aware of what she was doing so it wouldn't be a matter of needing to be an investigation. I'm sure Susan talked to her but I was not party to that conversation.

15  
Q. To your knowledge was Yana ever disciplined, reprimanded by the YMCA for anything she did in relation to the Nikityuks?

A. No.

20  
Q. Would it be fair to say that if her conducted had warranted disciplinary action, it would have found its way into your performance review or her personnel file?

A. Yes.

25  
MR. MAE: Your Honour, I'm just looking at the time.

THE COURT: Yes.

MR. MAE: Is it time for a mid-morning break?

THE COURT: We can take our break now, yes. You have more questions I take it.

30  
MR. MAE: I may or may not have, Your Honour.

THE COURT: All right. So this is a good time to take our morning break. You have another

witness for today?

MR. MAE: We do. That witness is teed up for  
2:00 p.m.

SCHEDULING discussed...

RECESS TAKEN

UPON RESUMING

MR. MAE: I have no additional questions for  
Mrs. Millar at this time.

THE COURT: All right. Thank you. Ms.  
Chapman, do you have some questions?

MS. CHAPMAN: Yes, I do.

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. Good morning, Ms. Millar. We had a look  
this morning at some notes that you took while working on  
the Nikityuks' file. Do you have the book one of two  
there? So we have a look at Tab A2 which you confirmed  
were notes that you had taken on this file. Could you  
turn to Tab A1? Do you recognize these notes?

A. I couldn't say absolutely that I recognize  
these notes.

Q. Had you ever reviewed Yana's notes on the  
Nikityuks' file?

A. We mostly talked.

Q. So when you would prepare notes when  
working with the Nikityuks, would those be on a separate  
file on the computer than Yana's notes? Do you recall?

A. Well, we both had our own computers.

Q. Yes. Would you access the same Word  
document to prepare notes?

A. I still don't think I understand you.

5 Q. Did you create - if you recall, did you create your own file within Nikityuks to prepare notes as you worked on the file?

A. Yes.

Q. Okay. And so when you drafted notes, you didn't see notes from Yana in that particular document?

A. No, when I opened up the file I would see - it would be all in the same file.

10 Q. Same folder.

A. The same folder, so it would go chronologically, yes. Sorry, I didn't understand your question.

15 Q. Okay. So even though you had your own computer, you worked on a network. Are you familiar with that term?

A. Yes, I'm familiar with that term, but we dealt with paper files. They were not saved on a computer file. So what you see here is what was in the paper file. We did not have a central file that was kept on a computer data base. We had paper products.

20 Q. So if you took a note from a specific date, you would take that electronically. You would type that note?

25 A. I would type it, print it, and then - yes, I would be looking through the file and I would place it in the same file as Yana.

30 Q. But you wouldn't save that electronic note, the typewritten note into a folder on your computer or network?

A. Not necessarily.

5  
Q. And what about handwritten notes. Would those have been put into the Nikityuks' file?

A. Yes.

Q. You may not know this, but we've heard evidence that the notes at Tab A1 are Yana's notes -

A. Uh huh.

Q. - on Nikityuks. Do you know whether Yana took any notes in 2009 or 2010 regarding the Nikityuks?

A. She would have.

Q. Just to your knowledge.

A. To be quite truthful, I don't remember.

Q. Would it have been expected that Yana working with the Nikityuks in those years would have taken some notes and placed them in the file?

A. Yes.

Q. That would be your expectation as her supervision.

A. Uh huh.

20  
Q. And do you recall the date that Yana first came to you about the abuse allegations that Nikityuks were making against their sponsors?

A. I can't tell you specifically when it was whatever was documented in the file would be my remembrance would be.

Q. And do you recall whether you reviewed the file at that time when Yana came to you with these allegations?

A. No, I don't recall.

30  
Q. Do you recall that meeting with Yana any details of that meeting with Yana?

5 A. She advised me on what was happening and what she was doing and she moved forward with that.

Q. Okay. So do you recall what she said was happening?

A. Yes.

Q. And what did she tell you was happening?

A. She was telling me that they were having problems with their relationship with their daughter.

10 Q. And you said she also told you what she was doing.

A. Uh huh.

Q. Do you recall what she said she was doing? Was she addressing those problems with Nikityuks?

A. Yes.

15 Q. And how was she doing that; do you recall that discussion?

A. She was - she was referring to the appropriate agencies. She talked with the shelter. She talked to - she talked with the legal advocate. She talked with - and they were referred to a lawyer and she assisted them with interpretation to lawyer and she assisted with interpretation when it came to having them figure out their money.

20 Q. But you would agree those steps were taken over a course of a few months, correct? It wasn't all in one meeting that she said I've been doing all of those things, correct?

A. That's correct.

25 Q. Do you recall the very first moment that first discussion Yana comes to you about the Nikityuks' allegations?

5  
A. I can't really say. I know that there was an issue that they said that there was a confrontation and that they were quite upset about that, but they wanted to deal with that themselves and it was only later when they decided they didn't that she could - she would forward to - refer them appropriately.

10  
Q. So did Yana come to you after the Nikityuks advised her about this confrontation?

A. She told me yes.

15  
Q. And she told you that the Nikityuks weren't interested in taking any steps at that point, is that correct?

A. They wanted to see if they could solve that problem themselves.

20  
Q. And so then did she come to you a few weeks later? Did you have a discussion a few weeks later about some other issues that were now going on in the Nikityuks' home?

A. I believe so.

25  
Q. So you believe you had at least two separate discussions with Yana about that situation initially?

A. Uh huh.

30  
Q. And so did you advise Yana to start preparing detailed notes or a log with regards to the Nikityuks?

A. I don't remember specifically but I would tell her to document what she's doing, yes.

Q. But as her supervisor, you believe she was already doing that. She was already documenting what she was doing with her client.



A. Uh huh.

Q. With the Nikityuks, yes?

A. Uh huh.

5 Q. And so you said at some point she refers them for legal advice. How involved should a settlement - would a settlement counsellor be in that referral?

A. Well, since they don't speak English she would be relatively, fairly involved in terms of making the referral and assisting them to get to that point.

10

Q. And what about an actual meeting with lawyers or other third parties? Would Yana as a settlement counsellor be involved in those meetings? Would that be acceptable?

A. Uh huh.

15

Q. So at what point would a settlement counsellor hire an outside interpreter; someone not employed by the YMCA?

A. We don't have money to hire.

20

Q. And what about referring the clients to hire their own interpreter?

A. They could have if they wish I suppose, I don't know. Basically when we refer to the shelter, the shelter can get interpreters as well.

25

Q. The shelter could hire their own outside interpreter?

A. It is possible, not necessary.

Q. In your experience, has that happened in the past?

30

A. Yes, but we've also provided interpreters in the past.

5  
Q. And so is there any oversight of that interpretation or you rely on the YMCA employee who is acting as an interpreter?

A. We would rely on the person to do a complete accurate job. I believe she did take training from the - there's a - what do they call it, interpretation service in Toronto that you can do training for and she did take that I believe.

10  
Q. And so when Yana came to you about the abuse allegations that Nikityuks had raised with her, did she talk about bruises?

A. I think I remember that.

15  
Q. Do you recall any specifics about these bruises?

A. No, just that there was bruising.

Q. Did she say where they were?

A. I don't remember.

Q. Or what size they were?

20  
A. No.

Q. Don't recall?

A. No.

25  
Q. In your evidence this morning you said at some point in 2011, if I have this correctly, there was a discussion about a gift policy at the YMCA.

A. Uh huh.

30  
Q. There was no written policy, but there was a discussion. Can you tell us more about that discussion and when it occurred?

A. I do not remember exactly when it occurred but we - we were receiving gifts from clients on a regular basis and felt uncomfortable about doing that and

5 so we discussed the fact that we would tell students in particular and clients that there was a no gift - there was a no gift policy, but that didn't stop them from - people still wished to give.

Q. And do you recall who was involved in that discussion?

A. It was a staff meeting I believe.

Q. So that would have included Susan Green.

A. Uh huh.

Q. Yourself.

A. Uh huh.

Q. Yana.

A. Uh huh.

Q. Anyone else?

A. The teachers.

Q. The teachers who would be at Bayfield Mall teaching the English classes.

A. Uh huh. I can't tell you exactly when that was 'cause that's very vague in my memory, but we did have a discussion about that at some point.

Q. And was there anything to be done if a student did give you a gift?

A. No.

Q. Just respectfully try and decline the gift.

A. That's correct.

Q. So you didn't have to report that gift?

A. No.

Q. We're going to move to the second green binder, two of two. And if I could take you to Tab F13, please. Do you recognize this document?

A. Not really at the moment.

5 Q. Let's have a look at page 1 of 17. Would you agree that this is a policy the YMCA's policy in relation to child protection and procedures to be taken in a child protection situation?

A. Yes.

Q. And does that refresh your memory? Do you recall having to rely on this policy at any point during your employment?

10 A. No.

Q. And if you could turn to page 2 of 17. On the - it appears it's on the backside and the next page, the same information. But in terms of the definition of a vulnerable adult. I'll read it to you. It states, 'a vulnerable adult is a person aged 16 years or older who may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation.' Would you agree that the Nikityuks meet this definition of vulnerable adult?

15 A. They did not understand English. They needed assistance with that, but they were quite capable of making decisions.

Q. Would you agree they were unable to protect him or herself against significant harm or exploitation given the facts of the situation alleged by Nikityuks?

20 A. Well, they asked for help and they got help.

Q. Right. If the physical attack had taken place, would you agree that that was a harm that they failed to protect themselves from or at least Alla failed to protect herself from?

25 A. I don't think so.

5 Q. And in terms of the financial situation, were you aware of details related to the financial allegations Nikityuks made against their sponsor?

A. Yes, I was aware of those.

10 Q. Okay. And would you agree in those circumstances they were being exploited?

A. Yes. I would agree that they were being exploited.

15 Q. And so if they were unable to protect themselves from that exploitation, would they not meet this definition of vulnerable adult?

A. When they found out about it, they would be able to do something.

20 Q. And is that explanation contained in this definition?

A. I don't quite understand where you're going with this.

25 Q. Does it say anything about whether the party or the person is able to do something?

A. Not necessarily. It says maybe unable.

30 Q. Did you and Yana discuss this policy and this definition in relation to the Nikityuks?

A. No.

Q. Did you even consider this policy in relation to the situation with the Nikityuks?

A. No, we dealt with the facts that stood before us.

Q. And what were those facts?

A. They told us.

Q. And was there anything provided to you to support those facts?

5  
A. Well, my understanding that as abused person you were to believe them and to move that forward. That was not our responsibility. Our responsibility was to refer to appropriate people that could assist.

Q. So in your opinion who would be the appropriate person to investigate those facts?

10  
A. We referred them to the legal advocate to find out their legal rights and from there we refer them to the community legal clinic who also dealt with their situation.

Q. And the legal advocate, you're referring to Bev Juneau who works at the Barrie - pardon me, Barrie Women's Shelter?

15  
A. Uh huh.

Q. And so are you aware whether those facts were investigated by either of those two third parties?

A. I still don't understand why you're asking these questions.

20  
Q. Do you have any knowledge whether any investigation was undertaken by either of those third parties?

A. I have no knowledge whether they did or they didn't.

25  
Q. Could we provide Mrs. Millar with the second white binder, please? Tab 139, looking for page 890. This is an email correspondence between Yana Skybin and Anthony Cuthbert at the Community Legal Clinic dated October 4<sup>th</sup>, 2011. Have you seen this email before?

30  
A. I can't say that I have or I haven't.

5 Q. And I understand from your testimony this morning you said you didn't oversee every email or letter that Yana would have corresponded on the Nikityuks' file.

A. That's correct.

Q. Okay. So this one does not look familiar to you?

A. Not specifically, no.

10 Q. And how about the correspondence at Tab 140? This again is another email between Yana Skybin and Anthony Cuthbert at the Community Legal Clinic.

A. Correct.

Q. You don't believe you've seen this one before?

A. I don't remember it.

15 Q. And how about the one at Tab 142, page 895. There's actually a number of emails between Yana Skybin and Anthony Cuthbert.

A. Uh huh.

20 Q. Are these emails familiar to you?

A. I don't know whether I saw them or not. It's a long time ago.

25 Q. So the email on page 895 marked number 6 in the third paragraph Mr. Cuthbert writes, 'as precaution you may want to consider whether police involvement is necessary at this time.' Did you and Yana ever discuss Mr. Cuthbert's comment about maybe involving the police at that point in time?

A. Not that I recollect.

30 MR. MAE: I'm sorry, Your Honour, I missed that answer because of the noise. Could the witness repeat please?

THE COURT: Can you just answer that question again?

A. Not that I recollect.

MR. MAE: Thank you.

5  
MS. CHAPMAN: Q. And let's now look at Tab 144. It's page 899. And again, the first email marked number 9, last paragraph this is again from Mr. Cuthbert to Yana Skybin, 'Have you considered police involvement? We may have criminal aspect to activities.' So again the lawyer is advising Yana that maybe the police should become involved?

MR. MAE: Actually, he's not Your Honour.

15  
That's misstating the letter. It says, 'Have you considered police involvement?' There's no advising in that sentence.

MS. CHAPMAN: Sorry. Q. He's asking whether she's considered police involvement.

A. Okay.

20  
Q. Do you recall whether you and Yana had a discussion at that point about involving the police?

A. I don't believe we had that particular discussion, but that's not something I don't believe we would have done.

25  
Q. And as Yana's supervisor, would you have concerns if a lawyer is asking whether this is something that should be considered and Yana doesn't discuss that with you?

30  
A. We did have discussion about the visit to the lawyer and whether one would move forward on that and my recollection was that at this point there was not much that one could do. That's my remembrance of what



5 happened. The upshot eventually was that there was -  
that this was a choice that the Nikityuks would have to  
make and that it would not move forward. It's their  
choice.

Q. And what are you referring to specifically;  
their choice about what?

A. About - about, complaining about the use of  
their money.

10 Q. And then if we could look at the letter at  
Tab 146. It's page 903. And this is a letter from Mr.  
Cuthbert to Yana Skybin dated November 21<sup>st</sup> 2011. And  
just at the fifth paragraph he writes, 'Please note that  
I would caution Mr. and Mrs. Nikityuk about making any  
verbal charges that could be interpreted as slanderous.'  
15 Have you seen this letter before?

A. I'm not sure that I remember this.

Q. And do you recall whether you and Yana had  
any discussions about the verbal charges being set out by  
Mr. and Mrs. Nikityuks may be considered slanderous?  
20

A. I don't remember.

Q. Earlier Mr. Mae was asking you about your  
involvement with the Nikityuks and specifically with  
regards to Ontario Works. Was Yana involved in the  
application to Ontario Works on behalf of Nikityuks?  
25

A. Probably.

Q. I'm sorry?

A. Probably.

Q. Do you remember specifics about the steps  
that you or Yana took regarding the Ontario Works  
application?  
30

5 A. I don't remember the specifics. I just know what would have happened, made an appointment and gone and seen them and had an interview, but I don't remember the specifics.

Q. And do you know whether Yana attended that interview as an interpreter?

A. Not for sure. It's a long time ago.

10 Q. And the meeting that took place on December 13<sup>th</sup>, we can go back to your notes if that's of assistance. Would that help you? So that would be the first green binder, binder one of two. Your notes are at Tab A2 and unfortunately I don't have page numbers, but it would be your note dated December 13<sup>th</sup>, 2011. And it's the one where you list 14 numerated items.

15 A. Uh huh.

20 Q. Sorry, just a moment. Item number 10, for letter internal review list each decision letter and why we don't agree with it and list every decision date. What was that internal review for?

A. It was for them not having - being refused Ontario Works.

25 Q. So Yana was part of that discussion; she was in that meeting, correct?

A. Uh huh.

Q. And we looked at some letters earlier that you and Yana prepared to support that review, correct?

A. Uh huh.

30 Q. And so at that point when you're preparing correspondence to Ontario Works, were you also aware that the Danilovs were trying to get support cheques to the Nikityuks?

5 A. I believe there is - there was a letter  
after that.

Q. Yes.

A. That she was trying to do that, yes.

Q. And you saw that letter and the cheque come  
in through your office?

A. It went to Susan Green.

10 Q. But do you recall at the time in the fall  
of 2011 seeing that letter or knowing that the Danilovs  
were trying to get a cheque to Nikityuks?

A. Yes.

Q. And having that information why then  
continue with an Ontario Works application?

15 A. Because of their situation. If you noticed  
they tried to cash those cheques and they bounced. There  
was stopped payments on them. So there is no reason why  
they could not - that the Danilovs could not pay Ontario  
Works, and then Ontario Works pays Nikityuks. That  
20 happens in many situations.

Q. But you would agree Danilovs they would -  
they were trying to pay the Nikityuks directly and not  
involve Ontario Works. Would you agree with that  
statement?

25 A. I agree with that statement. It appeared to  
be that way, whether it's the case or not, I didn't know.

Q. And so when you make the statement that the  
sponsorship agreement was broken, what was that based on?

A. It was based on the relationship.

30 Q. The relationship between Nikityuks and  
Danilovs.

A. Uh huh.

5  
Q. And so what did you know about that relationship that you can give evidence that the sponsorship agreement was broken?

A. I wasn't giving the evidence; I was writing what the Nikityuk had told.

10  
Q. But this morning you said the sponsorship agreement was broken. So what did you base that statement on?

A. On what Nikityuks told us.

Q. And what Yana was telling you?

A. Yes. But basically it was what the Nikityuks were saying about their situation.

15  
Q. Would you agree with the statement that the Danilovs harassed everyone?

A. I don't -

MR. MAE: Your Honour, would my friend like to lay a foundation before she asked that question.

20  
MS. CHAPMAN: Q. Ms. Skybin has given evidence and has written in her correspondence that the Danilovs harassed everyone and specifically named two persons: Yulia Malysheva and Lilia who also goes by Lika Fatykhova. Did the Danilovs harass you?

25  
A. No they didn't have my phone number to harass me.

Q. And are you aware whether they tried to contact anyone else at the YMCA?

30  
A. They contacted Yana and they contacted Susan Green.

Q. And they were looking for the Nikityuks when they made those calls, correct?

A. Yes.

Q. And are you aware whether they tried to contact any other students looking for their parents?

A. I pers - I know that it was happening but I did not know specifics. I do know that Emma Tratrova (ph) came in asking where they were so she must have asked them, but otherwise I was not in that particular loop.

Q. And were you aware that Yana had attended a bank appointment with the Nikityuks in the fall of 2011?

A. Yes.

Q. And were you aware that the Nikityuks were able to come up with \$3,000.00 cash for a retainer for a lawyer if necessary?

MR. MAE: Again, Your Honour, that's a bit of a misstatement. I believe the email was they had \$3,000.00, no mention of cash. I ask my friend not to misstate her evidence.

MS. CHAPMAN: Q. Were you aware that the Nikityuks had \$3,000.00 to retain a lawyer in January of 2012?

A. I'm not aware of that.

MS. CHAPMAN: Those are my questions. Thank you.

THE COURT: Thank you, Ms. Chapman. Mr. Mae, any re-examination?

MR. MAE: Only one question.

RE-EXAMINATION BY MR. MAE:

Q. Ms. Chapman took you to a number of emails authored by Yana Skybin.

A. Uh huh.

Q. And she took you to communications that Yana received. Was it Yana's job to copy you on everything she wrote?

A. No.

Q. Was it Yana's job to copy you on anything that came in?

A. No. That was her client she dealt with it.

MR. MAE: I have no other questions, Your Honour.

THE COURT: Thank you.

SCHEDULING discussed...

RECESS TAKEN

UPON RESUMING

THE COURT: Yes, Mr. Thomson.

MR. THOMSON: We're prepared to call our final witness, Dorothy Archer.

DOROTHY ARCHER (AFFIRMED)

EXAMINATION IN-CHIEF BY MR. THOMSON:

Q. Do you mind telling us your occupation?

A. I work at the Women and Children's shelter. I'm a transitional and housing support person at the outreach office.

Q. How long have you worked there?

A. Eighteen years full time.

Q. What is Barrie - it's the Barrie shelter?

A. Yes.

Q. What is the Barrie Shelter for Women and Children; what is your mandate?

5  
A. To assist women and children when they're leaving abusive relationships of an intimate source.

Q. Do you have any particular qualifications?

A. I have a diploma as a human service counsellor. I've taken many workshops, trauma training, different things over the last 18 years to keep updated.

Q. And what are the types of clients you generally work with?

10  
A. Women who are leaving abusive relationships; whether it's an intimate partner or a family member.

Q. Do you know the co-defendants in this; Alla and Valentin Nikityuk?

15  
A. Yes, I do.

Q. How did you come to know them?

A. The referral came in from the YMCA.

Q. And you met them in person?

A. I did.

20  
Q. What did you understand at the time that they needed from you?

A. Options. So when I first met them I was going there to explain what services the shelter has and what I specifically could assist them with if they chose to have that support.

25  
Q. Generally speaking, what kind of services does the - what is the range of services the shelter offers?

30  
A. Could be residency. It could be linking up with other referrals to housing, Ontario Works, CAS, that sort of thing, going advocacy, going to appointments,

trying to get some legal matters done but I would probably refer more the legal matters to my co-worker.

5 Q. Do you recall around what time it was that you met the Nikityuks?

A. Around the end of September. I would come up with that because I know I wrote a letter of support for housing in October so it would have been prior to that.

10 Q. And the year?

A. 2011.

Q. Okay. Perhaps we can show the witness the green binder Volume I, Tab B9.

A. Tab B9?

15 Q. B9, yes. It's actually B Tab 9. The first thing is that tab is a letter on YMCA letterhead.

A. Yes.

20 Q. As we flip to the second page, there's a letter dated October 7<sup>th</sup>, 2011 on Barrie Women and Children Shelter of Barrie letterhead.

A. Correct.

Q. And at the bottom it says Dorothy Archer. Is this your signature? Did you write this letter?

A. I did.

25 Q. And is this the letter you mentioned a moment ago around the time that you first met the Nikityuks?

A. Yeah. This would have been a week or two after I would have first met them.

30 Q. Okay. And what was the purpose of you writing this letter?



5  
A. They had decided to go ahead with a housing application to separate from the abusive home that they were living in.

Q. Okay. At the bottom or in the last sentence of the, I suppose it's the middle paragraph below the witness signatures there, perhaps you can read out the last sentence for us starting with Alla.

10  
A. 'Alla and Valentin shared many situations of the power and control that is held over them daily and is displayed into their emotional, physical and verbal and in financial abuse.'

15  
Q. And this information - how did you come to know - how did you come to put this information in your letter?

20  
A. I would have met with them prior and using an interpreter which was Yana asked specific questions on what a day in the home would have looked like or explaining the situation of what my mandate is or what the options are and then going from there as to did they see where any of my services might fit for assistance that they were needing.

25  
Q. And after that conversation did you determine that some of your services would be of help?

30  
A. Yes. So even for me to short form it into emotional, physical, verbal and financial abuse, they would have had to have given me specific examples that I would have used those phrases on.

Q. And given that the information came from the Nikityuks, do you undertake any investigation of when they present that information to you?

5 A. No. It is our mandate that women tell us things and we believe them.

Q. Would you characterize the relationship with the Nikityuks as a personal or professional?

A. Professional.

Q. And did you meet one-on-one - I suppose I should say one on two, you and the Nikityuk?

A. Sometimes.

Q. And other times.

10 A. Other times we had Yana to interpret or sometimes another co-worker might be there and sometimes it was just the three of us. I think at times like where I was driving them to an appointment or to their - from one hotel to the next or taking them food items. I didn't always have an interpreter. They had basic English skills, but with all of the facial expressions and different things sometimes we just worked it out, understand what each other were saying.

15 Q. And what types of services were providing them?

20 A. I was providing them support in transitioning into the community. Well, first of all, support in hearing their story and giving them options if they wanted to do something, if they wanted to leave. I couldn't offer housing in the shelter because Valentin is a man. So I had to explore other options in the community and that's - went to Salvation Army to get a hotel for the two of them which originally they spent one night in one on Dunlop Street and I advocated on their behalf to get them to another hotel which at that time they didn't really even have surfaces with that hotel but

25

30

5 since then have made that bridge so that they could be closer to their school and some of the support that they already had because I saw their situation as very vulnerable in not being able to have the supports that they needed.

Q. How often did you speak with the Nikityuks?

10 A. Often. I would say a few times a week at least especially in the beginning of the relationship because there was clarity that needed to go along with certain things or it all moved very quickly as far as other referrals and getting the supports that they needed, I think of like support links. So I meet them at this meeting here today and then set up something the next day or support link into make that connection for other supports.

15 Q. And you told us a moment ago that you spoke with them on occasion directly and on occasion through a translator -

20 A. Uh huh.

Q. - Yana.

A. Yes.

25 Q. On many occasions. In your ongoing discussions what types of things or what kinds of issues did the Nikityuks tell you directly or through your translator?

30 A. They explained what living in the home was like, like eating dinner and going to their room because it was very tense in the home and my word or my phrase would have been walking on egg shells and things like that. That there were abusive physical incidents were

things were smashed or they felt physically threatened and intimidated.

5 Q. During these conversations, can you comment on the demeanour of the Nikityuks, their demeanour?

A. Quite often what I would perceive as shameful to it with head down, tears, wanting to hide their face not wanting to admit that that was really going on in their home.

10 Q. Can you comment any more - can you comment any more on the particularities of you mentioned instances of abuse, a moment ago?

A. Sorry?

15 Q. Can you comment on any more specifics with regard to that?

20 A. Alla had said that dishes were - Alla or Valentin had told me about the dishes that were thrown and how they felt threatened with that, that Alla felt fearful that her daughter was going to strangle her and her husband had to intervene. Telling me that the tensions in the home on the weekend during the week, they'd be at school so it was less, but on the weekend it would be much more. So at different times, I would offer them movie passes so that if they could get the car because I guess that was something that was either given or not given like a privilege that could be taken away and they didn't have a lot of money 'cause they explained to me that they had an allowance. So I would give them vouchers to be able to go to the movies and at least get them kind of the fall/cold weather and be able to do something and thinking that it was building on their English skills too watching an English movie.

25

30

5  
Q. Can we direct the witness please to Tab 9 of the red first volume? Do you have that document in front of you?

A. I do.

Q. And are you familiar with this document?

A. It's the Ontario housing application for the county.

10  
Q. And if we turn to the second page, page 62 on the top right corner.

A. Yeah.

Q. In the middle here beside co-applicant, it lists you as - it lists Yana Skybin and then it lists you as a contact person. Are you - is that familiar to you?

15  
A. Yes. I would have wrote that because when Ontario housing is offered, the person has about 24 hours to respond and if they don't respond they move onto the next person. So with my name and contact number in there, they would know to contact me directly and then if I needed more time to get a hold of the person, they I would be able to buy an extra day or however long I needed.

20  
Q. And if we can flip to now, it's box 12 in this document, it's page 65 in the top right corner.

25  
A. Yes.

Q. It says here special priority and down below in section 13, additional comments, is this your signature down at the bottom right hand corner?

A. Yes, it is.

30  
Q. Can you tell us what special priority is and how these two sections relate?

5  
10  
15  
A. Special priority is a mandate that the government came out for special priority who were leaving abusive relationships after death of people and different incrusts that were done. So in order for a person to get special priority I need to write a letter, make sure that all of these boxes are appropriate and follow the mandate. So I would have said that I've attached a letter. So that would be the letter that I wrote outlining the abuse that was back here, proof of co-residency. I ticked it but I wrote a little note here stating that it wasn't safe for Alla and Valentin to get a copy of something with their daughter's address on it because she was the named - she and her husband were the named abusers in the home. And for priority status, there has to be verification of the abusers' address and the victim's address matching the same.

20  
Q. Perhaps this is where you've commented on, in section 13, it says, I'll read here 'Alla and Valentin are not able to gain access to their daughter's mail in a safe way.' Can you comment on that particular entry?

25  
A. They could not get a piece of mail showing that they lived at the same address. So I knew if I wrote it and put it in there that there was leeway or can open that that could be overlooked that that they didn't have the mail 'cause of the safety issue.

30  
Q. And you just referred to a letter that you wrote which I believe you mentioned is in the green volume I Tab B9 again, back to that document. If the witness could be shown that, B9, please. So again this is the Tab starts with a letter on YMCA letterhead dated October 7<sup>th</sup>, 2011 but then on the second page the letter

was looked at already dated October 7<sup>th</sup>, 2011. Is this the letter you mentioned a moment ago with respect to that application?

5 A. Yes. And typically the person in additional comments would need to write something in there stating they're leaving an abusive relationship, they do not plan on reconciling or moving the abusive partner in at the housing.

10 Q. Just for clarity when you say - who typically would fill out section 13, the additional comments?

15 A. The person that is the application is for. It is generally in their handwriting. In this case I wrote that we weren't able to get the mail to show the verification of addresses, but suggested that they could write their story or whatever they wanted housing to know.

20 Q. If you flip the page in the tab we're in now, should be looking at a handwritten document in Russian.

A. Uh huh.

25 Q. At the bottom it's dated what I believe to be October 7<sup>th</sup>, 2011.

A. Right.

Q. Is this what you're referring to, what you were referring to a moment ago?

A. Yes. Typically, that would be in that little box or on an additional piece of paper.

30 Q. And at the first page of that tab, the letter on YMCA letterhead, do you understand - what do you understand this letter to be?

5 A. I understand that to be their story that they would have written in there but also in a much lesser way of explaining the financial, emotional, and the psychological abuse that went on.

Q. Okay. Now if you can flip to the last page of that tab. There's a document here and at the bottom - in the middle I should say under signature, is that your signature?

10 A. Yes, it is.

Q. Can you tell us what this document is?

15 A. This is a document that the county had in place to accompany an Ontario housing application that would - and if this document was completed it would be special - a request for special priority status. If this wasn't, then it would just be the chronological wait list. For me to complete this form, I know what the priority status is. I've had training in that and not everybody can write a special priority request; doctors, counsellors, there's a few different agencies that can do it. I would have to check off each box knowing that they - that the status, but I believe what they were saying to be abusive and then I would have to sign off and my supervisor who in this case happens to be the head of agency to signed off on it. And the bottom part is to be completed by applicant. That part is a release of information so that if Ontario Housing had any questions in regards to the application or the letter that I wrote that that would give them the permission to speak to me and I to them.

20  
25  
30 Q. Moving on, turn to Tab still in section B, move to Tab 25.



A. Okay.

Q. Do you recognize this document or do you know what this document is?

5 A. It's the police occurrence report from the day that I attended the home with Alla and Valentin to get their belongings.

Q. And can you just give us a bit of an overview of that day?

10 A. Prior to going, I would have contacted the Innisfil Police and asked them for assistance doing police escort so that they could go to the home and get the things that they needed out of it. So I met them at the police station and there was Alla and Valentin and another woman a few men with a truck. There's several of  
15 us and we went into the police station first because the police officer wanted to know what kind of situation he was walking into before us going there. I briefly told him what I knew about the situation and why I was involved. And that they were living an abusive home.  
20 And no, I didn't tell them - I told them about the - our mandate of abuse, and then the officer stopped me and said, okay, if they're going to pick up things from their home, then I can be there. I can support that and make  
25 sure that everything goes smoothly. But if you are telling me that there is anything else to this story, then it is going to change how today is going to play out. So I repeated that to the translator, the  
30 translator repeated it to Alla and Valentin and because the officer had said elder abuse is a criminal offence, and when she repeated it to Alla and Valentin what I

heard back was they just wanted to go and get their things from the home because they were ready to move on.

5 Q. Can you tell us about just some of the details of that day of what took place, how it took place?

10 A. Sure. That was our meeting at the police station and then we left and I drove to the house. The police officer went in and Alla and Valentin were there and another woman and myself. And when we were greeted at the door the woman, Alla's daughter let the officer in then say no, that the woman couldn't come in, the Russian woman. I believe they knew each other and then I - she stepped in behind me. Alla and Valentin were just in the door and I went to step in, and the woman said, "No, she's not coming in either. Nobody is coming in." And the officer said, "No, she's with me, she is coming in." And Alla and Valentin and I went upstairs.

15 Q. You referred to a Russian woman and a translator, do you recall who either of those two people are?

20 A. Irena, I don't recall her last name. She translated at the police station and she was there translating at the event.

25 Q. If the witness could just be directed to volume II of the green book. Section E which is the first section Tab 17. There's a fax cover sheet there. Are you there?

30 A. Yes, I am.

Q. A fax cover sheet and then on the second page, there's a letter dated April 13<sup>th</sup>, 2012 on Women and

Children's Shelter letterhead. Is that your signature at the bottom?

A. Yes.

Q. You wrote this letter?

A. Yes, I did.

Q. Can you tell us what the purpose of this letter was?

A. It was to confirm that I saw Valentin attempt to give the new power of attorney to his daughter. The day that we went there, I remember him having the envelope with all of it, and that was something that was to be left with them because the daughter was the power of attorney. Earlier in that home visit, I had been upstairs packing with Alla and Valentin and the officer asked that I come down and answer some of the questions that may be the daughter had and just as far as who I was, what the agency was and that sort of thing. I just kind of listened to what she was saying and then left her with my business card and then went back upstairs to continue bringing things downstairs and passing to the guys that were loading the truck. And this would have been just me verifying. I don't recall who it was going to and it just has 'to whom it concerns' so verifying that I saw Valentin attempt to give the power of attorney. And the officer said that she didn't have to physically take it because it just had to be left in her visible sight.

Q. In general speaking, would you describe the Nikityuks as capable of making their own decisions?

A. Absolutely.

5 Q. I'm going to ask you a few questions about the other co-defendant in this matter Ms. Skybin, Yana Skybin. You know her?

A. I do.

Q. Did you know before you became involved in the Nikityuks' file?

A. Yes, I did.

Q. You had worked with her before?

A. Yes, many times.

10 Q. In what context?

A. The YMCA and the Women and Children's Shelter do referrals back and forth all the time. Us to them for their services and them to us for when a woman needs our services.

15 Q. What role did you understand that Yana was fulfilling with the Nikityuks?

A. Settlement counsellor.

Q. Are you familiar with Yana's role as a settlement counsellor?

20 A. I know that the YMCA is set up right there in the school that English as second languages in there, that she works with a lot of the newcomers to offer support in various situations as they come. I would guess it's almost something like mine only in their services and what they provide.

25 Q. And did you speak with Yana on a regular basis about the Nikityuk file?

A. Whenever I had questions.

30 Q. Are you familiar or are you aware of the plaintiffs in this matter, Svetlana and Pavel Danilov?

5 A. Not the gentleman I don't - I know that he was on the phone the day the wife had some questions for me, but that's my only awareness of them or contact with them.

Q. Did Yana ever make any malicious comments about them?

A. No.

10 Q. Can you describe how you saw or how you understood Yana's relationship with the Nikityuks?

15 A. Professional, passionate in her advocacy which I see in the work that she does with women. I think that when people are in certain positions they do their job. They're in that job because of what they can offer and I found - always have found and still do find Yana very professional and willing to advocate when needed for a client.

20 Q. Did it ever appear that Yana was trying elicit falsehoods from the Nikityuk?

A. No.

25 Q. When Yana was translating, did you ever get the impression she was prompting the Nikityuks?

30 A. No. I felt that she always informed me. I would ask a question, there would be a conversation and then she would report back to me and if there was a time where maybe a little more was being said by Alla or Valentin, Yana would stop and say they're just explaining or expanding on this, this and this and she'd go back to them and then report it back to me. So the same as I would have had or expected from any other translator that I've used.

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Q. Did you feel Yana's work with the Nikityuks was professional in nature?

A. Absolutely.

MR. THOMSON: Just one moment, Your Honour.

Those are all my questions, Your Honour.

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THE COURT: Mr. Thomson, I just want to go back to her testimony about what the officer said, obviously that would be hearsay unless he is going to be a witness.

MR. THOMSON: He's not going to be a witness, Your Honour.

15  
THE COURT: But I accept that evidence that he was there to keep the peace or attend at the house, but his advice or comments would be hearsay unless it's supported by such evidence.

MR. THOMSON: That's right.

THE COURT: Thank you. Ms. Chapman, do you have some questions?

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MS. CHAPMAN: Yes, I do.

CROSS-EXAMINATION BY MS. CHAPMAN:

Q. Hello Ms. Archer. Are you a social worker?

25  
A. I am a transitional and housing support worker.

Q. So you're not a registered social worker?

30  
A. No. I have a two-year diploma as a human service counsellor with many certificate of trauma training, abuse issues, human trafficking, many other - the list is very long, working with women, sexual abuse.

5 Q. If you could go back to the red binder please. We're going to go back to Tab 9 that my friend took you to, page 65.

A. Okay.

10 Q. And you gave evidence regarding the special priority of the Nikityuks' application for social housing.

A. Yes.

15 Q. With regards to the mandatory requirements item number 3, it says that 'written verification of abuse on letterhead by a professional such as a doctor, a lawyer, a law enforcement officer, a community health care worker, a social service worker etcetera.' Do you recall what letter was provided as verification of the abuse against the Nikityuk?

A. It was the letter that I wrote on letterhead that we addressed in the green binder.

20 Q. Okay. So it was your letter that Mr. Thomson took you to earlier?

A. Yes.

25 Q. And so your evidence was that the mandate at the shelter does not require you to verify abuse?

30 A. The mandate of the shelter is we believe women with their story that what they're coming with is what they're saying. We don't ask them to prove the abuse, but I have been at the shelter for 18 years and I do have a sense of knowing when somebody is telling me something and everything is lining up.

Q. But it is possible that someone may be good at telling you a story and it appears that it's lining up?

A. I guess there's always that possibility.

Q. And so there were no steps taken to verify the story that the Nikityuks were telling you?

5 A. I sat with them for many hours before I would have written the letter. I saw their faces. I heard their words and I saw their hesitation in coming forward and saying things because they didn't want to get anybody into trouble.

10 Q. And during those many hours, Yana was translating for the Nikityuks?

A. Sometimes but not always.

Q. Let me ask, do you speak Russian?

A. I do not.

15 Q. And do you understand Russian when spoken to you?

A. I do not, but they had basic English skills.

20 Q. So what did they tell you in English if you can recall? Do you remember any of the statements they made in English?

25 A. I don't recall exact statements, but I do recall them talking about things not being good at home and asking what does not good mean and them going onto explain having dinner, having to go to their room, not having money, being pushed, having bruises. Those are things that I recall.

Q. And they gave you those answers in English?

30 A. Yes. We spoke many times. They came to abuse awareness flag raising, then went off to do their thing, but met me at different - the event, the barbecue they were having at Roberta's Place and made their way



there on the bus. They would talk to me full of tears trying to express what was going on for them.

5 Q. And did you ever hear them speak to Yana in English?

10 A. Yes, they would speak in - I would encourage anyone with them in particular coming from an abusive relationship their voices generally have been taken away so I would encourage the person Alla and Valentin to use their voices to speak not have Yana speak for them. Yana was there to clarify things when I didn't understand or when we got into a stumble of the English language of not knowing exactly what somebody was saying.

15 Q. And do you recall whether Yana spoke to the Nikityuks in English?

A. If she was speaking for us all to hear I would encourage English in all of our conversation and then if she needed to translate, she'd translate.

20 Q. But do you recall moments in that discussion where Yana spoke to the Nikityuks and used English?

A. Yes.

25 Q. And beside from the move on October 24<sup>th</sup>, I believe you said there were other meetings you had with Nikityuks where Yana wasn't there.

A. Correct.

Q. And you found a way to communicate.

A. Correct.

30 Q. And they were able to use basic English in those circumstances?

A. Yes.

5  
Q. And when you had these difficult conversations with the Nikityuks was Valentin also I think you said head down, in tears.

A. Yes.

Q. He too was?

A. Yes. Maybe not - no, I have seen - I have seen tears come down his cheeks. Quite often you could just see the flood of emotions behind the eyes.

10  
Q. So let's talk a little bit about the move that took place on October 24<sup>th</sup>. You clearly didn't know all the people that were there that day.

A. No.

Q. Do you know who called those people to assist Nikityuks?

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A. I asked if Yana could help do that because we don't have moving services.

Q. And so aside from the police constable that attended -

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A. Yes.

Q. - from South Simcoe, the other individuals with Nikityuks were all Russian speaking?

A. I can't remember everybody who was there. I can't remember how many men were there. So I'm going to

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-

Q. Don't guess.

A. I'm not - I'm not going to guess.

Q. Okay.

30  
A. I don't remember everybody who was there. The majority would have been Russian speaking, yes.

5  
Q. Could we have a look at the South Simcoe Police report. It's the green binder one of two. And I think you might be on the tab. It is B25.

A. Yes.

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Q. At the bottom of the third paragraph under the occurrence synopsis, the constable writes, 'because there was a social worker present, police stood by till no longer needed.' Did he ask - did the officer ask you if you were a social worker?

15  
A. No, I probably gave him my card, but that - I don't recall him asking me if I was a social worker. If so I would have clarified a lot of people think that I'm a social worker, it's a form of. Somebody who works in social services field.

20  
Q. And so when you were in the home you said you went upstairs to the Nikityuks' bedroom, any concerns about the home? Was it clean?

A. Yes.

25  
Q. And they seemed to have appropriate furniture for their bedrooms?

A. They had beds and dressers.

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Q. Was there any damage to any of the walls in the home that you noticed?

A. I don't recall.

Q. Earlier you said that you saw the Nikityuks' situation as very vulnerable. Could you explain that statement?

A. I saw it as very vulnerable because they were new to the community. They didn't have a lot of supports. Their English was limited. Their awareness of

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what supports in the area were also very limited. I saw that they were in a very vulnerable situation.

Q. And they were subject to harm?

A. From what they were reporting, yes.

Q. And possibly subject to exploitation?

A. I'm not -

Q. Financially.

A. Financially? Financially they told me that they were given an allowance or had limited money but had come to the country with money.

Q. And so would you agree that that would be a form of financial exploitation?

A. I believed it to be a form of financial abuse when somebody had the power of attorney over their finances and they had limited contact to their money, yes.

MS. CHAPMAN: Those are my questions for the witness, thank you.

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25  
THE COURT: Just a question for clarification, I don't know if much turns on this. This move out, was this to collect just personal effects or furniture. How much do you recall of what took place?

A. I remember -

THE COURT: Were they just getting clothing or beds and dressers?

A. No. They didn't get everything because they weren't allowed to take everything.

30  
THE COURT: I don't care what they were allowed to take or not take. Was much taken?

5  
A. Their personal effects, books, some books, computer. They didn't take the beds. I don't recall if they took the dressers. I remember part of my position is in helping getting people resituated into their home or into the community is donations from the shelter. I do remember making those referrals.

10  
THE COURT: Ms. Chapman, any other questions for you?

MS. CHAPMAN: No. thank you.

THE COURT: Mr. Thomson, any re-examination?

MR. THOMSON: If I can have 30 seconds to consult. No questions, Your Honour.

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THE COURT: Thank you. You may step down.

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SCHEDULING discussed - MATTER ADJOURNED

1922.  
Certification

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FORM 2

Certificate of Transcript  
Evidence Act, Subsection 5(2)

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I, Cathy Knelsen, certify that this document is a true and accurate transcript of the recording of *Danilov v. Nikityuk* in the Superior Court of Justice, held at 75 Mulcaster Street, Barrie, Ontario, taken from Recording No. 3811-01-20161122-134810 which has been certified in Form 1.

15

, 2017

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