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ONTARIO HUMAN RIGHTS COMMISSION

5 IN THE MATTER OF the Human Rights
Code S.O. 1981, c. 53, as amended;

10 AND IN THE MATTER OF the Complaint
of Chippeng Hom dated December 20,
1989 alleging discrimination on the
right to equal treatment in
accommodation and freedom from
harassment by the landlord on the
basis of ancestry, race, place of
origin, ethnic origin and race
reprisal by Elijah Elieff and
Elieff Investments Ltd.

15 *****

B E F O R E :

20 AJIT JOHN

Chairperson

25 HELD AT: Radisson Hotel,
London, Ontario.

DATE: September 1, 1993

VOLUME: 10



APPEARANCES:

Geri Sanson

Counsel for the Commission

Robert Metz

appearing as agent for Elijah
Elieff and Elieff Investments Ltd.

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J.K. DALY/D. CLARK

--- Upon commencing at 9:45 a.m.

JAMES KENNETH DALY, Resumed:

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DARLENE CLARK, Resumed:

10

THE CHAIRPERSON: Are there any preliminary matters?

MS. SANSON: The Commission doesn't have any.

15

THE CHAIRPERSON: Okay. It's my hope that we will complete examination and cross-examination of Mr. Daly and Ms. Clark, and then there will be two matters called in reply.

20

MS. SANSON: Pardon me?
THE CHAIRPERSON: There will be two matters, two witnesses called in reply?

MS. SANSON: Two witnesses and the video.

25

THE CHAIRPERSON: And the video called in reply, and I believe that's not going to take too long.

Is there anything else?

30

MS. SANSON: The matter of the exhibits, which we could put over until after our witnesses have completed.

THE CHAIRPERSON: Oh yes, thank you.



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J.K. DALY/D. CLARK

Thank you.

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There's one other matter that I thought I'd deal with now, and that arises from a point raised by Ms. Sanson yesterday and a request for clarification of a comment I had made on February the 5th.

10

15

I've re-read the portion of the transcript again at page 482 through to 487 and I see that what I was asking for in argument was a discussion of a policy behind the Ontario Human Rights Code, in other words, the law, the common law that the Code attempted to codify, as it were, as it relates to the need or opportunities to conciliate a matter before it gets to this stage.

20

25

So apart from any statutory responsibility to conciliate I would like some comment on the principles -- I have called them equitable principles, that might not be the right word, but beyond statutory responsibility what were the principles -- what are the principles for requiring parties to conciliate, especially when there is a public body as a party?

MS. SANSON: I'm not a party during the investigation stage.

30

THE CHAIRPERSON: That's true, you're not a party, but you might want to comment ---

MR. METZ: Well, if I may comment, I would



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suggest that the first thing that has to be determined before a conciliation goes on is the relative guilt or innocence of a person who was subject to a complaint. It seems to me that should precede any agreement the two people may have to make.

THE CHAIRPERSON: Well, I think, although these aren't criminal proceedings, it would be useful to compare it with criminal proceedings because there the matter is put into process, as it were, process has begun, and there are bargains and attempts to work out arrangements and settlements. Similarly, in civil proceedings one party can begin the adjudicative process, and there are ways of mediating and conciliating and settling a civil dispute.

So I wonder if you could do some digging, and if there isn't anything, fine, but if there is I'd like it addressed during argument. But that's what I was trying to get at there. Because the question that was put was why wasn't there any effort -- attempt to conciliate this matter before, and Ms. Sanson went through a brief history of this particular case and I was satisfied ---

MS. SANSON: We also heard from Mr.

Elieff's own mouth that the Commission ---

THE CHAIRPERSON: Yes.



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J.K. DALY/D. CLARK

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So just in terms of this particular case I'm satisfied that we've heard evidence on that, so this is really reaching for some understanding of the policy behind it, and not just the statute, but if you can reach beyond the statute that may be helpful. If there isn't much to be gained by that, that's fine, it's not a major point, it's just I'm just trying to understand what I was getting at in that comment.

15

MR. METZ: I believe this also relates to the question Ms. Sanson raised yesterday when she asked Mr. Elieff what views were so polarized, is that what you're referring to, at the time of Rick Harrington's investigation?

20

25

THE CHAIRPERSON: It's the same issue, but I'm not -- what I'm saying is I'm not that interested in the particular facts of this case, that is why the discretion not to move to conciliation was exercised in this case, I think the evidence is already in on that, but what I am more interested in is the policy behind conciliation at this stage.

30

It's not a very big point, but I wanted to try and clarify what I was saying there. I don't need to say that it's always open to the parties to come to an agreement or conciliate.

MR. METZ: So you're suggesting we can



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(Sanson)

deal with that in our closing arguments?

5 THE CHAIRPERSON: Yes. Yes. It's really to clarify the point I made back in February, a request to have you look at that issue as part of the argument and just give me any information that's available on that.

10 Okay. I don't think I have any other matter to address before we begin.

15 Ms. Clark, are you ready yet ---

MS. CLARK: Yes.

20 THE CHAIRPERSON: --- or do you need more time?

25 MS. CLARK: No, I don't think so, I'm okay.

THE CHAIRPERSON: Okay. Well, then let's return to examination-in-chief of both Mr. Daly and Ms. Clark.

30 MS. SANSON: Thank you.

25 CONTINUED EXAMINATION-IN-CHIEF BY MS. SANSON:

Q. Good morning. Ms. Clark, I'm going to ask you to continue on with your budget information.

30 MS. CLARK: Okay. Is there anything in particular that you'd like to deal with in the budget? Do you want me to continue on as going through on a step-



1130 J.K. DALY/D. CLARK, in-ch.
(Sansom)

by-step process? I'm sorry, I'm ---

MR. DALY: I could ---

Q. Well, the way that we had left it last day, I think that people were going to take a look at the document and if there were any specific informational questions as opposed to questions of cross-examination before we moved on to some ---

MS. CLARK: Right.

Q. --- questions I have in the area of
property management.

THE CHAIRPERSON: Can I ask a question about the budget?

MS. CLARK: Yes. The budget being on page 16?

THE CHAIRPERSON: The budget on page 16.

MS. CLARK: Okay.

THE CHAIRPERSON: I'm trying to understand how the capital items are brought into the budget, whether they are dealt with all in the year 1993 or spread out over five years. I'm not too clear on that.

MS. CLARK: The budget -- this is an operational budget, capital items that are referred to on pages, I think it's 20 ---

THE CHAIRPERSON: Twenty (20), yes.

MS. CLARK: --- and 22, are assumed in



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(Sanson)

this budget to have been completed.

THE CHAIRPERSON: Okay.

MS. CLARK: So the only thing showing in this budget is the actual operation of the building towards revenue and the direct property expense, excluding the mortgage.

THE CHAIRPERSON: That's right. So for the capital improvements and the mortgage charges ---

MS. CLARK: That's right.

THE CHAIRPERSON: --- would be in addition to this.

5 MS. CLARK: Because in the mortgaging they may have to borrow the money. A landlord would normally have to borrow that money and finance it, so it could be that the mortgage would increase.

20 THE CHAIRPERSON: In the first year.

MS. CLARK: Yes.

THE CHAIRPERSON: Yes.

25 MS. CLARK: In this case I don't know, but I looked at it as the sense that the capital work had been done prior to the operation, because this budget is based on the capital, assumption is that the capital work has been done and that the marketing plan has been implemented. All the assumptions found in the budget notes have been implemented throughout this budget.



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(Sanson)

THE CHAIRPERSON: Okay.

5 BY MS. SANSON:

Q. Perhaps at this point I would ask Jim Daly to comment on the condition of the building and provide the board with your opinion as to the nature of the capital items?

10 MR. DALY: The property in general is what I would call a depressed property, and the reason I refer to it as depressed is because it's as if nobody cares. And it's -- the state that it's in right now is something that didn't happen overnight, it took a long period of time for it to evolve, and it's just generally speaking, in all aspects, completely rundown and neglected.

20 Specific items on the capital report?

25 Q. If you could just provide your opinion as to why the relationship between the capital items -- the need for significant capital expenditures now.

MR. DALY: The need for capital expenditures now is because all of these items weren't maintained in the past, and what's happened now, instead of me treating them as a maintenance item, all of these items have accumulated and now have to be dealt with as a capital item. They have reached their life expectancy,



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(Sanson)

right, they wore out.

5 THE CHAIRPERSON: From what you've seen of
the capital items how many of those repairs, in your --
to your knowledge, would be required by a statute or a
Code of some kind, under the Fire Code or others?

0 MR. DALY: The Fire Code was broke in
different locations, for example the door which I
photographed; the fire extinguisher. Generally speaking
the way the city enforces the Code is they maintain --
for a particular building they'll maintain the Code for
the timeframe in which that building was built. For
example, there are a lot of things about that building
.5 that wouldn't meet Code were it being constructed today.

THE CHAIRPERSON: I see.

20 MR. DALY: An example is the height of the
railings on the balcony slabs don't meet Code, they're
not high enough, but the city won't come after you to
change those railings unless you address the balcony slab
as a construction item, apply for a construction permit,
at which point it becomes an engineer drawing, at which
25 point the height of the railings change.

30 THE CHAIRPERSON: So pre-existing
violations will not be pressed so, in other words, those
conditions that existed prior to the Code being changed
to include those items would not be required to be



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(Sansom)

changed, is that -- is that true?

5 MR. DALY: There are instances on the property where Fire Code has been broken. As far as Building Code is concerned with regards to original construction there are certain items in the building that don't meet Code today ---

10 THE CHAIRPERSON: Yes.

MR. DALY: --- however at the time of construction they did ---

15 THE CHAIRPERSON: Yes.

MR. DALY: --- and because of that they are acceptable today until that point in time when ---

THE CHAIRPERSON: A major construction ---

20 MR. DALY: --- a major construction job is put in place.

THE CHAIRPERSON: Okay. Thank you.

25 BY MS. SANSON:

Q. Now, you've dealt with the Building Code, there is other legislation, Landlord and Tenant Act, I've brought a couple of them along.

30 THE CHAIRPERSON: Thank you.

35 BY MS. SANSON:

Q. There's the Health Promotion



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(Sanson)

Protection Act, the Landlord and Tenant Act, section 63
is it?

5 MR. DALY: As far as the Landlord and
Tenant Act is concerned ---

Q. Yes?

A. --- I think that's something Darlene
should deal with.

.0 Q. Ms. Clark, would you like to deal
with the Landlord and Tenant Act at this ---

15 MS. CLARK: Well, in the Landlord and
Tenant Act you're obligated to provide a safe and secure
premise to a tenant.

Q. Perhaps we could turn up the specific
provision, 94.

20 MS. CLARK: Under section 94 it says that:

"A landlord is responsible for
providing and maintaining the rented
premises in a good state of repair
and fit for habitation during tenancy
and for complying with health and
safety standards, including any
housing standards required by law,
and despite the fact that any state
of non-repair existed to the
knowledge of the tenant prior to the



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1136 J.K. DALY/D. CLARK, in-ch.
(Sanson)

tenancy agreement was entered into."

That's section (1).

5 Part (2) says:

"The tenant is responsible for ordinary cleanliness of the rented premises, except to the extent that the tenancy agreement requires the landlord to clean them."

10 Part (3) says:

15 "The tenant is responsible for the repair of damage caused by the wilful or negligent conduct of the tenant or of persons who are permitted on the premises by the tenant."

20 And part (4) says:

25 "The obligations imposed under this section may be enforced by application to a judge of the Ontario Court (General Division) and the judge may,

30 (a) terminate the tenancy subject to such relief against forfeiture as the judge sees fit;

(b) authorize any repair that



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(Sanson)

has been or is to be made
and order the cost thereof
to be paid by the person
responsible to make the
repair, such cost to be
recovered by due process or
by set-off;

(c) make such further or other
order as the judge
considers appropriate."

THE CHAIRPERSON: Okay. I think that's
enough.

BY MS. SANSON:

Q. The question that was asked by the
board was with respect to your capital -- was it capital
items?

THE CHAIRPERSON: Yes.

BY MS. SANSON:

Q. What items would be required
according to obligation in law?

MS. CLARK: Well, in my opinion you should
be able to have security on your premise, which starts
with locks; you should be able to be in an apartment that

1 1138 J.K. DALY/D. CLARK, in-ch.
5 (Sansom)

is clean and that ordinary maintenance items have been looked after; you should have potable water; you should be able to have the privacy in your apartment, such as bathroom locks. If it is infested with cockroaches or any other thing along that line it should be repaired, or like exterminated.

10 You should have -- well, under the law you have to be able to have a safe and secure premise, and that means cleanliness and security and comfort. You're obligated to provide those.

15 And even if a tenant would go in and ruin your apartment, if they ruin the rug or -- whether it be negligent or not, you'd have to prove the negligence to start with, but you're still obligated under the law to provide a relief to those damages.

20 THE CHAIRPERSON: Are these in common areas or within the unit as well?

25 MS. CLARK: Both.

THE CHAIRPERSON: Both.

25 MS. CLARK: Interior and exterior of the building also.

30 MR. DALY: It would be safe to say that all of these items would fall under the scrutiny of the Middlesex and London Board of Health.

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(Sanson)

BY MS. SANSON:

Q. Yes.

MS. CLARK: Yes.

In particular, the cleanliness of the premise, in regard to the cockroaches, or anything along that line, that is the obligation of the landlord, because you cannot verify 100 per cent where those cockroaches, you know, come from. And certainly an infestation of the building could start anywhere, and you could be the cleanest tenant ever and still have problems with that.

I've looked after buildings and we've never been able to locate, and we've had the whole building sprayed, we've put down paste, you know. I have floors there's no tenants on it at all and there's still cockroaches in those buildings, several floors that we're completely renovating, cockroaches all over the place, we've had to keep spraying. Until you get some idea of where the problem originates you cannot adequately address the source of the problem.

THE CHAIRPERSON: But you're saying ultimately in any case scenario ---

MS. CLARK: The responsibility is the landlord.

THE CHAIRPERSON: --- it's the landlord's

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(Sanson)

responsibility?

MS. CLARK: That's right.

THE CHAIRPERSON: Okay.

5 Anything else? Any other comments?

MS. CLARK: I'd like to add to that. Even if it is in some regard, as it points out in here, that the tenant is responsible for the repair, let's say they were negligent, it is the responsibility of the landlord. Let's say they broke the lock, it would be the responsibility of the landlord to get that lock repaired and then take the tenant to court to recover the cost of the repair. It is his obligation to repair.

And if the tenant refuses, I've been in cases where the tenant has refused repair, we're still obligated to repair, and then it's our choice whether to recover through the courts under that clause.

BY MS. SANSON:

Q. Perhaps at this juncture I would ask you to comment on specific ongoing maintenance items that you, in your experience, have advised specific property managers to carry out.

MS. CLARK: Well, I have written instructions on obligations that they have to follow, from cleaning to how to do proper maintenance on



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(Sanson)

5 different items in the building, or unit. If it's something to do with common area cleaning I get them to -- there's methods, do you want me to go into details on how ---

Q. Yes, I would like to hear that.

10 MS. CLARK: Okay. They'll start at one point in the building, the lobbies, every day they have to go down and clean the lobbies, the windows, the tile. I have written instructions on how to clean it, and to get in the corners and everything, and make sure that there's no dampness left; everything's been picked up; 15 the garbage is emptied daily.

20 All the window glass is cleaned in the lobby area daily, in those lobbies and the laundry rooms, because they're both public places and they have dampness surrounding them, you know, people coming in out of the rain or wet shoes or the pool area; and certainly in the laundry room the dampness is from the machines. They 25 have to be cleaned daily.

25 And all the common area carpeting, if there's carpeting in the common area, I have it thoroughly vacuumed twice a week and spot checked and vacuumed where required every day.

30 Walls are washed in spots as they make their daily rounds. Every day they have to do a check on



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(Sanson)

all security doors. This is in the common area that I'm dealing with now, I'm just trying to go through the list in my mind.

All the fire hose cabinet glass has to be washed every day. Any repairs that are -- they were going around on their rounds, for instance, they have to check all the exit lights and all the common area lighting, all those have to be repaired on that day, so an adequate stock of supplies has to be available, or means of getting that.

They have to take the slush mats and clean them daily. They have to clean any elevator tracks, if the elevators are in the building, the inside of the elevator and the elevator tracks. If there's a rental office they have to clean all the rental office. All these are daily items. They also have to go outside, sweep the steps, pick up garbage daily around the building.

On a weekly basis in the common area they have to take the laundry machines on a per floor, one per floor per week, out and clean in behind there, clean the accumulated dust bunnies, as it were, behind the machines. They have to -- the same laundry room that they're taking the laundry machines, backing them out, they have to clean those windows. They have to check all

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(Sanson)

the connections to make sure that you're not wasting water.

All the lockers have to be checked to make sure that there's no combustible items in it; all the electrical rooms also has to be checked so there's no combustible items in there.

The grounds are thoroughly looked at every week to make sure that if there's anything required from the landscaper, any trimming or any broken branches or anything that would impair the safety of any tenant or staff, that that is taken care of.

The quarterly basis, the window drapes, if there are any, are taken down and washed throughout the building.

Weekly they also have fire safety code that they have to follow, and they have to make -- that's daily and weekly, they have to make reports on those.

If there's a generator in the building they have to check that and, you know, do the appropriate logs. They check the venting. Quarterly they have to clean all the venting, the vent grills in the hallway. They have to make sure that the air exchange is working.

That's just the cleaning part of it.

There's a lot of administrative work, and that depends on the different companies so I won't get into too much on



1 1144 J.K. DALY/D. CLARK, in-ch.
(Sanson)

the administrative, but there's certainly a lot of other things on maintenance.

5 In the place that we work we've started up a program, it's a certification program which deals with three levels, and the first level, which is the mandatory prior to hiring of all new superintendents -- you can jump in here any time too, okay.

10 It deals with the basic necessities of the skills that they have to have prior to being brought into our company, and that deals -- they have to be able to go in and -- in an apartment, if the water is leaking out of the taps they have to have the knowledge and the tools to be able to change the tap or the cylinders or anything that it may require, and know what it may require rather than just taking the whole tap and changing it; going into the toilet and seeing if it's the valve or it's the whole ball cock assembly that needs to be changed.

15 Being able to ascertain if the weep holes are plugged in the bottom of the window. They have to be able to look at a building and tell us there's a problem that needs addressing that is passed that level one that needs to have skilled help in. For instance, if there is leakage coming in from a roof a skilled person should be able to ascertain, and it's, you know -- it's difficult sometimes to find a water leak, I think that's the worst



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(Sansom)

thing to try to find, but they should be able to ascertain is it a water leak or if it's a plumbing leak, if it's from the roof or from plumbing.

5

They have to be able to do the jobs such as gluing down tile; repairing small seams in carpeting; putting tracks down if it's coming up and causing a tripping hazard in the floor connections; installing closet doors; installing locks; making sure that the windows are closing properly, and if they're not closing properly what's the obstruction.

10

Being able to do small patching plaster work, do painting. Taking the appliances that are needing repairs and ascertaining if it's a minor repair or a major repair that we have to call somebody in that's more skilled, like it could be freon, but it could also be the temperature control needs changing or it needs to be -- the coils behind it need cleaning.

15

The light fixtures, changing the light fixtures, making sure that that is all standardized. Making sure that in the bathroom the tiles are not loose. When that happens, if you don't look after that right away the water will go in behind your tiles and will ruin the tile wall, and that has to be addressed immediately. So they have to do all the re-caulking, taking the old grout out and re-caulking it if necessary.

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(Sanson)

Touching up any minor flaws in the enamel paint in the sink and the basin.

5

They have to make every vacant apartment reach out standards and, you know, I think it's important that our standards are not -- because we're Carleton Group, our standard is a market standard. To be able to realize in a shrinking market more tenants as possible you've got to be able to address those tenant needs, and the apartment that you offer them has got to be clean, it's got to be undefected in maintenance. The people that you have managed to get have got to be the right kind of people to attract tenants and to keep tenants, and to address their concerns, because they'll move out if their concerns are not addressed.

15

20

So you have to be knowledgeable in all those areas too as part of the certification program, and if they don't know some areas of it then we train them, because it's important and it's imperative that they do know that, because their job will not be successful if they don't.

25

30

As far as the leakage under the sink too, they have to be able to -- if it involves soldering or welding then we hire our plumber in, but other than that they should be able to stop that. If it's involving small electrical work, not major, but small electrical

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work, changing a receptacle or a plug, as long as it's not aluminum wiring, they're allowed to do that, and that's part of the parcel of the knowledge to have.

And it's not really all that difficult for most people if they're in tune to that type of work. My son is 18 and is well trained in all those areas, you know. I can do it.

THE CHAIRPERSON: For a building like the ones we've been looking at here, is it your recommendation that there should be -- would it be your recommendation that there should be a superintendent trained in the sort of program that you're describing?

MS. CLARK: I believe every superintendent should be trained to that extent. Now, for -- in this particular case there's 40 units down there, I can compare it to a building that I manage now and I've got full time superintendents trained on maintenance and they look after 58 apartments, and they live on site, and they do most of that work. They're not trained in some of it, but they will be receiving training in October, so I guess that's next month.

MR. DALY: I'd like to add that -- I'm sorry. I'd like to add that one of our comparable properties, 1267 Richmond Street, has 15 units and it has a live-in building manager, and that person is female,



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(Sansom)

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she's not a full-time employee, but she is part time and she's there to answer and to address the problems of the tenants and the building. And basically, if nothing else, she's a pair of eyes and she's accessible to the tenants, and if she can't handle it in her part time capacity then she can right away pass it on to us who are prepared at that point to respond to it.

10

I think every building should -- has to have somebody to represent it or to be available, to be seen.

15

THE CHAIRPERSON: To my mind there's a difference between being a live-in superintendent/tenant with average responsibilities that a lay person would imagine, there's a difference between that and the standard described by Ms. Clark just a few minutes ago, the standard that you try to set in your certification program.

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25

MR. DALY: M'hm.

THE CHAIRPERSON: Is that fair, to say that there is a difference between that standard -- and I guess my further question is this person in the 15-unit building, is that person trained to meet the standard that Ms. Clark was describing?

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MS. CLARK: She will be brought up to standards.



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1149 J.K. DALY/D. CLARK, in-ch.
(Sanson)

THE CHAIRPERSON: She will be brought up
to standards.

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MS. CLARK: Yes.

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MR. DALY: I think it's very ---

MS. CLARK: In the marketplace, though ---

15

MR. DALY: It's very important to note
that in our company should Marie Wyatt, who happens to be
that person, not be able to perform one of her tasks, say
it was a leaky bathtub faucet, then she would immediately
phone it in to the maintenance shop, so we have a system
such as ---

20

THE CHAIRPERSON: I see.

MR. DALY: --- if they're not capable or
available that they pass it on to the next level, so the
building is not set there on its own with her as its only
resource.

BY MS. SANSON:

25

Q. I would like to ask a question in
follow up, and just bringing it back to the obligations
of a landlord and ask you to comment on whether in your
opinion what is required to meet that, the obligations of
the landlord?

30

MS. CLARK: What is required to the
landlord?



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1150 J.K. DALY/D. CLARK, in-ch.
(Sanson)

Q. What is a landlord required to do, in your opinion?

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MS. CLARK: Well, as I said, I don't know if your question is asking more than what I had said before, he's required to provide a safe and secure premise to a tenant in cleanliness and security and in maintenance items. If there is ---

10

Q. But you've just gone through a series of expectations, would you comment on those qualifications and expectations that you've just identified?

15

MS. CLARK: As far as the cleaning and the maintenance items is the landlord obligated to do that? In my opinion, yes, they are obligated to do that, because under the law you have to -- that's all part and parcel of providing a safe and secure premise to a tenant, and it's providing cleanliness. It's following the by-laws in London also, and the health and safety standards.

25

But it's not only obligated by law, it's obligated by business sense. If you're going to be successful as a landlord you have to be able to provide a unit that the tenant is not only going to come to, but they're going to stay in when they're there. Because if you don't provide those you may get a tenant to come in



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1151 J.K. DALY/D. CLARK, in-ch.
(Sansom)

through inducements, but the tenant is not going to stay there. You have to provide them with a safe and secure premise. It's clean, the maintenance items have been
5 addressed.

10

THE CHAIRPERSON: I guess my question was, about 10 minutes ago you were giving us a general description of the duties of a property manager or
10 superintendent ---

15

MS. CLARK: Of a superintendent.

20

THE CHAIRPERSON: Of a superintendent.

And what you're saying then, in answer to Ms. Sanson's question, is that it is really the landlord's responsibility to make sure those are done, whether he has a superintendent to do it or not.

25

30

MS. CLARK: Some of them would be addressed under the law, the vast majority of them would -- I don't know about -- well, by not doing any of them I guess it would get into that point, yes, that they would all eventually -- by not doing all of those items it would eventually deteriorate to the point that it would address -- for instance, picking up the garbage around the building, you may not be obligated to do that for a small degree, but as it builds up, yes, you would be obligated by law. There's a degree.

THE CHAIRPERSON: I see.



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1152 J.K. DALY/D. CLARK, in-ch.
(Sanson)

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MS. CLARK: And by not looking after it at the beginning it would build to the point that it would be an obligation under the law. In very short order, because the tendency is if you don't do those things then the building deteriorates to the point that it's not -- there's no pride in the building, there's no pride for tenants, there's no pride for anyone, and it's a cumulative effect overall.

THE CHAIRPERSON: Thank you.

15

BY MS. SANSON:

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Q. I have a question directed for Mr. Daly, just in furtherance to your evidence regarding the importance of having the set of eyes on sight so that the tenants know that someone is there to respond to problems that they're having, perhaps you could identify what personal or public relations skills that you would expect a superintendent or manager to have?

25

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MR. DALY: As a company we expect all of the people who work in our buildings to have a certain amount of public relations skills. They have to deal directly with the public, they're front line; they act as rental agents on occasion; they act as liaison between the tenant and the property manager on occasion. We would expect them to be capable of dealing with the



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1153 J.K. DALY/D. CLARK, in-ch.
(Sanson)

public in a polite and courteous and efficient manner.

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Q. What kind of turnaround time would you say is reasonable in terms of dealing with tenant requests or tenant problems?

10

MR. DALY: Well, it depends what the problem is and the extent of it. In our company we have a high, medium and low priority system and certain different items are classified as such. For example ---

15

Q. Okay. Let's just back up to the -- let's start with a contact by a tenant in terms of, you know, response time ---

MR. DALY: Yes.

20

Q. --- for contact.

MR. DALY: Yes.

25

Q. Perhaps you could just identify the steps.

MR. DALY: A tenant comes to a building manager ---

25

Q. Or places a phone call and someone isn't on site at the time.

30

MR. DALY: Yes. A tenant makes contact with a building manager and makes a request that the oven, the inner stove is not working, and she doesn't know why, but it isn't working. So the building manager at that point would either go to the tenant's unit



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1 1154 J.K. DALY/D. CLARK, in-ch.
5 (Sanson)

10 themselves -- actually they would, they would do that,
15 and firstly they would check the fuses in the stove to
make sure that a fuse hadn't blown, and they would check
20 the element in the oven. If they were capable of
changing the element they would do it the same day. If
they weren't capable of changing the element then they
25 would place a call to the Maintenance Division.

30 The Maintenance Division would consider an
oven element to be a medium priority. The reason we'd
35 classify it as a medium is because the stove isn't down,
only the oven, and they have the stove top available to
40 them to cook food on. A medium priority is a guaranteed
45 three day response time, so a maintenance man or an
appliance technician is guaranteed in our system to be
50 there in a three day time span to make a repair to the
55 oven.

60 Q. And what is your expectation for
initial response? Would it be ---

65 MR. DALY: To the tenant from the building
70 manager?

75 Q. Yes, to the -- yes, to the initial
inspection, the investigation of the problem.

80 THE CHAIRPERSON: I thought the witness
said within 24 hours.

85 MR. DALY: Yes.



1155 J.K. DALY/D. CLARK, in-ch.
(Sanson)

MS. SANSON: Oh, sorry.

MR. DALY: That would be an immediate response, within the same day.

BY MS. SANSON:

Q. I'll provide you with one further example, because we've heard some evidence about sewage back up onto first floor apartments. What would be the response time for that?

A. A response time for a sewage back up would be instantaneous, it would be immediate response. There would be a man on the site immediately.

MS. CLARK: Day or night.

MR. DALY: Day or night, 24 hours a day, 365 days a year.

Q. And the last one, cockroach infestation.

MR. DALY: That's a property management issue, so I'll let Darlene answer it.

Q. Thank you.

MS. CLARK: Any time I've ever had a phone call about that problem immediately I'll give them a P.O. number and they call and the person comes down.

THE CHAIRPERSON: I'm sorry, what number?

MS. CLARK: A building manager will call



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1156 J.K. DALY/D. CLARK, in-ch.
(Sanson)

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me, I'll give them a P.O. number, and it's immediate response. You know, depending on the exterminator, how long it takes them to drive down there, you know, booking it in, but they come -- they're called immediately.

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And the building managers do have spray on site. It's not like all of a sudden cockroaches appear, it's, you know, like there's a couple of them and then it's spread. In the sense that if it's really, really bad then that's already been addressed, and it may be two or three apartments that maybe start complaining that they've seen one, and at that point then we'll investigate further, decide if the whole building needs spraying. If it's a really bad problem, then we will go through and put paste down. The cost of paste is between \$22.00 and \$25.00 a unit.

BY MS. SANSON:

Q. Why is the response time so quick?

MS. CLARK: Because it costs money. I teach the tenants that the best -- the tenant is always right, because if they come to you and complain about a water leak you want them to, because when you don't then you're wasting the water, and a continued water leak will ruin your counter, will make the tenant unhappy, they may leave, but even if they don't leave your premises are

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30

being damaged.

MR. DALY: That's right.

MS. CLARK: And you can bet, if there's a water leakage problem and if one person complains there's all kinds of them that aren't, because not everyone will complain, depending on what type of building you have.

MR. DALY: That's the difference between a maintenance item and a capital item, it starts out as a maintenance item, it starts out as a washer and it evolves into a counter top, a kitchen sink -- or kitchen taps, and in like that. Perhaps the cupboards below it are rotted out at some point in time.

MS. CLARK: And if you have -- if it's a window leak, it will be the window sill, then it will be the wall, then it will be the trim, then it will be the carpet, then it will be re-renting that apartment because the tenant will move, and you have to do it anyway.

THE CHAIRPERSON: Mr. Daly, a minute ago you mentioned three levels of priorities.

MR. DALY: Yes.

THE CHAIRPERSON: Can you give me a couple of examples for each of those levels?

MR. DALY: A high priority would be a refrigerator stopped working, it would be a same day response.



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1158 J.K. DALY/D. CLARK, in-ch.
(Sansom)

THE CHAIRPERSON: Anything else in that high category?

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MR. DALY: It would be a sewer back up; a major electrical malfunction.

10

THE CHAIRPERSON: Okay.
MR. DALY: A medium priority would be the oven on your stove; a laundry machine in the laundry room is considered a medium priority.

THE CHAIRPERSON: That's three day turnaround?

15

MR. DALY: Yes.

THE CHAIRPERSON: Okay.

MR. DALY: A low priority would be a plaster repair; a fence repair; perhaps a carpet repair.

20

THE CHAIRPERSON: And that turnaround time?

MR. DALY: Low priority is two weeks.

THE CHAIRPERSON: Two weeks.

MR. DALY: Medium priority is three days.

THE CHAIRPERSON: Thank you.

BY MS. SANSOM:

Q. I'm going to direct my next question to Darlene Clark, and we heard you detail a number of daily and ongoing requirements in terms of



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1159 J.K. DALY/D. CLARK, in-ch.
(Sanson)

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responsibilities for maintaining the premises and the common areas, and you proceeded from days to weeks. I would ask you to comment on the individual apartments themselves and what you consider to be the obligations of a prudent landlord with respect to the individual apartment units.

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MS. CLARK: Occupied or ---

Q. Perhaps you could comment on both.

15

MS. CLARK: Okay. When the apartment is vacant they have to go through the whole unit and make sure that all maintenance items are addressed, and that includes checking the plumbing and electrical; making sure that the carpet is adequate or does it need replacing; doing all the plaster repairs, repainting the unit.

20

Q. Would the carpets be cleaned at that time?

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MS. CLARK: If they weren't going to be replaced they would be. All our carpets are shampooed.

30

The counter top is addressed, if it needed to be replaced; all the taps are checked for any leaks and repaired as required. If the -- even the switch plates, if the switch plates have paint on them we tend to change the switch plates. The appliances are checked and repaired.



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1160 J.K. DALY/D. CLARK, in-ch.
(Sansom)

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Tubs and sinks and basins in the washroom, if they, you know, need repair or replacement they're done at that time. The windows are checked to see if there's a leakage problem, you know, that's starting, or if there's a problem with the weep holes, that's repaired. The tiles in the bathroom, if it needs any re-caulking or if it needs replacement we do that.

10

And at that point too, you know, at some point -- we are starting an energy audit in the apartments, so energy efficient shower heads and aerators and toilet dams are put in. The toilet dams are in all our units now, so that a reduction in water occurs. It's a very low cost.

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THE CHAIRPERSON: Is that just reducing the volume of the water in the tank?

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MS. CLARK: Yes. Yes.

25

THE CHAIRPERSON: Okay.

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MS. CLARK: The cost for the water dams, for instance, installed is \$4.50 for the purchase of it and \$0.50 installed if we get our plumber to do it, because it takes just a matter of plugging it in, so we got all our superintendents to do it, so the cost was built into their salaries, so it was \$4.50 per, plus G.S.T., per little water dam and that was plugged into the toilets and they were just -- it's automatic, put in.



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1161 J.K. DALY/D. CLARK, in-ch.
(Sanson)

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And their estimated savings on a family of four is 18 gallons a day, so you're looking at a pay back in six months at the very, very worst outside case scenario, you know.

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They would also make sure that the caulking is done against the counter top and along the tub and the toilet. In some cases too, you may have a nice carpet, but there could have been a pet in it and you could have odors; the carpets, you know, may be lifted and the floors may have to be sealed and a new pad installed, because that could be the underlying problem. If that doesn't get rid of it the carpet is replaced, because we won't rent that apartment to the type of tenant that we want to have in there, we want a tenant that wants to take care of the premise, not just anyone, you know. We have a lease, they're obligated under the lease to come in and do that.

The units, as they are occupied, are inspected yearly for any damage that may be occurring, the tenant is not letting us know for instance. Most of them will let us know, but in the case that they don't. There's some people that just don't complain. We still inspect it to make sure that everything is being complied with, and if there is any other problems that we should be aware of.



1 1162 J.K. DALY/D. CLARK, in-ch.
(Sanson)

When I was in Sarnia I had -- what my
system was, and I've only been here since February so I
can deal more just on my expertise and what I manage and
what I do. One of the things that I had done is that I
made sure that every, you know, superintendent was made
available so that they would -- when they went in and
checked they had a check list of things that they had to
check for, and one of the things was the ceilings, if
there was any cracks in the ceilings in case that it was
a problem with the plaster.

There's a plaster problem that's called
the hospital disease, and what happens in there is that
waters will get into the plaster and you can't just paint
it because it will still bubble up and it will come off,
so it has to be taken out, that whole area, and brought
back to the area that it hasn't affected, and new drywall
or new plaster applied to that area, because latex water-
based paint on it, it just won't stick. And sometimes
that happens in the ceiling part of it too, so you have
to be very aware of that, and so that's inspected.

If there is any sponginess in it around
the counter top to see if there has been water damage.
It could be that the tenant is just -- at that point when
you're looking at it, wrenched on the taps and closed
them off, but I mean that's not the answer to that



1163 J.K. DALY/D. CLARK, in-ch.
(Sanson)

either, because most of the time they won't wrench it and the water damage will still accumulate, and you may not have seen that because it's not dripping at the time that you inspect. So you have to look at things like that also.

If there's any water marks on the floor that could be from drainage, improper drainage from the fridge. If there is any problems with the window sills, or just directly under the window, if it looks like the plaster is bubbling, that could pertain to a water leak, or weep hole holes that may be bringing the water back in, the drainage back into the unit rather than down through the bricks.

Looking at the fire alarm systems to make sure that they're working. That's done monthly actually so that they are kept up. It's our obligation under the by-law to make sure that the fire alarms are working inside the units, that they haven't taken the battery off, so we have to make sure that we get, not only when they come in, but also to make sure that they're operational. And we have a form that a tenant signs saying "Yes, that we have inspected this", and "Yes", that they will be -- you know, the batteries, that it was in operational condition.

We check the carpets at that time so that



1 1164 J.K. DALY/D. CLARK, in-ch.
5 (Sanson)

we have an idea of what needs replacement, you know, is
it badly soiled; the tile, is it lifting; the baseboard,
is it -- any problem. We look at every item in the
5 apartment. And it doesn't take that long to do that, you
know, once you're -- I've done 54 apartments in a day.
Mind you, my feet hurt, but I did 54 apartments in a day.
I checked the bathroom fans, the kitchen fans, if they
10 are exhausting the air properly, you know.

That's the sort of items that a
superintendent must do. And you must check those every
15 year, because if you don't, then your problems are going
to increase in other matters. For instance, if your
bathroom fan isn't working and it's not exhausting
moisture out, it's going to rot your paint job and your
20 plaster behind that and it's going to be ongoing, a
cumulative type of damage, and it's going to be much more
costly to replace a motor than it would be to replace a
plaster wall and tile or anything along that line.

So what you're doing is for a half an
hour's work you're saving yourself an awful lot of money
in the long run. And you're obligated to provide a safe
and secure and clean place to your tenants, so if that
tenant isn't complaining how are you going to know if
30 you're providing that if you don't go there and inspect.

Because even if that problem was existing



in that unit and you don't know about it, ignorance isn't a defence, you have to take the time to inspect and know.

BY MS. SANSON:

Q. Thank you. I would like to move into another area and ask Ms. Clark a question regarding your experience, and whether you've had any experience over your years in property management with non-English-speaking tenants?

MS. CLARK: Yes. A large portfolio I've held with various ethnic groups of people, and it's difficult at times to communicate.

Q. And how have you resolved that communication barrier?

MS. CLARK: Well, I've done it in a couple of different methods, it depends on the situation. When I was in Sarnia I had a wonderful superintendent and she -- we were the recipient of quite a large number of immigrant people coming to the country, and they would come to our building, and it was kept very well, and she was trained in different languages, the small things that she could help with. And she -- for instance, if she needed to tell them something, and she had interpreters hired through Immigration to help interpret on the language skills so that they would understand the



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1166 J.K. DALY/D. CLARK, in-ch.
(Sansom)

directions that she needed them to understand.

THE CHAIRPERSON: She would hire
interpreters?

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MS. CLARK: Immigration helped with Marie to make sure that she understood, and she's taking courses offered through the different programs in the city so that she could learn different phrases that would help both of them understand each other better, the things that they needed to do. And, in fact, in the one building that Marie was working at, there was a lady that spoke English and a couple of different languages and Marie used to get her to help convey messages.

10

Right now I'm managing a building in London that it's got a lot of Arabic people there, and one of the tenants will assist in writing letters through my superintendent now, and the letters are attached in English and in Arabic to the tenant, and then it is addressed to the tenant and he is, you know, sat down and we talk with the letter and the interpreter to make sure that there's an understanding.

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25
It's time, it's patience, but it's rewarding in the long run because we have to make -- communication is so important, because if you don't understand what your obligations are how can be expected that there's an understanding.

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55
It's time, it's patience, but it's rewarding in the long run because we have to make -- communication is so important, because if you don't understand what your obligations are how can be expected that there's an understanding.



1167 J.K. DALY/D. CLARK, in-ch.
(Sanson)

There's no cost to us either on that, because the tenants live there, so we're lucky on that, that they will assist us.

BY MS. SANSON:

Q. Thank you. I would like you to address the question -- this is another, completely another area, and subject to any further questions the board might have.

THE CHAIRPERSON: Can I just ask a question similar to one of communication? In your experience have you had any dealings with community workers or tenant organizations ---

MS. CLARK: Oh, yes.

THE CHAIRPERSON: --- and what is the best way of dealing with that, or what has your experience been?

MS. CLARK: Talking. The best way I've always found to resolve anything is talking, and when you're talking it's -- I think sometimes people are painted in an adversarial role, particularly landlords and the media with their tenants, but I think it's -- I feel obligated, morally or ethically, under the program that I'm going under, to make sure that all my dealings with a tenant, or any association dealing along this line



1168 J.K. DALY/D. CLARK, in-ch.
(Sansom)

1 of work, is to talk, sit down and talk. If you can't
talk in the same language then you get an interpreter.

5 If the problem is so -- you may be
emotionally involved in it, or it may be a personal
thing, you feel that you've done it right and they feel
that you've done it wrong, I usually try to get a third
party to arbitrate it. Then I'll talk it over with my
10 kids at home, they're pretty strict on things like that
too, I've raised them to be that way, and they'll give me
sort of an unbiased opinion about how they would handle
it. I know that sounds hokey, but I do do that.

15 And I think about. I analyze the
situation and I think primarily what I do is we talk.
And if we can't get it the first time we sit down and we
do it until we do.

20 THE CHAIRPERSON: Thank you.

MS. CLARK: In the cases that it hasn't
worked out that way, in tenant associations or when the
third party -- it's never gone past the third party,
25 dealing with groups of people.

THE CHAIRPERSON: Thank you.

30 MS. SANSON: The area that I would like to
move into is dealing with the calculation of rental
incomes, and I would request an indulgence of perhaps
five minutes, 10.



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1169 J.K. DALY/D. CLARK, in-ch.
(Sanson)

THE CHAIRPERSON: Sure. Let's take a
break for ---

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MR. METZ: I was just concerned that
Darlene said she had to leave for Kitchener by 11
o'clock, and it's almost 11 now and I was hoping to get
some time to cross-examine.

10

THE CHAIRPERSON: Yes.

15

MS. SANSON: You'll get -- if I can just
go to the washroom I'll be right back.

MR. METZ: Well, I won't be done in 15
minutes.

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THE CHAIRPERSON: All right. Let's take a
five minute break.

--- Upon recessing at 10:47 a.m.

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(Sansom)

--- Upon resuming at 10:55 a.m.

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JAMES KENNETH DALY, Resumed:

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DARLENE CLARK, Resumed:

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CONTINUED EXAMINATION-IN-CHIEF BY MS. SANSON:

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Q. I'm moving into the area of rental incomes, and perhaps if you could just briefly -- we heard your evidence in terms of the first chart and how you prepared that, page 2, and it's my understanding that what you did was took December of 1984 as your base rates charged, and from there you calculated the rental incomes for the following years by allowing maximum percentage increase in law on those rents?

25

MS. CLARK: Yes, I have, up until the date of the rent review order, and then I did any recalculations from that point onward, so that I brought it forward to 1993.

30

Q. Okay. And I've asked you to review the actual rental income sheets from Mr. Elieff for the years '84 through '92, and I would ask you to -- perhaps if we could turn to Tab 5, that might be the best place where we could insert the calculations.

If you could please provide the actual



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1 1171 J.K. DALY/D. CLARK, in-ch.
(Sanson)

rental incomes based on the legal allowable maximum, a breakdown, and then provide the board with the actual rental earnings by Mr. Elieff ---

5 MS. CLARK: Okay.

Q. --- on the properties. And perhaps we could go through it year by year and I would ask you to identify which number is which ---

10 MS. CLARK: Okay.

Q. --- so that we're clear.

MS. CLARK: I have taken the December rent roles for every year ---

15 THE CHAIRPERSON: Just to speed things up, can I add to that request, Ms. Sanson, build on that question. Ms. Clark, if you could give us, as suggested, the legally allowed revenue for each year from the rents, the actual rental revenues, and a figure, a net figure after taking the revenues away from expenses.

20 MS. CLARK: Sure.

25 THE CHAIRPERSON: Sorry, expenses away from revenues.

MS. CLARK: Okay.

MS. SANSON: For both of them, or for real?

30 MS. CLARK: Just for what he charged.

THE CHAIRPERSON: Just for what he charged



1172 J.K. DALY/D. CLARK, in-ch.
(Sanson)

I think would be the most sensible thing.

MR. METZ: Excuse me, is this Tab 5?

THE CHAIRPERSON: This is Tab 5, and we're

adding to Tab 5.

MR. METZ: Okay. I've only got a list of expenses.

THE CHAIRPERSON: That's right.

MS. SANSON: That's right.

MR. METZ: Oh, okay.

THE CHAIRPERSON: So we're just adding figures ---

15 MR. METZ: I see. Okay.

THE CHAIRPERSON: --- beside it.

MS. CLARK: Okay.

20 BY MS. SANSON:

Q. So you want to have a column that says "Legal allowable maximum rental incomes", and a column to say "Actual incomes earned on the property, based on Mr. Elieff's own records", and then ---

25 THE CHAIRPERSON: A net column.

30 BY MS. SANSON:

Q. --- a "Net" column based on Mr. Elieff's actual earnings on the property.



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1173 J.K. DALY/D. CLARK, in-ch.
(Sanson)

MS. CLARK: Okay.

THE CHAIRPERSON: Okay.

5 MS. CLARK: For 1984 you can charge -- he could have charged legally, and this has to be the same amount as what the rent rolls, because that was my base year, was \$6,207.00 -- no, \$62,078.40, so that's what I based the legal and the charge amount on, so that same figure would be in both columns. The net figure after expenses were deducted from the submitted expenses is \$61,254.78.

10

15

BY MS. SANSON:

Q. Sixty-one ---

20 MS. CLARK: Sixty-one, two, five four point 78 (\$61,254.78).

25

THE CHAIRPERSON: That's basically the profit?

MS. CLARK: No, that's prior to debt service.

25 THE CHAIRPERSON: Prior to debt service, thank you.

MS. CLARK: Okay. In 1985 ---

30 MR. METZ: I'm sorry, I got the legally allowable, I didn't get the actual.

MS. CLARK: That's the same.



1 1174 J.K. DALY/D. CLARK, in-ch.
(Sanson)

THE CHAIRPERSON: It's the same.

MS. SANSON: They're the same in this.

5 MR. METZ: Oh, they're the same. I see,
okay.

MS. CLARK: Yes. Because I started that
as my base year.

MR. METZ: Okay, I understand.

10 MS. CLARK: In 1985, under the same
scenario, being December of '85, I have a figure of --
the legal figure of \$129,123.20, and I have it that he's
charged \$152,624.16. And based on what he's charged,
15 taking the expenses off, leaves a balance of \$131,101.85.

Nineteen eighty-six (1986) I have
\$134,288.00 is what could be charged, and I have him
charging \$158,258.16, leaving a balance of \$128,368.09.

20 BY MS. SANSON:

Q. Okay.

25 MS. CLARK: In 1987 legally he could have
charged \$141,271.20, he charged \$166,482.00, leaving a
balance of \$137,521.13.

In 1988, legally \$147,977.20, and he
charged \$176,412.00, leaving a balance of \$120,990.77.

30 In 1989, \$154,715.20, he charged
\$191,676.00, leaving a balance of, off of expenses of



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1175 J.K. DALY/D. CLARK, in-ch.
(Sansom)

\$140,926.55.

5

And then expenses jump up to '92, bringing that forward the balance legally could have been \$180,805.28, he charged \$211,437.60, leaving a balance of \$179,970.50.

10

THE CHAIRPERSON: Just, I know I asked this question yesterday, but do you have any idea of what the debt service charges were?

15

MS. CLARK: No.

THE CHAIRPERSON: No. Thank you.

MS. CLARK: Not as it relates to those expenses, because it's an overall mortgage.

20

THE CHAIRPERSON: Yes.

MS. CLARK: Yes.

THE CHAIRPERSON: It was just to get a global picture of the building.

25

MS. CLARK: Right.

THE CHAIRPERSON: Thanks.

30

MS. SANSON: You keep asking for that mortgage figure, do you want that? It doesn't relate only to the properties, that's the problem.

THE CHAIRPERSON: That is the problem, but if there's some way we could get that evidence in I would find it extremely helpful.

MS. CLARK: If you took the mortgage, if



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(Sansom)

it related to all the complexes, based on that ---

THE CHAIRPERSON: And when you say "all
the complexes" you mean ---

MS. CLARK: Like if there's -- there are
four buildings there, is there not?

THE CHAIRPERSON: But only two are owned

MS. SANSON: By Mr. Elieff.

THE CHAIRPERSON: --- by Mr. Elieff.

MS. CLARK: Oh, well then his mortgage
then could. If that mortgage was just placed on those
two properties.

THE CHAIRPERSON: Yes. Now, Mr. Elieff
isn't here to confirm that, he isn't taking the stand,
but I think that ---

MS. CLARK: I don't know what to call it.

THE CHAIRPERSON: Perhaps you're going to
have to help me here, Mr. Metz, in the sense of do you
recall Mr. Elieff confirming that the mortgages were for
those two buildings only?

MR. METZ: Well, not that particularly,
but I do have copies of his unaudited statements of
income for the years that Ms. Sanson requested.

THE CHAIRPERSON: Yes.

MR. METZ: And the expenses versus income



1 1177 J.K. DALY/D. CLARK, in-ch.
(Sansom)

5

versus what we're being told now have nothing to do in common with each other, and I would suggest that's partially a reflection of the fact that the invoices that were submitted in the preparation of this report were just those that we submitted to your ourselves as exhibits, which were very partial invoices.

10

THE CHAIRPERSON: That's a question you can raise on cross -- you can get that evidence in on cross-examination. But just ---

15

MR. METZ: But, as an example, mortgage interest in 1988, the interest alone was \$51,799.00 ---

THE CHAIRPERSON: Okay.

MR. METZ: --- in 1987 it was \$50,116.00.

20

THE CHAIRPERSON: Do you have those figures going back as far as '84?

25

MR. METZ: What did I just give you, '87; '86 is \$50,375.00; '85 is \$53,603.00; '84 I don't have right here, but I imagine it would be just a little higher because interest rates were higher in '84.

30

THE CHAIRPERSON: I would like to just hold those figures, I don't want to use up the time.

MS. SANSON: Is this interest relating to interest actually paid out or the cost of the debt, Mr. Metz?

MR. METZ: I'm sorry?



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(Sansom)

THE CHAIRPERSON: These are from the financial statements.

5

MR. METZ: Well, these are the unaudited statements of income and expenses.

10

MS. SANSON: Right, but they relate to the amount of interest.

MR. METZ: Correct.

15

THE CHAIRPERSON: On the ---

MR. METZ: On the mortgage.

THE CHAIRPERSON: --- mortgages.

20

MS. SANSON: Paid out, or the interest that's accumulated in terms of what the debt is?

MR. METZ: I don't think it would reflect accumulated interest.

25

THE CHAIRPERSON: If it's related to the mortgage payments, I guess that's the question.

30

MS. SANSON: Yes. It was my recollection that the mortgage payments were somewhere between \$4,000.00 and \$6,000.00 a month, in reviewing that, and I don't have the statements here and I -- I mean, if that's any cost at all in terms of what might else come off there, it would be my submission that it's, you know, what he's paying out on a month-to-month basis with respect to his mortgage obligations as opposed to balancing at the end of the year making his assets equal



1 1179 J.K. DALY/D. CLARK, in-ch.
(Sanson)

his liabilities.

5 MR. METZ: I'm not looking at a balance sheet, I'm looking at an income statement.

10 THE CHAIRPERSON: I can't imagine any mortgage company accepting anything less than the interest payments, so ---

15 MS. CLARK: And that's the only thing that would be on an income statement anyway, you know, your principal amount isn't.

20 MR. METZ: It's not on the income statement.

25 MS. CLARK: You know, it just has to be the interest on the mortgage.

MR. METZ: That's an additional ---

30 MS. CLARK: That's the only thing you can write off on income is the interest on your mortgage.

THE CHAIRPERSON: Ms. Clark, did you have the financial statements as far back as -- was it '85?

25 MR. METZ: Eighty-four ('84).

THE CHAIRPERSON: Eighty-four ('84).

30 MR. METZ: I think it's '84 to -- what year did we submit to you? To '91.

MS. CLARK: I don't have them on me, no.

THE CHAIRPERSON: You didn't -- but when you were preparing this?



MS. CLARK: Yes.

THE CHAIRPERSON: So if you were to see those financial statements right now would you be able to confirm that those were the service charges on the mortgages?

MS. CLARK: I could try. I'd have to look at them. I can't really say. I don't like to say until I can see them.

THE CHAIRPERSON: I just think you've got maybe the best way to get them in, those figures, and I would like those figures in.

Okay, Mr. Metz, I wonder if you could take those financial statements for those years and just show them on cross-examination to Ms. Clark, unless you don't have any objection to doing them right now because we're on that topic.

MS. SANSON: I don't have any object -- in terms of the value of that evidence and the weight of that you'll hear my submissions at the end of the day.

THE CHAIRPERSON: That's fine.

MS. SANSON: And specifically we heard through this witness that the cost of the mortgage is irrelevant with respect to what a landlord's obligations are, and in terms of you will also hear my submissions with respect to the appropriateness of remedy and



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1181 J.K. DALY/D. CLARK, in-ch.
(Sansom)

measuring ---

THE CHAIRPERSON: Yes.

MS. SANSON: --- somebody's ---

5 THE CHAIRPERSON: No, I think those are
important issues, but I think this is -- it's helpful for
me to know what the carrying charges on the mortgages
were, and for that reason I would like those financial
10 statements for each year just to be shown to Ms. Clark so
she can confirm what they ---

15 MR. METZ: Yes, I do have 1984. Oh, I see
that '84 is just half a year, June 11th to December 31st.

15 THE CHAIRPERSON: Yes. Yes.

MR. METZ: So I assume that's the purchase
date, or pretty close.

20

MS. CLARK: That's the date of
incorporation.

25 MR. METZ: Oh, of incorporation, okay.

THE CHAIRPERSON: And do you have the
other years?

25 MR. METZ: There is '89, I've got '85,
'86, '87, '90, '91.

MS. CLARK: We need '84 to '89 and the
year '92 based on my ---

30

MR. METZ: There is no -- excuse me.
There are no records for '92 available. Oh, wait a



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1182 J.K. DALY/D. CLARK, in-ch.
(Sanson)

minute, '85 I'm looking for now.

5

THE CHAIRPERSON: Jus in the interest of time, Mr. Metz, we could just use the -- just go through the ones that you have.

10

MR. METZ: Yes. It looks like I just misplaced 1985 for some reason.

THE CHAIRPERSON: That's fine, but if you could just ---

15

MR. METZ: Wait a minute, no. No, that's the one here, sorry.

THE CHAIRPERSON: Okay. Well, let's start with '84 and move down, and if we could just show each statement to Ms. Clark and have her confirm what the service charges on the debt were.

20

MR. METZ: I think I've got two copies here of '84. Right, the mortgage interest in '84 is \$20,992.00 because it's for half for the year.

25

THE CHAIRPERSON: Could you just show each statement to Ms. Clark ---

MR. METZ: Okay.

30

THE CHAIRPERSON: --- and then have her ---

MR. METZ: Well, let me just pile them all together ---

THE CHAIRPERSON: Okay.



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(Sanson)

MR. METZ: --- and pass the whole bunch of them around at once.

5

THE CHAIRPERSON: Okay, Ms. Clark, could you -- as each financial statement is produced could you just give me the figure for the debt services costs?

10

MS. CLARK: Mortgage interest in December '84 unaudited statement of income is \$20,992.00, rounded.

THE CHAIRPERSON: Thank you. Right, and

for ---

MS. CLARK: Against revenues of \$71,013.00.

15

THE CHAIRPERSON: This is for Elieff Investments Limited?

MS. CLARK: M'hm. M'hm.

20

THE CHAIRPERSON: The discrepancy may be for other things.

MS. CLARK: I hope so.

THE CHAIRPERSON: Yes. Nineteen eighty-five (1985)?

25

MR. METZ: That was '84?

MS. CLARK: M'hm.

30

MR. METZ: Eighty-six ('86). I notice it's '86 but it's got 1985 figures and '86 figures, '87, '88, '89 ---

THE CHAIRPERSON: All right, let's use the



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1 1184 J.K. DALY/D. CLARK, in-ch.
(Sanson)

'86 ---

5 MR. METZ: --- '90, '91, okay?

MS. CLARK: Okay.

10 MR. METZ: Just take the whole bunch
there.

THE CHAIRPERSON: Okay.

15 MS. CLARK: Okay. For 1985 ---

20 THE CHAIRPERSON: Yes.

25 MS. CLARK: --- mortgage interest is
\$53,603.00. And I guess the mortgage became due because
it changed for -- oh, no, no, it would reduce, yes,
that's right, okay. Never mind. Ignore that last
remark, because the interest rates would reduce as the
principal payments came forward.

30 THE CHAIRPERSON: Yes.

MS. CLARK: Mortgage interest payments for
1986, \$50,375.00.

THE CHAIRPERSON: Thank you.

25 MS. CLARK: Eighty-seven ('87) is
\$50,116.00; '88, \$51,799.00; '89, \$49,443.00.

Well, in 1990 it's listed on the income
statement as bank charges and interest, but we've got --
I'm at '89, right?

30 MS. SANSON: Eighty-nine ('89).

THE CHAIRPERSON: Nineteen ninety (1990).



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1185 J.K. DALY/D. CLARK, in-ch.
(Sanson)

MS. CLARK: Okay. What did I say ---

5 MS. SANSON: But we're not dealing with
1990 in the comparables.

MS. CLARK: Right.

THE CHAIRPERSON: Oh, I see.

MS. CLARK: So have I given you '89's yet?

10 THE CHAIRPERSON: Yes, you have.

10

BY MS. SANSON:

Q. Eighty-nine ('89), yes.

15 MS. CLARK: What did I say?

Q. Forty-nine, four four three
(\$49,443.00).

MS. CLARK: Four four three?

20

THE CHAIRPERSON: Yes. I guess that's the
last one.

25

MS. CLARK: Yes, because the mortgage
interest here it's saying bank charges were also included
with this interest, it's \$49,496.00, so I guess the
balance in that statement is dealing with the bank
charges.

30 THE CHAIRPERSON: Okay.

30

BY MS. SANSON:

Q. I'm sorry, what was '92? Did you ---



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(Sanson)

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MS. CLARK: I don't have '92.

Q. All right.

THE CHAIRPERSON: Okay. Thank you.

5

Now, returning to you, Ms. Sanson, do you
have any other questions for the witnesses in-chief?

MS. SANSON: I don't believe I do.

THE CHAIRPERSON: Okay.

10

Mr. Metz?

MR. METZ: Okay?

MS. SANSON: Just before we move I'd like
to ask if the complainant has any questions.

15

THE CHAIRPERSON: Sure. Thanks.

(SHORT PAUSE)

20

MS. SANSON: I believe Ms. Hom does not
have any questions for the witnesses.

THE CHAIRPERSON: Okay, thanks.

Mr. Metz?

25

MR. METZ: Okay. I'll just put all this
back together here.

30



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CROSS-EXAMINATION BY MR. METZ:

5

Q. I made two separate sets, one for Darlene Clark's testimony, one for Jim Daly, so I might jump around a bit when I go between the two of you.

10

First of all, just for the record, who approached you to do this report?

MS. CLARK: Are you asking me?

15

Q. Yes, whoever ---

MS. CLARK: Jim.

Q. Oh, Jim asked you. And who asked you, Jim?

20

MR. DALY: The Ontario Human Rights Commission.

Q. So you were approached by the Ontario Human Rights Commission?

25

MR. DALY: That's correct.

Q. Was it the Human Rights Commission that paid you to produce the report?

30

MR. DALY: That's correct.

Q. Now, I believe this is from Darlene's testimony, in discussing how the report was prepared you mentioned that you took some comparable buildings. Could you equally say that you were looking at buildings that had comparable tenants?

MS. CLARK: For the assumptions that I was



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1188 J.K. DALY/D. CLARK, cr-ex.
(Metz)

doing in some of the build -- like what do you mean by "comparable tenants"? What does that mean?

5

Q. Well, would you say the make up of the tenants in Mr. Elieff's buildings were essentially the same type of tenants that were in the buildings that you used for comparable study?

10

MS. CLARK: What kind of tenants does he have?

Q. Well, this is something I thought you might observe on your site visit or something of this nature.

15

MS. CLARK: I don't understand your question.

20

THE CHAIRPERSON: I think the implication is that these tenants may have been more destructive. I think it's fair to say that that's ---

MS. CLARK: What? Is there a group of tenants out there that goes around and destroys things?

25

THE CHAIRPERSON: Well, you'd better ask Mr. Metz.

MS. CLARK: I don't understand your question.

30

BY MR. METZ:

Q. Well, for example -- or are you able



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1189 J.K. DALY/D. CLARK, cr-ex.
(Metz)

to answer the question? Perhaps you have no way of answering that question.

5

MS. CLARK: I don't know. I don't think so.

MR. METZ: Hello, Mr. Elieff.

10

BY MR. METZ:

Q. That you can't answer the question or that you can't compare?

15

MS. CLARK: I don't understand what your question is. Maybe I can ---

Q. Well, you said earlier ---

MS. CLARK: --- answer it, I'm not really sure.

20

Q. Let me see here ---

25

THE CHAIRPERSON: You might put it in another way.

30

BY MR. METZ:

Q. For example, you said that the people who run your apartments and do management for you have to be the right kind of people to attract the right kind of tenants, and I was wondering what kind of tenants those might be and what kind of tenants you might refuse.

MS. CLARK: A lot of it's income criteria,



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1190 J.K. DALY/D. CLARK, cr-ex.
(Metz)

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okay, or if they've had a bad report from their past landlord. I check back two landlords, not just the last one because they may just want to get rid of the tenant.

I tend to go back two landlords.

10

There's lots of times somebody will come in maybe and pass all that criteria and they still may go in and destroy the apartment, then I address that to the legal avenues that I have to get rid of that tenant and to protect the investment.

15

Q. What might some of those legal avenues be?

20

MS. CLARK: Eviction, through the various forms.

25

Q. And what might some of the grounds be, other than income?

25

MS. CLARK: Damaging or disturbing the peace and quietness of the other tenants, or non-payment of rent. I've evicted a person for urinating in the hallways.

30

Q. And how would you prove a conviction like that? Did someone witness him or ---

MS. CLARK: Eyewitness.

Q. It was eyewitness?

MS. CLARK: Yes.

Q. In the case where there are no



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1191 J.K. DALY/D. CLARK, cr-ex.
(Metz)

eyewitnesses to the specific acts of vandalism or damage,
how does one approach the situation?

5

MS. CLARK: If it's in the person's
apartment ---

10

Q. M'hm.

15

MS. CLARK: --- then that person is
responsible. If it's in the common area you have to
watch. You have to have somebody there on site to be
able to be, you know, your eyes and ears on site. That's
where the person helps. And invariably, if there's one
problem tenant, or two problem tenants in the building
you'll hear about it from the other tenants.

20

For instance, one of the buildings I'm
looking at now, a couple of days I went down there and I
got a tenant approached me with a letter and paint chips,
this one tenant -- tenant's children actually, was
scraping the paint off a door frame, so he gathered all
the evidence and he put it in writing.

25

I've asked them all, if they complain to
put it in writing. I have to be able to verify that that
is that person, and there's means and ways of verifying.

30

Q. M'hm. When you started testifying
yesterday you discussed something that I didn't quite
understand too clearly regarding the high leverage
problems due to the Rent Control Act. I'm not quite sure



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1192 J.K. DALY/D. CLARK, cr-ex.
(Metz)

I understood.

MS. CLARK: No. High leverage.

Q. High leverage, sorry.

5

MS. CLARK: It's dealing with finances on the property and it has nothing to do with rent controls, except that your income is controlled by rent control.

10

Q. I see. Okay, so the rent control controls the income ---

MS. CLARK: That's right.

Q. --- portion?

15

MS. CLARK: That's right.

20

Q. And does that, in your experience, cause very many problems for very many landlords?

MS. CLARK: Rent control?

Q. Yes.

25

MS. CLARK: Oh, yes.

30

Q. Could you describe some of those problems, what kind of limitations it places on landlords?

MS. CLARK: Well, rent control places restrictions on your income. I don't think it's a practical approach to providing rental accommodation. In the long term it certainly has been proven to be detrimental to the rental market.

It's the only business I know that there's



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so much government interference by a so little known subject, and controlled so tightly, because of a political belief, not a practical belief, that it is destroying the rental accommodation in Ontario.

Q. How do you mean "destroying"? What are the -- what are ---

MS. CLARK: Because it devalues your building. Because when you're restricted on your income, and the increases that you can get on your income, it makes a prudent landlord -- it's very difficult to maintain the building to the standards that a prudent landlord would like to do it, but if they don't do it then it costs them even more. And rent control will -- controls the amount of increases.

The problem is combined with, in London you may have market rent versus your maximum legals.

Q. I'm not quite clear what the problem -- you can have ---

MS. CLARK: Market rents are rents that you can charge a tenant when they're coming in, that is what they can find in the comparable market for this amount of rent charged to that apartment, which may in fact be slightly under what the maximum rent chargeable can be on that apartment.

THE CHAIRPERSON: Slightly under?



1194 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Slightly below?

MS. CLARK: Market rents are below maximum rent allowance. They have to be below because you can't charge above, legally, the maximum legal rent.

THE CHAIRPERSON: Right.

MR. METZ: I see.

THE CHAIRPERSON: So just to clarify, so how does this become a difficulty for the landlord?

MS. CLARK: Because even though you could charge, let's say for instance \$500.00 for that apartment, you may only be able to get \$480.00 ---

THE CHAIRPERSON: Yes.

MS. CLARK: --- because of the market, they could go next door and get a comparable apartment, all things being equal, for \$480.00, so why would they come over to your place and pay you \$500.00.

THE CHAIRPERSON: Yes.

MS. CLARK: Even though you can legally charge that, you may be only market-wise be able to get \$480.00.

5
0
BY MR. METZ:

Q. I see. So when you said that in your comparison study that you used legal maximums allowed for comparisons, that might be a little bit unrealistic in



1195 J.K. DALY/D. CLARK, cr-ex.
(Metz)

terms of market conditions?

MS. CLARK: Our comparables were based on
the expenses, not the income.

Q. Oh, I see, okay. So that was
strictly -- wait a minute. Just on expenses, there is no
legal maximum expenses for buildings, are there?

MS. CLARK: That's right.

Q. Now, I'm not sure which of the two of
you this question is best directed at, but getting back
to the chart on page -- right at the beginning there.
Hang on, I've got a little bit of a mess here.

All right. Page 3, the "Comparable
Expenses to Subject Property". Could you just explain
once again with respect to the subject property,
Cheyenne, where these figures came from to create this
chart?

MS. CLARK: From the landlord.

Q. From the landlord. Mr. Elieff
provided these for you?

MS. CLARK: Or I guess he provided them to
you, is what you said, and you provided them to us.

Q. No, I was not aware of providing you
with any information.

MS. CLARK: The Human Rights.

Q. There was some back up documentation



1 1196 J.K. DALY/D. CLARK, cr-ex.
(Metz)

for this, was there not, like in your tabs here?

5 MS. CLARK: That's the information that I
got for expenses.

Q. Isn't there some ---

MS. CLARK: Yes, it's right here.

Q. Yes, which ---

10 THE CHAIRPERSON: Let me interject here.
Those documents were filed as exhibits ---

MS. CLARK: Yes.

15 THE CHAIRPERSON: --- in this matter, and
between February and the dates that you were retained
those documents were in the possession of each party, or
copies of the documents. I assume that those were the
documents that were provided to you by the Commission.

20 MS. CLARK: Yes. If you look on ---

MR. DALY: Yes.

BY MR. METZ:

25 Q. They were actual invoice ---

MS. CLARK: Section two, "Expenses", from
page 27 to 35, those are where those expenses were taken.

Q. Okay.

30 MS. SANSON: I will clarify once again, I
did this at the outset.

THE CHAIRPERSON: Yes.



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1197 J.K. DALY/D. CLARK, cr-ex.
(Metz)

5

MS. SANSON: Neither Mr. Daly, nor Darlene Clark, have received the actual copies of the exhibits. What happened was I went through the exhibits, made a list from the exhibits themselves, and I pointed that out at the beginning, so if there are any ---

10

THE CHAIRPERSON: Okay. Thank you.

15

MS. SANSON: For example, our rose-coloured bathtub has been included as an actual expense. There have been exhibits listed, or identical copies of bills, they've been enumerated twice, so if there's any error in terms of overage it will -- the overage is included. So everything that was entered was listed.

20

And if there are some errors in the calculations then let's point them out. I reviewed them, somebody else in my office reviewed them, they got the actual -- the list that we now see in the tabs. That's the information they worked with.

25

MR. METZ: Well, since this issue has been

THE CHAIRPERSON: Thank you.

30

MR. METZ: --- brought up at this point with regards to the rose-coloured bathtub, this is an issue I wanted to bring up in any case.

THE CHAIRPERSON: Do you need to bring it up now with the witnesses here?



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MR. METZ: Well, according to the amount -- I do not have a copy of that invoice and I'd like to know which exhibit number it is in, and I don't see an invoice from Salmon Plumbing and Heating in this anywhere near the amount of \$1,200.00 I believe you said that amount was.

THE CHAIRPERSON: Mr. Metz, I realize that is a point you want to raise, it should have been raised on reply when Mr. Elieff was here to answer that.

MR. METZ: Well, I didn't have the document in my possession, and last night when I went home I reviewed the exhibits. And I made an error in telling you that the -- when I asked Ms. Sanson the address ---

THE CHAIRPERSON: Yes.

MR. METZ: --- on the Salmon Plumbing invoice. I pulled out my Exhibit No. 16 and I noticed that this is where the Salmon Plumbing invoices are, and that they are indeed all addressed to 6 Elaine Crescent, but they're very clear where the service address of the invoice is on the bottom section. And as I went through I found no invoice for a rose-coloured tub of any sort.

So I would respectfully say that it was perhaps my inability at recognizing the invoice, or even being aware of it, we did not submit such an invoice or



1199 J.K. DALY/D. CLARK, cr-ex.
(Metz)

at least it was not included in the Exhibit 16.

5 MS. SANSON: Well, it certainly wasn't ours, I don't know how else we got it.

THE CHAIRPERSON: Okay.

MR. METZ: I would like to see a copy of it because I'm sure ---

10 MS. CLARK: It's listed on page 32 for August 22nd, 1988 under "Household Plumbing".

BY MR. METZ:

15 Q. Page 31 -- 32 ---

MS. CLARK: Thirty-two (32).

Q. --- under "Household Plumbing".

MS. CLARK: Yes.

20 Q. Okay. I was told it was Salmon Plumbing.

MS. CLARK: Well, at any rate.

Q. Sorry, where is that? Page 32.

25 MS. CLARK: At least I think that's what it is, I'm not sure, I could be wrong.

30 THE CHAIRPERSON: Mr. Metz, I'm just going to ask the question again. Is it a question that can be put to these witnesses? I mean, we have these witnesses here, we want to deal with the questions that relate to them and to their expertise, can we proceed to those



1200 J.K. DALY/D. CLARK, cr-ex.
(Metz)

questions and then deal with this later?

MR. METZ: Well, again, the issue of the actual submitted exhibits ---

THE CHAIRPERSON: Yes.

MR. METZ: --- in terms of the invoices that we submitted were certainly not all inclusive of Mr. Elieff's expenses for the period. And it shows up very sharply on this graph in fact, because I know for a fact that we really concentrated, and I made it clear, and you can check in the transcripts, when we were going through these exhibits, that these were merely representative to give you an example ---

THE CHAIRPERSON: Yes, I do recall that.

MR. METZ: --- of the type of expenses that Mr. Elieff was incurring. And we particularly weighted them heavily towards '88, '89 and some at the beginning of '85 when Mr. Elieff took over the buildings, or close to that period, and it just glaring shows up on this chart on page 3.

MS. SANSON: Are you making final argument now, Mr. Metz?

MR. METZ: No, I'm -- this will be part of my final argument, but what I'm saying ---

MS. SANSON: Okay, let's -- could we leave it to final argument and move on ---



1201 J.K. DALY/D. CLARK, cr-ex.
(Metz)

MR. METZ: I think it's very important ---

MS. SANSON: --- with the cross-examination ---

MR. METZ: --- that we make it clear ---

MS. SANSON: --- of the witnesses.

MR. METZ: --- that these do not -- these graphs do not include the total expenses incurred by Mr. Elieff ---

MR. ELIEFF: Because we did not submit all the bills.

MR. METZ: --- during those years. We did not submit everything.

THE CHAIRPERSON: I take your point, Mr. Metz, and I come back to the question I asked earlier. We have these witnesses here, let's ask the witnesses the questions they can properly answer.

MR. METZ: Well, my question was basically relating to what documentation they were provided with, and apparently they weren't even provided with the documentation but with a list prepared by Ms. Sanson.

THE CHAIRPERSON: Yes.

MS. SANSON: That was made clear at the outset of their evidence, Mr. Metz.

THE CHAIRPERSON: How the list was prepared ---



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1202 J.K. DALY/D. CLARK, cr-ex.
(Metz)

MR. METZ: Right.

5

THE CHAIRPERSON: --- and I think it was clear that the origin of the list was explained, and what was provided to them was also explained.

10

MS. SANSON: And Mr. Metz has had the opportunity to go back to the exhibits and compare. If there are some corrections let's hear about them. Did we miss something? Is there something we should have included? Let's hear about it. Let's add the numbers onto our list while we have the witnesses here.

15

THE CHAIRPERSON: But I think, Mr. Metz, in fairness, the point that you've made is a valid one, but it really is more properly made in argument, because you've already made that point when you were entering the exhibits.

20

MR. METZ: Well, I guess my issue is in accepting this as a comparable report. I would assume that the same conditions would have to exist for the alternate properties that were chosen in terms of making some sort of fair comparison.

25

THE CHAIRPERSON: All right. Why don't you ask the witnesses that question, that is, for the other properties what documentation did they have at their disposal to come up with these figures?

30



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BY MR. METZ:

Q. There's the question ---

MS. CLARK: Okay.

Q. --- for the comparable properties.

MS. CLARK: The documentation was the invoices as put onto the general ledger and the financial statements.

Q. So you went by financial statements for the documentation with respect to the comparable properties, but you went by the list provided for you by Ms. Sanson for the subject property, is that correct?

MS. CLARK: That's right.

Q. Is there any way that -- would these comparisons also include personal labour done by Mr. Elieff or his family or anyone else he may have had doing work?

MS. CLARK: No.

Q. It wouldn't have.

THE CHAIRPERSON: I think just to follow up on that, I would like your comments on whether these figures that you've prepared in the comparison would be very much different, or how different would they be if you'd used the financial statements and not just the list of expenses provided by the Commission?

MS. CLARK: If it was based just on



exactly those two buildings?

THE CHAIRPERSON: Yes.

MS. CLARK: I couldn't, because it didn't give the breakdown exactly as we have, so you can't really answer that question.

THE CHAIRPERSON: Let me back up.

MS. CLARK: But I would like to add something prior to you adding that.

THE CHAIRPERSON: Yes.

MS. CLARK: It also didn't put into the labour that our landlord put in, or his family put into these buildings either.

THE CHAIRPERSON: Okay, that's a useful point.

I guess backing you, you've said that for the buildings used in comparison, for comparison, you used those financial statements.

MS. CLARK: Or the general ledger.

THE CHAIRPERSON: Or the general ledger.

MS. CLARK: That's right.

THE CHAIRPERSON: Okay. And in this case, for these buildings in Cheyenne ---

MS. CLARK: Yes.

THE CHAIRPERSON: --- you didn't use the financial statements?



L 1205 J.K. DALY/D. CLARK, cr-ex.
(Metz)

MS. CLARK: No.

THE CHAIRPERSON: Okay.

5

BY MR. METZ:

Q. So then you would say that the buildings used in comparison were more or less owner occupied and operated then?

MS. CLARK: No, they weren't owner occupied.

Q. Or not occupied, but the landlord or the superintendent was the owner of the building in these cases?

MS. CLARK: None of the superintendents own the building, but it was owned by Carleton Group.

Q. The buildings are owned by Carleton Group?

MS. CLARK: Yes.

Q. You're not strictly like a property management ---

MR. DALY: The buildings are owned by Carleton ---

Q. --- that contracts out?

MR. DALY: Actually they're owned by different companies.

MS. CLARK: Investors.



1 1206 J.K. DALY/D. CLARK, cr-ex.
(Metz)

5 MR. DALY: They're not owned by Carleton
Group.

Q. I see.

10 MR. DALY: There are different investors
involved.

Q. Now, you've said also in this chart
comparison carrying costs were not included, of
financing, is that correct?

15 MS. CLARK: Debt service is not included.

Q. Debt service.

MS. CLARK: That's right.

20 Q. And utilities were not included?

MS. CLARK: That's right.

Q. Just to keep myself even with my
notes here I'll switch to Mr. Daly now.

25 You said you visited the site on July 15,
'93, the subject property, and that when you were there
that you met Susan Eagle there. And did she accompany
you around the building?

MR. DALY: Around the property?

Q. Yes.

MR. DALY: Yes, she did.

30 Q. And did she bring any specific things
to your attention?

MR. DALY: Such as?



1 Q. I'm just curious what was on her mind
to bring to your attention?

5 MR. DALY: I met Susan Eagle there so that
I would have somebody to help me in my inspection and get
me -- I wanted to have a look at a couple of units for
the report.

10 Q. Now, was it -- Susan Eagle provided
you with the Dillon Report that is included here under
your Tab number 6, is that correct?

MR. DALY: Yes.

15 Q. Now, you said that you basically
agreed with most of the observations in the Dillon
Report, but not with its recommendations, is that --
would you agree with that?

20 MR. DALY: I didn't mean to say that.

Q. Well, if you could clarify, please?

25 MR. DALY: Okay. As a property management
company what we're in the habit of doing is maintaining
the buildings to meet proper standards, and when we wrote
our capital items and our budget that was our goal. I
believe the engineers came to the conclusion that the
buildings were in such state that it would be -- it
wouldn't be, you know, conducive to -- it wouldn't be
30 worthy of repair.

Q. Of repair, yes.



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1208 J.K. DALY/D. CLARK, cr-ex.
(Metz)

MR. DALY: Yes.

5

Q. Now, you said you disagreed with that conclusion, which was basically to tear down the buildings.

10

MR. DALY: I see in their report here their estimate is \$3 to \$3.5 million -- this report is also for four buildings so it would be half of that -- so what I'm offering in this report ---

Q. Hold on a sec, you said the report is for four buildings, and ---

15 MR. DALY: I believe so.

20

Q. I'm just trying to make sure we're making the same kind of comparisons here, because the figure of 20 per cent, you've suggested that your costs that you would incur, I think the both of you were suggesting that if it was you in charge of these buildings and how you would approach it ---

25 MR. DALY: Yes.

30

Q. --- that the amount of money you would be involved in bringing the buildings up to standard and everything would be 20 per cent roughly ---

MR. DALY: Yes.

Q. --- of what was quoted in that report. What would account for such a major different, an 80 per cent difference? And what would a decision ---



MR. DALY: I based the percentage on -- the engineer gave us a unit cost of \$40,000.00 to \$45,000.00, and I calculated our unit cost and our unit cost was 20 per cent of theirs.

The major difference is basically we didn't address a lot of items as fully as they had. For example, we didn't address the windows and the patio doors, which are a major ticket item. I can go through the report and ---

Q. But that having been the case, if they were a major ticket item, why would it not have been, as you've said, if it was in your hands and you're going to make the decision, are you then suggesting that you would not have addressed those major ticket items initially or something else?

MR. DALY: Pardon me?

Q. Well, you say they were major ticket items that they looked at in a little more detail and yet you still said that ---

MR. DALY: The windows. I said the windows were a major ticket item.

Q. The windows and the balconies.

MR. DALY: Yes. And we didn't allocate for window or patio doors.

Q. Right. Why wouldn't you have in your



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1210 J.K. DALY/D. CLARK, cr-ex.
(Metz)

report?

MS. CLARK: We did eight. We did eight patio doors, did we not?

5

MR. DALY: Yes.

Q. So you're more selective in the particular ones you felt needed repair, is that correct?

10

MR. DALY: In some instances. From my point of view, I would have included replacement of all windows and all patio doors, but this report is a joint effort and from a property management point of view they're looking at numbers and trying to make some sense of the situation and accommodate the tenants at the same time. Were I the author of this report it wouldn't be nearly as complete, however I would have budgeted for, as a capital item, replacement of all windows and all patio doors, for the reason being that they are not adequate in their present state.

15

Q. Now, is that a ---

20

MR. DALY: They don't do a very good job.

25

Q. Yes, you testified yesterday that I guess they were all single ---

30

MR. DALY: Standard single-glazed ---

Q. Single-glazed, standard sliders.

MR. DALY: Yes.

Q. And you suggested that they always



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1211 J.K. DALY/D. CLARK, cr-ex.
(Metz)

condensate in the winter.

MR. DALY: That's correct.

5

Q. Would that be part of your major concern with replacing them in that respect?

MR. DALY: Well, the condensation leads to damage, so I consider it to be prudent to change them.

10

Q. So you would be looking at it, you agree with me, in terms of a long term investor who wants to ---

MR. DALY: That's correct.

15

Q. --- keep his investment in good shape.

MR. DALY: Yes. Yes. The cost of ---

Q. When it comes to the ---

20

MR. DALY: The cost of window replacement was ---

THE CHAIRPERSON: Could I just have the cost of that, the cost of window ---

25

MR. DALY: As a rough calculation for all patio doors and all windows in both buildings I would estimate \$70,000.00. I'm not qualified to tell you what the payback timeframe would be on that investment, I would suspect that it would affect the utility bill somewhere in the neighbourhood of five and seven per cent as an energy saver.



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(Metz)

THE CHAIRPERSON: Just for clarification, what you'd replace for \$70,000.00 in both buildings would be double glazing or single glazing?

MR. DALY: We would remove -- the windows that are presently in the buildings are single-glazed.

THE CHAIRPERSON: Yes.

MR. DALY: We would remove all of the existing windows ---

THE CHAIRPERSON: Yes.

MR. DALY: --- and install double-glazed sliding windows.

THE CHAIRPERSON: Double-glazed, thanks.

BY MR. METZ:

Q. Now, as it stands now with the single-glazed sliders that are there now, is that in and of itself a violation of any building codes or ---

MR. DALY: Unfortunately, when they built -- when they erected the structure it was according to Code. To my knowledge it's not in violation of Code at this point, however the damage that it causes would be in violation to the Board of Health.

Q. Now, you were talking about you say that the sliders always condensate in the winter, I imagine that would be a problem exacerbated even further

1213 J.K. DALY/D. CLARK, cr-ex.
(Metz)

by the fact of overcrowding in an apartment, more people using showers, more people contributing to the humidity in the apartment, would it not, if there was more than an average number of tenants?

MR. DALY: Once again I can offer an opinion, but I can't make a ---

Q. Well, I'm only asking for your opinion.

MR. DALY: Okay. Because that involves engineering, and it's true that the higher the population in the unit the more condensation or humidity -- not condensation but humidity is in the air.

I would say that that building does not have a vapour barrier and that humidity is free to travel through the walls, so even though you've got a higher population, and that's contributing to the problem on the windows, well, how much it's contributing I'm not really sure because really and truly the air is free to move back and forth through the walls.

Q. Between apartments and out into the hall you mean, like that type of thing.

MR. DALY: Exterior walls. I'm referring to exterior walls.

Q. Is that in and of itself also any contravention of any building code?

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1214 J.K. DALY/D. CLARK, cr-ex.
(Metz)

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MR. DALY: No, it is not.

Q. No?

10
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MR. DALY: A lot of high-rise and walk-up
residential units do not have vapour barriers.

15
10
Q. Now, if these windows are
consistently condensating in the winter whose
responsibility would it be specifically to, let's say,
keep the damage to its least degree possible? I mean, if
there's people living in the apartment all the time
should the landlord -- or does the landlord have some
right to go in on a regular basis and do something about
it, and under what conditions? I'm not sure which of you
would ---

20
20
MR. DALY: Could I turn this over to
Darlene?

25
20
Q. Sure.

25
25
MS. CLARK: It's the landlord's
responsibility to make sure that the premise is kept in
good repair. He is obligated to go in and to make sure
that that apartment is in good repair, and the only way
he can do that is to inspect it. So, therefore, he is
obligated under the law to keep it in good repair, so
therefore it would follow logically that he would have to
go in to inspect it to see if it's in good repair.

30
30
So yes, it's up to him to make sure that



1215 J.K. DALY/D. CLARK, cr-ex.
(Metz)

the condensation on the window isn't further damaging the apartment, not only under the law but under practical business sense, because everything that he doesn't do at this point is just going to increase his cost in the long run.

Q. Well, I'll be getting back to that practical business sense point in a moment. However, if a landlord meets resistance in terms of allowed entry for purposes of inspection, how does he overcome that problem?

MS. CLARK: He has to give notification giving the proper time notice to go into that apartment. He's free to do that under the Landlord and Tenant Act for inspections.

Q. And whose responsibility would it be to keep just the basic windows clean?

MS. CLARK: To make sure that the glass is clean?

0. Is clear, so you can see out from it.

MS. CLARK: Clean? Is that what you mean,
like the actual window clean?

O. Or moisture clean.

MS. CLARK: Refer? Are you talking to
dirt ---

Q. Well, for example ---



1 1216 J.K. DALY/D. CLARK, cr-ex.
(Metz)

5 MS. CLARK: --- or are you talking to the
condensation? Condensation is the landlord's ---

0 Q. Both.

5 MS. CLARK: --- obligation to make sure
that the condensation isn't creating a problem. The
tenant is responsible to take the dirt off the window.

0 Now, if it's on the outside of the window
they're not responsible to hire the, you know ---

5 Q. Right.

MS. CLARK: That's another problem.

5 Q. If it's a landlord's responsibility
to -- like I sort of see a catch 22 here. If it's a
landlord's responsibility to make sure that the damage
caused by the windows, the condensing windows, if
that's his responsibility and yet the windows still meet,
legally, or don't break any ---

20 MS. CLARK: The standards that's referred
to there is on insulation value, what I'm referring to as
his responsibility is the damage value. He is obligated
to make sure that the windows do not damage the apartment
to the point that it falls into disrepair, which would
damage or make the tenant have an apartment that is not
under, you know, good peace and quiet, security, clean,
that type of thing.

25 30 So that's two different issues, it has no



1 1217 J.K. DALY/D. CLARK, cr-ex.
5 (Metz)

relation really.

Q. Okay.

5 MR. DALY: I might add that two of the properties that we used as comparables, which were older than the subject property, had wood double-hung windows, and in both of those instances the landlord had purchased aluminum storms that mounted on the face of the exterior 10 wall and achieved his insulation value that way.

15 Q. Now, just referring to your comment, you said that the other buildings were a little bit older than the ones Mr. Elieff has.

MR. DALY: Yes.

20 Q. Wouldn't that in and of itself imply that the expenses necessary to maintain them would perhaps maybe be a little bit higher than a newer building?

25 MS. CLARK: In those buildings, as far as the property management goes, in the operating costs and your expenses, if you keep up to the maintenance items your expenses should stabilize, outside of any capital items that you have to do from time to time, and they have been put into the cost and the expenses on that comparable sheet.

30 The only time -- as age -- if you keep the building in good repair as it goes on your expenses are



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1218 J.K. DALY/D. CLARK, cr-ex.
(Metz)

going to be fairly stable, it's when you don't do the repairs that the deterioration and expense go hand-in-hand.

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In the cases in our comparables, they have been looked after, the deterioration hasn't increased the expenses outside of the normal wear and tear of things that may have to be done on a capital nature, for instance if the bricks were spalling or if the -- maybe the caulking has reached its lifespan, or something along that line, or the appliances have to be replaced every once in awhile, or maybe something like corridors may need carpet replacements. That's wear or tear or just the lifespan has been met in some of those things.

But the operational expense of maintaining that apartment building, if kept in good repair, is not going to be -- it will increase as the age goes, but it's more the capital expenses that increases rather than the actual operating expenses.

Q. So then it would be more realistic to assume the older a building the more expense would be incurred towards capital?

MS. CLARK: That's correct.

Q. Or more likely towards capital costs?

MS. CLARK: That's right, yes.

THE CHAIRPERSON: Just to follow up on



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1219 J.K. DALY/D. CLARK, cr-ex.
(Metz)

that, can some of those capital, or all of those capital costs be recovered through an application to the Rent Review Board?

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MS. CLARK: Used to be somewhat, now you can't. Now you have -- if you put an application in you have to -- it has to meet certain criteria. And let's say you wanted to save energy, so you changed all your lighting in the common area, the reduction in your energy costs that you achieve -- you also have to show if you had an increase or reduction in taxes, it all has to net out in taxes, heat -- there's four different items off the top of my head -- at any rate, they're all put in and they're all netted off, and the tenant is then -- like if you save -- let's say your net savings is \$2.00 a unit, the tenant can then apply to have that reduction in energy cost of \$2.00 a unit taken off their rent.

THE CHAIRPERSON: Okay.

MS. CLARK: So the incentives for a landlord anymore to do energy-efficient things, it has to be calculated with that idea in mind to make sure that everything nets off in a proper manner for him or her.

THE CHAIRPERSON: Okay.

BY MR. METZ:

Q. Now, in your budget estimates for the



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10 subject property you stated that all your projections
5 were based on your best estimates of what could happen in
the future, and yet you referred to a shrinking market
10 when you were talking about the basic skills necessary
for a landlord or a superintendent, and I would suggest
in addition to that, given our current political and
economic climate, are these best estimates a reasonable
assumption?

MS. CLARK: Yes.

Q. How would you justify that ---

MS. CLARK: Well, any budgets ---

15 Q. --- given those factors?

20 MS. CLARK: Any budgets are just -- are
very subjective. I think that they're very good
estimates because that's -- if I had to do a budget for
an investor based on that building this is exactly how I
would do it, and it's exactly how I do it for any other
building that I manage.

25 The market, you have to be skilled in
being able to attract that market, that's why I was so
insistent on some of those capital items being done to
increase your curb appeal, to increase your ---

30 Q. If I could just interrupt you for a
moment?

MS. CLARK: Sure.



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1221 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Q. What if your market isn't for the higher paying rent group, if we can put it that way?

5

MS. CLARK: Actually you can make your market what you want it to be. It's your responsibility. You own the asset, it's your responsibility to make your market what it needs to be.

10

Q. Right.

15

MS. CLARK: For instance, I have buildings that -- I might have a tenant that doesn't want to pay the rent, and when I take over the building, in a lot of cases it's for the banks, and the landlord may have been in there before wouldn't even sign a lease with tenants. You know, they never followed through on a lot of their obligations, the building has deteriorated and is utter chaos. I've been in there and I've been able to turn the building around, given a length of time, and I would put a lot of capital -- well, the investor would, and I would manage the capital investment into that property.

20

25

30

I would be very careful in scrutinizing the people going in there in the sense of their income criteria and how they have treated their last two places that they lived on. And based on that information I would be able to get a clientele base in there based so that they would be able to afford the rents comfortably and that they would look after their home and that



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1222 J.K. DALY/D. CLARK, cr-ex.
(Metz)

everything would be as well as could be expected. Of course you're going to get the ups and downs in any business like this.

5

Q. Just to go back, you talked -- you know, when you're screening your prospective tenants you say you go back over the last two ---

10

MS. CLARK: Landlords.

15

Q. --- landlords. What do you do in a case where, for example, the tenant doesn't have a previous landlord or is new to this country immediately or ---

20

MS. CLARK: If there's no good reason, if I don't have a good reason, if I still feel that they'd make a good tenant?

25

Q. M'hm.

25

MS. CLARK: Their income criteria, for instance -- where it's backed, sponsored by a church, I'll let them in. Then my obligation is make sure that they look after the premise, understand their obligations as a tenant, and if that means hiring an interpreter or having someone there to speak to them, and at that point in time my obligation begins to make sure that the covenants that I've agreed to are carried out, and certainly that theirs are too.

30

If I find out that it hasn't been on their



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behalf, for instance if I find that they don't -- if they've been instructed properly and if they still didn't follow the rules and, you know, obligations of that building, if they ruin the apartment let's say, and they have been instructed not to and they understand that, then my recourse is to do it the legal way and I'll evict those people, and I do.

10

*but when
it's
"RENTAL"*

Q. Okay. When a tenant does cause damage or -- well, let's just say damage or vandalism to an apartment or anything like that, and that tenant is on some sort of social assistance or government assistance, is there a difference in the ability of a landlord to collect his damages?

15

MS. CLARK: Yes.

20

Q. How so?

MS. CLARK: Because you cannot garnishee their wages. That's a consideration prior to them coming in also, you have to consider all aspects of it. Let's say ---

25

Q. Well, aren't you describing a very discriminatory process in a sort of way?

30

MS. CLARK: No. No.

Q. How -- please elaborate. Why would you say that?

MS. CLARK: Well, what part could be



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(Metz)

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discriminatory? If they're on social assistance you can't collect monies that you may be able to sue them for. How is that discriminatory? That's a fact that you can't collect the money, that's not discriminatory.

10

Q. Well, it wouldn't be by my definition either, but there are those who believe for various reasons that perhaps an action like that would be discriminatory.

15

MS. CLARK: Well, then I guess you should ask them because I said what I had to say and you've said what you had to say on it.

20

Q. Now, you also in your projections estimated a 50 per cent vacancy rate for the balance of 1993 I believe.

MS. CLARK: M'hm.

25

Q. And you said this was because of the bad reputation of the building.

MS. CLARK: M'hm.

Q. Could you elaborate on that?

30

MS. CLARK: Well, what I meant by that exactly was ---

Q. Well, for example, how did you know there was a bad reputation related to this building?

MS. CLARK: Because I've been reading about and I've been talking in my -- people that I



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(Metz)

associate with in the landlord community, it's a well-known fact what's happening here and it's followed very carefully.

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And also I've talked to various people in the industry as far as fire inspectors and people along that line, not in a derogatory sense against the landlord or against the tenants, but just what's happening, just to be aware it's a community event, or it's a community happening that's affecting the community.

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Q. Did any of these people have a firsthand knowledge of the situation there or were they all second and third-hand knowledge?

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MS. CLARK: Firsthand knowledge actually like living in there?

Q. Or someone who has actually been on site or had some experience with either the tenants or the landlord himself or herself?

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MS. CLARK: I talked to the fire inspector that worked with -- and seen the reports, yes.

Q. And what did he have to tell you?

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MS. CLARK: Well, he believes that it's very difficult to manage an apartment complex, but his estimation is that the place is in very bad repair, and they're very concerned that if a fire ever broke out, we



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(Metz)

can all talk what we want, but what happens if a child dies in that fire.

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Q. Well, that's ---

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MS. CLARK: We can talk about obligations then.

Q. M'hm.

MS. CLARK: Big deal.

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Q. Right. That's sort of on a speculative level ---

MS. CLARK: Is it?

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Q. --- in terms of what might happen ---

MS. CLARK: I don't think so.

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Q. --- or which could possibly happen.

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MS. CLARK: I think that we have to maintain the properties on the belief that it could happen, and I think that our obligation is to go past what the laws say that we have to do, because we have an obligation to people.

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Q. That would be a moral obligation then, if it goes beyond the law, would it not?

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MS. CLARK: And this is just my opinion also. It's not certainly something that's in law, but I think that everyone should have a moral obligation because it's -- I have a strong, strong personal belief in fire safety, yes. I guess that's why I said what I



said, because I really feel it's imperative.

Q. Now, in your estimates you said you estimate a 50 per cent vacancy rate for the balance of '93. In the subsequent years following how high a vacancy rate were you ---

MS. CLARK: That's all stipulated in the report. Assuming that all the capital work has been done it's 50 per cent for '93, 25 per cent for '94, and five per cent thereafter, which is an industry standard.

Q. Is that a reasonable expectation that these buildings, if operated -- I'm sorry, were you going to interrupt?

THE CHAIRPERSON: No.

MR. METZ: Oh, I'm sorry, I thought you were?

BY MR. METZ:

Q. That they would basically be at a 95 per cent capacity under normal circumstances?

MS. CLARK: If it's marketed properly, and if the capital work has been done, and the -- all the other assumptions based on the assumption notes have been followed, I believe that your five per cent vacancy factor by '95 would be a very realistic figure.

Q. And in looking over the past records



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(Metz)

what were the vacancy rates, or were you ---

MS. CLARK: Right now you're looking at 50
per cent.

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Q. Today, yes.

MS. CLARK: Yes.

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Q. But in the periods, were you given
any information regarding vacancy rates going back
anywhere near 1984 to present?

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MS. CLARK: I have some of his rents
sheets that sometimes they will say an apartment is
vacant at a particular time, but I didn't calculate any
vacancy loss on the expenses because it didn't apply to
my expenses.

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MS. SANSON: We have the actual incomes
now, which may be a better indicator. And, despite his
vacancy -- any vacancy rate, he was earning more than the
legally allowable rents for that period, so he had rented
a full vacancy.

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THE CHAIRPERSON: Mr. Metz ---

MR. METZ: Yes?

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THE CHAIRPERSON: --- how much longer do
you think you'll be in cross? I'm not trying to cut you
off.

MR. METZ: Not very much longer. I'm just
going through my notes that I took as they were speaking.



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(Metz)

THE CHAIRPERSON: Okay.

5 MR. METZ: I just want to address things
as I'm going through them.

THE CHAIRPERSON: Okay.

BY MR. METZ:

Q. Now, Darlene, again in your testimony
you said in the Landlord and Tenant Act a landlord is
obligated to provide and maintain the unit basically fit
for tenancy, and you also said that the tenant is
responsible for ordinary cleanliness, and/or for wilful
or negligent conduct. And then you also said a little
later on that even if a tenant refuses to repair, and I
assume that when you said that this assumes a
responsibility of the tenant has been ascertained ---

MS. CLARK: Would you like me to give you
an example of that?

Q. Yes. But just to go on with my
question, you say the landlord is still obligated, if you
could just expand on that.

MS. CLARK: I'll give you an example,
maybe that will give you what you need. Let's say that
the tenant broke the key in the lock, so you couldn't
lock it, let's say it's locked open, it doesn't work, and
they made you aware of it, and it was the tenant that did



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(Metz)

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it, whether the fault -- if they did it on purpose or not
is beside the point at this point, but the door is --
door lock is broken. And if you don't repair the lock,
let's say because the tenant turned the key, and you
think it's the tenant's responsibility to repair that
lock, so you don't repair it, you wait for the tenant to
do it.

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Then somebody broke into that apartment
and raped that person in that unit, you could, and in
Toronto have been charged and found responsible for, as
superintendent, property manager, and the actual building
owner, for not providing security of premise. So you are
legally obligated to repair it, even if the tenant was
found to be the person that did it in the first place.

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Q. I would almost suggest that that
example is a little outside, because you're almost
talking about outside the apartment itself rather than
perhaps what's going on indoors.

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MS. CLARK: You're talking about entering
into the apartment.

Q. Yes. Let's assume that there is a

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MS. CLARK: Okay, let's give another
example.

Q. Okay.



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(Metz)

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MS. CLARK: Let's say that the tenant went
in and changed a plug inside the unit ---

Q. An electrical plug you mean?

MS. CLARK: Right.

Q. Okay.

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MS. CLARK: Okay. And they didn't report
it to you as far as -- let's say it's an aluminum wired
building. Now, this is going kind of crazily, but let's
say it's an aluminum wired building and they put a copper
receptacle into that, and a fire was caused because of
that ---

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Q. We're assuming here without the
landlord's knowledge are we?

MS. CLARK: Right.

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Q. Yes.

MS. CLARK: No, there's a lot of other
factors, I don't know if that's a really good one or not,
because how would you -- okay.

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Q. Well, maybe I can broaden the
question in a more general way by asking ---

MS. CLARK: Yes, it would probably be
better.

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Q. --- by perhaps asking -- clearly, you
made it clear that it's up to the landlord that even if
the tenant is responsible, it's up to him to prove



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negligence, which seems to me under the way the current laws are would be a very difficult task, would you not say so?

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MS. CLARK: I don't know, it would depend.

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THE CHAIRPERSON: I think, if I can just interject here. I think, if I remember the evidence, it was that the landlord would have to prove negligence, but in a subsequent action in a court of law. In other words, the point that I recall the witness making was that the first step was the landlord's obligation to repair.

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MR. METZ: Right.

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THE CHAIRPERSON: Then if the landlord wanted to recover then you move to the second stage and prove negligence. I think that was the evidence, and if you wanted to ask a further question.

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MR. METZ: No, I rather assumed it from within that context.

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BY MR. METZ:

Q. For example, I guess what I'm getting at is how does one go about proving negligence? For example, if I was a landlord, I'm not, but if I were, and I rented an apartment to a tenant, and the apartment was in acceptable condition and in proper condition when



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rented to the apartment -- or rented to the tenant, and when that tenant either departed or took off or whatever else I find that that apartment is in a shambles ---

MS. CLARK: Okay. What we do is when somebody moves in ---

Q. --- isn't it -- no. Isn't it almost automatic sort of in law that -- wouldn't the tenant be held responsible for that damage regardless?

MS. CLARK: When we move in we do an incoming inspection report that is signed and dated by the tenant, and a copy of that goes to the tenant. When they move out, whether they're there or not we ask them to be there. If there's any damages that isn't noted to be wear and tear it's our responsibility at that time, if we want to carry it further as far as means of collection. Let's say they ruined it by spilling paint all over the carpets and the carpets all had to be replaced, for an example.

Q. Okay, let's say that the tenant ---

THE CHAIRPERSON: Just let her finish.

MS. CLARK: Just let me finish, please.

So at that point in time, after the outgoing report is completed, then what we do is we take it and we either put it in the collection agency or we will take them to Small Claims Court to recover the cost



of the damages that have been done, it is over and above the wear and tear in the comparison between the incoming and the outgoing report.

BY MR. METZ:

Q. And what if the tenant refutes the charge that he was responsible for the damage?

MS. CLARK: It's up to the court to decide on how they would handle that.

Q. So the court would have to decide.

MS. CLARK: Yes.

Q. And then again getting back to the issue of if that tenant were on some sort of social assistance and the wages cannot be garnisheed, would it not be correct to assume then it's almost not worth the landlord's time to go after a tenant like that?

MS. CLARK: What you can do at that time, if you get a judgment, you can register that judgment, and then you can keep that, and assuming that the tenant isn't always going to be on social assistance the rest of their life, you just keep renewing that and you can garnishee that judgment at a further date.

Q. I see.

MS. SANSON: Might I ask for a very brief break?



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THE CHAIRPERSON: Thank you, because I
need one as well.

MR. METZ: Okay.

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THE CHAIRPERSON: A five minute break.

MR. METZ: Sure.

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--- Upon recessing at 12:13 p.m.

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J.K. DALY/D. CLARK

--- Upon commencing at 12:15 p.m.

JAMES KENNETH DALY, Resumed:

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DARLENE CLARK, Resumed:

THE CHAIRPERSON: Okay. Can we continue?

10 MR. METZ: If I may just interrupt for a moment, there is a gentleman that's just joined us in the room I would like to have identified for purposes of this board, and that would be the gentleman sitting there. Could you come forward?

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THE CHAIRPERSON: Yes. Sir, can you identify yourself?

MR. MATYAS: Pardon?

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THE CHAIRPERSON: Could you tell me who you are?

MR. MATYAS: Yes, I'm Joe Matyas.

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THE CHAIRPERSON: And do you represent anyone?

MR. MATYAS: I'm here out of personal interest.

THE CHAIRPERSON: Okay.

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MR. METZ: If you could ask Mr. Matyas if he has any relationship with anyone else attending these



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board hearings?

MS. SANSON: I'm not sure what the relevance of that is, unless it relates to a party.

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MR. METZ: Well, I'll explain my relevance. I believe Mr. Matyas is a ---

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MS. SANSON: I think it's a completely inappropriate question.

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MR. METZ: I'm just following your example, Ms. Sanson. Mr. Matyas is an employee of the London Free Press and I believe has a relationship with Susan Eagle. If he could elaborate on that with you?

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THE CHAIRPERSON: I think that unless you can explain to me the relevance I'm not going really do any -- I'm not going to do anything about it, because my only concern would be if the person in the room was going to be a witness subsequently, and I don't believe ---

MR. METZ: If I may remind ---

THE CHAIRPERSON: I don't believe it's the case.

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MS. SANSON: I will speak -- I would like to speak to that, and maybe Mr. Metz is referring to an earlier time when I asked people to identify themselves and their interest in the proceeding, and that day involved a great number of people who were there with recording devices; there was a great deal of media there,



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J.K. DALY/D. CLARK

and the request was to come forward and identify.

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There was also another earlier time, as you may recall, when there some -- a great deal of concern as to the order of the proceedings and comments in terms of what was going on within the room and trying to maintain some order within the proceedings then themselves. And those were the two instances when the Commission requested some identification of individuals. One arose out of an orderly proceedings and comments that were being made by people who were sitting in the room, and the second time dealt with media and people taking recordings of the proceedings or by way of cassette or video or otherwise.

MR. ELIEFF: I don't think so.

THE CHAIRPERSON: Mr. Metz ---

MR. METZ: I don't remember it that way.

THE CHAIRPERSON: --- I just want to make a comment in general.

MR. METZ: Yes.

THE CHAIRPERSON: These are public hearings ---

MR. METZ: Yes, I agree.

THE CHAIRPERSON: --- anyone is entitled to come unless the board makes a ruling on somebody's application that this hearing be held in camera. No



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J.K. DALY/D. CLARK

application is pending, no application has been made, that means anyone is entitled to attend.

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Apart from the issues of being a witness and the issue of decorum, I can see no other reason for raising a question about a connection, whatever that connection may be, between any person here, any member of the public who is in attendance.

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Now, unless you can tell me that it fits into one of the categories I've just stated I really think we should proceed with the cross-examination and not be troubled with that.

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MS. SANSON: I continue to be concerned about the comments made, number one about the Commission and what the Commission said or didn't say; the conduct of the Commission; and the characterization of Commission or Commission counsel, and we continue to hear these submissions throughout, and I have concerns about the accuracy of those comments where it relates to the Commission as a public body and the behaviour of the Commission.

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MR. METZ: Which comments are you referring to, Ms. Sanson?

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THE CHAIRPERSON: I'd rather not go into that at the moment. I'm satisfied that we can ---

MR. METZ: I think that Ms. Sanson's



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(Metz)

defensiveness is a very clear sign that this is a sensitive issue and I think ---

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THE CHAIRPERSON: Mr. Metz, I'm overruling all that.

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MR. METZ: Very well.

THE CHAIRPERSON: I'm asking you to proceed with the cross-examination of the two witnesses.

MR. METZ: Okay.

THE CHAIRPERSON: Thank you.

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CONTINUED CROSS-EXAMINATION BY MR. METZ:

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Q. Okay. We were talking about, before the break, situations that arise when a tenant is being held liable for damages and things of that nature, in your opinion, Darlene, do you think that it's a fair process, what a landlord has to go through to recoup his losses from a tenant who may have damaged his property?

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MS. CLARK: I don't think that I should really comment whether it's fair or not. I mean, the law is there because it ---

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Q. It's just an opinion.

MS. CLARK: Well, my opinion is that the law is there to do general good and I'll base it on that.

Q. Would you therefore say that the law is doing a general good?



MS. CLARK: Yes.

Q. Okay. You were also talking earlier about the basis skills necessary to run an apartment building and that you talked about the importance of training and the type of people who run buildings. Right now, if my understanding is correct, there are no laws or regulations governing that type of -- like who can own a building and who can operate it.

MS. CLARK: That's right. Well, I don't know about who can own a building or any of that.

MR. METZ: Or not own it.

MS. CLARK: But to my knowledge, unless there's something that I'm not thinking of, there's no law saying that you can't own a building or that you can't run that building, as long as you run it according to the by-laws and the law that may apply to it, for instance under the Landlord and Tenant Act or any other Act that may affect your management of that building. Certainly if you follow those I don't see the problem.

Q. So you also mentioned, for example, that your son was 18 and well trained so you don't really see a problem with someone who just knows the basics of the things you went through in being a superintendent.

MS. CLARK: He's well trained in maintenance issues, he's not well trained as far as



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(Metz)

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marketing goes or anything along that line, and he certainly has more to learn as far as ongoing maintenance issues. Like he can change a tap, and he can do the issues that I have spoken of.

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Q. Would most landlords in a position of the Cheyenne ---

MS. CLARK: Of course, he isn't a superintendent in any of my buildings either.

Q. I'm sorry?

MS. CLARK: He isn't a superintendent in

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Q. No, I understand that. But in your experience would most landlords in comparable buildings to Mr. Elieff's where they basically operate the buildings, do you find that they're very conscious or concerned with marketing concerns of that nature or do you generally find they're more concerned with more concrete problems or concrete issues?

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MS. CLARK: I can give you opinion on what I've found. People that I have dealt with, that I believe that are prudent landlords, they're primarily -- they're extremely concerned on their marketing, because if they aren't they're going to lose the edge of their market, they won't be able to have the type of tenant that they need to have to make sure that the building is



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generating income.

They have to be able to know how to manage the building, they have to keep up with the applicable laws, they have to be able to do all kinds of things in a rent controlled environment to maximize their income.

Q. When a landlord allows tenants into his building that he doesn't screen for income or doesn't really ask a lot of questions about their background but practically meets them on the spot and allows them in, would you say a landlord of that nature -- would you call a landlord like that discriminatory?

THE CHAIRPERSON: I'm think that's a ---

MS. CLARK: I don't see how one ---

MS. SANSON: I'm going to object to that question.

MS. CLARK: --- relates to the other.

MR. ELIEFF: Why would ---

MS. SANSON: I'm going to object to that question because ---

MR. ELIEFF: She's expert, sir.

THE CHAIRPERSON: --- that is a ---

MS. SANSON: It's asking for a conclusion in law, which we went through in terms of qualification, they're not here to give expert evidence about



discrimination in law. They're here ---

MR. METZ: I wasn't referring to discrimination in law, I was just referring to discrimination as a dictionary definition.

MS. SANSON: I'm not aware that there is any one definition of "discrimination".

THE CHAIRPERSON: The Code sets out certain areas that are considered infringement and that's a legal question. I don't think the witnesses here have been qualified to give that sort of answer concerning the impact of the Ontario Human Rights Code.

MR. METZ: I believe I asked a question regarding discrimination earlier on when I was applying it to the practice of screening tenants and there was no objection brought up at that point in time, and I'm only asking for an opinion.

THE CHAIRPERSON: Well, I ---

MS. SANSON: I should have objected the last time you did it, so I didn't.

THE CHAIRPERSON: Yes.

MS. SANSON: That doesn't mean you get to get it in now.

THE CHAIRPERSON: I was -- just in the interests of proceeding expeditiously I didn't interrupt then, I really feel it's an improper question.



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(Metz)

MR. METZ: Okay.

MS. SANSON: If I had objected to everything I thought shouldn't have been asked or gone in we would have been here for another six weeks, Mr. Metz.

THE CHAIRPERSON: In any event, Mr. Metz,
let's proceed.

10 MR. METZ: Okay. If I may rephrase the question?

THE CHAIRPERSON: Sure.

BY MR. METZ:

Q. In the circumstance I just described to you would you say a landlord is doing a service to his tenants or a disservice?

MS. CLARK: I don't know.

O. You wouldn't know in that respect.

MS. CLARK: No.

Q. It would depend on the tenant then
really?

MS. CLARK: Yes.

Q. You discussed also beyond legal obligations and legal requirements, you were talking about a sense of pride in the building and sense of business sense, that a landlord when he's looking after his property would more or less want to look after it.



In your experience would you say landlords to your knowledge, do you know of very many that generally throw garbage or vandalise -- around their property or vandalize their own property?

MS. CLARK: Well, let me clarify that. I may not know the landlord that would go and take a bag of garbage and throw it, but I also know -- I don't know any landlord that generally wouldn't go and clean it up if it was there either.

Q. True. And what would your -- how would your judgment be extended in the case where a landlord picks it up and the next day the same condition exists, and then he picks it up and the next day ---

MS. CLARK: I've had buildings that I've managed like that, so every day we're picking up garbage. Every day.

Q. And yet there's no way to assign any responsibility to -- obviously in those cases a landlord's not ---

MS. CLARK: Do you know what I do?

Q. --- throwing the garbage.

MS. CLARK: I take the bag and I find out if there's anything that addresses itself to that apartment and I try to establish where that garbage is coming from, and then I follow the legal proceedings to



evict that tenant.

Q. I see. So you would say as a general rule, would you not, that it is in the self-interest of any landlord to properly maintain his buildings and that by not doing so it would be acting against his own self-interest?

MS. CLARK: That's correct.

Q. I'm sorry you're getting most of the questions now, I'm just on your side of notes right now.

MS. CLARK: If you want to answer any, Jim, you can go ahead.

Q. You were talking about in your operations that you basically rent apartments to the types of tenants you want and you want -- you know, how would you typify or describe the type of tenant you're looking for? What is your market in the sense of the tenant aspect of that market?

MS. CLARK: Somebody that will pay the rent, somebody that will take care of the premise.

Q. That's it?

MS. CLARK: M'hm.

Q. You said you had some experience with non-English-speaking tenants, would you be able to expand that experience to not just people who don't speak English, but people who may have a very dramatic



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(Metz)

difference in culture perhaps ---

MS. CLARK: Yes.

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Q. --- from our own? Could you expand
on that, what type of experience might you have had in
that regard?

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MS. CLARK: The same experience.

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THE CHAIRPERSON: Same as the experience
with linguistic differences?

MS. CLARK: Yes.

BY MR. METZ:

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Q. Right. When you were answering this
question previously with respect to non-English-speaking
tenants you found that the best way to resolve things is
basically by talking, and you commented, which I thought

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MS. CLARK: No. No, no, no.

Q. To resolve the problem.

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MS. CLARK: That was a question from the
board and he was asking about tenant associations.

Q. Oh yes, you're right, experience with
community workers. You're right.

MS. CLARK: That's right.

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Q. As opposed to with the tenants
themselves.



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MS. CLARK: Well, there was no "opposing" in there ---

Q. But I'm not ---
MS. CLARK: --- that was just dealing with tenant associations.

Q. Okay. But my question doesn't relate to that, I'm just referencing it. In your comments you mentioned that landlords and the media are often painted in an adversarial role.

MS. CLARK: That's correct. That's my opinion.

Q. Yes. Do you have any -- relating to your opinion, do you have any idea as to why that might be?

MS. CLARK: In my opinion it's because of the belief of people like David Cook and Bob Rae.

Q. That belief being?

MS. CLARK: That landlords are evil people.

Q. And are you aware of any basis for that belief in your experience?

MS. CLARK: Well, I don't think they have any basis for that belief, but that's certainly what they've said. Not perhaps that they haven't said that landlords are evil people. I spoke to David Cook on this



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(Metz)

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issue in London and Windsor at one point when he was in the Housing Department, Ministry, and he really sincerely believes that the tenants in general are disadvantaged to the landlords. And I have a problem believing that in general. I believe that there is something on both sides.

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But certainly in general my experience has been that most landlords and most tenants, if given the opportunity, can sit down and work out and deal with each other on so many issues. For instance, HALT is a tax issue that I believe strongly that the tenants and the landlords have a common interest, and I believe that communication will help both sides.

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Q. I think I'm going to switch more over to Jim's notes now.

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I would have to make it clear here, of course, that the date that you inspected the subject property was very recently, in July of this year, is that correct?

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MR. DALY: It was July the 15th.

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Q. July 15th. Jim, as you were going around you mentioned also that you saw an electric meter box vandalized and that it was taped up, or there was some ---

MR. DALY: I saw that ---



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1251 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Q. That was one of the pictures I believe that was submitted.

5

MR. DALY: --- some of the connections were taped, as is customary practice by the PUC.

10

Q. Now, the box that we're talking about is the property of the PUC, is that correct?

15

MR. DALY: I believe so. They would have a lock on it and they would read their meter.

20

Q. Would it be their responsibility to maintain that box or would it be the landlord's responsibility to do that?

25

MS. CLARK: Can I interrupt this for just a minute, if you don't mind?

30

Q. Sure.

MS. CLARK: It's my understanding that you have to, that is the developer has to purchase the meter and the PUC reads that meter. Now, I could be wrong, but I think that's -- I think that's correct, that when the developer builds the building they purchase the meter, so the actual -- I know in a lot of the buildings I manage that's a fact, that they own the meter.

Q. I know in a private home the meter is not owned by a homeowner.

MS. CLARK: I'm talking about the development of multi-residential complex, that the meter



will be purchased by the -- it's several thousands of dollars. And when a meter needs repair or replacement, for instance if a breaker goes, it's up to the landowner to pay for that repair. But the meter, I believe in some cases at least, is owned by the developer as they build, it's one of the costs of building.

Q. Would you agree with that, Mr. Daly?

MR. DALY: I really couldn't tell you who owns the meter or the meter cabinet. I would say, though, that I would think it would be reasonable that the landlord or the maintenance person would repair it, or have it repaired as soon as possible.

Q. Mr. Elieff informs me that there is a label on the meter that says "Property of the PUC", so with that label would that be evidence enough to suggest that it is the property of the PUC?

MS. CLARK: M'hm.

Q. And if so whose responsibility?

MS. CLARK: It would be the landlord's.

Q. It would still be the landlord's?

MS. CLARK: M'hm.

Q. Even though it's not that ---

MS. CLARK: It would be the landlord's at least to have that ---

MR. DALY: Health and safety.



1 1253 J.K. DALY/D. CLARK, cr-ex.
(Metz)

5 MS. CLARK: --- for health and safety, but it would certainly -- the landlord, if nothing else, is to call the hydro or the PUC office and say "Get it repaired".

10 Q. Earlier this morning, Jim, you were talking about how -- you referred to the subject properties, I believe, as a depressed property?

15 MR. DALY: Yes.

20 Q. Is that the phrase you used? And you said it took a long time to get in this position, and then you were talking about the need for capital expenditure and -- though in context of that comment you said that a lot of the capital expenditures were necessary because the items in question had reached their life expectancy. Is that a -- am I correct in assuming -- in what I've heard you say?

25 MR. DALY: I said that -- would you repeat that, please?

30 Q. Well, my understanding when I was taking notes while you were speaking was that you were saying that the need for capital expenditure -- that there is a need for capital expenditure now because of ongoing neglect, although you commented at the same time that -- and I'm not sure which items you're referring to, but that they had reached their life expectancy.



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1254 J.K. DALY/D. CLARK, cr-ex.
(Metz)

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MR. DALY: Yes. I think I was making a broad judgment when I said they had reached their life expectancy. As far as the capital items are concerned

10

THE CHAIRPERSON: Mr. Metz, did you want reference to specific capital items?

MR. METZ: No, it didn't have to be ---

THE CHAIRPERSON: No.

15

MR. METZ: No, it didn't have to be a specific reference.

THE CHAIRPERSON: Okay.

20

MR. METZ: I just wanted to get a general opinion in that regard.

BY MR. METZ:

25

Q. Are there things there that you would say are definitely in their condition because of the life expectancy expiration, if you want to call it that?

30

MR. DALY: I would say that they're in their condition because they weren't maintained, and whether that's accelerated ---

Q. Now, when you say they weren't maintained ---

MS. SANSON: Could the witness ---

MR. DALY: Well, let's talk about the ---



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1255 J.K. DALY/D. CLARK, cr-ex.
(Metz)

MS. SANSON: --- finish the answer?

5

MR. DALY: --- ceramic tiles in the
washroom.

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The ceramic wall tiles in the washrooms
are in a deplorable state of repair, the walls are
falling down. The repairs that have been made to them
have been of very, very, very poor quality; the water,
because they're not being maintained, because the grout
isn't being scraped out and regROUTed and made tight,
made watertight, water gets in behind the tiles and
disturbs the -- or deteriorates the plastered walls, it
causes dampness, it causes bugs, causes mould, it's
depressing -- depressed. It's an ongoing process, you
know. Maintenance is an ongoing issue.

15

20

BY MR. METZ:

25

Q. How long would you say is -- how much
time would be necessary to elapse in general terms with
respect to the buildings that you saw for these
conditions to accumulate?

30

MR. DALY: I really would have to have a
specific issue I think. For example, that ceramic wall
tile I would think would need to receive regular
maintenance at least every second year to maintain it as
a good ---



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1256 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Q. Would the increased moisture in the buildings perhaps also have something to do with accelerating the damage too?

5

MR. DALY: Increased moisture?

Q. Increased humidity.

10

MR. DALY: Is it increased? I'm not -- I have no ---

15

Q. Well, if the humidity were higher than normal. I know you haven't heard a lot of the testimony here, but if the humidity were higher than normal, would that accelerate the damage by any degree?

20

MR. DALY: High humidity and condensation causes damage on plastered walls, right.

25

Q. Did you get a chance to look at ---

MR. DALY: Low -- I'm sorry.

Q. It's all right.

MR. DALY: Low humidity causes damage as well, right. Humidity is moisture and as it condensates you get damage.

30

Q. I'm sorry, say that again, low humidity ---

MR. DALY: Well, any humidity that's in the air as it condensates causes damage.

Q. Right.

MR. DALY: Right. So were the washroom



Q. So how would low humidity cause damage?

MR. DALY: Well ---

Q. Wouldn't it be less likely to condensate?

MR. DALY: To cause as much -- to condensate as much.

Q. You went on an on-site visit at the Cheyenne Ave. apartments, did you find -- or was there anything available to you by any of the information supplied to you, including your on-site visit, did you find that more money was spent or more attention paid to the maintenance and repair of some apartment units versus others?

MR. DALY: When I was on site did I see evidence of more money being spent in one location versus another?

Q. Or less, you know, depending on which side of the coin you're on?

MR. DALY: When I was on site ---

Q. Or, you know, even ---

MR. DALY: --- I didn't see evidence of any money being spent.

Q. Also in connection with any of the



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1258 J.K. DALY/D. CLARK, cr-ex.
(Metz)

material provided to you in the preparation of your report?

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MR. DALY: Pardon?

10

Q. Also in connection with any of the material supplied to you.

MR. DALY: As far as these ---

Q. For the preparation of the report.

15 MR. DALY: As far as our budget is concerned and ---

Q. Yes.

20 MS. CLARK: Say that again?

MR. DALY: Yes.

25 THE CHAIRPERSON: I think the question may be ---

MR. METZ: I'm looking for ---

30

THE CHAIRPERSON: --- were any of the -- when you visited the site did you see evidence, or in the viewing of the material, did you see any evidence that certain apartments were favoured for repair as opposed to others.

Is that a fair question, Mr. Metz, were some apartments favoured ---

35 MR. METZ: Right.

THE CHAIRPERSON: --- in terms of repairs?

MR. METZ: Right, that would be.



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(Metz)

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MS. CLARK: We didn't get the original documentation so we wouldn't know what apartment -- where any of the documentation -- expense went into any of the apartments, so we can't answer that question.

10

THE CHAIRPERSON: And from the site visit, Mr. Daly?

15

MR. DALY: I saw no differences.

THE CHAIRPERSON: Thank you.

MS. SANSON: I could speculate on who got the rose-coloured tub.

20

BY MR. METZ:

Q. Would you -- I'm going back a little bit now, either or both of you can answer this question.

25

You said that -- you just told me just now and I'm just going to go back to that point again. You just told me now that you said you didn't see any evidence of any money being spent.

30

MR. ELIEFF: How do you know?

BY MR. METZ:

Q. Yes. How would you know that, that no money was spent? I mean, you can look at a building in a state of disrepair ---

MR. DALY: Well, I didn't see any evidence



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1260 J.K. DALY/D. CLARK, cr-ex.
(Metz)

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of money being spent on maintenance. I saw no -- like I didn't see anything that was newly repaired or -- well, perhaps you could ---

10

Q. Well, that's true.

MR. DALY: I'm not saying that there wasn't.

15

Q. You wouldn't have on July 15th, that's true.

MR. DALY: M'hm.

20

Q. So I guess that point doesn't relate to the period in question.

25

Both of you must -- I guess you're both from London, is that correct, or live in London? You must have been seeing some of the newspaper coverage from time to time that appeared on this particular issue at the Cheyenne Ave. apartments, would you -- I'd like to hear from each of you on this, would you say that the landlord was painted in an adversarial position with his tenants by what you were reading in the media, either of you.

30

MS. CLARK: I've been reading on this case for awhile now, and the thing that sticks in my mind is the thing about the utilities.

Q. That's a curious observation.

MS. CLARK: I know, but it's the truth,



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(Metz)

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it's what I remember is the utilities. And I can remember thinking to myself, I was wondering how you were going to work this out, because the tenants had the -- if the heat got turned off what the tenants were going to do, and I was interested in how that worked out as far as what was going to happen and who was going to be responsible for the payment.

10

Q. Right.

15

MS. CLARK: So that's what sticks out in my mind. And it wasn't made that anyone was at fault at that, it was just the facts of the case being that the heat was going to be shut off, who was going to pay.

20

Q. Now, that was a very recent development in the situation out there, were you aware of any ---

MS. CLARK: It's been this year.

25

Q. Just this year, yes.

MS. CLARK: It's been several months.

Q. Yes, sure.

MS. CLARK: Right.

30

Q. Like we're concerned here from a period stretching from 1984 until the present, so ---

MS. CLARK: I only heard it -- started hearing about it last year.

Q. Okay. And again, would you ---



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(Metz)

MS. CLARK: Has this been going on like this since 1984, is that what you're saying?

5

Q. I'm afraid so.

MR. ELIEFF: Eighty-four ('84).

10

MS. CLARK: And we haven't done anything different since 1984. It's awful.

15

Q. Well, not the bill situation, just the issue, but that's getting off on a tangent.

From what you did read in the Free Press did you again get that impression that there was an adversarial situation ---

20

MS. CLARK: Between the Free ---

25

Q. --- between the landlord and his tenants?

MS. CLARK: --- the Free Press and ---

Q. No, between the landlord and his tenants as described in the paper.

30

MS. CLARK: Describe what you mean by "adversarial". What's your terminology of adversarial?

Q. Well, I'm using that -- I don't know, I'm using that term because that was the term you used earlier ---

MS. CLARK: Not in that context.



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(Metz)

Q. --- in a sense that most -- not in
that context, no.

5

THE CHAIRPERSON: Do you mean they were
fighting each other?

MR. METZ: Well, yes, adversarial. In an
adversarial position as opposed to a co-operative ---

10

THE CHAIRPERSON: Okay. What was your
sense of ---

MR. METZ: --- situation.

THE CHAIRPERSON: --- your sense of it?

15

MS. CLARK: My sense of it, and that was
just based on just when people gather information out of
the paper, whether the paper is correct or not, is that
the landlord was being obstinate and the tenants were
getting nowhere.

20

MR. DALY: I seem to recall a roof being
in issue and in the newspaper as well, and water coming
in through the roof. I remember that, and I remember --
but I believe it was an issue in the paper. And it seems
to me whenever I think of Cheyenne I think of the
utilities as well, they seem to come to the top of the
page, as it is a basic need, heat.

25

30

BY MR. METZ:

Q. It's interesting, because in the



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1264 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Dillon Report that we have here that was included in yours it does say:

5

"The roof trusses appear to be in good condition. (Photograph 8)"

MR. DALY: M'hm.

10

Q. So would you say -- how long ago do you recall hearing about the roof?

MR. DALY: Was the roof in issue? I seem to recall ---

15

Q. I don't recall it as being an issue myself.

MR. DALY: Well, then ---

20

THE CHAIRPERSON: Well, maybe you should go on.

MR. DALY: Yes, we should strike that.

BY MR. METZ:

25

Q. Yes. Have either of you met Mr. Elieff, before yesterday I guess?

MR. DALY: No.

30

Q. You never met him before?

MS. CLARK: No.

Q. He wasn't on site when you examined the buildings?

MR. DALY: No.



1 1265 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Q. When you're called in to examine a building, or inspect a building, is there no permission required from a landlord to do something like that?

5 MS. CLARK: It depends on what role you're inspecting on.

Q. I'm sorry?

MS. CLARK: It depends on the role that you're inspecting on. If it's a fire inspector, he doesn't need your permission.

Q. No, I mean yourselves in your own positions.

15 MS. CLARK: You can come in as a guest of one of the tenants.

Q. Was there a tenant that was involved in showing you around the building?

20 MS. CLARK: I never went.

Q. I'm addressing this -- I guess you said you only were met by Susan Eagle, is that correct?

25 MR. DALY: I met Susan Eagle, that's correct.

Q. So there wasn't any tenant that accompanied you?

30 MR. DALY: Through the building?

Q. Right.

MR. DALY: No.



Q. Did you, in your preparation of your report, either of you, were you given the opportunity to review any of the testimony of Mr. Elieff or his tenants who have appeared before this board, and in particular regarding any work that he had done on his own with respect to the buildings?

MS. SANSON: I'm sorry, could you just repeat that question?

MR. METZ: I'm asking if either Darlene or Jim had an opportunity to review any of the testimony of Mr. Elieff's tenants or himself who have appeared before this board regarding the work that Mr. Elieff and/or his family or representatives have done on their own.

MS. CLARK: No.

BY MR. METZ:

Q. No.

MS. CLARK: Would the testimony be typed up by now?

Q. Yes, there is transcripts up to yesterday.

MS. CLARK: I didn't know that.

MR. METZ: I believe that's all of my questions.

THE CHAIRPERSON: Okay.



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1267 J.K. DALY/D. CLARK, cr-ex.
(Metz)

Before I ask for questions in reply I just had a few questions I would ask.

5

MR. METZ: Oh, excuse me, I do have one other.

10

THE CHAIRPERSON: All right.

BY MR. METZ:

15

Q. Relating to page 22 of your report, where you have the capital items listed. When you -- these are basically a single event type of repair, is that correct? What happens when consistent vandalism is occurring, then obviously these expenses would be greatly increased, would they not?

20

MS. CLARK: In the event that there's vandalism occurring it would follow the same methods as I've mentioned twice before, at that time you're obligated to reduce your expenses by repair, by finding out by whatever means at your disposal who's doing the vandalism and acting in your legal methods, such as eviction.

25

Q. Well, right. You're talking about ongoing maintenance I would assume, like ---

30

MS. CLARK: No, I'm talking about vandalism, that's what you were talking about. If they went in and wrecked something in here, if it was a



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1268 J.K. DALY/D. CLARK, cr-ex.
(Metz)

capital expense and let's say you put it in and it was vandalised, is what you were referring to ---

Q. Right.

MS. CLARK: --- and if it kept going -- what could you do?

Q. Yes.

MS. CLARK: You have legal methods of controlling vandalism.

Q. No, that wasn't what I was really asking, I was asking wouldn't that immediately raise expenses for the landlord, regardless of whether he can recover those expenses from the tenant or not. That would increase the actual amount spent on a lot of capital expenses, would it not?

MR. DALY: Is the question in the case of patio doors, \$6,000.00 ---

Q. Well, for example ---

MR. DALY: --- if they were installed and then someone smashed them all ---

Q. And then they were smashed, wouldn't ---
MR. DALY: --- would it cost you more money?

Q. Yes.

MR. DALY: Yes.



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Q. Yes, okay. That's the only thing we're looking for there.

Just to make sure I don't have any other tabs marked here. Okay.

THE CHAIRPERSON: Okay.

I'm looking at page 22 and page 20 of Tab 1, and there are two sets of capital items, one, page 20, capital items for units; and page 22, capital items in common areas. Can you tell me what the total capital costs for all, the both buildings and common areas, and for the units would be? I see, for example, at page 22 there's a total per building.

MS. CLARK: You would take that total figure on the bottom of page 20 ---

THE CHAIRPERSON: Yes.

MS. CLARK: --- times it by two.

THE CHAIRPERSON: I'm sorry, just in rough figures it would be \$70,000.00 times two, so \$140,000.00.

MS. CLARK: For instance, for the units in capital items it would be \$200,640.00.

THE CHAIRPERSON: Oh, so on page 20 the capital items per units per building, okay. So that would be two hundred ---

MS. CLARK: Six hundred and forty dollars.

THE CHAIRPERSON: Okay.



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J.K. DALY/D. CLARK

MS. CLARK: And then in the case of the capital items per buildings for the common areas ---

THE CHAIRPERSON: Yes.

5

MS. CLARK: --- it would be \$139,260.00.

10

THE CHAIRPERSON: Now, from previous evidence ---

MS. SANSON: A hundred and thirty-eight, two sixty-nine?

MS. CLARK: A hundred and thirty-nine, two-sixty (\$139,260.00).

15

THE CHAIRPERSON: And just from previous evidence there was indication that windows were not included and that may cost \$70,000.00 ---

MR. DALY: Yes, that's correct.

MS. CLARK: That's right.

20

THE CHAIRPERSON: --- in addition to that. Is anyone good at adding those figures, just to help me frame the question.

25

(DISCUSSION OFF THE RECORD)

MS. CLARK: How much?

30

THE CHAIRPERSON: Three hundred and forty-nine thousand (\$349,000.00). I just want a figure for all the buildings, for all common areas, all units.



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J.K. DALY/D. CLARK

MS. SANSON: Are you adding in those windows?

MS. CLARK: Yes.

5

THE CHAIRPERSON: And the windows.

10

MS. SANSON: What did you add in for windows?

MS. CLARK: Four hundred and nine thousand, nine hundred (\$409,900.00).

THE CHAIRPERSON: Four hundred and nine thousand ---

MS. CLARK: Nine hundred.

15

THE CHAIRPERSON: And that figure is the total of both buildings capital costs for units and for common areas, and the \$70,000.00 estimated for replacement of windows.

20

So if you have a total capital cost of \$409,900.00 for bringing the building up to scratch, as it were, can you tell me -- can you give me some idea of the kind of financing that may be available in today's market for a landlord like this who would need to bring his building up to scratch?

25

MS. CLARK: I don't think a bank would lend the money to fix this building to the present level.

30

THE CHAIRPERSON: And why is that?

MS. CLARK: Because the deterioration is a



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J.K. DALY/D. CLARK

result of the management, I believe. That's just my opinion.

5

MR. METZ: May I add a subsequent postscript to this question?

THE CHAIRPERSON: Sure.

10

MR. METZ: If the landlord were to take on a proper management company, subcontracting or something, do you think that would change?

15

MS. CLARK: It might.

THE CHAIRPERSON: In other words, what would the banks require to be satisfied?

20

MS. CLARK: They would have to be able to be properly managed, and the building would have to be able to support the cost of the financing.

MR. DALY: Sufficient equity.

THE CHAIRPERSON: Assuming there's sufficient equity.

MS. CLARK: Yes.

25

THE CHAIRPERSON: And my final question is, in the budget should there be an amount set aside for a building fund for capital repairs? Is that usually reflected in an operating budget?

30

MS. CLARK: In the guideline increase there's already two per cent of your guideline increase every year that is a reserve for capital items, but I



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(Sansom)

think a prudent landlord would tend to put a capital reserve fund in.

5

THE CHAIRPERSON: Into his operating budget?

10

MS. CLARK: Yes, I think so. But actually most, and they're prudent landlords -- do -- they don't do it. Most landlords I know don't do it, and I disagree with that management of it, but that's their building and they really -- to be practical and to be realistic they don't normally do that. They will do the capital items as they occur every year, and they'll look through and they'll notice the year as they're doing their budget what's going to be needed next year and they'll work it in at that point. It could have something to do with their taxes.

20

THE CHAIRPERSON: Maybe. I'm not a tax expert though. All right, thank you very much.

Any questions in reply?

MS. SANSON: Just a few brief ones.

25

RE-EXAMINATION BY MS. SANSON:

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Q. This question I believe is directed for Darlene Clark, and Mr. Metz asked you why you commented on why the financial statements were used for the comparatory buildings and they weren't used for the



Cheyenne apartments, would you -- in your opinion what was the best assessor for the expenses for the Cheyenne apartments?

MS. CLARK: Well, I had the list of expenses, and that's what I wanted to compare, I only wanted to do the percentages of revenue to expenses, and I started it on what was submitted by the landlord. I didn't know what was all included, and there was no explanation what was all included in the financial statements, so I had to go directly to what was included as the actual expenses or revenues as generated and submitted by the landlord, and I thought that would be more accurate to the landlord.

Q. Okay. This question I believe is directed to Jim Daly, but Ms. Clark may have something to say about it as well. The first question, the specific example you provided was the grouting and the tiles and the condition of that and the deterioration of that.

MR. DALY: Yes.

Q. In your opinion can you provide any assessment as to how long that was let go in order to get into that kind of state? How long had that not been maintained properly?

MR. DALY: In excess of -- that had been going on a long time, I would say in the neighbourhood of



1 1275 J.K. DALY/D. CLARK, re-ex.
5 (Sanson)

five years perhaps, or longer. It's really hard to
answer that question, but I could safely say that it
hadn't had any professional repairs made on it in at
least five years.

Q. And in follow up to that question,
we've heard evidence that -- or we haven't -- we have
only the receipts that have been provided, but based on
the percentage of expenditures that have been calculated
per unit, and based on your on-site visitation and your
assessment of the condition of the properties, are you
able to comment on the accuracy of the figures in terms
of overall what was made on expenses on repairs, of the
figures for the Cheyenne apartment buildings.

MR. DALY: When I look at the expenses
supplied to us for the subject property?

Q. Yes.

MR. DALY: Excuse me, but are you asking
me if our per cent of expense looks like indeed it was
spent on the property?

Q. Well, in your opinion -- are you able
to comment on the accuracy of that figure in terms of in
your opinion are you able to comment on -- by your
assessment of the building, that indeed more was spent,
or are those figures accurate? Are you able to comment
on that?



THE CHAIRPERSON: In all fairness, for someone to give an opinion like that they would have to also look at the financial statements and see what was referred to there for expenses that year on those buildings. Because the evidence thus far has been that the receipts were only some of the expenses, we don't know how much, that's the question. The question is what do the exhibits -- how much of the total expenses do the exhibit really reflect?

And so the witness has been properly asked a question, their opinion of whether the totals listed from the exhibits -- I'm sorry. The extent to which those totals reflect the actual expenses, in their opinion. And I'm suggesting that maybe one of the other factors should be to look at a view of the financial statements and what is set out in the financial statements of the expenses of the expenses for those buildings. But if ---

MS. SANSON: Okay. And perhaps we should have the witness excluded for this, but it's my understanding that the expenses are all lumped together, so we have no idea ---

THE CHAIRPERSON: Yes.

MS. SANSON: --- of what those expenses -- where those expenses went. So expenses for



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(Sansom)

maintenance of the property were -- the only information that we have is the information that's before us.

5

MR. ELIEFF: Therefore, they cannot answer.

10

MR. DALY: When I was on site I saw no evidence of maintenance that I recall.

THE CHAIRPERSON: All right. Then I'll let Ms. Sanson ask her question again, just based on those exhibits which were summarized for you.

15

So, Ms. Sanson, ignoring the comments I had made, can you rephrase your question put to the witnesses and they can give their answer.

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BY MS. SANSON:

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Q. Based on your review of the condition of apartment buildings, and based on your assessment that the expenditures for your capital budget related to the lack of ongoing maintenance and the need to now make capital expenditures, are you in a position to comment on the totals of money that was being spent in terms of maintenance? I guess the first question is are you able to do that comparison?

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MR. DALY: I guess, well, right off the bat then I would say that the amount, however much money was spent on maintenance, the amount of money wasn't



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1278 J.K. DALY/D. CLARK, re-ex.
(Sanson)

sufficient, and as a result created a long list of capital expenses. Does that answer your question?

5

Q. Certainly.

10

And are you able to comment on actually what -- the figures that we do have in terms of the totals spent? Are you able to make any comment?

MR. DALY: As far as the percentage of expense ---

15

Q. Yes.

MR. DALY: --- to revenue?

Q. Yes.

MR. DALY: As shown on our chart here?

20

Q. Yes.

MR. DALY: Well, I would say that it is abnormally low and insufficient, an insufficient amount to provide maintenance.

25

Q. You made some reference, Mr. Daly, about life expectancy, and just one quick point in terms of clarification. Would the life expectancy of an object depend on how it's maintained?

MR. DALY: Absolutely.

Q. Okay.

30

This is a point for Ms. Clark, and that was with respect to the communication, and you gave evidence in-chief and Mr. Metz had some questions for you



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1279 J.K. DALY/D. CLARK, re-ex.
(Sanson)

about communication and dealing with tenant boards in terms of resolving problems. In your opinion whose responsibility is it for -- or whose responsibility do you see it as for maintaining those lines of communication open?

MS. CLARK: Quite frankly, I think both parties are.

Q. Yes.

MS. CLARK: Yes. I think the tenants are responsible for to make sure that their needs are well-known, and the landlord is responsible for addressing those needs.

Q. We heard some evidence about increase in capital costs as a result of vandalism, would -- the question is for Darlene. Would a prudent landlord expect, if there was no one watching the property, that -- and no security, that vandalism would be a likely result of that?

MS. CLARK: Yes.

Q. Would a prudent landlord completely abandon their property and not have anyone watch over it?

MS. CLARK: No.

MS. SANSON: Those are my questions in reply.

THE CHAIRPERSON: Thank you. You've been

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J.K. DALY/D. CLARK

very patient ---

MS. CLARK: Thank you.

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THE CHAIRPERSON: --- and we thank you for coming and for staying, for helping.

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MS. CLARK: Okay. Thanks.

THE CHAIRPERSON: I think this would be an appropriate time to break. When would you like to return?

MR. METZ: How much longer are we expected to go?

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THE CHAIRPERSON: I gather we have two short witnesses and a video tape, a short video tape.

MR. METZ: Two short? Two short which?

THE CHAIRPERSON: Witnesses in reply. So that -- in total how long should that take?

20

MS. SANSON: My evidence in-chief won't be long.

THE CHAIRPERSON: So it depends on what cross-examination you'd have for each witness.

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MR. METZ: There's more evidence in-chief, I thought we were ---

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THE CHAIRPERSON: No. You're entitled to call a witness in reply to clarify something that's been said, or evidence that's been already introduced. When the witness is introduced in reply you have the right to



cross-examine that witness, so a witness can be called in reply or a new witness can be called in reply.

5

Then the same principles apply, the person who's witness it is ---

MR. METZ: As opposed to the questioning process?

THE CHAIRPERSON: Yes.

10

MR. METZ: We're talking about a witness in reply instead of cross-examination and reply?

THE CHAIRPERSON: Right.

15

MR. METZ: Okay. I didn't realize there was that distinction.

THE CHAIRPERSON: So there are two witnesses in reply ---

MS. SANSON: Yes.

20

THE CHAIRPERSON: --- and you'll have a chance to cross-examine those witnesses. So depending on how long that cross-examination takes ---

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MR. METZ: And then would Ms. Sanson have the opportunity to ---

THE CHAIRPERSON: Yes.

MR. METZ: --- cross-examine them again in reply?

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THE CHAIRPERSON: Yes.

MR. METZ: Okay.



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MS. SANSON: It's not cross-examination.

MR. METZ: I know. What is the term for
that?

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THE CHAIRPERSON: There's a witness in
reply and questions in reply.

MS. SANSON: It's reply.

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THE CHAIRPERSON: So the witness is
brought in reply, examined in-chief, cross-examination
and reply.

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MS. SANSON: Could I ask that we have at
least an hour, I've got to do some errands over the lunch
break?

THE CHAIRPERSON: All right. We will
return at 2:15.

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MS. SANSON: Thank you.

--- Upon recessing at 1:10 p.m.

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--- Upon resuming at 2:20 p.m.

MS. SANSON: I would like to proceed next with the videotape. I have an affidavit affirmed January 27th, 1993, and this is a ---

MR. METZ: If I may ---

MS. SANSON: --- videotape ---

MR. METZ: If I may interrupt?

MS. SANSON: Would you just let me explain and I will give you the affidavit -- of CFPL TV NEWS, and it's a copy of a news story on -- the news story aired on CFPL TV NEWS on November 8th, 1989 during the 6:00 p.m. and the 11:00 p.m. newscast, and I have an affidavit as to the authenticity of that tape.

THE CHAIRPERSON: This is September 8th

MS. SANSON: Nineteen eighty-nine (1989).

THE CHAIRPERSON: --- 1989.

MS. SANSON: And it's from CFPL TV NEWS.

THE CHAIRPERSON: Yes.

MR. METZ: September or November?

MS. SANSON: November.

THE CHAIRPERSON: I'm sorry, November 8th,

1989.

MS. SANSON: From CFPL TV NEWS ---



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THE CHAIRPERSON: Yes.

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MS. SANSON: --- aired during the 6:00 p.m. and 11:00 p.m. newscast.

THE CHAIRPERSON: Thank you. The actual

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MS. SANSON: Video is here and I intend to play that.

THE CHAIRPERSON: Okay.

MR. METZ: If I may ask a question?

THE CHAIRPERSON: Yes.

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MR. METZ: Is this being entered as evidence?

THE CHAIRPERSON: Yes.

20

MR. METZ: It was my understanding when I agreed to represent Mr. Elieff that all evidence that was to be entered was supposed to be made known to me in advance. This is the first we're hearing of this, and we do not have a copy of the videotape, nor of any other documentation relating to it and I'm just wondering is this in violation of any principle of that?

25

30

THE CHAIRPERSON: No. Videotape evidence can be admitted as an exhibit and as evidence, and as long as it's identified, and that identification can take place through an affidavit.

MR. METZ: I agree. But shouldn't I have



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had a copy before we came to this hearing?

MS. SANSON: You can see it now before the board sees it if you'd like.

THE CHAIRPERSON: We can adjourn for 10 minutes and I'll come back, and then if you need more time we'll deal with that question then, okay.

MS. SANSON: You had notice of the videotape evidence, it was put to Mr. Elieff on cross, so if you had wanted an opportunity to review it beforehand you certainly had sufficient time to do it.

MR. METZ: No, you didn't give notice, you ---

MS. SANSON: I've had the video ---

MR. METZ: --- you made a supposition, you said "What would you do if I could produce a videotape", and you did not make it clear whether you had one. And I did object at that point, I did say that we don't have a copy of that videotape.

THE CHAIRPERSON: All right. What I'm proposing is that we take a 10-minute break, you view the videotape.

How long is it?

MS. SANSON: It's two minutes long, if that.

THE CHAIRPERSON: Okay. And then you'll



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have a chance to consider the videotape.

MR. METZ: Is this legally considered
enough notice in terms of our ---

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THE CHAIRPERSON: Well, we decide that
when I come back.

MR. METZ: Okay.

10

THE CHAIRPERSON: I mean, it's up to me to
determine whether it's enough notice for you to answer.

And then we shall return. I shall return
in 10 minutes and we will adjourn until then.

15

--- Upon recessing at 2:26 p.m.

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1. **What is the relationship between the number of hours worked per week and the weekly income?**

2. **Is there a significant difference in the mean weekly income between males and females?**

3. **Is there a significant difference in the mean weekly income between married individuals and single individuals?**

4. **Is there a significant difference in the mean weekly income between individuals with different levels of education (e.g., high school vs. college)?**

5. **Is there a significant difference in the mean weekly income between individuals from different ethnic backgrounds?**

6. **Is there a significant difference in the mean weekly income between individuals from different geographic regions?**

7. **Is there a significant difference in the mean weekly income between individuals with different job titles or professions?**

8. **Is there a significant difference in the mean weekly income between individuals with different years of experience?**

9. **Is there a significant difference in the mean weekly income between individuals with different levels of job satisfaction?**

10. **Is there a significant difference in the mean weekly income between individuals with different levels of job security?**

--- Upon resuming at 2:48 p.m.

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THE CHAIRPERSON: All right. We've returned after a break of almost 20 minutes.

10

MR. METZ: It didn't seem like 20 minutes, it was a short one.

15

THE CHAIRPERSON: All right.

MS. SANSON: A long 10 minutes.

THE CHAIRPERSON: It was longer than 10 minutes.

20

MR. METZ: Did it?

THE CHAIRPERSON: Yes.

And, Mr. Metz?

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MR. METZ: Well, with regard to entering this as evidence we're most eager to have this entered as evidence.

THE CHAIRPERSON: All right.

MS. SANSON: So I proceed?

30

MR. METZ: And I would like to also request that we could get a copy of this videotape for our own?

35

MS. SANSON: I'd like to make some submissions on that. There's no obligation to produce real -- to reproduce real evidence. It doesn't -- there isn't an obligation in terms of receiving it and



providing copies. It's real evidence. That's the only copy, I'm going to ask the board to receive it, we don't have a copy.

And in terms of its authenticity, if Mr. Metz wants to make arrangements to have a copy reproduced and authenticated I'm certainly open to that, but I don't think there's any obligation ---

THE CHAIRPERSON: Is this a question of authentic?

MR. METZ: Oh no, it's just a question of having a copy. I could take a dub off that, no problem.

THE CHAIRPERSON: Or you could ---

MR. METZ: I'd accept a dub.

I don't understand what real evidence is versus a videotape.

THE CHAIRPERSON: You could order it from CFPL.

MR. METZ: I guess I could. I just don't understand the distinction between the evidence that is recorded on a videotape versus the evidence that's recorded on a piece of paper.

THE CHAIRPERSON: It's to be treated in the same way.

MR. METZ: Then we should be entitled to a



copy, should we not?

MS. SANSON: Real physical evidence ---

MR. METZ: Videotape is not physical evidence, it is a recording.

MS. SANSON: Well, it is.

THE CHAIRPERSON: Well, you ---

MR. METZ: I'll be happy with a dub from that.

THE CHAIRPERSON: Okay. In the same way that we often enter exhibits, you know, paper exhibits and have them copied later, I'm asking you to avail yourself with a copy of that by contacting the CFPL offices.

MR. METZ: Very well.

MR. ELIEFF: All we want is to -- you as the chairman to deal with things the way you started and the way you want to finish.

THE CHAIRPERSON: Yes, that's the way we're dealing with things.

MR. ELIEFF: If we are entitled to something we don't want to be denied.

THE CHAIRPERSON: I have said to Mr. Metz that as with other material we've admitted in evidence, very often there aren't enough copies to go around and we arrange that after the hearing we make copies and



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distribute them. So in the same way copies can be made available to you after the hearing, the only difference is you have to ask CFPL to give you a copy.

5

MR. ELIEFF: But shouldn't we get it from the one who is trying to use it as accusing us ---

10

MR. METZ: I believe that argument would be the same as saying that the invoices we submitted copies to Commission counsel should have been obtained from the sources themselves.

15

THE CHAIRPERSON: There's only one difference, Mr. Metz, and that is that copyright does attach to something like this and if you want a copy of exactly the same thing it would be better to approach the person who holds the copyright on this.

20

MR. METZ: Okay.

THE CHAIRPERSON: Okay?

MR. METZ: Fair enough.

THE CHAIRPERSON: All right, are we prepared to proceed?

25

MS. SANSON: Thank you.

MR. ELIEFF: And we would like to ask you to listen carefully about this, please.

30

THE CHAIRPERSON: Yes, I will.

(VIDEO PRESENTATION)



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"MS. GRAHAM: These apartments at 105 and 95 Cheyenne Avenue are home to many Cambodian families. The buildings have had a history of complaints from cockroaches to broken plumbing.

10

Owner, Elija Elieff, has been ordered by the city to fix the problems, he won't, and faces a \$6,000.00 fine he says he won't pay. He blames the tenants.

15

'MR. ELIEFF: I'm not saying they are pigs, but what they are doing is only what pigs would do.'

20

MS. GRAHAM: Elieff says he and his family are tired of cleaning up after these people, he says they throw garbage anywhere they please and deface the property with graffiti.

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'MR. ELIEFF: It's up to every individual how he keeps his apartment inside, but here, this is a public house and stairs and people don't care about it.'

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MS. GRAHAM: Alderman Pat O'Brien



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lives a block away from the Cheyenne apartments, he says blaming the immigrant is ridiculous and Elieff's remarks about the tenants are even worse.

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'MR. O'BRIEN: They're disgusting-type remarks and I think there the old trick is a landlord who wants to shirk his responsibility, it's always handy to blame the tenants, and where the tenants are a minority it becomes an even more tempting tactic.'

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20

MS. GRAHAM: O'Brien says Elieff won't get away with his remarks or without paying the \$6,000.00 fine.

25

30

'MR. O'BRIEN: Well, we have news for Mr. Elieff, the City of London is going to take the strictest possible action with these fines, and if it means seizing of properties, or whatever legal steps we can take, the city solicitor is going to be fully prepared to take those steps.'



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MS. GRAHAM: Elieff says he has had his buildings up for sale for the past year, he says he's tired of this whole situation.

10

Thursday, tenants and other concerned citizens are going to demonstrate outside Elieff's Richmond Street business. They'll also be going to City Hall to meet with councilors to find out how they can take their case to the Race Relations Advisory Committee.

15

Jayne Graham, TV London News."

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(END OF VIDEO PRESENTATION)

MR. ELIEFF: Do it one more time to make sure you hear everything, sir.

25

THE CHAIRPERSON: No. Anyone want it played a second time? Okay, let's replay it, please.

MR. ELIEFF: I would like.

MR. METZ: Oh, okay.

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THE CHAIRPERSON: I'd like to see it again. This time I'm going to sit over here.



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(VIDEO PRESENTATION)

5 "MS. GRAHAM: These apartments at
105 and 95 Cheyenne Avenue are home
to many Cambodian families. The
buildings have had a history of
complaints from cockroaches to broken
10 plumbing.

15 Owner, Elija Elieff, has been ordered
by the city to fix the problems, he
won't, and faces a \$6,000.00 fine he
says he won't pay. He blames the
tenants.

20 'MR. ELIEFF: I'm not saying they
are pigs, but what they are doing
is only what pigs would do.'

25 MS. GRAHAM: Elieff says he and his
family are tired of cleaning up after
these people, he says they throw
garbage anywhere they please and
deface the property with graffiti.

30 'MR. ELIEFF: It's up to every
individual how he keeps his
apartment inside, but here, this
is a public house and stairs and



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people don't care about it.'

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MS. GRAHAM: Alderman Pat O'Brien lives a block away from the Cheyenne apartments, he says blaming the immigrant is ridiculous and Elieff's remarks about the tenants are even worse.

10

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20

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25

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Jayne Graham, TV London News."

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(END OF VIDEO PRESENTATION)

THE CHAIRPERSON: Thank you.

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MR. ELIEFF: Thank you.

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MS. SANSON: We could perhaps mark this as an exhibit.

THE CHAIRPERSON: Yes. At some point we're going to have to go through the numbering of the exhibits.



MS. SANSON: Perhaps we could do that now.

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THE CHAIRPERSON: All right. I thought, Ms. Sanson, that you wanted to introduce some of the exhibits included in your exhibit book through one of your witnesses.

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MS. SANSON: I do indeed, and I will do that through Susan Eagle, who is our next witness. I think there are some other ones that weren't identified, and I thought if we could go through and just identify all of the exhibits now ---

15

THE CHAIRPERSON: Yes.

MS. SANSON: --- and I will ensure that the remaining ones have gone through the proper witnesses.

20

THE CHAIRPERSON: Okay.

I'm addressing this to all parties, there are financial statements and I would like to know whether they have already been identified and introduced as exhibits, particularly the ones that we looked at today.

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MR. METZ: I don't recall actually.

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THE CHAIRPERSON: I would very much like them to be introduced as exhibits, and if we need to get Mr. Elieff back on the stand just for that purpose of identifying those.

MS. SANSON: It's not necessary.



THE CHAIRPERSON: Okay. Or we can accept them as ---

MS. SANSON: Unaudited financial statements.

THE CHAIRPERSON: --- unaudited financial statements. I'd like those in. Do we have copies?

MR. METZ: Oh yes, copies have all been forwarded.

THE CHAIRPERSON: Okay. I don't have a set.

MR. METZ: Oh, you should have. We did multiple copies at the time we provided them.

THE CHAIRPERSON: Was that on one of the hearing days?

MR. METZ: How long ago was it you asked for those?

MS. SANSON: You provided them in the mail so I'm not sure that you would have provided them to Chairperson John. The request was to produce them to the Commission.

THE CHAIRPERSON: All right. I'm just going to put this on the record. Could you make sure that copies of those financial statements which were referred to in today's hearing will be forwarded to the



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MR. METZ: To your attention.

THE CHAIRPERSON: --- board's office.

MR. METZ: Is that ---

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THE CHAIRPERSON: To the Board of Inquiry,
okay, at 150 Eglinton Avenue East. If you want the
correct address and postal code you can call the office.

MR. METZ: Is this to your attention?

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THE CHAIRPERSON: You can have it
addressed to my attention. The board's number is (416)
314-0004.

MR. METZ: Three zeros?

15

THE CHAIRPERSON: Three zeros.

MR. METZ: Yes.

THE CHAIRPERSON: Okay.

20

MS. SANSON: Okay, if we can begin with
this book.

THE CHAIRPERSON: Okay.

25

MS. SANSON: The first two documents are
public documents and I would ask that the board receive
them as such. One is related to ---

THE CHAIRPERSON: We will mark as Exhibit
36 the publication of Statistics Canada entitled
"Immigration and Citizenship".

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MR. METZ: And what may the relevance of
this be?



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THE CHAIRPERSON: Ms. Sanson, do you have any comments on that?

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MS. SANSON: It gives you the statistical information of -- the breakdown of the actual residents in Ontario.

MR. METZ: And how is that relevant to the

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MS. SANSON: --- by various backgrounds.

MR. METZ: How is that relevant to the charges against Mr. Elieff -- or to the complaint?

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MS. SANSON: I wasn't aware that there were any charges against Mr. Elieff.

MR. METZ: The complaint.

MS. SANSON: How is it relevant?

MR. METZ: Yes.

20

MS. SANSON: Well, I think it's relevant to the impact of the -- it's relevant to the impact on the tenants in the apartments, and it's useful information for the board to know in terms of what the make up is of London.

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MR. METZ: So among the information here I see there's a breakdown of immigration population, say, in Caribbean and Bermuda, you're suggesting to me that whatever that breakdown there is that somehow impacts upon this hearing?



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MS. SANSON: I'll be relying on the statistics as they relate to London.

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MR. METZ: All right. So you're saying that due to certain statistical breakdowns in the City of London, that has an effect on whether Mr. Elieff did or did not make statements?

10

THE CHAIRPERSON: Mr. Metz, that argument will be developed on the day of argument. The only reason ---

MR. METZ: Well, doesn't relevance have to be established?

15

THE CHAIRPERSON: For the purpose of ---

MR. METZ: I can't argue unless I know the relevance.

THE CHAIRPERSON: Okay.

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MS. SANSON: I've just provided the intention in terms of the use that I intend to make, and that is to provide information to the board in terms of the statistical make up of the population of London, and in terms of any impact of any of the actions taken on a particular group, and that is the relevance, and the rest I think can be left to final argument.

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Are you suggesting there's no relevance at all?

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MR. METZ: Yes.



MS. SANSON: Well, then please make your submissions.

5

MR. METZ: I don't think statistics have any relevance to the actions of any particular individual at any time, under any circumstance, it's totally contrary to all sense of logic, fair play, and any sense of justice that I've ever encountered.

10

THE CHAIRPERSON: You have a chance to reply to the argument that uses this information on the day set aside for argument. At this ---

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MR. METZ: My understanding is that as evidence is being entered, and as exhibits are being entered, that they have to be relevant.

THE CHAIRPERSON: The discretion ---

20

MR. METZ: This is the constraint under which I have been operating, and if I could bring in statistics and I could bring in -- I could go to the library and bring every book in the library and use all those books to prove that my client is innocent, I mean if that's what we're getting into here.

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THE CHAIRPERSON: The board or boards are allowed considerable discretion in admitting as evidence publications, particularly publications that are in the public domain or by government agencies, and a tribunal or a court can take judicial notice of such documents.



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Here is a public document, it has, in my view, some relevance to the matter before the board in terms of the breakdown of various ethnic groups. Now, it may not have a lot of weight, it may have a lot of weight in terms of arguing, in terms of the argument that is to be presented, but at this stage we are only talking about whether a document like this can be admitted as an exhibit.

15

Believe me, the practice of boards and tribunals is very, very broad in terms of admitting, just admitting exhibits. You could bring a mountain of books in here and they could be stashed away.

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MR. METZ: Well, then perhaps that's what I should be doing.

MS. SANSON: I thought you already did that, Mr. Metz.

25

MR. METZ: No, I was under the belief that everything I brought in in terms of exhibits and information had to relate to this action, I did not realize I could bring in anything basically under the sun.

THE CHAIRPERSON: No. Mr. Metz, just let's be fair here.

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MR. METZ: That's what I'm asking for.

THE CHAIRPERSON: We're not talking about



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Pete Samprose's Guide to Davis Cup tennis playing.

MR. METZ: Well, to be honest with you, I regard this as about as relevant as that ---

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THE CHAIRPERSON: Well, then I've given you ---

MR. METZ: --- and I don't think ---

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THE CHAIRPERSON: I've given you my ruling

MR. METZ: Okay.

15

THE CHAIRPERSON: --- and in my view it is relevant and the weight to be given to it will be determined after I hear argument.

Okay, go ahead.

MS. SANSON: Thank you.

20

--- EXHIBIT NO. 36: Publication from Statistics Canada entitled "Immigration and Citizenship, The Nation, Census".

25

MS. SANSON: And the next document is a recent Gallup Report.

MR. METZ: Oh boy.

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MS. SANSON: And in terms of the accuracy of the survey that's detailed in the covering page, and then following are the actual charts and the questions asked, and then there's various breakdowns of responses.



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THE CHAIRPERSON: Will you be referring to this in argument?

MS. SANSON: Yes, I will. I'll also -- I understand that there is some literature in terms of how the board might weigh this kind of evidence in terms of any conclusion. I think there is some -- there is some law in terms of how you might look at that that I would like to rely on.

MR. METZ: If I may have a point of clarification?

THE CHAIRPERSON: Yes.

MR. METZ: When we go into argument my understanding previously was that certain exhibits didn't need to be entered but that could be used in final argument. Now, am I incorrect in that assumption in the sense that if I wanted to use any other references to any other material in my closing arguments that they have to be presented now?

MS. SANSON: Articles or case law?

THE CHAIRPERSON: Yes. You see, all the cases to be used are not before me. I would prefer it if

MR. METZ: I'm sorry, what did you mean "articles"?

THE CHAIRPERSON: Legal articles, and



articles -- well, I suppose even this could be referred to on argument.

5 MR. METZ: For example, when we brought it up earlier, I think it was in reference to certain newspaper articles that appeared and you told me that it wasn't necessary to bring them into evidence at the time, but that I could use them or refer to them ---

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THE CHAIRPERSON: Yes, in argument.

MR. METZ: --- in final argument.

15

THE CHAIRPERSON: But I can't treat any of those articles as evidence. Not anything you bring in on the day set aside for argument will not be treated as evidence, merely your argument or your opinion, and they will carry much -- they will be given no weight at all in terms of evidence.

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25

MR. METZ: So, therefore, if I had presented them at the time I intended to you're saying then that they would be more treated as evidence rather than the situation I find myself in now. Because I do have some articles I was planning to refer to, and I did not realize that they had to be brought in as specific exhibits. I was under the clear understanding that I could ---

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THE CHAIRPERSON: It's difficult to explain this distinction, but if, for example, somebody



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was -- well, let's take Ms. Sanson. If she had introduced this as an exhibit, just the way it is, and discussed the facts in here, or opinions in here, through one of the witnesses, it couldn't be that witness's evidence, it couldn't be anybody's evidence.

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15

It could be, for example, if she used it to ask an expert opinion, it could only be used as fodder to phrase the questions. But the facts or the truth of what's in here can't be accepted as evidence unless the person who made up the report was called and was asked about the study and how he or she prepared this study and what the study revealed, et cetera. That's very different ---

20

MR. METZ: I understand that distinction, but I don't think that's what I'm getting at. I'm getting at more -- for example, say I have three or four editorials or newspaper articles that I haven't entered as exhibits.

25

THE CHAIRPERSON: Yes. Yes.

MR. METZ: Am I permitted to refer to them in my closing arguments and, if so, what is ---

30

THE CHAIRPERSON: Would it have been any

MR. METZ: --- the difference in the weight ascribed to them versus like if I had ---



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THE CHAIRPERSON: None at all.

MR. METZ: There's no difference in the weight?

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THE CHAIRPERSON: No difference. Because you could have entered them earlier, but they still would carry very little weight ---

MR. METZ: Okay.

10

THE CHAIRPERSON: --- or no weight at all, and you can refer to them in argument and it would not carry any weight. It wouldn't be treated as evidence.

MR. METZ: Thank you.

15

THE CHAIRPERSON: All right?

Okay, returning to this Gallup Report, which will be Exhibit No. 37, and it's dated Thursday, August the 12th, 1993.

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--- EXHIBIT NO. 37: The Gallup Report, For Publication: Thursday, August 12, 1993, "Majority Perceive Increase In Racial Intolerance", By Jon Hughes.

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THE CHAIRPERSON: Exhibit 38 will be the Application to Ontario Court (General Division) under the Landlord and Tenant Act by Elieff Investments, and the court file number is 8051 of '92.

30

Exhibit 39 consists of an Application ---

MS. SANSON: These have -- 38, 39, 40 and



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41 I think have all been ---

THE CHAIRPERSON: Oh, they've already been
introduced, okay. Thank you.

5

MS. SANSON: So we're to 42.

THE CHAIRPERSON: Forty-two (42).

10

Now, Ms. Sanson, you're going to have to
help me in identifying this.

15

MR. METZ: This was introduced yesterday
too.

MS. SANSON: Requests for repairs.

MR. METZ: Isn't that 42? Are you talking
about 42?

15 THE CHAIRPERSON: It may have been
referred to as Tab 42, but I don't believe it was
formally entered as an exhibit.

20

MR. METZ: Oh, okay.

25

THE CHAIRPERSON: Okay?

These are?

MS. SANSON: Requests for repairs by
Cheyenne tenants to Mr. Elieff, and response from Mr.
Elieff.

30

THE CHAIRPERSON: Two of the four
documents do not bear a date, and the other three are
letters, one from Karen Noels, N-O-E-L-S, dated May 21st,
1986; and one from Karen McDonald, that's M-c-D, dated



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May 21st, 1986.

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--- EXHIBIT NO. 42: Requests for Repairs by Cheyenne tenants; letter dated May 21, 1986 to Elieff Investments from Karen Noels; and letter dated May 21, 1986 to Mr. Elieff from Karen McDonald.

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THE CHAIRPERSON: Now we're on to Exhibit 43.

MS. SANSON: Forty-three (43).

15

THE CHAIRPERSON: This consists of an Order under section 38 of the Rent Control Act, and it's dated February the 12th, 1993.

20

MS. SANSON: I'm sorry, an Order? I have the Middlesex-London Health Unit.

THE CHAIRPERSON: All right, then I have an extra page here.

(DISCUSSION OFF THE RECORD)

25

THE CHAIRPERSON: I took it out, okay.

30

All right, correction. Exhibit 43 is a Referral Form from the Environmental Health Division of Middlesex-London Health Unit, and the date is December the 2nd, 1992; also a letter from Tom Partalas to Elieff Investments dated December 2nd, 1992 and a list of



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deficiencies accompanying that letter, or several lists of deficiencies.

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--- EXHIBIT NO. 43: Middlesex-London Health Unit, Environmental Health Division, Referral Form; letter dated December 2, 1992 to Elieff Investments Limited from Tom Partalas, C.P.H.I.(C), Public Health Inspector, Environmental Health Division with attachments listing deficiencies.

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15

THE CHAIRPERSON: Exhibit 44 consists of details of a work entitled -- marked as "Schedule 'C'" and related to 95 and 105 Cheyenne Avenue.

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--- EXHIBIT NO. 44: By-law C.P. 1079-35 As Amended, Schedule "C" Work Order.

THE CHAIRPERSON: Exhibit 45 consists of an order of the District Court of Ontario, The Honourable Judge J.F. McCart, M-C-C-A-R-T, dated Friday the 4th of December, 1987, the judgment of that court; a judgment of the same court dated Friday, November 14, 1986; a judgment of the same court dated Friday, the 4th of December, 1987; another judgment, same court, same court, same date; another judgment, same court, same date.

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--- EXHIBIT NO. 45: Judgments of The Honourable Judge J.F. McCart, District Court of Ontario, one dated Friday, the 4th day of December, 1987; one dated Friday, November 14, 1986; one dated Friday, the 4th day of December, 1987; one dated Friday, the 4th day of December, 1987; and one dated the 4th day of December, 1987.

10

THE CHAIRPERSON: Exhibit 46 is a transcript of proceedings before His Honour Judge McCart on Wednesday, July 29th, 1987.

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--- EXHIBIT NO. 46: Excerpt of Proceedings, between Elieff Investments Ltd. and Grace MacIntosh before His Honour Judge J.F. McCart on Wednesday, July 29, 1987.

20

THE CHAIRPERSON: Exhibit 47. Now, I believe this wasn't referred to in any way.

MS. SANSON: I actually referred to the evidence and Mr. Elieff agreed. I don't think there's any need for the document.

25

THE CHAIRPERSON: All right.

30

MR. METZ: Could we go over that one again? What is this relating to?

THE CHAIRPERSON: Well, we're not introducing it as an exhibit.

MR. METZ: This is number 47?



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THE CHAIRPERSON: Forty-seven (47).

MR. METZ: This is not an exhibit?

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THE CHAIRPERSON: No. The point was -- or
the contents were referred to in questions put to Mr.
Elieff.

(NO EXHIBIT NO. 47)

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THE CHAIRPERSON: What about Exhibit 48?

MS. SANSON: Forty-eight (48).

15

THE CHAIRPERSON: I don't recognize this.

MS. SANSON: It's the real estate listing
for 95 and 105 Cheyenne.

20

THE CHAIRPERSON: Oh, yes, I see, it's an
MLS listing.

MS. SANSON: There's a date on it
somewhere.

25

MR. METZ: I see an August 1st, '95 or
something.

THE CHAIRPERSON: It's undated.

30

--- EXHIBIT NO. 48: Undated real estate listing for 95
and 105 Cheyenne Avenue.

THE CHAIRPERSON: Exhibit 49 is a letter
from Harold Fischer, the London Office Manager of Rent



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Review Services for London and it's to Elieff Investments and contains an application for rent review filed by Elieff Investments.

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--- EXHIBIT NO. 49: Letter dated March 30, 1987 addressed to Elieff Investments Limited from Harold Fischer, London Office Manager, Ministry of Housing, Rent Review Services and application for rent review filed by Mr. Elieff.

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THE CHAIRPERSON: And 50 is the Respondent Questionnaire in this proceeding, and it's dated -- not in this proceeding, correction, in this complaint, and it's dated January the 20th, 1990.

15

(EXHIBIT 50 PREVIOUSLY ENTERED)

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(DISCUSSION OFF THE RECORD)

25

THE CHAIRPERSON: Exhibit 55 is a videotape of an interview prepared by Jayne, J-A-Y-N-E, Graham, G-R-A-H-A-M, taken on November the 8th, 1989 and broadcast the same day.

25

MR. METZ: What number was that again?

30

MS. SANSON: Fifty-five (55).

THE CHAIRPERSON: This is Exhibit 55.

MS. SANSON: Should would include the



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affidavit in this?

THE CHAIRPERSON: Along with the affidavit of George Clark, C-L-A-R-K, affirmed in January of 1993, January 27th, 1993.

--- EXHIBIT NO. 55: Videotape of interview with Mr. Elieff prepared by Jayne Graham, taken on November 8, 1989 and broadcast November 8th, 1989, and Affidavit of George Charles Clark affirmed January 27, 1993.

THE CHAIRPERSON: Thank you. All right.

MS. SANSON: May I call Susan Eagle to return to the stand?

THE CHAIRPERSON: Just before you proceed with that, I might as well number -- go ahead and sit down -- number the financial statements as exhibits now.

MR. METZ: What did I do with them.

THE CHAIRPERSON: I think I have a list.

MR. METZ: You want to number them all as one exhibit rather than year-by-year?

THE CHAIRPERSON: Yes. Yes.

Just to make sure that this will be contained in the exhibit, it's the financial statement for '84, '85, '86, '87, '88, '89. Was there one missing in there, do you remember?

MR. METZ: Ninety ('90) and '91.



THE CHAIRPERSON: And '90 and '91.

MR. METZ: Yes, that's what we have.

THE CHAIRPERSON: Okay.

MR. METZ: We just don't have '92.

THE CHAIRPERSON: All right.

Exhibit 56 will be the unaudited financial statements of Elieff Investments for the following years, 1984 through to 1991 inclusive.

MS. SANSON: We weren't dealing with '91 in our report, did we?

MR. METZ: No you didn't, but that's what I submitted. Does it make much difference?

THE CHAIRPERSON: It's all in there in one exhibit, if no one has referred to it that's fine.

MS. SANSON: I don't know why we're having it. The specific ones that were referred to were '84, '85, '86, '87, '88, '89 and '92, and there was no '92.

THE CHAIRPERSON: There's no '92, right.

MR. METZ: Well, that's fine.

THE CHAIRPERSON: I have no problems with this.

--- EXHIBIT NO. 56: Unaudited financial statements of Elieff Investments Limited for the years 1984, 1985, 1986, 1987, 1988, 1989, 1990 and 1991.



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S. EAGLE, in-ch.
(Sanson)

THE CHAIRPERSON: Okay. Ms. Sanson?

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SUSAN EAGLE, Recalled:

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EXAMINATION-IN-CHIEF BY MS. SANSON:

Q. You understand that you're previously affirmed?

A. I do.

15

Q. Okay. I'm going to begin just by going through these documents that we've already identified, and there are some specific ones that were not received and ask you to identify them and how you received them.

20

The first one is found at Tab 39, and it's a the third page from the back of the document, and it's a letter dated December 4th, 1992 to Mr. Elieff. Could you identify that letter?

25

A. Yes. It's a letter that was written by me on behalf of the Cheyenne Community Tenant Board after we held a meeting of the tenant board to discuss what we would do about the fact that the tenants had received a notice that they were about to use their electricity. This was back in December.

30

Q. Of what year?

A. I'm sorry, December of 1992.



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Q. And did you send this letter to Mr. Elieff?

A. Yes, I did.

Q. How was it sent?

A. I sent it either priority post or registered mail. It had been a concern of the tenants for some time that perhaps mail that was sent would be claimed later that it had not been received, which is why we took to personally delivering mail last summer, and when that was not working we moved to mailing it, but making sure that we could have a trail so that if there was any suggestion later that it had not been received we could provide proof of that. But we used the two methods, priority post or registered mail.

THE CHAIRPERSON: Do you have the registration slip?

THE WITNESS: I do, but not with me.

THE CHAIRPERSON: Okay. That's fine.

THE WITNESS: We also used the method of having Neighbourhood Legal Services send material on our behalf too ---

THE CHAIRPERSON: Okay.

THE WITNESS: --- so that they would have a record of it.

MS. SANSON: A copy of that letter is in



the legal document, it's part of the material of the legal proceeding so it wasn't -- would have received it twice.

THE CHAIRPERSON: Okay.

BY MS. SANSON:

Q. Would you just explain the nature of that letter and why it was sent?

A. Oh, okay. The tenants were very, very upset at the beginning of December when they received notice that possibly they were not going to have -- well, not possibly, that they were not going to have electricity very, very shortly because of an unpaid bill. As is our custom, the tenants get together to talk about it.

At the meeting we felt we needed information from some other sources so we invited the PUC to be present, we invited a lawyer to be present so that we could try and understand what all the options were for the tenants in order to deal with this matter.

At the end of the meeting the tenants had made a decision that they would set up a trust fund, having been advised by the lawyer who was present that they would need to go to court to have that kind of a trust fund legitimized. The PUC made it clear to them



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S. EAGLE, in-ch.
(Sanson)

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that if there was an initiative taken by the tenants to start to even set up that trust fund that that would be grounds then for the PUC to continue the electricity even though it was past the date even when the date came for the cutoff.

10

So immediately there were four tenants who agreed that they would direct their rents to that trust fund so that the trust fund could get started.

15

20

We sent the letter primarily so that Mr. Elieff would know what the tenants were doing, but also we were concerned, and this had been raised at the meeting, that perhaps tenants would suffer possible eviction if they didn't pay their rent, and so we wanted to make sure that Mr. Elieff understood that these four tenants were redirecting their rent to the trust fund so that there would be no confusion.

Q. Are the names of the tenants set out in that letter?

25

A. Yes. There are four tenants and I identified them by name, also by unit number, and by the amount of rent that they were paying into the trust fund.

30

Q. Okay. This is at Tab 41.

A. Do you want me to speak to both of these?

Q. There are three letters in that



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S. EAGLE, in-ch.
(Sansom)

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regard. It was previously filed, but I would ask you to -- one of the letters Mr. Elieff acknowledged receiving, but I'm not sure that the other two were acknowledged as having been received.

10

A. As the spring continued it became very, very difficult for Chippeng to continue to live in her apartment with the problems that she was having with her need for repairs and so on May the 6th I wrote a letter that she dictated to me and we listed the things that needed repairs. I then sent that letter to Mr. Elieff, again using the same process of priority post or registered mail.

15

There was -- a few days later Chippeng told me there had been absolutely no response to the letter that she had sent and so on May the 20th we wrote another letter, together, and we sent that to Mr. Elieff.

20

If I might add that a few days later there was no response to that letter and so I tried to call Mr. Elieff to discuss the matter with him. We decided that we would hire an electrician -- or a plumber, pardon me, to come in and do the repairs, and I have a copy of the bill from the plumber.

25

The plumber was concerned about coming in, he said he needed access to a locked door in the apartment building. He visited a couple of times and

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S. EAGLE, in-ch.
(Sanson)

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said he needed access to a locked room downstairs to be able to turn off the water to fix it, so I also called Mr. Elieff the day the plumber was to come to advise him that the plumber needed access to that room.

10

Q. Were you able to reach Mr. Elieff?

A. I was not able to reach Mr. Elieff.

15

MR. ELIEFF: That valve is outside.

20

THE WITNESS: There were two occasions this spring that I called Mr. Elieff to advise him that repair people needed access to the building and the one day I reached somebody at the household and left a message, and I think the other day I did reach Mr. Elieff, but he hung up on me and, I'm sorry, I can't remember whether one was the electrician and one was the plumber.

25

BY MS. SANSON:

Q. Okay.

30

A. We did get the -- some repairs done, like the urgent repair was done, that was the hot water tap that was running in the bathroom, because it was very hot and Chippeng was very concerned about the safety of her two-year-old child. So we had that repair done, it came to about \$73.00, and she then deducted that from the rent that she paid. I think it was her June rent.



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S. EAGLE, in-ch.
(Sansom)

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The plumber at the same time listed a number of things on the bill that he felt needed to be done in the apartment, and that list of those repairs that were required was sent to Mr. Elieff through Neighbourhood Legal Services so that he would have a record of what other requirements were needed in the apartment, and I don't know how they send their mail.

20

25

The last thing here, do you want me to speak to that?

Q. Sure.

A. This does not relate specifically to Chippeng's apartment. This was a letter that came out of a further incident that we had at the Cheyenne buildings when I was contacted by some of the tenants at 95 Cheyenne because they were concerned that there was no hot water in their building. Attempts had been made to contact Mr. Elieff, to no avail, so we called the health department and asked the health department what they could do. They came over to -- we also called a plumber, just because we considered that maybe we would have to have a plumber try and turn the hot water on.

30

The plumber again could not get through the locked door in that building and it was only finally when the health department phoned Mr. Elieff they did get him to come out and unlock the door and turn the hot



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S. EAGLE, in-ch.
(Sanson)

water on.

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This letter was sent from Neighbourhood Legal Services at that time because we also advised them that there was no hot water in the building.

10

Q. We're on to Tab 42 now.

A. This document dates back several years. It was brought to me stapled together by tenants several years ago, back in 1986. They had made an attempt when they first formed their tenant's association to send letters to Mr. Elieff asking that repairs be done in the building.

15

They sent the letters all together and they came to the next tenant meeting and brought this package stapled together and said that this had been sent back or stuffed in a door, I can't remember, but the tenant who had it brought it to me. She was the tenant in apartment 4 and said that this had been returned to her with this message "You can All go to Hell." across the front of the letters.

20

25

Q. Do you recognize that handwriting?

30

A. It appears to be Mr. Elieff's handwriting, from other messages that I have seen scrawled on notes and pieces of paper stuck on tenants doors that they have brought to me from time to time, but beyond that I couldn't say for sure. The tenants did



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tell me, though, that Mr. Elieff was the person they had mailed their correspondence to.

Q. I'm just going to back up here and perhaps you can just, in reference to the various legal documents beginning at Tab 38, to explain your involvement.

MR. METZ: What are we at now, 38?

THE CHAIRPERSON: Thirty-eight (38).

MS. SANSON: Thirty-eight (38).

THE WITNESS: I think I first saw this affidavit when Chippeng called me to let me know that she had received it. She was upset about receiving it and ---

BY MS. SANSON:

Q. Do you recall when this was?

A. I know that it was after we had sent the letter to Mr. Elieff letting him know that Chippeng and the three other tenants had paid their rent into the trust fund, because we had hoped that this action would not be taken by the landlord.

So she called me, I think it was probably -- I think it was in January that she called me, it may have been December. I don't -- I just know it was after we had sent the other letter. There was a lot of stuff



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S. EAGLE, in-ch.
(Sanson)

that kept us very busy in the community during Christmas.

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It was at the point that she got this form about being evicted for not paying her rent that we then discussed with both the lawyers at Neighbourhood Legal Services and Community Legal Services about how we would proceed with the tenant -- the application for the tenant trust fund, and their advice to us was that the most efficient way to move forward in dealing with the tenant trust fund was to make a counter application at the time of Chippeng's eviction, a counter application asking that the trust fund be set up. Again, we sat down as a tenant board and discussed that, and the tenants agreed that that would probably be the best way to do it.

10

15

So this document because the means by which we made our application to court for the trust fund to be set up. At that time there were up to about 15 tenants who were paying into the trust fund and we went round and had them all sign affidavits. Again, this was done by the two legal clinics.

20

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Do you want more information on this?

Q. Perhaps we can proceed, unless the board has any questions.

30

And at Tab 40. Did you attend court in March of 1993?

A. Yes, I did. We were there to be part



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S. EAGLE, in-ch.
(Sanson)

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of the counter application being made by Mr. Elieff to evict Chippeng. We were a little surprised the day that we got to court that Mr. Elieff was not there to process his application to evict the tenant, but we went ahead with the counter application. Chippeng was there, I was there.

10

I was there to be a witness to give information on who had paid into the trust fund and the amount of money that was presenting in the trust fund and what negotiations had occurred between the tenant board and the PUC to make the payment and to keep the electricity on.

15

I might mention that by that point we had received notice from Union Gas that the gas was going to be cut off in the buildings, but our application was only to get the electricity paid, and the amount of money that had been paid into the trust fund was not sufficient to even pay the electric bill, and the PUC were not anxious to share that money with Union Gas, so we only made an application to have the money directed to paying the PUC bill.

20

We were granted that by the court. The court also recognized that there might be other tenants who wanted to pay into the trust fund and allowed that to be set up. And they didn't put any end date on it

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because they realized that there was -- that the bill had not been paid for some time and therefore it would take some time collecting rent to get that bill paid. It appeared that the bill had not been paid since June of 1992.

10

Q. Okay. Are you aware of any further actions that have been taken to ensure that the remaining bills have been paid?

15

A. The further actions that have been taken are that the city, through the health department, made arrangements with Union Gas to get the gas bill paid on behalf of the tenants. That covered two months, and then of course it came up again that the gas bill was owing.

20

The tenants were also getting very, very tired of an experience of being asked both by the landlord to pay rent, and also feeling an obligation to pay into the trust fund in order to keep the electricity on, and so by May they said "We can't do this any longer, it's becoming -- it's becoming too much of an upset for us to continue to do that", and so at the tenant board meeting that they had they decided that they would stop paying into the trust fund and that they would turn to the City and to the Province to say there has to be a better way of ensuring that bills get paid for tenants

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S. EAGLE, in-ch.
(Sansom)

rather than making the tenants the vulnerable ones in making this process go forward.

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At that point Irene Matheson, the M.P.P., made a Private Member's Bill, that she submitted to Queen's Park, which allowed the city -- which went through and was approved, and then it allowed the city to enact a by-law which now protects all tenants from having their utilities shut off. And that by-law just came into existence this June, or this past June or July.

15

So at this point we paid everything that was left in our trust fund to the PUC and hoped that we would not have that situation again.

20

There were a couple of other things that came up this spring that were also a problem for the tenants and I don't know if I should mention that. I was notified by the City Engineer's Department that the bulk garbage bin rent had not been paid, that they had -- when I asked them why they were contacting me they told me that Mr. Elieff had advised them to call me to pay the bill. It was, I guess, two or three months owing at that point, and I told them that our trust fund only authorized us to pay the electric bill, it didn't authorize us to pay any other bills.

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30 So they took the bulk garbage bins away, and those were not put back until the bank took its



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S. EAGLE, in-ch.
(Sansom)

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action this July, and when we raised that with the city the city put the bulk garbage bins back and added that to the tax roll of the landlord, so that was another thing that came up in terms of getting bills paid this spring.

10

THE CHAIRPERSON: What is the bank action that was taken in July?

15

THE WITNESS: The bank action that was taken in July was simply to take over the power of sale. We contacted the bank ---

15

THE CHAIRPERSON: Which bank is this?

20

THE WITNESS: It's ---

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MR. METZ: The National Bank.

30

THE CHAIRPERSON: National Bank.

25

THE WITNESS: We contacted the bank to find out exactly what they were taking over, because at that point we had some outstanding Fire Code violation orders; we had exposed wires in a building that Ontario Hydro had threatened to cut off electricity; we had a health report that had been filed by the health department, and we asked if now the bank would take responsibility to provide safety in the buildings.

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The bank assured us, both the bank representatives and the lawyer for the bank, assured us that the bank was taking absolutely no responsibility for -- that they were not taking over the ---



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S. EAGLE, in-ch.
(Sanson)

THE CHAIRPERSON: Landlord's responsibilities?

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THE WITNESS: Yes, that they were not. I was told by other lawyers that that could be disputed, but they weren't sure.

10

We then held a public meeting at City Hall and invited all parties affected by the bank's action to be present, including the bank, so there were tenant representatives there and also city representatives, to ask who was taking responsibility for what as a result of the bank's action. And again the bank publicly reiterated that the only power they were taking was the power to sell the buildings, that all other responsibilities would continue to remain with the landlord.

15

THE CHAIRPERSON: Thank you.

20

THE WITNESS: That did not make the tenant board feel a lot better, but at least it was clear then that we needed to continue to try and get bills paid.

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30

Subsequent to that we have hired an electrician to accommodate the Ontario Hydro order, because we were concerned both about the electricity being shut off, but also about safety for the children in the building.

I might mention too that everything that



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S. EAGLE, in-ch.
(Sansom)

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has happened, though I have often been a spokesperson for the tenant board, that every decision that is made is made by the tenant board when they hold a meeting, even insofar as having visitors on the premises of the buildings. We've had a police officer come out to the building.

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We've had the fire inspector come out to talk to the tenant board about how, in the absence of any landlord, how they can provide safety at the building. One of the things that they have been advised to do is that if there are any strangers present on the premises that they should be calling the police, so it's become even more critical that if there's anybody going on the property that it be cleared with the tenant board.

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So this morning Jim Daly, who was here, that was taken to the tenant board before he came to the property to visit, the tenants were advised of that before he came, even to the extent of who wanted to invite him into their apartment to show their apartment to him.

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THE CHAIRPERSON: Thank you.

BY MS. SANSON:

Q. And Tab 43?

A. This is a document that came from the



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S. EAGLE, in-ch.
(Sansom)

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Middlesex-London Health Unit while they were still in charge of enforcing the property standards by-law. They are no longer responsible for that by-law, enforcement of that by-law.

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So this was one of the last actions of the health department in enforcing the by-law, and they ---

Q. Who is now responsible?

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A. The city is now directly responsible.

They did a write-up of some of the things that were outstanding on the properties, a number of those items were redirected because the by-law covers certain things but redirects other things, so some things were then referred to the fire department or to Ontario Hydro or to other places. As of this spring those matters were referred over to the city.

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A further action, though, was taken by the health department this June when Mr. Carson became again very concerned about the health and safety for the tenants in the buildings, and he did a further report, which I don't think is included here, but it was the source of the several actions that have been taken by the city in terms of coming out and mowing the lawn of the properties, because there had been no lawn mowing done all spring; they picked up the garbage; they boarded up some broken windows. The fire department put a Fire Code

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S. EAGLE, in-ch.
(Sanson)

violation -- filed another Fire Code violation against
the properties.

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Q. And Tab 44?

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A. I might mention too, just before I
leave this, that the process the health department uses
is when they do a write-up so many days notice were given
to the landlord and then there's a hearing held. I was
invited to be at that hearing as a representative of the
tenants, but the landlord was not present, that we sat
for half an hour and waited for him to come.

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I'm sorry, which tab?

THE CHAIRPERSON: Forty-four (44).

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THE WITNESS: This would be the order that
came out of the inspection that was done back in December
of 1993, and as a result of the hearing that was held.
And, as I said, the parties are invited to that hearing
to speak to the outstanding issues that have not been
repaired. As a result of that the order was then placed
on the properties.

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BY MS. SANSON:

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Q. Did Mr. Elieff attend that meeting?

A. No, he was not there. Mr. Partalas
was there as the inspector who had done the inspection,
and Dick Cadwallader, who was the inspector -- the



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standards officer for the city was the person who had the job of conducting the hearing, and I was, as I said, there on behalf of the tenant board.

Q. And Tab 48?

A. This is material that was provided to us by the real estate agent back in, I guess it was 1991, when the tenant board at that point started to explore some options for trying to get repairs done, and one of those options was whether or not we could get the -- whether or not we could purchase the properties and do the repairs ourselves.

At that time a man named Hanny Hassan of the Dillon Corporation offered to give us some kind of an assessment of the property so we'd know what kinds of repairs would be needed if we wanted to take over the properties or make an offer to purchase the properties, and so he contacted the real estate agent to see if he could have a tour of the buildings.

The real estate agent provided him with that tour and also provided him with this material, which he then handed over to me, which was a breakdown on the information that report, Dillon Report that was referred to this morning, the material that he gave to us as a tenant board.

Q. And just to go back to this, this was



an income statement provided by the real estate agent in support of the sale of the ---

A. Yes. It was ---

Q. --- property, or the offer for sale?

A. --- part of a package that he had put together which he was handing out to any prospective purchasers of the property.

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Q. And that was in 1991 did you say? I see a line at the bottom that says "CURRENT INCOME as of 01JUNE91".

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A. Yes. We -- Hanny did his survey of the property in, I think it was October -- September, October or November of '91, at least that's my memory of the first time that I got -- was given real estate information, because we did that through the real estate agent because he had keys to the furnace room and to empty apartment building units so that Hanny could go in and try and have a good look at the structure of the buildings.

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Q. And Tab 51?

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A. This was handed to me by several tenants when I went around to collect the rent at the first of January. The December rent had happened very, very quickly as a result of the tenant meeting that was held at the first of December when the four tenants



decided that they would direct their rent into the tenant fund.

As well as a letter to Mr. Elieff advising him that the four tenants had set up this trust fund and had paid into it, we also advised all the tenants that they had this option, and we gave them the time and date that I would come around to get the rent. The tenant board had asked me if I would receive the rent from the tenants and set up a trust fund.

So when I went around to get the January rents this was -- had been handed to some tenants the night before they were to pay the rent to the trust fund.

THE CHAIRPERSON: This is January '93?

THE WITNESS: That's my memory of it is that it was January, 1993, the beginning of January.

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BY MS. SANSON:

Q. What was your reaction to that note?

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A. I guess my relationship with the tenants is very important to me, it's a relationship that has been built over many years of working with them, it hurt to have a note like that handed to the tenants, and I had to simply wait and see how seriously they would take a note like that handed to them.

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It didn't certainly improve the



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relationship and the feeling in the building to have that note handed out, but I had been asked by the tenant board to collect the rents on their behalf and so I continued to go door to door and to let them know that I was not collecting their rents, that it was the tenant board collecting the rents and that they would have to decide if I was a liar and wicked or not, but it certainly didn't help.

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Q. You've been referred to throughout this proceeding as -- publicly, in this public proceeding as being described as a lying witness, would you describe how that makes you feel?

20

A. It certainly does not make me feel good. I realize that in doing my job I have to continue to do my job regardless of that kind of an environment and a situation.

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The reason that I made the effort to go and get the transcript from the court case of a few years ago was I was hoping that if the data was brought to this hearing that the board could see clearly that this was -- was not true, and so I made the effort with the court reporters from a few years ago to actually get the transcripts, which were a little hard to get because they only keep records of transcripts for a couple of years after the court cases were held.



But certainly when you work in the community, both as clergy and as a community worker, your integrity and your reputation for having integrity are perhaps the only strengths that you have in the work that you do, and so your reputation is more important than it is perhaps in some jobs -- in some other jobs.

So yes, I take it very seriously when I am called a lying witness. However, be it as it may, I have to continue to do my job.

Q. We've heard a great deal of evidence throughout the course of the proceedings that the approach by the tenants and the tenant board and other members of the community has not been to correspond with Mr. Elieff, or communicate with Mr. Elieff about the problems, but rather to take an adversarial approach and go public with everything.

A. Many, many, many attempts have been made to contact Mr. Elieff over the last nine years, and that's how long I've worked in the community. My advice to any community group is to try and negotiate. I have been to court with tenants and I know that court is a very lengthy process. This hearing alone is again proof of how long a legal process can be. My first recommendation always to tenants is to try and work out something that is mutually agreeable.



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S. EAGLE, in-ch.
(Sansom)

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I sometimes have dealt with tenants, not at Cheyenne, but because I work in other parts of the city too, where tenants are in arrears on rents, et cetera, and the first thing we try to do is sit down with the landlord and arrange a payment plan whereby the tenant rents can get caught up and something can be worked out that is agreeable to both sides.

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I think it's a simpler process and I think it -- a tenancy or relationship is not just a legal one in terms of exchange of money, it's also a human situation where people have to live together and relate to each other, often in a relationship of trust and respect, and so as soon as it becomes adversarial it takes a lot longer for healing of that relationship.

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When we first set up the tenant board in Cheyenne, back when -- most of the tenants living there now were not living there, the first tenants I began to work with, on many occasions they contacted Mr. Elieff to try and work at things co-operatively.

30

I recall one day they wanted to have a garbage clean-up day and they sent a letter to Mr. Elieff and they asked him if he would provide the garbage bags and they would have a garbage clean-up, and then they wanted to finish with a barbecue in the community and a get-together for the families. Even then they indicated



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S. EAGLE, in-ch.
(Sansom)

that he had been totally unco-operative.

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At that time I was not there on a day-to-day basis with the tenants, because I work in many parts of the city, so I was relying on information that they gave me, but they at that time were very concerned. The letter from 1986 that came back saying "You can All go to Hell." was again an indication that he was not willing to work co-operatively with the tenants.

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We have continued to contact Mr. Elieff, right up to the present time about need for repairs. Back in November of 1992 when the sewage flooded the main floor of 105 Cheyenne I was called over by the tenants, and when I arrived I said "Have you called Mr. Elieff?", they said they had but they had not been able to get any response from him. Another tenant told me that he had called and Mr. Elieff had said "Call Susan".

So I then got on the phone and asked Mr. Elieff -- to advise him of the sewage backup and ask him what he could do about that, and his response was "Tell your church people to do something about it" and he hung up the telephone.

But we have continued to call Mr. Elieff, first of all because I believe he's legally responsible, and therefore he needs to be notified; and I continue to hope that we can get the repairs done. It has been a

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S. EAGLE, in-ch.
(Sansom)

very long and painful process for the tenants to have to continue to live in the bad conditions that they live in.

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Even with Chippeng's need for repairs, living in an apartment with the hot water running full out in the bathtub, it creates a terrible humidity problem in the apartment, it's not safe for her children. The easiest way to get that repair done is to have the landlord do the repair. It possibly means more legal action to have to hire a plumber and then have to withhold rents and file actions and so we have continued to try and contact Mr. Elieff. But there are only so many hours in the day and you can only write so many letters, part of your time has to be spent getting the things done that need to be done as well.

Q. I have one last question for you and I would -- if I just might have a moment.

(SHORT PAUSE)

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MS. SANSON: The question that I have relates to Chippeng Hom, and I've asked if Chippeng would excuse herself just for this question.

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THE CHAIRPERSON: Sure.

THE CHAIRPERSON: Just before you ask the question, I'm looking -- can we go off the record for a



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moment?

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(DISCUSSION OFF THE RECORD)

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BY MS. SANSON:

Q. Would you please describe Chippeng Hom's emotional well-being since the outset of this proceeding?

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A. Chippeng -- I don't want to disclose confidences that perhaps I should not, because part of my role in the community is to give support to people, but I do know that Chippeng has been very distressed about the hearing that has gone on. I always make sure that I pick her up to come to the hearing each time that there is a hearing because I know that she needs support from the community and from people around her to continue in this process.

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She has found it very, very difficult emotionally to undertake this hearing. Certainly she understands that she is in many ways a representative of the community in bringing this concern, but still she has been the lone person in filing this complaint.

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There are times that I have gone over to her apartment and simply just sat and had a coffee with her and talked because she was feeling very depressed



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(Sanson)

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about -- feeling the weight of this hearing and feeling
that she has made herself more vulnerable by being in
this process. That has been further confirmed by getting
a notice of eviction shortly after -- she is one of four
tenants who paid into the trust fund, and the other
three, there was no action against them, but just against
Chippeng.

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I think beyond that, what she has said to
me is confidential.

THE CHAIRPERSON: That's fine.

Okay. Let's take a 10 or 15-minute break.

15 MR. METZ: I'm sorry?

THE CHAIRPERSON: We'll take a 10 or 15-
minute break and then we will proceed with cross-
examination.

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--- Upon recessing at 4:10 p.m

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--- Upon resuming at 4:35 p.m.

SUSAN EAGLE, Resumed:

MR. METZ: I'm still a little up in the air about how Exhibit 55 is going to be introduced, does it have to be introduced in any particular way or is it just -- that's the videotape.

THE CHAIRPERSON: Oh, yes. It's in as an exhibit.

MR. METZ: Oh, it didn't have to be ---

THE CHAIRPERSON: It was introduced through this affidavit.

MR. METZ: I see. Okay. That's it then as far as that goes?

THE CHAIRPERSON: Yes.

MR. METZ: Is it my reply now?

THE CHAIRPERSON: Yes, your cross-examination.

MR. METZ: I'm ready to go then.

THE CHAIRPERSON: Yes.

CROSS-EXAMINATION BY MR. METZ:

Q. Ms. Eagle, in your earlier testimony when you were discussing with Ms. Sanson the setting up



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of the trust fund, this is in particular reference, I guess, to the document under Exhibit 39, a letter dated December 4th, you said that the tenants made a decision to set up a trust fund. I notice that there's four tenants listed here on this letter, was there some sort of vote taken at the time?

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A. We ---

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Q. How would the decision have been arrived at to set up a trust fund?

A. At any meeting that we have with the tenant board we discuss things, and then often the community discusses it themselves, in Cambodian, and ---

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Q. You're distinguishing between the community and the board, could you make that a little clearer for me?

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A. Well, it's a community tenant board, so I sometimes say "community" or I sometimes say "tenant board", but when we have a meeting of the tenant's board every tenant is notified about the meeting.

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Q. Okay. And how many people sit on the tenant board?

A. The formal board, because we have -- since December we -- in December we became an incorporated board -- so there is a formal board now which is made up of ---



Q. Since December '92?

A. Yes. Five or six people are actually formally on the incorporated board. But when we talk about ---

Q. Are the people ---

A. --- the Cheyenne Community Tenant Board, and they hold meetings, there's a general invitation to those who want to attend to come to those meetings.

Q. Are the people listed in this letter on the board or are they just part of the community?

A. Some of the people of those four are actually on the formal board.

Q. How many of them?

A. The community made a decision -- I'm sorry, you started by asking me how decisions get made and ---

THE CHAIRPERSON: That's all right.

THE WITNESS: Do you want me to finish answering one question before I get the next?

BY MR. METZ:

Q. Go ahead, then, with ---

THE CHAIRPERSON: Yes. Let the witness finish the question. The question is how many of those



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S. EAGLE, cr-ex.
(Metz)

in this letter are on the board?

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BY MR. METZ:

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Q. Well, I'll be getting -- I'll get back to that.

15

A. Okay. Three.

Q. Three of the four?

A. Three of the four.

Q. Which of the four is not on the board?

A. Muoi Van Dang.

Q. That's the first person?

20

A. As I recall. I'm sorry, I don't have the incorporated list in front of me and I haven't seen it since December of 1992 when we took out the incorporation papers.

25

Q. How many tenants at this point in time would you say were in the buildings, occupying the buildings as part of the community?

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A. I'm sorry, at which point in time?

Q. I guess ---

A. As of December?

Q. --- as of this letter.



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S. EAGLE, cr-ex.
(Metz)

A. And which tenants living in the building were part of the community board?

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Q. Well, I guess what I'm getting at here is if there's four people who have agreed to direct their rent into the trust fund how many tenants in the building -- obviously the rest of the tenants didn't or they would be listed, am I correct?

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A. Well, if you look at the date of the letter, which is December the 4th, that was right at -- rents were due on December the 1st. My memory is that our meeting was held on December the 1st and so it was very problematic to set up a trust fund on the same day that rents were due, so some of the tenants had already paid their rent for December.

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Some tenants had not been able to attend the meeting, because we only got this notice one day and try to call an emergency meeting for like 24 hours later to alert the tenants to what was happening, and to also give them some legal advice.

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So there were four tenants who felt very quickly that they were able to redirect their rent to the trust fund, and they had not already paid the landlord, and they were present at the meeting, and they understood what was happening and were part of the decision. It was a very -- we had to move very, very quickly.



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S. EAGLE, cr-ex.
(Metz)

Q. So four tenants out of how many potential tenants, roughly?

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A. I don't recall how many tenants were living in the building at the time. My memory is that the place was about two-thirds -- about two-thirds full at the time.

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Now, the other problem that we also had, Mr. Metz, is that several of those tenants were not paying any rent at all because of rent rebate orders, and so they wanted to support ---

15

Q. Which tenants, these tenants here?

A. No.

THE CHAIRPERSON: Or other tenants?

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THE WITNESS: They wanted to support the trust fund but said "We don't pay any rent to anybody right now because we're getting money back on the rents that were overcharged."

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BY MR. METZ:

Q. Have those tenants since agreed to direct their money towards the trust fund?

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A. Well, as I mentioned earlier, at one point we had 15 tenants paying into the trust fund.

Q. Now, to get back to my original point, how was this decision made? Was it made by a



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S. EAGLE, cr-ex.
(Metz)

recorded vote of any sort?

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A. The tenant board has not done formal votes in the past, they have moved on much more of a consensus model, which they seemed far more comfortable with, and so after information is shared with the community they often, as I said, moved to even talking among themselves and I wait to hear what some of the discussion and results of that discussion are, and then someone will come back and say "This is a decision that the community has made." So that's generally the process.

Now that the board has become an incorporated board we realize that we are going to have to move to more formal kinds of decision making and record keeping as a result of the incorporation.

THE CHAIRPERSON: Mr. Metz, can you help me to understand where these questions are headed?

MR. METZ: I'm trying to determine for myself how much support is actually existing through this line of action within the community.

THE CHAIRPERSON: All right.

BY MR. METZ:

Q. The letter, as you've written it here, refers to Mr. Elieff's negligence in paying the



bill.

A. M'hm.

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Q. Wouldn't you agree with me that it would be more a matter of an inability of paying the bill? I mean, after all ---

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A. No, I don't agree with you.

15

Q. After all, the rents are being redirected.

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A. Well, at the time that the tenants were given the information that there was an unpaid electric bill there was no trust fund, so the only tenants who were not paying rent were tenants who had already paid their rent, shall we say in advance, by being overcharged by Mr. Elieff, and it was only after the Rent Review Office advised them that they had already paid too much money to Mr. Elieff so they shouldn't pay him for awhile, until they'd caught up, or he'd caught up to what they -- what he owed back to them. So he had already taken money in advance, so I don't see that there was any lack of funds, in fact there was an overabundance of funds that Mr. Elieff already had in his possession. And it was only when we were notified by the PUC that the electricity would be cut off that we had to move to trying to get the bill paid.

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Q. Well, wouldn't you consider that in



the long term by reducing rents and having rents reduced
that that would reduce the amount of funds available for
the payment of certain invoices and bills, including the
utilities?

A. Well, I'm not sure what you mean by
reducing rents. What the Rent Review Office did was
advise the tenants what the legal rents were and said
"From now on don't overpay the landlord".

Q. But still, don't you agree that that
would place the landlord in a position ultimately of
having less funds with which to meet the needs of the
tenants?

A. Well, certainly, Mr. Metz, if
somebody wanted to overpay me on my salary I'd have a lot
more money until I got paid my legal salary again, and
then it would reduce the amount of money I would have to
spend, but I'm not sure what you're asking me.

Q. Well, to create an analogy, I guess
it's a bit like doctor -- extra billing with doctors who
are now finding themselves short of funds because they're
not allowed to ask their patients for the money directly,
even though those patients may be willing to pay. I
mean, isn't it true that these tenants, when they entered
the building, agreed to these rents? I mean, rent review
aside.



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A. I couldn't speak for the tenants as to what they agreed to pay. I know they were informed what it was that they were to pay, and very quickly became concerned that they were paying too much rent. We advised Mr. Elieff last August that we were making application to have the legal rents assessed and, as you probably recall from an earlier hearing, that's when I was assaulted by Mr. Elieff when I handed him the legal papers.

So since last August he knew that the tenants were making an application to have the legal rents assessed and I can only assume that as a landlord he would not want to be overcharging his tenants.

Q. You say you were assaulted by Mr. Elieff, did you press charges?

A. That is on file with the police department, yes.

Q. Has anything come of it?

A. No, it has not.

Q. Do you intend to carry on with it?

A. No, I do not.

Q. May I ask why?

A. Because it seemed to me that the more important issue was the moving ahead on the concern with the tenants and the rents and that if I pursued that line



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S. EAGLE, cr-ex.
(Metz)

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of action that there would be a fair amount of visibility and publicity around it and that it would distract and detract from the issue here, which is justice for the tenants.

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THE CHAIRPERSON: Mr. Metz, I've allowed this line of questioning to go on for a little while, but I would ask you to focus on those points that were raised in the examination-in-chief of this witness who was called in reply, because there was an opportunity at an earlier stage to cross-examine this witness more generally.

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MR. METZ: I, myself, have never had an opportunity to cross-examine Ms. Eagle, that was Mr. Elieff that did that.

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THE CHAIRPERSON: Okay. All right, then.

MR. METZ: This is the first time I've had that chance, and I am trying to direct myself directly to the comments that were brought up earlier.

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BY MR. METZ:

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Q. You say the trust fund is no longer in existence, or that people aren't paying into it? You said they stopped paying into it in May '93?

A. The tenants decided that the May rents would be the last time that they would pay into the



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trust fund, because they were hopeful that at that point legislation would be in place that would give them the protection that they sought and that would no longer be a voluntary kind of thing, so they decided not to pay the trust fund.

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But it was shortly after that, then, that we realized that the bank was taking over. There also is a matter of a number of unpaid rent rebate orders, where Mr. Elieff owes cash back to tenants who have moved out of the apartments, so the tenants stopped paying the trust fund, and the next thing the tenant board did was to garnish rents so that those rent rebate orders could get paid off.

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And we are now in the process of seeking action, again through the advice I'm getting from Neighbourhood Legal Services for us to pay the rents into court so that the tenants are protected from any suggestion that they are bad tenants and not paying their rents. So we're making sure that their rents are paid into court as soon as the rent garnishments are finished.

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Q. Who is currently administering the trust fund, or who administered the trust funds?

A. The trust fund was taken out in the name of the Cheyenne Community Tenants Board, and I collected the rents and deposited them.



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S. EAGLE, cr-ex.
(Metz)

Q. You personally?

A. Yes, I did.

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Q. To the best of your knowledge, how many of the invoices, the outstanding invoices or utility bills were actually paid from the trust fund itself?

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A. In total we paid \$19,500.00 and-some-odd cents to the PUC. We paid out everything that was collected. That still did not pay all of the electric bill because, of course, while we were collecting that money the bill was going up. It was a cold winter this year and without proper heat in the buildings most of the tenants were using electric heaters, so the electric bill went up very quickly.

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Q. All of the \$19,500.00 was paid to the PUC?

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A. Yes, it was.

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Q. And this would be up until what time including? Is the PUC -- never mind that. Is the PUC ---

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A. I have my file here ---

Q. Is it current now?

A. --- if you want actual receipts and those kinds of things, to show you.

Q. Are the ---

THE CHAIRPERSON: Mr. Metz, if your



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questions are about the administration of the trust fund
this may not be the proper place to ---

MR. METZ: No, it's not about the
administration, it's about the existing outstandings.
I'm curious if -- are the utilities, rather, are they up-
to-day so to speak, or relatively up-to-date as of today.

THE WITNESS: Well, I'm sorry, Mr. Metz,
I'm not the person that has that knowledge and I don't
receive the bills, the landlord receives the bills for
the utilities. The only time that it's been brought to
my attention is when there's a notice on the door saying
something is going to be cut off, and I then phone that
utility and say "Can we try and work something out on
behalf of the tenants?"

BY MR. METZ:

Q. So the utility hasn't been ---

A. I have not been contacted by the
utilities ever about an unpaid bill, and I've only
gotten the amounts from them when there was a note on the
door. There have been no notes on doors to tenants
saying utilities would be cut off since the legislation
went through giving them that protection.

THE CHAIRPERSON: Mr. Metz, you will
recall the earlier evidence this afternoon that the



National Bank has only taken over with respect to the sale of the property and has specifically denied any responsibility ---

MR. METZ: Well, I'm not interested in the power of sale.

THE CHAIRPERSON: So by default then, the landlord is still responsible for everything else.

MR. METZ: Well, that's true, but if a legal trust fund has been set up for a specific purpose it strikes me as odd that the purpose for which it was set up, i.e., paying the PUC, that the party involved there wouldn't be aware of it.

THE CHAIRPERSON: I see.

Has the trust fund been set up by court order?

THE WITNESS: Yes. The document that you asked me to identify was ---

THE CHAIRPERSON: Yes.

THE WITNESS: --- the court order setting up the trust fund.

THE CHAIRPERSON: And is the order for a limited period of time?

THE WITNESS: No, it was for an unlimited period of time, there was no termination date set on it.

But as of May, when the tenants felt that they were



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(Metz)

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getting -- that they couldn't keep ahead of the bill, and that no action was being taken by the landlord to regain the responsibility or to get the bill paid, we notified the PUC ---

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THE CHAIRPERSON: Yes.

THE WITNESS: --- it's now London Hydro

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THE CHAIRPERSON: Yes.

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THE WITNESS: --- that we would give them whatever was remaining in the fund that had come in as of the May rents, and that after that we would not have any further money to give them from the trust fund and that they would need to continue, as they had already been doing, to direct their bills to Mr. Elieff.

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They never stopped directing their bills to Mr. Elieff, we just would periodically phone and say "How much is owing, we're going to make another deposit", in the name of Elieff Investments I guess, to get this bill paid so we can keep the electricity on. So they have continued to bill Mr. Elieff, and we told them in May that that was the last payment that we had to make to them. And they began to wait, as did Union Gas, for the legislation so that they could get their bill paid through other means, through the city's by-law.

THE CHAIRPERSON: Okay.



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THE WITNESS: It was very temporary what we set up.

THE CHAIRPERSON: Mr. Metz.

BY MR. METZ:

Q. Now, moving on to Exhibit 48, you were discussing the possibility of whether you -- you said "we", which I assume means yourself and the tenant association, could purchase the property yourselves.

A. M'hm.

Q. How long have you been interested in the purchase of these properties?

A. Our first interest really came in the fall of -- no, I shouldn't say the fall of 1991, that's when we seriously began to look at it. Back in 1986-87 the tenant board decided that they wanted to build their own housing, and they built the Genesis Co-Op, which was a 75 townhouse complex, which many of them moved into. At that time we knew that the buildings apparently were for sale and it was recommended to us that we consider purchasing them, but many of the tenants had had such bad experiences in the buildings that they were not interested in renovating the buildings, they wanted new housing.

So in the fall of 1991, when we had still



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been unable to get repairs done, and I was now working with a new tenant board, the possibility of purchasing the buildings became a serious one. And we realized that there was active promotion of the sale of the buildings, they were being advertised in the newspaper, et cetera, et cetera, and at the same time we had an offer from someone to give us a free appraisal of the buildings to assist us in considering whether or not we should even be making an offer.

We did not make an offer at that time, we took this back and looked at the building report, which was quite devastating in terms of what it was telling us about the need for repairs.

Q. Now, I understand that the churches that you work for, according to your previous testimony, were interested in these buildings long before Mr. Elieff was the owner of these buildings, is that not true?

A. Not that I'm aware of, Mr. Metz. Perhaps you can refer me to the testimony, because that's news to me.

Q. Page 80 of your testimony previously, quote:

"Back in 1984, even then the churches I work for were asking City Council to take action before any



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(Metz)

Cambodian or Vietnamese people moved
in."

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What were you referring to at that point?

A. They were asking for action to get
the building repaired, not to purchase the building, and

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Q. Were you involved at that time?

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A. I was hired in the summer of 1984,
and the organization I work for was created at that time,
and I was the first staff person that was hired by the
East London Cluster.

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It was in the spring of 1985 that we had
the first sewage backup at the apartments, and at that
time the board I work for was concerned, and so it was
out of that situation that they went to City Council, and
I believe there was an open letter that was written by
the board at the time, which probably is on record
somewhere, asking the city to take action to get repairs
done. At that time there were four United Churches that
were involved in the board.

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Q. Now, you just referred to the Genesis
Housing Co-Op, and you've referred to this before, and
again in your previous testimony "In '87-88" -- you were
talking about "we", and I guess again you mean yourself
and the tenant's association:



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(Metz)

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"... were able to move most tenants out into some co-op housing which the tenant association built for Genesis Housing."

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Do I understand from that that what you mean is that your own tenant association was moving tenants out of Mr. Elieff's buildings into the Genesis Housing Co-Op?

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A. Well, what they did was they created a tenant board. Many of the tenants, actually, that moved into Genesis had already left the Cheyenne apartments before the Genesis Co-Op got built, because it took us a couple of years to get the place up and most of them couldn't wait that long.

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So Wendy McAstonchkeror, who was the chairperson of the board had already moved into another co-op; Karen McDonald, who was the recipient of the letter "You can All go to Hell.", she had already left; Jane Anderson, who was on the board had already moved out; so a number of the tenants had already moved.

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But they were part of the nucleus of tenants living in the buildings who had first sought to get repairs done and then had felt that they weren't getting anywhere getting repairs done and began to look at other options.

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Q. So when you said "we were able to



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move out", what kind of efforts were involved in that respect? Were you ---

A. Well, the Cheyenne tenants ---

Q. --- encouraging people to leave?

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A. The Cheyenne tenants board certainly were very excited about the possibility of building new housing and so they certainly actively promoted the co-op housing. We heard this morning from people talking about marketing, they believed they had something that was really quite marketable and very attractive to people in the community, and so -- and something also where they had ownership and responsibility for the maintenance of the buildings, so they were very excited about that.

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Q. So you're suggesting, then, that this was going to go ahead with their own funds and their own efforts so to speak? I mean, if they have ownership one assumes that they're purchasing the property directly.

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A. Well, Mr. Metz, co-op housing, without getting into a long explanation, co-op housing is done -- there's a formula for co-op housing which is done through application to the Ministry of Housing.

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Q. Well, isn't it true that it was your intention at some time, if you could, to have acquired the buildings that Mr. Elieff owns to tear them down and turn them in -- and build co-op housing on that site?



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(Metz)

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A. It is still a hope of the co-op board that they might be able to do some renovations. We have made a couple of different applications to the Ministry of Housing in the last two years for allocation, conditional on us being able to negotiate sale price with Mr. Elieff, which we have not been able to do.

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THE CHAIRPERSON: Mr. Metz, I'm going to ask for help here in understanding how this line of questioning is going to help in putting forward the respondent's case in this complaint.

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MR. METZ: I'm sorry?

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THE CHAIRPERSON: I'm losing my voice here. I need some help in understanding how this line of questioning is going to assist you in making the case for the respondent in answer to the complaint that is before us here.

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MR. METZ: Well, I'm really trying to determine Ms. Eagle's motivations for getting involved in this whole issue in the first place, because based on previous testimony and other evidence put before me I have some doubts as to whether her involvement was based on the basis that she's trying to make it sound.

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THE CHAIRPERSON: Well, Mr. Metz, the complaint hasn't been lodged against Ms. Eagle.

MR. METZ: No, I realize that.



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THE CHAIRPERSON: Ms. Eagle isn't the person complained about, so ---

MR. METZ: But she has made testimony that I think deserves to be questioned or investigated further.

THE CHAIRPERSON: Well, I think it has very limited value, and I can tell you that the weight that I give to those answers will not be very great because it doesn't ---

MR. METZ: Nevertheless, I feel that the questions are necessary.

THE CHAIRPERSON: All right.

MS. SANSON: I'd like to raise an objection at this point, or perhaps not even an objection but a clarification for the record lest there be any misunderstanding in terms of the ability of a representative on reply and how evidence with respect to reply is to deal with issues that arose that couldn't have -- first of all, you have evidence in reply that deal with issues that arose out of the respondent's case, and so they touch on very brief areas.

Your submission, Mr. Metz, was that you weren't around for the first cross-examination during the Commission's case, well, in law that does not entitle you to a second and full opportunity of cross-examination.



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Mr. Elieff chose to represent himself, and chose to proceed without an agent and without counsel, and made that choice, and conducted his cross-examinations accordingly. There is no entitlement to you in law, as long as you're clear that that is a leniency that's being provided to you in terms of the scope of the cross-examination you're now provided with. There is nothing in law which allows you a second opportunity just because you were not acting at the time for Mr. Elieff.

MR. METZ: I am currently asking questions in reply to the questions you just raised, and one of the answers to your questions with regard to Exhibit 48 dealt with the purchase of these properties, and it's my contention that the purchase of these properties is the primary objective of this whole event that we are being subjected to here.

THE CHAIRPERSON: Mr. Metz, I'm allowing you to ask those questions, but I think Ms. Sanson's point is well taken, it's a discretion that's given to the board to make ---

MR. METZ: Well, I understand ---

THE CHAIRPERSON: --- these allowances, and ---

MR. METZ: --- and I believe that ---

THE CHAIRPERSON: --- I have made that



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(Metz)

allowance for you.

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MR. METZ: --- if I'm allowed to continue
I think you'll see where my ---

THE CHAIRPERSON: Sure.

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BY MR. METZ:

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Q. Again, with relation to these buildings, you also testified on page 94 of the transcript that the four churches that hired you have designated several buildings in that area, and that was in 1984. Would you not agree with me, therefore, that the primary interest of yourself and the churches is in the buildings and less in the people who occupy them?

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A. No. First of all, the designation was not made in 1984, I was hired in 1984. My job has evolved for the last nine years. The board had no knowledge even of the Cheyenne buildings existing particularly in 1984 when they hired me, they only became aware of those buildings in the spring of 1985 when I got a phone call from Wendy McAstonchkeror telling me she was standing two inches deep in raw sewage and that the landlord had refused to clean it up and what should she do about it. That was how I got involved at the Cheyenne



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apartment buildings, and I took that information back to the board that had hired me to recount the story of her experience, and the subsequent court case which she was then involved in in trying to recoup the damages to her apartment.

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So it was not designated. But geographically they have designated buildings over the last nine years as they -- because I work in a geographic area, which is the northeast part of the city.

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And there are problem buildings that have been identified in that time, buildings where there are rundown conditions, where tenants are having constant problems, and those are the areas that I am sent into, because I'm hired as a community worker.

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Q. Well, wouldn't, then, the objective of your efforts therefore be in alleviating the problems that are related to those buildings and the tenants rather than creating co-op housing, which seems to me an entirely separate objective?

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A. M'hm, that's quite right, Mr. Metz. We look at the options, and my job as a community development worker is to sit down with the community and find out what it is that they want to do, to help them also identify the different options available to them.

Back in 1986 we looked at several options



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for the tenants living at the Cheyenne apartments, one was to continue to push for repairs to be done; another was to look at alternative housing for the tenants to move into; and a third option was for them to look at the possibility of building their own co-op housing. They decided that they would look at all three options, because they wanted to improve the conditions.

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They were also aware that if they simply left the Cheyenne apartments and moved out that they would simply be handing the problem on to somebody else moving into the buildings.

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Q. Isn't it true in that regard that you spent a considerable effort in lobbying provincial and municipal governments for funding for the co-op housing project, including ---

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A. Not only ---

Q. --- the printing of 10,000 postcards in Cambodian and in English?

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A. Well, you're jumping now to last fall, so we're kind of all over the place time-wise. Back in 1986 when we looked at the options they decided that they would pursue the option of getting repairs done as well as looking at the option of alternative housing. So I have been involved in lobbying both the city and the province to improve the standards by-laws, to improve

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landlord and tenant legislation, et cetera, as well as working with the tenant board on finding alternative housing, and included building co-op housing.

Back last fall, when we were trying to get something done on the apartments, yes -- and you raised a question earlier about my motivation. My motivation last fall was that the tenants were living in really deplorable conditions, we had a cockroach infestation, we had sewage backups, at that point I was certainly pushing very, very hard for something to be done to alleviate the conditions that the tenants were having to live in.

Q. And we heard also, later on in your testimony today, when you were asked by Ms. Sanson regarding the emotional well-being of Chippeng Hom since the outset of this proceeding, and you discussed how distressed she was about the hearing that was going on. Isn't that -- wouldn't you think that's a little odd considering she was the one to file the complaint? Wouldn't she be pleased that the hearing was going?

A. Well, that may be a question that you should better put to Chippeng. I was asked how she was feeling about the whole process and I advised you that she was feeling the distress of the lengthiness of the proceeding.

The Cambodian community met in November



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S. EAGLE, cr-ex.
(Metz)

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of 1989 to discuss the concern that they had. I have shared with the board, and I don't know if you were present at the time, but with the lengthiness of dealing with the complaint. There have been public stereotypes that have been created in the community about linking Cambodians and cockroaches, which is very painful for the community and for people having their children go to school and coming home with these stories.

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And then the initiation of the formal part of this hearing has been lengthy. Chippeng has, as I have, sat through many hours where there have been all kinds of things said, we've heard all kinds of testimony given, including comments about cockroaches and Cambodians. She has had to relive the evidence and all the information, and so when she and I have talked between hearings she has expressed to me a sense of the burden of having to go through this whole process again.

I can share -- I can't say more about her feelings, you need to ask her yourself, but I can tell you that I have found that it has been a stressful and lengthy process.

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And, as I also said earlier, I don't consider a legal process to be my first choice of an option of getting something -- something to happen. I don't find that it's a very helpful process. I think at



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a certain point you realize you have to move to a legal process and accept -- I guess when you start you know that that may be where it has to go, but you hope it won't.

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Q. Well, again, you know, when you were referring to this you said that she has been a lone person in filing this complaint. And again I refer to your previous testimony where you said, and I quote:

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"So, therefore, although it is Chippeng Hom filing the human rights complaint it came out of the process of about 20 families gathering together to discuss what a community solution might be."

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A. M'hm.

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Q. "Certainly part of my job is to push people."

A. M'hm.

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Q. Did you push Chippeng Hom to file this complaint?

A. No, I did not. I was actually quite surprised when Chippeng came forward to file the complaint, because at the time that the remarks were made, and we read them in the newspaper, it was the men of the community who were expressing some of the outrage



about the comments.

Q. I'm sorry, it was the what?

A. Some of the men ---

Q. The men.

A. --- in the community who were expressing outrage. The night that we sat and all the families gathered together and we got information and talked and then, of course, went to the Human Rights Commission, went to the Anti-Racism Committee, and went several other places to find out what options were available to the community, there was still continuous discussion about how this could be processed and whether or not collectively the community could file a complaint.

It then came down that it needed to be a specific person and a specific complaint, and it was at that point that Chippeng came forward and said that she had some very specific complaints to make and to file.

I had rather thought myself that it would probably be one of the male members of the community who would come forward, perhaps because in some ways the community is a very traditional community and so I had made that assumption, so I was quite surprised.

Q. It would seem a little odd to me, then, that we're discussing Chippeng Hom's emotional well-being since the outset of the proceeding, wouldn't



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we really want to be discussing that with respect to the outset of the whole situation? It seems that the emotional stress seems to be resulting from this action, not from anything that happened previous to the filing of the complaint. Would you agree with that?

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A. I would be happy to discuss that with you, Mr. Metz, but the question I was asked was Chippeng's well-being since the hearings had begun, not since the complaint was filed, so I was responding ---

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Q. Well, would you then ---

A. --- to the question that was put to me.

Q. No, wait a second, I just put another question to you. Would you agree with that?

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A. I think Chippeng has certainly not felt good about the process of dealing with the complaint, because of the length of time, as I've said, but I think part of that has been the perpetuation of a stereotype that has gone unchallenged, and it has resulted in children being told things at school and coming home with those stories.

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Q. And you felt that the best way to address the stereotype would be to file a complaint against Mr. Elieff, is that correct?

A. We felt that the Human Rights



Commission was the place to take the concern, and so since then we have followed the process that the Human Rights Commission outlined to the community.

And I have not been the only person that has been involved in this, Mr. Metz, Lam Vong was involved with the community, the Cross-Cultural Learner Centre; many, many other people. I'm not -- I am not the orchestrator of the action that happens, I am one of many participants who attends community meetings or is there to give support to the community, or to help to provide information to the community.

Q. Well, would you not agree with me that of all the people who are involved your name comes up most frequently?

A. No, I ---

Q. You wouldn't?

A. I'm sorry, I -- my name comes up, I'm not sure where. Are you meaning in the media or are you meaning in the community?

Q. In every action. I mean, you were the one that requested this videotape; you were the one that got all the documentation; you're the one that's assisting people in filing complaints; you're the one that's assisting people in putting -- what do you call it, before the Human -- not the Human Rights Commission,



before the Rent Review Board, the rent review forms; and the court cases, I don't see anyone else's name involved in these respects.

A. I'm not sure how to answer that. I am hired by the church board to be in the community, the community has made it clear that they wanted me to do some work with them. There are some other things I've done that you maybe are not aware of, I've found funding for 250 of the Cambodian community to go on a trip to Toronto Island last month; there's a number of other things that we do in the community, it's part and parcel of my job as a community worker.

For a full description of my job you could check with the church board that hires me.

Q. Again, I refer you to a question that Ms. Sanson posed to you earlier, and that was why do you see your interaction with the tenants as necessary, which was in your previous testimony, and your answer was that "First and foremost", quote:

"... my job is to respond to the needs, which means there has to be some subjective decision about what the needs of the community are."

A. M'hm.

Q. What would that subjective decision



involve? What are we talking about here?

A. Oh, it involves the Cheyenne Community Tenant Board holding meetings and making decisions about some things that they would like to do.

The application for rent review came as a result of the Deputy Minister coming down and meeting with the Cheyenne Tenant's Board and advising them that they needed to be making application to the Rent Review Office. At that point they said that they would do that, but of course there was a problem with the documents all being in English and translation being needed, et cetera, et cetera. I was not the only person working on that, Nabby Chan at the Cross-Cultural Learner Centre was working on that, we had a couple of people who were helping us with some of the legal translation, et cetera, et cetera.

Another decision made by the community board, as I said, was to have a trip to Toronto Island last month. I again responded to the need in that they said one of the biggest needs was for someone to fund raise so that we could afford to rent five buses and take the children away for a day and go on a trip, so they asked me if I would help find the funding for that trip.

THE CHAIRPERSON: Mr. Metz ---

THE WITNESS: Yes, my job is to respond to



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S. EAGLE, cr-ex.
(Metz)

what they ask me to work on.

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THE CHAIRPERSON: --- do you have many more questions?

5 MR. METZ: No, just a couple.

MR. ELIEFF: We need short answers. Short ones.

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BY MR. METZ:

Q. With respect to your action of obtaining the videotape from CFPL TV, what were you trying to demonstrate with that tape?

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A. It's awhile ago since I went after the tape, but it seemed to me that at the time we were trying to collect as much information to recapture the events that happened during that four-day, five-day period in November, and so I turned both -- I turned to what we consider to be our public records, which are the newspaper and the television. I couldn't recall anything being on the radio, nor do I know that the radio keep transcripts ---

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Q. Well, what I'm asking ---

A. --- but I inquired of the television if they ---

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MS. SANSON: I'm going to object to this line of questioning, anything that was done in



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furtherance of the litigation. I think he's -- you know, he's getting into an area of how she collected ---

THE CHAIRPERSON: Yes.

MS. SANSON: --- information or not is of -- is completely ---

MR. METZ: I'm sorry?

THE CHAIRPERSON: You see, Mr. Metz, you're asking questions about the motives for collecting certain evidence, and they may be fair questions, but really that's the prerogative of counsel for the Commission, and we don't usually question why a lawyer chooses to bring certain evidence, it will stand or fall on its own. And I think it's really casting the net too widely to ask witnesses, even counsel, what the purpose was for bringing this piece of evidence forward and, you know, I think it's going -- it's casting the net too widely, so if you could move on to another question I would appreciate it.

MR. METZ: Am I permitted to refer to what was in the video, or is that not ---

THE CHAIRPERSON: You can make reference to what was in the video in argument.

MR. METZ: In argument. Okay, we'll have to do that in argument.

MR. ELIEFF: Why we can't ask her a



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S. EAGLE, cr-ex.
(Metz)

question about it?

THE CHAIRPERSON: She wasn't the author of
the video.

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MR. ELIEFF: She supplied it. She pushed
for it.

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THE CHAIRPERSON: It's really -- she has

MR. METZ: It's okay, we'll get to that in
argument.

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THE CHAIRPERSON: --- no connection with
it really.

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MR. METZ: We've covered that. I think
that's it then.

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THE CHAIRPERSON: Okay.

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MS. SANSON: I have one question in reply.



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RE-EXAMINATION BY MS. SANSON:

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Q. Mr. Metz asked you about -- and I'm just actually going to ask Chippheng to excuse herself once again.

THE CHAIRPERSON: Okay. Okay.

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BY MS. SANSON:

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Q. Mr. Metz put to you in essence that Chippheng Hom was the author of her own distress in the sense that she initiated these proceedings and if she was feeling distressed by them that that was perhaps her responsibility. Would you detail the actions that have been taken against her since the commencement of these proceedings?

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A. Well, I know certainly there has been the eviction notice that was served on her; she has -- she called me when the situation happened with her money being returned to her, and she was upset about that; there has been an ongoing problem of repair in her apartment during -- for the duration of his hearing. I know, I understand that at one point somebody, after I brought pictures in December of the hot water tap running that somebody went and did something in her apartment, but it was done so inadequately that it became a problem again immediately.



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There has been some publicity of this hearing that -- because we have had media present, and I know that Chippeng has had anonymous racist and sexual reference calls made to her home, which she and her children have received. She has been approached by media, independent of the hearing, wanting comments about what was happening, and that has been additionally stressful.

There was real turmoil in the building when the announcement -- when people got notices on their door that the electricity was going to be cut off, and if you remember the date of it, it was the beginning of December, and the date for cutting off the electricity was going to be just before Christmas, the 14th or 15th or 18th, somewhere in there. So all of a sudden families were not sure what kind of a Christmas they were going to have and Christmas holidays with their children.

I know that after Christmas, when we got the news that the Union Gas was going to cut off the gas that I was being approached by children out in the yards saying "What's going to happen? Are we going to have a home? Are we going to -- is there going to be anyplace for us to stay tonight? If we go to school are they going to shut off the heat while we're gone? Are mom and dad going to be gone when we come home?" There was



general turmoil, and Chippheng has been part of that in that she lives in the building where this was going to be cut off.

THE CHAIRPERSON: Was she being blamed for that?

THE WITNESS: There is at all times a discussion in the community about whether or not you endure and -- that if you stand up and fight about something, or object to something or say no, that then there are repercussions and reprisals, not only against you but against others around you.

And so certainly she has indicated to me that some people have suggested to her that there may be reasons why suddenly the electricity is being cut off, the gas is being cut off, and that it has something to do with the human rights hearing going on. So -- and yet, the benefit to the community is that we have kept the heat and hydro on with the actions that the community has taken.

The bulk garbage bin removal sounds like a pretty insignificant kind of thing, except that what happened was there was no place then for people to put their garbage, and so it further perpetuated the stereotype around the buildings that all the tenants are bad tenants, that they dump their garbage out in the

parking lot, because people could drive by. So there have been some calls to city councilors about the people living at Cheyenne, et cetera, being bad tenants, et cetera. And the tenants daily live with that kind of a picture of themselves being painted.

There was, I guess, a letter to the editor in the newspaper by the Freedom Party, which has also been added into this, so there's been a lot of visibility in the community and a lot of focus.

There was a further crisis in the community when the heat, which was kept on in February, the amount of money ran out, and the heat became an issue again in April or May.

There was also a situation in the community where tenants -- the tenant next to Chippeng approached her, because he had been asked to sign an affidavit, and he sought her advice as to what to do about this affidavit he was being asked to sign saying that the human rights case was a bogus thing, and that Mr. Elieff had kept the apartments in good condition, and Susan Eagle was trying to create problems, and the Free Press was misrepresenting everything. And Chippeng had to translate for her neighbour next door when he finally called the police and asked for some protection because he didn't want to sign this English affidavit that he was



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S. EAGLE, re-ex.
(Sanson)

being asked to sign.

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The culmination, I guess, of all the things that have gone on in the community in the last six or eight months have been very heavy for Chippeng.

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THE CHAIRPERSON: Ms. Sanson?

MS. SANSON: Those are my questions, thank you.

15 THE CHAIRPERSON: We're going to break. I need to call. Thanks.

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15 --- Upon recessing at 5:30 p.m.

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C. HOM, in-ch.
(Sanson)

--- Upon resuming at 5:40 p.m.

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THE CHAIRPERSON: Okay.

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CHANHY LONG (Interpreter), Recalled:

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EXAMINATION-IN-CHIEF BY MS. SANSON:

Q. Chippeng, you understand that you
are still affirmed to give evidence?

A. Yes.

Q. Chippeng, were you counselled by Pat
O'Brien or the City to file a human rights complaint?

A. No.

Q. Were you counselled by the London
Free Press to file a human rights complaint?

A. No.

MS. SANSON: Having just packed all my
transcripts away you'll forgive me, I need to refer to
one. It will just be a second.

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(SHORT PAUSE)



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BY MS. SANSON:

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Q. At the February 5th, 1993 transcript at page 400 we heard from Mr. Elieff that -- it begins the page below, the chairman asked:

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"Were there many tenants, Mr. Elieff, or potential tenants who came to see any one of your apartments, didn't like it and then left without moving in or paying money?

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THE WITNESS: Well, I have been having this from time to time now, now I've been having a lot of people come here, see the place, they see the markings on the wall, they see some of this vandalism, stuff like that, they don't like the smell, they see the people, they don't like those people, they tell me the white Canadians and they just don't come and I always go to these nice people to me so far. I always asked the, please, don't you have some more friends, I got so many vacancies, you can have them all. Even Mrs. Hom, I was asking her many times, please



find if you get some more Cambodians
because I don't like Canadians."

Did Mr. Elieff ask you please find some more Cambodians
for apartments because he didn't like Canadians?

A. Yes.

Q. Yes, he did ask you?

A. Yes, he did ask me.

Q. Where those the words he used? Did
he say he didn't like Canadians?

A. No, I never heard he say that to me,
all he say was if you have any Cambodian friends tell me,
that need a place.

Q. And when did he ask you this?

A. I remember the word that he asked me,
but I don't remember the exact day.

Q. Did you tell Sultana Elieff, which is
Mrs. Elieff, that you had a friend who wanted to move
into apartment 17 when you took apartment number 18?

A. No.

Q. We heard in the evidence of Zeranco
Elieff that it may be a custom of yours to breed roaches
as a sign of fertility ---

THE CHAIRPERSON: I believe, unless you
have the transcript in front of you, I think Zeranco was
referring to a TV program or something like that ---



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C. HOM, in-ch.
(Sansom)

MR. METZ: That's correct.

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THE CHAIRPERSON: --- on customs in
Southeast Asia, and that one of them was that crickets
are caught because they're ---

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MS. SANSON: Cockroaches.

15

THE CHAIRPERSON: --- cockroaches are
caught because they're a good luck ---

MR. METZ: Fertility sign.

THE CHAIRPERSON: Sorry.

MS. SANSON: That was his -- yes, that was
his evidence, that he thought he had seen on TV a show

20

THE CHAIRPERSON: On TV. On a TV show,
right. Thanks.

MR. METZ: What is the question?

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BY MS. SANSON:

Q. Is it a custom of yours to breed
cockroaches as a sign of fertility?

30

A. I had never heard of this before, the
first time I heard was when Zeranco said that.

Q. Mr. Elieff's evidence was that the
moisture on the window sill in your apartment was caused,
at least in part, by you watering flowers on there. Do
you have flowers on your window sills?



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C. HOM, in-ch.
(Sanson)

A. I don't have any plants now.

THE CHAIRPERSON: Sorry, what was that?

MR. ELIEFF: Not now. Not now, but then.

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THE CHAIRPERSON: I'm sorry, I didn't hear
the response.

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THE INTERPRETER: She say she doesn't have
any plant now. Because she had asked if there was any
plant now.

THE CHAIRPERSON: Okay.

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BY MS. SANSON:

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Q. Did you have any plants on your
window sill?

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A. I used to have two small pot of
plant on the window and I have a sort of a plant that --
to hold the water underneath, and when I water it the
water stay on that, it does not drip underneath it, and
I don't water a lot.

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MS. SANSON: I'd like the record to
indicate that the witness was -- when she was giving her
evidence was holding this ---

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THE CHAIRPERSON: As a pan.

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THE WITNESS: --- cup lid as something as
being underneath the ---

THE CHAIRPERSON: The pot.



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C. HOM, in-ch.
(Sanson)

MS. SANSON: --- pot.

THE CHAIRPERSON: Okay. Thank you.

5

BY MS. SANSON:

Q. We also heard from Mr. Elieff that you have your lights on all day and all night, is that true?

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A. No, it's not true, because if I don't go to bed at night the light would be on.

THE CHAIRPERSON: Could you ---

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BY MS. SANSON:

Q. Okay. I'm just going to ask the question again, I'm not sure I understand the answer. We heard from Mr. Elieff that you have your lights on all night and all day, is that -- do you have your lights on all night and all day?

A. No, it's not true.

25

Q. We also heard that you have your windows open all the time, even in the winter, is that true?

A. No, it's not true.

30

Q. Would you please describe to the board how you have been treated by Mr. Elieff since this hearing has begun?



A. After the first hearing at the City Hall I received a rent increase, stuck to my door, a week after that.

Q. Has anything else happened to you since the commencement of these proceedings?

A. Next I asked him to come and repair in the bathroom, because the water was leaking ---

THE CHAIRPERSON: This is the hot water tap?

THE INTERPRETER: Yes, the hot water.

THE WITNESS: At that time I write a cheque to pay the rent, but the amount was \$427.00, and I gave it to Mr. Elieff's son, and I told him that if he wanted the amount of the rent increase, which was to \$453.00, to let me know, to give me another notice. About two hours later Mr. Elieff returned with the cheque, knock at my door, give me back the cheque, and told me that he will take me to court.

BY MS. SANSON:

Q. What happened next?

A. So I reply "Okay". And next I asked him to come and repair in the hot water in the bathroom again, it's leaking again, and that time Zeranco came to fix it, and without my permission, without my notice he



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C. HOM, in-ch.
(Sanson)

took the picture in my bedroom and the TV and also the picture of the clothes in the bedroom, and also taking the picture of the fridge.

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I feel that what he is doing is invading my privacy because he does not have any permission from me to take those pictures.

10

Q. How did you feel when you found out that he had taken those pictures?

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A. I feel very angry and very upset because I had said he is invading my privacy because I did not permit him to take those pictures.

Q. What happened next?

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A. Next he also asked my daughter, asked her who is her father, and I don't feel that is his business to know that. Whatever questions that he wants to ask he should direct the question to me, not to the child.

25

Q. How many beds do you have all together in your apartment?

A. Three beds.

Q. Is there or was there a bed in the living room?

A. Yes.

30

Q. Is there a bed in the living room now?



A. No.

Q. When was the bed in the living room?

A. In the wintertime when it's cold.

Q. Did Susan Eagle pressure you to file a human rights complaint?

A. No, I did it myself. Nobody had pressured me to do it.

Q. Did the health department pressure you to file a human rights complaint?

A. No, it was me who asked their help.

Q. How do you feel when you're described as a pawn of Susan Eagle to come forward with this complaint?

A. That is not true, because if I have problem, if I don't go and ask Susan how would Susan know if I have any problem in my place.

Q. Is there anything else you would like to tell the board, Chippeng?

A. She say, I would like to know why did Mr. Elieff take me to court for not paying that rent, why didn't he take the other? And also, when I requested for him to come and fix the hot water that was running why didn't he come and fix it for me?

THE CHAIRPERSON: Is there anything she would like to ---



MS. SANSON: Perhaps I could just follow up.

THE CHAIRPERSON: Okay.

BY MS. SANSON:

Q. Why do you think Mr. Elieff took you to court and didn't follow up on the hot water?

A. He said that because I didn't pay the rent. I also like to ask again, with all those people why does he only take me to court, just me, not the other people, because when I received the note I was so scared, I didn't know what the note was all about, I had to call other people to come and help me understand what was the note all about, what was it all about.

Q. Now, today we heard some evidence from Darlene Clark, and she detailed a great number of things that a landlord should be doing in order to take care of the apartments. Chippeng, would you care to comment on that evidence, specifically with respect to a remedy that you would seek from this board?

A. The remedy that I would be seeking would be the carpet to be cleaned, the cockroach -- for him to spray the cockroaches, and also to have the window fixed, because in the wintertime the ice was very thick, and in the wintertime the water would start dripping on



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C. HOM, in-ch.
(Sanson)

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the window and I always had to keep on cleaning it. Because if you don't believe me I can also take the picture in the wintertime to show you. It's not only the snow that did that, also when it rain it's also dripping also.

10

Ever since I move in the landlord had not come to clean the carpet one, not even once, and the smell is so bad. I'm not asking for the building to be 100 per cent perfect, but just to have, for example, the electricity, the stove to be on, the heat to be on, just the necessities, that's all I'm asking for.

15

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And I don't want to be have to put up with, for example, the heating, the electricity going to be turned off, or the heat going to be turned off, because I cannot find a place for my child, to cook food for my child, I don't have a car to take them out.

MS. SANSON: Those are my questions.

THE CHAIRPERSON: Okay.

MR. METZ: No questions.

25

THE CHAIRPERSON: No questions. All right. I have a question.

Is there anything else you would like to say to me about this matter, about this case?

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THE WITNESS: I'm just asking for you to judge this to the best of your knowledge, to look at



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everything, because I'm not asking for much, I'm just asking what is my rights, have my rights being taken the wrong way.

Also, in the wintertime if there would be enough heat in the apartment to keep us warm, because in the wintertime I had to turn on the stove to keep the apartment warm.

THE CHAIRPERSON: Okay. All right, thank you. Those are all the -- you can go back.

THE WITNESS: Thank you.

THE CHAIRPERSON: I believe we have finally arrived at the end of the evidence.

MR. METZ: It only took one day.

THE CHAIRPERSON: Are there any matters, anything else we need to deal with before we leave?

MR. METZ: Just a few points of clarification and follow up ---

THE CHAIRPERSON: Yes.

MR. METZ: --- that I'd just like to make certain. Now, when we come to closing arguments, just for my own information, what is the exact procedure of closing arguments, roughly speaking, and what is -- I guess it might be easier to say what's not permitted or what should be avoided in the presentation of closing arguments?



5

THE CHAIRPERSON: The format will be familiar to you. The Commission will open with it's argument, and then you will have a chance to respond, and then there will be a chance for the Commission to reply.

10

The purpose of the argument is to refer to evidence that has been received, to make your argument based on the evidence, those are the facts, and on the law with respect to the Ontario Human Rights Code and how other facts, similar fact situations have been adjudicated. So you would be making reference to cases, other board decisions, other decisions of the court.

15

MR. METZ: Now, when you said the Commission opens, then I get a response and they get a reply. Do I get a reply to the reply at all?

20

THE CHAIRPERSON: No. No, we have to stop it somewhere.

MR. METZ: So the Commission gets the last -- gets the last word, not the respondent?

25

THE CHAIRPERSON: When the Commission replies it will be replying to any matter that came up in your response that wasn't dealt with earlier ---

MR. METZ: Now, you say that I ---

THE CHAIRPERSON: --- to clarify.

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MR. METZ: --- I'm dealing with a response, does that mean I have to respond specifically



to what the Commission says, I can't bring any other factors into my argument.

5 **THE CHAIRPERSON:** No. You can bring in other factors, factors other than the ones that have been argued.

MR. METZ: So it's not a response in the sense that we've been talking about up until now?

10 **MS. SANSON:** Response to the complaint, so whatever your defence is.

THE CHAIRPERSON: Yes. Not just to the arguments.

15 MR. METZ: Not just to the arguments that she is presenting?

THE CHAIRPERSON: Yes. Yes.

MR. METZ: Okay.

20 **MS. SANSON:** And in terms of process, the whole -- how the process goes, it's typical in any kind of case, whether it's an administrative tribunal, a criminal hearing or civil litigation, in that whoever is 25 the applicant goes first, then ---

THE CHAIRPERSON: The respondent.

30 **MS. SANSON:** --- the responding party goes next, and then there is a right of reply by whoever the applicant is, and in this case it's the Commission.

MR. METZ: Okay.



5

THE CHAIRPERSON: One other thing I might want to ask at this time, because it's come up before and I didn't deal with it at an early stage and it caused confrontations. If either side is going to prepare a brief, a written brief, I would like to know so that the briefs are exchanged simultaneously, because we've run into problems before.

10

MR. METZ: You mean like at the same time, not ---

15

THE CHAIRPERSON: That's right.

MR. METZ: --- one person in advance and then another person later type of thing?

20

THE CHAIRPERSON: That's right.

MS. SANSON: I can't commit myself. I mean, it would certainly be, I think, enviable for everyone to have some stuff in writing, and I think that would shorten the arguments, but just in terms of times it's not a practicable -- if I ---

25

THE CHAIRPERSON: Okay.

MR. METZ: Well, there's no obligation ---

30

MS. SANSON: If I can do that then I'll certainly -- there's no obligation.

THE CHAIRPERSON: There's no obligation.

MR. METZ: --- for a written brief.

THE CHAIRPERSON: It's an option.



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MR. METZ: Or one person can have one and
one person not.

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MS. SANSON: That's right.

THE CHAIRPERSON: That's right.

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MR. METZ: Now, we're allowing two days
for closing arguments.

THE CHAIRPERSON: Yes.

15

MR. METZ: That sounds like one person is
going to be talking for a pretty long time.

THE CHAIRPERSON: Not necessarily.

MR. METZ: No? Where does ---

MS. SANSON: Let's finish it in one day.

15

MR. METZ: Oh, it could be finished in one
day?

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THE CHAIRPERSON: Sure.

MR. METZ: And what role do you play at
this point in closing argument, you just get to sit there
and take it all in?

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THE CHAIRPERSON: Take it all in. You
know, I can ask questions and ---

MR. METZ: Okay.

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THE CHAIRPERSON: --- challenge a
particular interpretation of a law and just ask for
clarification, that sort of thing.

MR. METZ: Now, just out of curiosity, and



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maybe you might consider this an odd question, but are there any forms of audiovisual aids or anything permitted during argument?

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THE CHAIRPERSON: I haven't witnessed any.

10

MR. METZ: Is there any prohibition against such a thing?

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MS. SANSON: What are you thinking about?

MR. METZ: Well, I've got a couple of ideas but I don't know whether they'll apply or not, so I'm just brainstorming right now.

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THE CHAIRPERSON: I think if you can restrict it to a verbal presentation, or if you have -- if you come on the day with a summary of your argument that you'd be referring to, that's fine, but just come on the day with it and don't distribute it beforehand.

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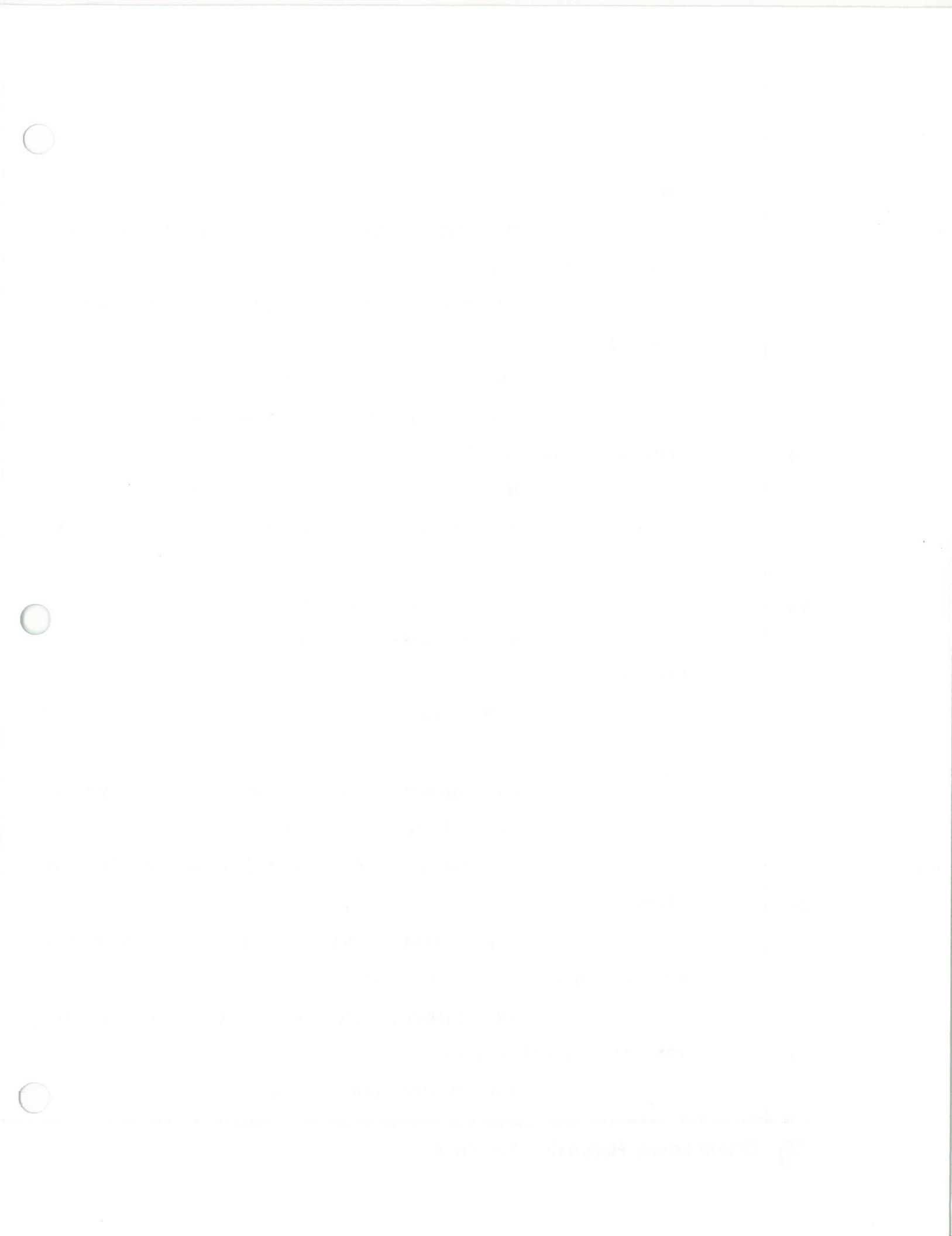
MR. METZ: Right. Okay.

With reference to basing our arguments on previous cases, Ms. Sanson told me that I should have in my possession a book of authorities. Now, I know I don't have it. I asked Mr. Elieff about it and he does recall you showing it to him, but not giving it to him. I was wondering if I could get a copy of that somehow?

30

MS. SANSON: I will make another copy. I'm sure I provided one, I gave all of the parties one. I will have to take apart mine and have another copy





made.

MR. METZ: Thank you, I appreciate that, because I know I don't have one.

THE CHAIRPERSON: Do you remember whether I was given one?

MS. SANSON: Pardon me?

THE CHAIRPERSON: Do you remember whether one was given to me?

MS. SANSON: Yes, you should have a copy as well. It was -- I can't remember which day it was, it was ---

THE CHAIRPERSON: Oh yes.

MS. SANSON: --- one of the days when I thought we were concluded, so I ---

THE CHAIRPERSON: Oh, this book of authorities.

MS. SANSON: --- provided it to everyone.

THE CHAIRPERSON: Okay.

MR. METZ: Right. I definitely don't have that.

THE CHAIRPERSON: All right. Could you arrange to make one available?

MR. ELIEFF: Can he get that one now and you get the other one?

THE CHAIRPERSON: Sure.



MS. SANSON: If that's all right with you.

MR. METZ: Is that okay? Oh, great.

And, on another issue, is there such a
5 thing as a list of ---

MS. SANSON: Can I just check that?

MR. METZ: Sure.

MS. SANSON: You should have some handout
10 cases too.

MR. METZ: Okay.

Is there such a thing as as we've been
making exhibit numbers and everything, is there a
15 separate listing of the exhibits, or do they only exist
in the transcripts?

THE CHAIRPERSON: I didn't make a separate
listing in this particular case, I just hadn't started to
20 do it.

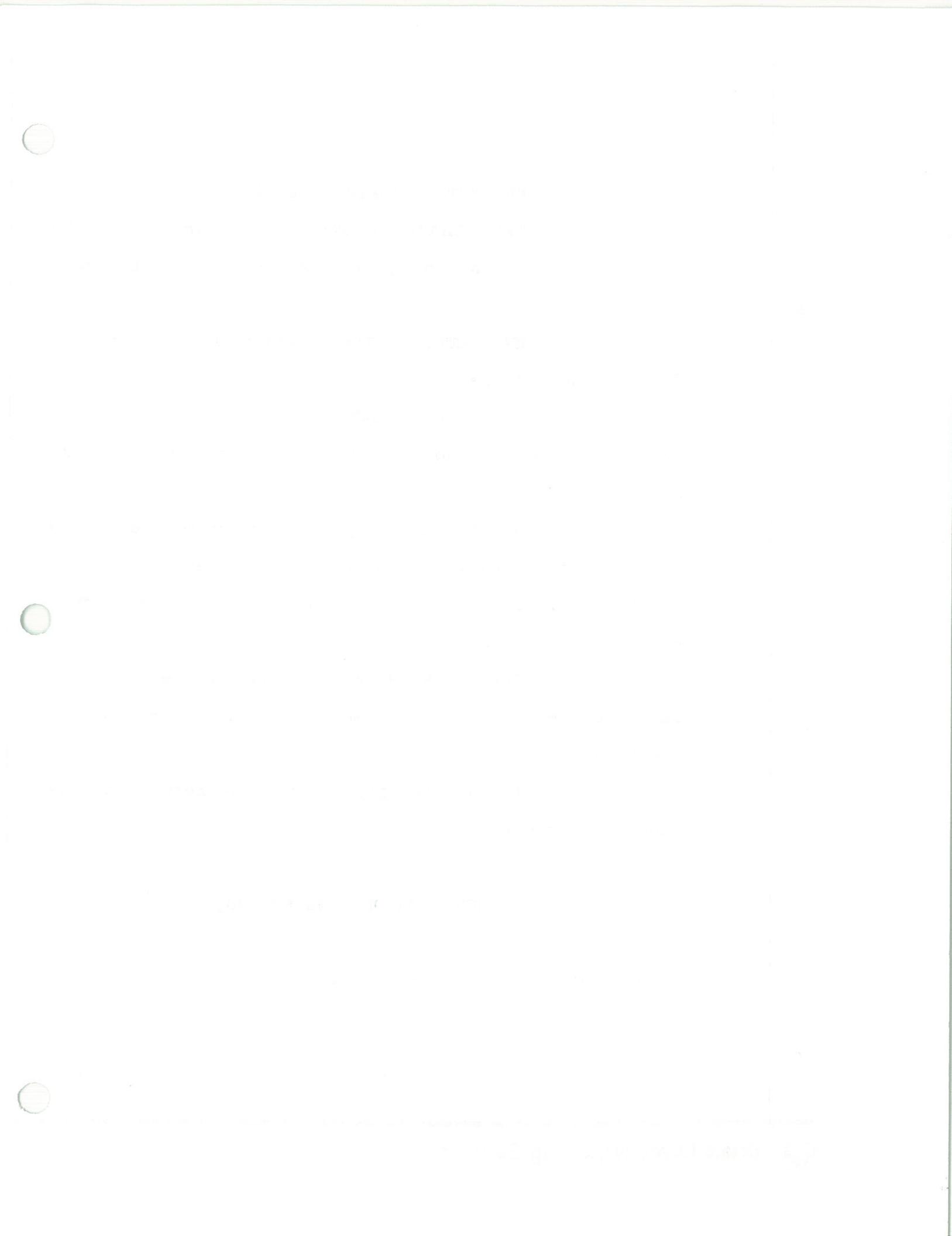
MR. METZ: You see, I wasn't here for the
first two days ---

THE CHAIRPERSON: Yes.

25 MR. METZ: --- and so the only way I'll be
able to piece together what the specific exhibits were
for that period of time ---

30 THE CHAIRPERSON: If you'd like to take a
minute after we adjourn today, I've got the books here
and you can just check that.





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MR. METZ: There is a list?

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THE CHAIRPERSON: I've got all the exhibits arranged chronologically and you can just take a look at them.

10

MR. METZ: There isn't like a written list, though, of what they are?

THE CHAIRPERSON: I'll have to check whether the person who put it together for me has done that.

15

MR. METZ: Okay. But they were all read into the transcripts at the time that they -- I would find them all if I -- as I go through I'd see number one, two, three four, would I?

20

THE CHAIRPERSON: I'm not entirely sure of that, because the person who was doing it for me ran into some gaps.

I think we can get off the record at this point. All right.

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(DISCUSSION OFF THE RECORD)

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--- Upon adjourning at 6:15 p.m.



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CERTIFIED CORRECT

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W. Bruce Levey,
Certified Correct



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