

ONTARIO
SUPERIOR COURT OF JUSTICE
(Small Claims Court)

5 CESALTINA FIUSA, GILBERTO FIUZA, and RICARDINA FIUZA
Plaintiffs

- and -

10 CREEKSIDE REAL ESTATE GROUP INC., ANDREW DOOLING, JACQUELINE
FERGUSON, THE CORPORATION OF THE CITY OF CAMBRIDGE and WATERLOO
(REGION) POLICE SERVICES BOARD
Defendants

* * * * *

15 P R O C E E D I N G S A T T R I A L
C O N T I N U A T I O N
(DAY TWO)

20 BEFORE THE HONOURABLE MADAM DEPUTY JUDGE C. DICKENSON
on February 27, 2018 at KITCHENER, Ontario

25 APPEARANCES:

Mr. T. Ellis	Counsel for the Plaintiffs
Mr. F. Battiston	Counsel for the Respondent, Creekside Real Estate Group
Mr. A. Dooling	Unrepresented Respondent
Ms. J. Ferguson	Unrepresented Respondent

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T A B L E O F C O N T E N T S

ONTARIO
SUPERIOR COURT OF JUSTICE

W I T N E S S E S

<u>WITNESSES</u>	<u>Exam. in-Chief</u>	<u>Cr- Exam.</u>	<u>Re- Exam.</u>
FIUZA, CESALTINA	25	64	

E X H I B I T S

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Legend

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

Transcript Ordered May 21, 2019
Audio file receivedMay 23, 2019
Transcript Completed June 14, 2019
Ordering Party NotifiedAugust 21, 2019

TUESDAY, FEBRUARY 27, 2018

...UPON COMMENCING COURT (10:00:57)
...UNRELATED MATTER SPOKEN TO

THE COURT: All right, onward and upward.

CLERK REGISTRAR: Thank you, Your Honour.

THE COURT: I'd like to call the parties in on matters three, four and five 'cause I want to know how long the parties are gonna be. I might have to send the other parties away.

CLERK REGISTRAR: Do you want me to pages parties on number five?

THE COURT: Yeah, three - well, four you don't have to worry about because that action has been discontinued actually. So the parties on the trial matter, number three, *Fiuza and Creekside et al.* You better page Dooling and Ferguson. No need to page the City of Cambridge or the police. They're out of it but Dooling and Ferguson are unrepresented, and they might not understand.

...PARTIES ON THE FIUZA AND CREEKSIDE MATTER PAGED TO COURTROOM 504

...MATTER HELD DOWN; COURT SPOKE TO ANOTHER MATTER

MR. ELLIS: Good morning, Your Honour.

THE COURT: Good morning.

MR. ELLIS: I see they've stacked your docket today.

THE COURT: Oh no, it's clearing up pretty quickly.

MR. BATTISTON: Good morning, Your Honour.

THE COURT: Good morning. Mr. Ellis and Mr. Battiston what do you think...

MR. BATTISTON: This is not going to finish today, Your Honour.

THE COURT: It's not going to finish today?

MR. ELLIS: There's been a whole pile of stuff that's happened since the last trial date.

THE COURT: Well, I can't wait to hear about the whole pile of stuff, but I don't want to hear about it right now.

...COURT IS ADDRESSING ANOTHER MATTER

THE COURT: All right, so everybody else is in the courtroom today is on matter number three, yes?

MR. ELLIS: Yes, I believe so.

THE COURT: Okay.

MR. BATTISTON: I can introduce Mr. Mendez, Your Honour.

THE COURT: Yeah, I know who Mr. Mendez is. Mr. Mendez, would you please come forward?

MR. MENDEZ: Good morning, Your Honour.

THE COURT: Good morning.

MR. MENDEZ: Initially at the start of this proceeding, I was representing both the police and the City.

THE COURT: Yes.

MR. MENDEZ: Simply observing and also, I understand that summons have been served on officers that were involved...

THE COURT: I have no idea.

MR. MENDEZ: ...as well as By-Law officials.

MR. BATTISTON: Yes, they won't be called today.

MR. MENDEZ: But I just want to understand where the evidence is going so that I can brief those individuals when their time comes.

THE COURT: All right, thank you. Mr. Battiston, do you have something else?

MR. BATTISTON: Yes. The situation with respect to the records follows from the documents that were produced and delivered to us some time ago.

THE COURT: All right.

MR. BATTISTON: I suppose the triggering incident last time was that the Doolings announced here in court that they weren't intending to call evidence so...

THE COURT: Correct.

MR. BATTISTON: ...that changed our position into a different set of gears. So, I asked Mr. Ellis to confirm and to consent to the records - his records and the records he produced to us, consent of those records being tendered into evidence and that we can rely on the authenticity and the accuracy of the statements in those records. As a backup to that I had issued subpoenas and served subpoenas on three by-law officers, an administrator with the Cambridge By-Law Department and an administrator with the Waterloo Police. So that is all backup to the request that I made to Mr. Ellis which he has not responded to.

I started communicating with Mr. Mendez when we got in contact with each other. I told him that I didn't

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expect the officers to be in a position to give evidence today and so he could - and then he said he wanted to attend to get a status report and to figure out where this thing was going. So, that's where it stands with respect to those records that we called the summonses that I've issued, Your Honour. The other point and again the six weeks that have lapsed, Mr. Ellis is right a whole lot - a whole bunch has happened because....

THE COURT: Has it really been that long?

MR. BATTISTON: I'm sorry?

THE COURT: Has it really been that long?

MR. BATTISTON: We were here January 16th.

THE COURT: January 16th, yes.

MR. BATTISTON: So, with encouragement from me the Doolings continue to be unrepresented but they did seek some advice and some assistance to prepare a trial affidavit which I've been served with in some three weeks ago so I'm not acting for them but...

THE COURT: I understand.

MR. BATTISTON: ...I understand that that has been filed. On our part I have prepared - we have prepared a trial affidavit from the principal of Creekside which I've already filed in two separate affidavits but I have a consolidated bound version which I can file, Your Honour, which will facilitate at least the following of the evidence, if I may. This was served about three weeks ago as well and separately. It's the same affidavit. There's two of them. There's a main affidavit and supplementary affidavit. Your Honour, may I file that?

THE COURT: All right, well I wasn't notified that a motion was filed.

MR. BATTISTON: Oh, can I explain that?

THE COURT: Sure, because I haven't even looked at it.

MR. BATTISTON: Nor should you have to because again and with all due respect to the Court and with no disrespect to you, Your Honour, I couldn't leave the issue of disclosure alone, certainly not for six weeks. So, I was here on February 14th.

THE COURT: Oh, okay so was there an order made February 14th?

MR. BATTISTON: The motion was dismissed and Deputy Judge Winny and I got into an interesting discussion about the whole issue of disclosure in Small Claims Court and although I had some case authority for my position certainly on that issue alone, I believe I have now learned a lot more about the issue of disclosure in Small Claims Court. So basically the bottom line is that higher courts have ruled that there's no authority for entertaining a motion for disclosure in Small Claims Court, which was great but during the hearing I did get answers to the question I asked at the beginning of trial on January 16th and that was the question I posed to Mr. Ellis.

Mr. Ellis tell me what the nature of the claim is, and the nature of the case is against Creekside. I followed-up with a letter confirming that Mr. Ellis stated in court that the claim against Creekside is the failure to evict the tenant; the failure to evict the Doolings from the house. That to me was, was a

5 significant achievement because at least I understand the nature of the case against my client. There was another question that Mr. Ellis answered when the question was posed by Deputy Judge Winny which is, what's the claim for damages, is it \$25,000 or is it \$25,000 for each of the plaintiffs? Mr. Ellis answered that it was \$25,000 for the three plaintiffs. Thank you very much that was substantial clarification for me as well.

10 I followed-up with a letter to Mr. Ellis once again asking the follow-up question from that, how are the damages allocated between the three plaintiffs and how are they allocated between the defendants. I didn't get an answer to that question. If I'm to sit and wait until argument to know where the plaintiff stands and where the defendants - where my client, Creekside stands vis-à-vis the claim for damages then I suppose I have to but you can - I hope you understand the reason for me being persistent about the motion given the fundamental change of
15 circumstances at the commencement of trial which was that the people that I deemed to be the main defendants and the initial line - at the front of the line for the claim where the Doolings who have - are not in a position to hire counsel for this so that is a serious position but we did have a chat.

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THE COURT: There are many, many, many people who come to this court without counsel, so I'm not concerned.

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MR. BATTISTON: That's fine. That's fine.

THE COURT: What I was concerned about was their reticence to do anything...

MR. BATTISTON: Exactly.

THE COURT:...in terms of defending themselves.

MR. BATTISTON: Exactly, exactly. So now we have an affidavit filed. That got served with the affidavit and quite frankly the revised list that to file includes potentially putting Mr. Dooling on the stand in order that I can ask questions and examine so....

THE COURT: Well you can cross-examine him on any evidence that he's filing.

MR. BATTISTON: Yeah. The other point - there was a matter going way back to the original settlement conference in this matter which required this matter to be in - to stay in abeyance until the so-called criminal charges were withdrawn and it's only through the Doolings that I was provided with a transcript from a proceeding that took place in November of 2015 where the charges were actually withdrawn in court. It was a private complaint. So, this matter has remained in abeyance from the time that that criminal proceeding was withdrawn in November of 2015 and quite frankly, I don't have an explanation for that.

THE COURT: All right well I have nothing in my file that suggests that that order was even made.

MR. BATTISTON: Oh, I can provide you with a copy of the transcript.

THE COURT: That's fine. I'm just saying it's not in the court file.

MR. BATTISTON: Yeah, it was certainly a mystery to me until recently and if I may that's the transcript.

Oh, sorry....

THE COURT: Yes, if you could provide that please.
Okay so this is just a, the transcript.

MR. BATTISTON: Yeah, that is, yes.

THE COURT: Dealing with that. All right.

MR. BATTISTON: That's the Creekside affidavit, Your Honour.

THE COURT: Oh, okay and this is something you're intending to file?

MR. BATTISTON: Yes, correct and Mr. Buonvivere will be on the list.

THE COURT: I thought you were handing up the - a copy of the endorsement which I seem to be missing that the matter was to be held in abeyance until the court proceedings...

MR. BATTISTON: Oh, I can give you that, sorry.

THE COURT: Honestly, I thought this was in the court file last time but it's not here now.

MR. BATTISTON: The settlement conference endorsement?

THE COURT: Yeah.

MR. BATTISTON: Oh, I've got it.

THE COURT: It is not here now for whatever reason. Yeah, I did see this before 'cause I knew the action was discontinued against the police and the City.

MR. BATTISTON: Yes. The notation is on the second page. First of all, paragraph two.

THE COURT: Yes, I'm just reading that now. Medical records, audio recordings and willsays and journal entries?

MR. BATTISTON: I didn't get the recordings until we got them from the Doolings, Your Honour after we were here last time. So, there was no report to us at any time about those proceedings being withdrawn. We did not receive case law although it says, best efforts regarding the case law and we never received the recordings. I have since been provided that material and as this matter evolves it has required additional responses on our part, Your Honour. So the whole thing with the record perhaps Mr. Ellis can clarify exactly what we're doing with those records because he has not responded to my letter and we're dealing with the documents that his client or he obtained from the City and from Waterloo Regional Police as a result of a request for records.

THE COURT: Well, how about I have a look at Deputy Judge Winny's decision first?

MR. BATTISTON: Sure.

THE COURT: All right. You want to have a seat please.

...BREAK IN PROCEEDING AS THE COURT READS DECISION OF DEPUTY JUDGE WINNY

THE COURT: All right, Mr. Battiston what is it exactly that you're seeking at the outset of this continuation? What's the issue now, if there is one? It's not clear to me. I mean I've just read Deputy Judge Winny's Reasons with respect to the grounds of the action which was something we'd already addressed orally at the beginning of the action when we last

were here on January 16th and now I see that he dismissed the disclosure obligations motion. So where we at? What's going on?

MR. BATTISTON: I'm sorry if there was something that you take offence on, Your Honour but....

THE COURT: No, no, I'm just saying what....

MR. BATTISTON: At the beginning of trial....

THE COURT: At the beginning of this matter today I was told that there was a whole bunch of things that have transpired so what - why can we not simply just proceed with the plaintiffs' evidence and get this matter going? What are the problems that we're now facing in the midst of the trial?

MR. BATTISTON: I didn't say problems, Your Honour.

THE COURT: Okay, so there's no problems. Are there any issues Mr. Ellis? What's going on?

MR. ELLIS: I only have an issue with the fact that I was served with an expert report five days ago.

THE COURT: An expert report?

MR. ELLIS: Yeah, from my friend.

THE COURT: In a negligence and a nuisance claim basically which is what this is?

MR. ELLIS: Mm-hmm.

THE COURT: What's the expert report about?

MR. BATTISTON: In response to their technical persons' report or letter. It was a letter, it hasn't....

THE COURT: Oh, are you talking about the level of the noise?

MR. BATTISTON: There was - well it deals with the recordings actually.

THE COURT: Okay.

MR. BATTISTON: Because as I, as I learned last time my friend was not intending to rely on the recordings that I had not been provided with.

THE COURT: That you hadn't been provided with, right.

MR. BATTISTON: Because the recordings were not adequate or didn't come out as they intended.

THE COURT: That's what I recall that they wouldn't be...

MR. BATTISTON: Useful to them.

THE COURT:...useful in terms of playing them through the equipment in this courtroom.

MR. BATTISTON: Exactly, exactly.

THE COURT: Right? That was your position Mr. Ellis so you decided not to produce them?

MR. ELLIS: Exactly.

THE COURT: So, now you want to produce them?

MR. ELLIS: I don't want to produce.

THE COURT: Oh?

MR. ELLIS: He wants to produce them.

MR. BATTISTON: I have them now.

THE COURT: You have them, okay.

MR. BATTISTON: I have them and I've had an opportunity to go through them.

THE COURT: And, do we know if they're going to be able to be heard through our equipment.

MR. BATTISTON: Oh, I can play the recordings. I have the recordings just as they are.

THE COURT: Okay, are you playing them on a laptop then?

MR. BATTISTON: Oh no, it will be on an amplifier.

THE COURT: Okay, all right.

MR. BATTISTON: I want to deal with the problem or perceived problem on the plaintiffs' part that the equipment doesn't, doesn't appropriately represent what exactly was recorded. Anyway, I let the technical people deal with that and they, the plaintiff had a technical person by way of a letter, made certain statements about the recordings. We have since had someone review that evidence including the recordings to make a statement so as soon as I got the letter, I served it on Mr. Ellis.

THE COURT: All right.

MR. BATTISTON: In truth it's a letter. I didn't have the opportunity to go through the letter with the technical person to get a CD and to have the, the undertaking signed as an expert is required to do. But I anticipate we're going to be - this matter is going to be ongoing so I will definitely give Mr. Ellis plenty of notice as he has had with everything else that we've produced in the last six weeks.

THE COURT: You don't anticipate getting to that today?

MR. BATTISTON: No, I don't.

THE COURT: No? Okay, all right fine. Okay so that's not even something I'm going to address because we're not dealing with it today.

MR. ELLIS: This is part of the motion that Deputy Justice Winny dismissed so I don't know whether it's evidence or not evidence.

THE COURT: You're asking me because how am I supposed to know?

MR. ELLIS: Yes.

THE COURT: How am I supposed to know? I don't even know what it is.

MR. ELLIS: It's a sworn statement. It's sworn affidavits from the defendant.

THE COURT: Okay, I think Deputy Justice Winny dealt with production requests from you Mr. Ellis, is that not correct?

MR. ELLIS: Yes, but this was a supplementary affidavit to the same motion that was dismissed.

THE COURT: I didn't even see that addressed in his Reasons. Maybe I missed something. Was it addressed in his Reasons?

MR. ELLIS: I didn't see it addressed in his Reasons either.

THE COURT: I didn't see it.

MR. BATTISTON: The affidavit was served with a twofold purpose. Mr. Ellis read the letter, says these are the affidavits in support of the motion which we also intend to rely on at trial pursuant to Rule 18.02. So that was three weeks ago and thus those affidavits are filed and they were filed separately so I have facilitated matters by putting both together and Mr. Ellis has had these affidavits for three weeks knowing again, as in the letter that we would rely on them for the motion and for our purposes at trial pursuant to Rule 18.02. And again, not last minute. I don't believe in last minute ambush for anybody.

The letter is the most recent document and as soon as I got it, I gave it to Mr. Ellis. It's not last minute. It's not today. What I didn't receive was a response from Mr. Ellis which follows his statement at the motion with Deputy Judge Winny. The claim is 25,000 in total. Well, I sent him a letter saying,

[As read] With respect to the damage I requested, you confirm the plaintiffs' position as to how the damages are apportioned,

(a) as between the three plaintiffs, and

(b) as between the defendants.

I did not receive a response so if you're inclined to consider that a valid request, Your Honour, and you're asking me what else needs to be addressed, quite frankly I'd like to know.

THE COURT: Well, the plaintiffs' claim's for them to prove and I understand your concerns that you weren't sure, and you mentioned this before last time. If each plaintiff was claiming 25,000 which they could have done but it certainly wasn't clear by their pleadings, how it's broken down, I'm not sure that really is of any consequence. I think that will come through the evidence.

The bigger concern is whether or not the plaintiffs have produced sufficient evidence to prove their claim of \$25,000. I don't know what that's going to be. So far all we have heard are hundreds of entries from one of the plaintiff's diaries, that's - and that was almost an entire day and we haven't even finished yet. So....

MR. BATTISTON: That's where we're at.

THE COURT: Pardon?

MR. BATTISTON: Where we're at.

THE COURT: That's where we're at today, yes.

It's....

MR. BATTISTON: And with that many documents in a, in a proceeding like this we're not going to finish today so....

THE COURT: Well, and everybody was asked last time how much more time you needed and I was told another day so I scheduled it for another day and now it's not going to be another day which means it then has to be adjourned to another date that I'm sitting which puts it further off into the trial list and what we have is a disjointed trial from January to February to maybe April now.

MR. BATTISTON: Easily.

THE COURT: Easily, if not into May.

MR. BATTISTON: I had one go on for a year and a half.

THE COURT: Well, I won't allow that to happen. I'll tell you right now 'cause that is unacceptable. It is unacceptable to the parties to have a matter drag out. It's not beneficial to anybody. Tactically it's ridiculous and for myself having to go through reams and reams and reams of not only documents that are filed but all of my notes and sometimes the transcripts of days and days of trial to figure out what everybody is saying. So I'm a little concerned or I'm a lot concerned that this matter has now exploded into something a lot bigger than it originally was and it was fairly big to begin with

and the parties certainly didn't provide any reasonable estimate of time but nevertheless that's where we're at. I'd like to get going with this instead of wasting time debating about things that have happened over the last six weeks. I can't speak to anything about the motion between you and before Deputy Judge Winny on February the 14th because all I have is his endorsement. I did not read any of the materials. I have read nothing that's been filed since then because I assumed this was going to be a trial continuation.

MR. ELLIS: I've not filed anything since last time, Your Honour.

THE COURT: But I'm just saying that's where I'm coming from so be as it may certainly, we've been adjourned for what six weeks, I guess. Pretty much. There's always, always a potential for additional documentation to be provided. You, Mr. Ellis said you weren't going to rely on those recordings last time and you're not, but you haven't provided them to the defendant, had you?

MR. ELLIS: No.

THE COURT: No.

MR. ELLIS: Because we weren't relying on them.

THE COURT: Okay but nevertheless he still wants them, and he's entitled to hear them and have this court play them.

MR. ELLIS: He never requested them from me, Your Honour and I understand what you're saying.

THE COURT: Regardless, I don't want to hear you know complaints about he did that or he didn't do that

5 from either one of you. I just want to get this matter heard because it's a matter for the parties' concern. I don't care about any spats really between counsel or counsel and their representative. I'm more concerned about the parties and the delays that are obviously going to result.

10 So what we have now is: There's a claim for \$25,000 in total amongst three defendants - three plaintiffs. Split it how you want. You can say that it's \$8,000 plus each, doesn't matter who's getting what really if any of them are successful. I don't know that. I haven't even heard any damage evidence at all, nothing on which to base my decision if I find that there's any liability. I understand that there's a claim against the landlord. I understand there's a claim against the tenant. That's the basic action. We don't have to make this into something for the Supreme Court of Canada. It's pretty straightforward as far as I'm concerned, so let's get going. We'll deal with the evidentiary issues and complaints as they arise, but I would like to get this matter going.

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25 **MR. ELLIS:** Yes, Your Honour. I just have one thing I wanted.

THE COURT: What's that?

30 **MR. ELLIS:** He requested consent to the admission of all various occurrence reports at evidence at trial and admission that the statements made in the reports are true and accurate. Unfortunately, I couldn't talk to my client until today. We're willing to

consent to that which allows Mr. Mendez not to waste his day here in trial.

THE COURT: Okay perhaps Mr. Mendez could be paged, and we can get him...

MR. BATTISTON: Oh, he's right there.

THE COURT: Oh, I can't see, sorry. So, Mr. Mendez are you content or do you still want to spend a day listening to....

MR. MENDEZ: No, I am content.

THE COURT: Perfect.

MR. BATTISTON: Well, I will follow-up with Mr. Mendez.

THE COURT: Thank you.

MR. BATTISTON: Given what was just - it could have been done sooner but....

MR. ELLIS: I apologize.

THE COURT: Thank you Mr. Battiston. Okay, we've dealt with that one issue and Mr. Mendez. Mr. Battiston, I don't think I, I don't need this endorsement.

MR. BATTISTON: You don't?

THE COURT: No, the proceeding transcript. Pardon me but what I think I will do is because this is missing from the court file and I don't know why.

MR. BATTISTON: I made extra copies.

THE COURT: Okay, can I keep this?

MR. BATTISTON: I made extra copies.

THE COURT: Okay, thank you because it should be in there. I don't know what happened to it from last time but it's back now and I'm going to just leave your trial brief up here.

MR. ELLIS: Your Honour this is the book too that is all the documents that were just admitted that they would be in evidence.

THE COURT: Is that my copy?

MR. ELLIS: Yes.

THE COURT: Okay, you can pass that up then and we can mark it when we deal with it. Thank you.

MR. ELLIS: I apologize, Your Honour. I gave you the wrong book.

THE COURT: Okay and you've got an extra one for the witness, Mr. Ellis?

MR. ELLIS: I thought that I had a whole set of books here at the corner but.....

THE COURT: What do you mean?

MR. ELLIS: I thought that I had one for the witness last time, one for you and one for me and now there seems to be one set of books missing so....

THE COURT: Well, the one that was marked as an Exhibit was in the court file.

MR. ELLIS: Yes.

THE COURT: Okay so what others are we missing?

MR. ELLIS: Actually, I'll work through it, Your Honour. I do - I will work through it.

THE COURT: Because nothing would have been left on the witness box last time.

MR. BATTISTON: What are you looking for?

THE COURT: We've lost a brief or two.

MR. ELLIS: I thought I had one more set of books but I obviously don't so I will just deal with it.

THE COURT: You mean in terms of having something available for the witness to look at?

MR. ELLIS: Having something available for me to look at...

THE COURT: For you to look at.

MR. ELLIS: ...while I'm discussing with the witness.

THE COURT: Mm-hmm.

MR. ELLIS: But I will deal with that. We're on book one right now anyways.

THE COURT: Maybe it's back at the office.

MR. ELLIS: Which I don't even have another book one. I don't know what happened to the other set of books.

THE COURT: Okay, I have book one which is...

MR. ELLIS: Yeah, super thick.

THE COURT: ...that one. You know what, there is an issue. Just a minute. According to your trial brief index there's a book one, two and three.

MR. ELLIS: Yes.

THE COURT: All I have is book one.

MR. ELLIS: And book three.

THE COURT: I don't have book three.

MR. ELLIS: I just gave it up, Your Honour.

THE COURT: Oh, okay because that's not been marked.

MR. ELLIS: Yes.

THE COURT: Because unfortunately the exhibit from last time says it's the plaintiffs' trial brief, it probably should be amended to state its book number 1. Exhibit number 1 is book number one and I'm going to mark that in. Do you agree with me gentlemen?

MR. ELLIS: Yes.

THE COURT: Exhibit 1 was your trial brief, book number 1 only.

MR. ELLIS: Yes.

THE COURT: We never saw book number 2 or book number 3. So, you're missing book number 2?

MR. ELLIS: Your Honour, I'm missing and the witness one of book number 1...

THE COURT: Okay.

MR. ELLIS: ...and I - it's my own doing, Your Honour. I will have to work around it.

THE COURT: Maybe at the break you can make a call back to your office and see if that's there?

MR. ELLIS: Yeah because I only have two copies. Well I have two copies. I have one for the witness and one for me.

THE COURT: Well that leaves me with nothing which isn't very helpful.

MR. ELLIS: No.

THE COURT: I can't see it.

MR. ELLIS: No, I agree. I will deal with that at the break.

THE COURT: All right, all right so then we were in book number 1 when we adjourned last time.

MR. ELLIS: Yes.

THE COURT: And we can continue on with that?

MR. ELLIS: We can.

THE COURT: All right. Mr. Battiston, Mr. Dooley and Ms. Ferguson you're content we carry on with Ms. Cesaltina Fiuza, her evidence?

MR. ELLIS: Yes.

MR. BATTISTON: There are a lot of parties in the court, we didn't do this last time but parties are entitled to stay. I don't know if any witnesses that propose to give evidence are not parties are here.

MR. ELLIS: This is, this is my intern, I apologize.

THE COURT: Yeah, I remember her from last time.

MR. BATTISTON: Ms. DiBiase is my assistant.

THE COURT: Assistant but are there witnesses?
There's....

MR. BATTISTON: Mr. and Mrs. Dooling, Mr. and Mrs.
Buonvivere.

MS. FIUZA: We have a translator for my parents.

MR. ELLIS: And the translator for....

MR. BATTISTON: Oh, she's the translator.

THE COURT: Yeah, she's got to be here. I think
everybody is okay to stay.

MR. ELLIS: I will have to give up my copy of the
book to the witness or to Your Honour. Are you going
to - would Your Honour like the exhibit to be the
copy that the witness goes through?

THE COURT: Well the witness is going to have to go
through something which leaves me with...

MR. ELLIS: No, no.

THE COURT: ...nothing or - okay so you've got that,
but you don't have a book Mr. Ellis?

MR. ELLIS: I do not, Your Honour and I do not
understand what has happened to the other book.

CLERK OF THE COURT: Will you take an oath on the
Bible ma'am or do you wish to affirm?

MS. FIUZA: Yes. Bible.

CESALTINA FIUZA: SWORN

MR. ELLIS: Your Honour, could I have just two
seconds to ask my intern to go back to my office. I
think I know where the books are. Sorry, Your

Honour, we'll proceed.

THE COURT: It's okay.

MR. ELLIS: I know where the books are now.

THE COURT: Okay, good. I'm glad to hear...

MR. ELLIS: It just came to my head where...

THE COURT: ...they could be recovered.

MR. ELLIS: ...the books are so....

THE COURT: According to my notes we left off on January 30th, 2015 pages 269 to 270 and it was an e-mail entry at 7:10 p.m. Is there anything further about that or are we moving on.

MR. ELLIS: No, I think we're moving on to the next page.

THE COURT: All right.

CONTINUED EXAMINATION IN-CHIEF BY MR. ELLIS:

A.

[As Read] Friday, January 30th, 2015 at 11:48 p.m. He home when I leave....

THE COURT: Ms. Fiuza, I'm going to ask you please, once again, don't speak so fast. I haven't even had time to get to the document that you're reading from. Mr. Dooling, Ms. Ferguson need time. Mr. Battiston needs time. We all need time to get to the document. I'm also taking notes as are the other parties probably about what you're saying. So, when you fly through your evidence and you read it very quickly it's lost on me and if I don't understand what you're telling me then that's not very helpful to you. Okay, so please take it slowly and don't read like you're in a race. All right, so we are now at

January 30th and this is again in 2015 and this entry can be found on page 271.

Okay maybe in the interest of making this move along a little quicker is there - do we really need the witness and I'm just putting this to all of you to consider - do we really need the witness to read out everything or is there something that can be summed up or are there certain points that can be addressed and I'm just trying to make this a little bit quicker, easier for everybody.

MR. ELLIS: Yes, I agree, Your Honour.

THE COURT: And, you don't have a book.

MR. ELLIS: That's okay. I understand that. I will....

THE COURT: 'Cause this is, I mean in a day we only got through half of this book.

MR. ELLIS: I know.

THE COURT: That's my concern.

MR. ELLIS: Your Honour these are books that were given a couple years ago. These are the journal entries. I don't know if my client really needs to be going through every single page unless my friend would like her to go through every single page.

THE COURT: But, no it's - but it's your - it's up to you. It's your case Mr. Ellis...

MR. ELLIS: Yeah, I totally agree.

THE COURT: ...and that's why I'm asking if there's some way of making this a little more compact if that's the correct word.

MR. ELLIS: Yes. Before I was - when we were here the last day, I was trying to jump over and just do every ten days so that it's the gist.

THE COURT: Okay.

MR. ELLIS: So, if we can jump ahead ten pages.

THE COURT: Sure.

MR. ELLIS: And tell the Judge which page we're going to.

A. Do you want to go to page 283 for the beginning for February 8th, Sunday February 8th at 10:25 p.m.

MR. ELLIS: Q. And, can you tell us what happened that day, the gist of what - like give us in your words what happened that day?

A. Once again, we were dealing with bass noise coming through the walls. It was on at 12:08 a.m. Wanted to go to sleep and the fact that not only is it the bass noise but it's also the bass vibration from the subwoofers from Mr. Dooling's speakers. The fact that 2:08, 2:03 I was once again awakened. I had fallen asleep and awakened again.

Q. Sorry, is that a.m. or p.m.?

A. A.m. 2:03 a.m. awakened. The fact that I was tired, and you know and still awakened even with sleeping pills in my system and using ear plugs. It looks like it went on pretty late 'cause at 3:27 it was also playing. It was a lot lower at 6:38 p.m. and then once I came home again from later after work it was 7:47 p.m. Once again, we had bass vibration going on so it's just a constant bass and the vibration that was coming through the, the walls from 542 Elgin Street.

Q. Okay, can we jump ahead ten pages?

A. That is page 293?

Q. Yeah, what's the date?

A. February 19th.

Q. Okay.

A. 2015.

Q. And, can you tell us in your words what happened on that day?

5 A. At this point instead of sending a daily e-mail to noise by-law I was summing it up into the weeks' by-law. So, I had on February 16th that we had bass noise again that was turned down at 12:18 a.m. in the morning. 4:57 a.m. once again had bass noise. When I woke in the morning for work there was no
10 bass noise playing. Oh, I admit I didn't go 'cause that was a Thursday. When I awoke at 7:41 a.m. there was no bass noise. At 11:00 a.m. once again the bass noise started again. It was turned off for about an hour and a half later. Turned on again later so it was just the bass noise, the constant bass noise on and off, on and off and the amount of hours that we listened to
15 bass noise. During that week for February 16th, February 17th. February 18th was the submissions for those three days.

Q. So, up to this point, how is this bass noise affected you?

20 A. Myself personally I was constantly stressed. I was sleep deprived - you know I had no sleep. Anxiety, probably had a little bit of depression. So it was just a constant on edge that you just couldn't rest, you had no right to enjoyment. You couldn't eat, you couldn't sleep, you couldn't - if you had
25 company over, they're like, what's going on here. It was just a constant like you were living next to a club and it was constant thump, thump, thump, thump, thump that it was just like it was a boom car sitting in your house and it carried throughout the house. It was from the basement all the way up to the living
30 room. Up to the living room and up to the bedrooms. So, with

the exception of maybe one room, if you got the far room up in the bedrooms that you could probably escape it a little. There was no escaping unless you left your house.

Q. So, let's proceed forward and move to page 305.

A. That was February 22nd, 2015.

Q. And, in your words what happened to you that day?

A. Once again, this day was the ongoing of the bass noise. I did have - well we purchased an amateur decibel metre reading where I did take a decibel metre reading where it reached 60 dbc's in our living room.

THE COURT: I'm sorry, I didn't hear that?

THE WITNESS: A decibel metre reading. It reached 60 dbc but when you provide it to By-Law, they don't recognize decibel metres so they don't do anything with it. And once again it was just you know kind of what went on that day. You know when you're awakened. How long the bass noise has been playing. You know trying to have lunch and its constant base noise that there is nothing that you can do in your house without this enjoyment with this constant noise and vibration.

Q. Okay, can we flip to page 320.

A. Make it 319.

THE COURT: My page 320 starts in the middle of an e-mail.

MR. ELLIS: Okay, I apologize, Your Honour.

THE COURT: Do you want 319?

MR. ELLIS: Q. Yes, please. 319 please.

A. March 3rd, 2015.

Q. And can you tell us what happened that day?

A. Noted that my parents had a mental - my mom had a mental assessment from the hospital so Tara from the hospital was visiting. There was no bass noise at the time. We had bass....

THE COURT: Sorry, I didn't hear.

THE WITNESS: There was no bass noise when the assessment was going on from the hospital. We had an assessment as it was taking a toll on my parents' wellbeing and their health.

MR. ELLIS: Q. Okay.

A. Once again documented when the bass noise started, when the bass noise stopped.

Q. And what were those times?

A. 3:21 where I was napping on the living room couch, I was awakened to bass noise starting. My mom was also awakened. I have a decibel metre read 63.5 dbc. I called By-Law 3:40 p.m. and the police and was advised there is no by-law on duty and then I left a message. I was in the bathroom at 3:50 and the bass noise could be heard in the bathroom also. At 4:16 p.m. Mr. Dooling's car was in the driveway so he was also home with Ms. Ferguson. 5:08 decided to go shovel some snow as I need to get out of the house and couldn't get away from the bass. Commenting how I feel bad for my parents 'cause my parents have nowhere to go with this ongoing bass noise. When I came in at 6:31 p.m. the bass noise from shoveling snow, the bass noise was still ongoing.

Q. For how long that day did the bass noise continue ongoing?

A. I've got it 3:21 was awakened. I've got that it switched to tv surround sound at 9:58 so from 3:21 to around 10:00 and then it went to their surround sound on their tv which makes it sound like we live next to a movie theatre 'cause you get all the rumblings and thunder sounds and everything coming through the walls 'cause once again he's listening to his tv on the speakers.

Q. And, on page 320 does it continue to that day?

A. It does continue. I've got that it was turned off at 11:01 p.m.

Q. All righty. Can we flip to page 335, I believe?

THE COURT: Again, that's in the middle.

MR. ELLIS: Sorry, 334, I apologize.

Q. And, can you tell us your experience on that day?

A. I sent it on March 11th. I did note that on March 9th and March 10th we had no bass noise for two days. March 11th once again it had started at 6:38 p.m. Just comments on how frustrated - that we're just - it's constant bass noise. Once again at 7:09 p.m. called the police and By-Law and advised there's nobody on duty. Decibel metre reached 63 dbc. Once again it could also be heard in the bathroom. At 8:45 we tried to get the police to come out but once again the police advised, we do not attend noise by-laws; that is a by-law division. They refused service on that matter.

Q. Okay.

A. 9:15 it was still on. I've got at 10:43 it was finally turned off and that I had also sent Constable Forrester(ph) - oh, Constable Forrester had come so I guess we did get - well we spoke to a supervisor and got them to come out on a - the only way they would come out for a noise by-law is if we escalated it to a neighbour dispute.

Q. Okay and what did he say when he came out?

A. Once again, they - we spoke about thirty minutes and he said he would look into things to investigate so - did I sorry, let me just see if I did, hang on. I was on the phone with him, he did not come out. Sorry, I'm just going to read my notes. Actually, it was a phone call. We had also spoken to Constable Forrester another day. We asked that we'd like them to

turn it down. Constable Forrester had called on my cell. We spoke for about thirty minutes and he was looking into it, but police do not have any assessment for noise and Cambridge's by-law is, is very vague.

Q. Okay could we flip to page 344, I believe.

THE COURT: 343?

MR. ELLIS: 343, sorry.

A. 343?

THE COURT: Actually I think it might be....

THE WITNESS: 342, 41.

THE COURT: 341 is the start of it.

MR. ELLIS: Okay.

THE COURT: March 15 of 2015?

MR. ELLIS: Yes. If we can go to page 341.

A. I've got here 11:05 p.m. I noted that we had bass noise back on.

MR. BATTISTON: I don't....

THE COURT: There's actually two e-mails on....

MR. ELLIS: Can we go to page 346, I apologize, not 341, Your Honour.

THE COURT: Okay.

MR. ELLIS: Q. And, can you tell us what's happened on this date?

A. Once again March 16th. Bass noise is starting at 9:08 in the evening. It's heard throughout the house, in the living room, kitchen, bedroom, staircase, the basement. Just frustrated we have no rights to enjoyment on our home. The constant bass noise and vibration. Used a decibel metre and it came to 59 dbc. I did call in a noise complaint and just commented on my parents' frustration that nobody was helping us in this situation, the constant ongoing bass. You know the fact

that this was just not a one-time situation; it was a day after day after day maybe sometimes we might get a break in between here or there.

Q. How long did that noise last that day?

A. I've got it turned off at 11:13 p.m. so from 9:08 p.m. to 11:13 and the frustrating thing about that is it's starting in the evening time when you're ready to go to bed by 9, 9:30 or even 10:00 and yet there's bass noise that is just starting up when you're ready to unwind and go to bed.

Q. Can we flip forward to page 355?

A. This is from March 23rd, 8:06 a.m. I noticed that there was low bass noise while I was sitting on the couch. It wasn't as loud. Commenting how they know how to turn it down when they want to. 9:48 p.m. It was very subtle in the bedroom. It sounded as if it might be the tv as it's not as consistent as the radio. I had once again used sleeping pills and ear plugs to sleep. At 10:00 p.m. was advised by my mom when they were in the basement that the bass noise had been turned up at 10:00 p.m. at night. My parents were in the basement when they started the bass noise and heard the bass noise start and just commenting you know people are getting ready to go to bed at 10:00 p.m. and they're just starting with the noise with the bass, the boom, boom, boom. At 12:18 I was awakened to the bass noise. I did have ear plugs in so I confirmed that it wasn't something else than it was because even though you've got ear plugs in your body is vibrating to bass where you get the boom, boom that thumps from the bass and your ears vibrate. I heard my mom going to bed. My dad advised at 12:45 a.m. that it was still playing when he went to bed. Just commenting how we felt like this was done intentionally. That you know they were aware. They'd been advised by By-Law and the police that the bass carries through

the wall but yet they repeatedly over and over would turn it on and even at this time of the night.

Q. Okay, can we flip to page 360?

A. This is for March - dated March 30th. I've got March 28th, I have more than one date on this e-mail. I've got that on March 28th when I arrived home at 4:05 p.m. when I got home his car was not in the driveway. There was no bass noise heard. My mom had advised that there had been no bass noise heard all day. At 6:34 p.m. once again the bass noise started. Although I did not see Andrew's car in the driveway so not quite sure if it was just - who was home. It could be heard in the living room, kitchen, bedroom, basement, staircase and was also heard in my parents' room as I usually didn't go in to check in their room. 6:48, I saw the - Andrew Dooling's car come into the driveway. At 8:13 I could hear the bass noise in the bathroom. 10:45 p.m. it's - was still loud bass noise. You know just commenting how we don't even have a right to reasonable peace and to sleep. My parents advised that today that the bass was even extra harder in the basement. 11:20 going to bed. It's still heard and sleeping pills and ear plugs to try and go to sleep. My mom commenting how she can't even sleep, and my dad can't either so they would continue. You know just commencing how 'cause they know By-Law doesn't come and By-Law does nothing about it they continue on with such behaviour. March 29th, once again 1:47 a.m. Awakened to bass noise. Not as hard but it was still heard. I heard my dad at 2:04 go to bed. His sleep is so irregular at night because he's having a hard time going to bed to sleep with this noise. Trying to fall asleep. I guess I managed to fall asleep and at 5:12 again I was awakened but there was no bass noise at that time. On March 29 at 11:31 a.m. I was in the basement colouring my hair and you could hear the bass

noise coming through the walls. It actually sounded like it was the surround sound from the tv with the bass. Once again it continued on. You know we try to have lunch - well we had lunch at 1:30 p.m. and we can't even have a reasonable, peaceful lunch. I've got there at 2:42 it was turned down. 3:30 it was finally off. 4:58 Mr. Dooling's car arrived. Did not see who was in car 'cause I didn't note. 8:55 p.m. once again the tv with the surround sound and the bass. Rumbblings of bass noise like a movie theatre heard throughout the house. 10:12 p.m. going to bed. Commenting how I miss peace to sleep - reasonable peace in our home to sleep. Sleeping pills and ear plugs once again. 10:55 my mom had advised that the bass was still playing when she attempted to go to bed and my dad advised that at 1:00 p.m. - that should have been at 1:00 a.m. when he went to bed that the bass noise had stopped and at that time the crown had suggested that we attempt to hold off on calling the police or by-law temporarily which I found did not help the situation.

Q. Could we flip forward to page....

MR. ELLIS: Could I have one second.

THE COURT: Yes, have a second there, Mr. Ellis.
Your books are here.

MR. ELLIS: Q. Okay, if we could go to page 370?
Can you tell us what happened on this day?

A. This was April 5th, 2015. Bass noise started again at 12:04 p.m. I was in the living room watching tv. My parents were not home at the time. They were arriving. My mom advised that she could hear the bass noise immediately walking in the door. It was heard throughout the house. At 1:36 I noted how the bass noise was constantly up and down. At 1:58 p.m. it was turned off. You know commenting that we had a right to a reasonable, enjoyable lunch, peaceful lunch. 4:14 p.m. once

again the bass noise started. Once again heard through the house. My dad went outside. In the summertime he would go outside as much as he could to avoid being in the house and in the wintertime, he would go to hide in the shed if he could. It could be heard in the bathroom. You know my dad had gotten very quiet. 6:21 the bass noise was turned down a little. 8:27 p.m. once again it was turned back up. Noting at 9:30 the bass noise has been up and down since 8:27 p.m. but it's always the hard thump, thump, thumps and it's heard throughout the house. 10:29 my mother and I were going to bed. Bass noise still on. Sleeping pills and ear plugs to try and sleep again. We were all on sleeping pills at this time. My mom even commented how the bass was a lot louder in her bedroom that day and my dad's downstairs because he has a hard time going to bed because he just - he can't sleep with all the bass going on and I just commenting on how my parents are suffering and I just - I feel bad for them.

Q. So, can we go to page 376, I believe and if you could tell us what happened on this day?

A. That was April 10th. Noticed that the neighbour's car was arriving. It was not in the driveway when I arrived. It was in - I had gone for yoga that day. My mom had advised that at 8:05 the bass noise had started, and it was heard throughout the house. She advised 9:30 the bass noise was turned down. When I arrived from yoga, I could hear the bass noise but it was on the lower level. At 10:35 when my mom and I were going to bed you could still hear the bass noise but it was drowned out a little bit by the sound of thunder as it was raining that day and once again I was still taking sleeping pills plus melatonin to sleep and so was my mom.

Q. Up to this point in April how many days a week would you say that you didn't have bass noise going on?

A. On general I could say it was an everyday thing. If there was a certain occurrence or a by-law officer or police might have said something. It might have quietened down for a couple of days or I think we even had a week where it was pretty quiet, but it was, it was almost like a daily occurrence. I could probably tell you - it happened so rare that it was hard for me to say when the bass didn't occur.

Q. Yes.

A. In my opinion if the Dooling - Mr. Dooling had his way with Ms. Ferguson when they came home from work that bass started the minute they walked in the door.

MS. BATTISTON: Giving opinion evidence Your Honour I think this witness should talk about factual events and not opinions because I didn't hear anything about qualifications nor is she here as an expert.

THE COURT: Well, I understand that.

THE WITNESS: Based on my experience, based on my experience they would start as soon as they got home from work with the exception of a certain day here or there or it quieted down for. When they came in that bass was guaranteed to start within half an hour.

MR. ELLIS: Q. Could we move on to page 384.

A. April 19th, 2015.

THE COURT: Just so we're clear because this has gone on several times now at the top of the - the e-mail might be dated one date but at the top of it you have a different date.

THE WITNESS: I had times where especially if it was quieter or it wasn't so much noise, I would send - instead of sending by-law a daily e-mail, I would send them a weekly e-mail.

THE COURT: I get that. What I'm saying is you're only - you're not referring to when it's happening. When you say April 19th, you're referring to the date of your e-mail because what is happening is on April 18th. Do you see what I'm saying? Subject 542 Elgin Street North. Noise complaint April 18th but it's dated the next day, so I just want that to be clear on the record that it's - the date of the complaint is April 18th or when it happens. The e-mail may be the next day or several days later.

THE WITNESS: Yes. At 2:02 a.m. I was awakened to low bass noise. I did pull out ear plugs to confirm that it was the bass noise because you can usually tell with the vibration. Once again making some comments about the frustration of it playing at that time. Heard my dad coming to bed at 2:11 a.m. He had confirmed the bass noise had been playing and heard throughout the house. At this time Andrew and Jacqueline were outside sitting on their porch smoking at the time because I could hear them talking and I looked out the window and saw them or standing on their porch. I took another sleeping pill at 2:11 a.m. and put the ear plugs back in. 3:03 the bass noise was still heard. 10:15 a.m. I left for an appointment. His car was home that morning - Mr. Dooling's car was home in the morning. 4:12 p.m. hard bass noise started. It was a lot harder, the bass, than usual. Mom was lying on the couch in the living room watching tv. She felt like they got a new CD because the bass - 'cause the bass was so constant it sounded like they were playing the same songs and it was slightly different base, so it sounded

like it was a different song or different CD. Dad was in the basement lying on the couch and I was sitting on the couch you know trying to watch tv. Commenting how it just never stops and the weekends are always a nightmare, they're always worse. My mom went to the basement with my dad as it was a little more subtle down there. She just couldn't handle the noise and the vibration anymore. My dad's not feeling well. My dad had had health issues that had escalated during the situation. 4:43 my dad went outside to get away from the noise. 6:41 the bass noise was turned off. 6:45 the neighbours' car was not in the driveway. At least now we know we are guaranteed some peace at this time. 8:58 p.m. the neighbours' car arrived. Once again 9:39 p.m. the bass noise started again. I was commenting how they were aware of the situation, just a constant ongoing bass. There was some banging going on, the wall from the neighbours' side. Even my parents said the bang was so much that they could hear it downstairs in the basement also. 10:55 going to bed. Sleeping pills and ear plugs for all of us again. And just how I was waiting for the sleeping pill to kick in to try and get some sleep and what a nightmare the weekend had been.

Q. Could we flip over to page 392 and what day was this actual issue?

A. It was dated April 27th so I would say that it was probably April 26th.

Q. What does it say on the subject line?

A. April 27th is the date it was dated at 1:27 p.m.

THE COURT: No, what does it say on the subject line was the question.

MR. ELLIS: Q. Top line of that e-mail.

A. Oh, noise complaint April 26th.

Q. And, what happened on April 26th?

A. Once again at 1:00 a.m. my dad advised that bass noise was heard throughout the house. He advised at 2:00 a.m. when he went to bed that the bass noise had been turned off. Commented how Saturday had been a nightmare for the bass noise. 12:30 mom advised heard - backyard and kitchen so his daughter was home 'cause that also affected the bass noise sometimes. Having lunch and the kids went on the trampoline. 4:00 p.m. once again the bass noise was heard. 10:30 p.m. subtle bass noise heard in bedroom, sleeping pills to help sleep.

THE COURT: I think that might be a good time to break for the morning break. Everybody break so we will take fifteen minutes and resume at twenty to twelve.

CLERK OF THE COURT: All rise. Court will recess for fifteen minutes.

R E C E S S

(11:26:31)

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

(11:44:55)

MR. ELLIS: Your Honour, I apologize the books that I sent my intern to go get were from the criminal trial not from this trial so I have a witness going to Ms. Fiuza's house to get me the books but I will proceed forward as best I can so I apologize if I pick the wrong page number.

THE COURT: Okay.

MR. ELLIS: Q. Could we go to page 398 and what day is this in the subject line?

A. This is for I had said April 8, 9 and 10th but it was actually a correction day for May 8, 9 and 10.

Q. Okay.

41.

Fiuza v. Creekside et al.

C. Fiuza - in-Ch.

5 A. Noted on April 8th we did not hear any bass - on
May 8th did not hear any bass noise. April 9th at 6:57 p.m. the
bass noise started but it was on the lower end that day. 10:12
p.m. the bass noise was turned up. It was low and it was hard
and the fact that my mom was trying to go to sleep at that time
when it had started. 10:47 commented had the bass noise been up
and down. And commenting my mom was trying to go to sleep even
though she took a sleeping pill but still could not sleep and how
upset that she is about the whole situation and the fact that she
10 was crying. My mom did a lot of crying at this time regarding
the whole situation. Asked if - asked her if she wanted us to
call the police or By-Law and said, no they do nothing, and then
between 2:00 and 4:00 a.m. the neighbours will just turn it up
and startle us out of our sleep which happens on two occasions.
Even saying how the air conditioning was on and it doesn't drown
15 out the bass noise, the air conditioning, the white noise that it
makes. That the decibel metre had reached 54.5. I could hear my
mom in bed crying. 11:18 it was finally turned down and 11:32 it
was turned off and 11:47 as I was listening, I could hear my mom
crying herself to sleep and then on April 10th there was no bass
20 noise.

Q. April 10th or May 10th?

A. Sorry, May 10th, no bass noise.

Q. Could we flip to page 409?

25 A. This is dated June 1st for May 29th, 30th, 31st.
Noted that we had listened to 16-1/2 hours of bass noise. It had
increased this weekend as we had attended court, so it seemed
like it got worse after court. May 29th' we had 4-1/2 hours of
bass noise that day. It started at 8:37 p.m. Commented how it
was up and down. I took a decibel metre at 58 dbc at 9:58 p.m.
30 10:51 I was going to bed, once again ear plugs and sleeping pills

to try and sleep. My mom was also taking sleeping pills, melatonin and ear plugs and just comment how when we come out of court that Andrew looked pretty pissed-off when he came out of the courtroom. And we just kind of say the way it had escalated that weekend that we just felt that they were sticking it to us. It was just partially based on what we were experiencing that day. May 30th six hours of bass noise. Awakened at 12:49 a.m. vibration. It was also raining that day, but the bass noise was still louder than the rain falling on the house. Took another sleeping pill to try and go back to sleep. My dad advised when he went to bed at 1:30 a.m. there was no bass noise heard. 4:27 p.m. again - once again the hard bass noise started. It could be heard upstairs, also in the living room. Decibel metre that day reached 65 dbc. 6:35 in the kitchen and the basement noise was turned off and it had been up and down again that day and when I looked out the window at 6:43 the neighbours' car was not in the driveway.

Q. 6:43 a.m. or p.m.?

A. P.m. It was not in the driveway which was why we were not getting any bass noise. 8:24 p.m. the neighbours arrived home and the bass noise had started again. The bass noise was up and down. Once again it could be heard throughout the house. 10:02 my mom went to bed, she said she was not feeling well. She kept holding her chest and kept saying, oh my God, oh my God. She was taking a sleeping pill plus melatonin and ear plugs to sleep. My dad at this time had gotten very quiet due to all the stress. Just commenting on how I was really stressed about my parents' wellbeing and their health and the strain that this was taking on them. 10:30 I went to bed. Once again sleeping pills and ear plugs and when I went to bed, I could hear my mom still in bed crying. You know I commented

about worry about taking sleeping pills 'cause I finding that's not functioning properly for my parents but you can't sleep without a sleeping pill so I still took a sleeping pill and just frustrated how I didn't know how to help my mom and dad. May 31st six hours of hard bass noise. 2:00 a.m. my dad had advised there was no bass noise heard. 12:33 p.m. the bass noise had started. Once again it was heard throughout the house. Sounded like they might be listening to the radio that day as it sounded like it was loud enough that you could hear some muffle talking coming from the speakers on the other side. At 1:00 p.m. we were having lunch. Once again, the bass noise still continued. 3:54 p.m. the bass noise was turned down low. We couldn't hear anymore muffle talking coming from the radio or tv. 6:40 we had come up because we had gone to the basement where it was a little more lower. No bass noise heard but I could hear - no bass noise heard in the basement, but I could hear it in the living room, very low. 10:43 I went to bed. It was just low subtle bass noise and once again taking sleeping pills to help sleep. Sounded like based on the way this bass was coming into the house 'cause at one time they had it near the window and then it sounded like they might have moved it or just speculating towards the wall against the kitchen/living room wall 'cause it was - had gotten harder within the house. So just commenting on the noise and also when they don't have their daughter, the older daughter which seems that is shared custody, bass noise was always escalated.

MR. BATTISTON: Your Honour I apologize, and I apologize to my friend. Despite the numerous e-mails here how the details seem to repeat themselves. I noticed that this e-mail that we're looking at page 412 and I didn't - or how should I say it. I'm

prepared to accept that Ms. Fiuza wrote e-mails to the By-Law Department but an e-mail to her lawyer or to Mr. Ellis is a self-serving internal memo which I do have a problem with because it's not an external event that I can verify with the By-Law Department. So, unless Mr. Ellis is going to take evidence that he received this e-mail I don't see the relevance of internal memos between a lawyer and his client.

THE COURT: Mr. Ellis?

MR. ELLIS: Yes, I agree Your Honour. I didn't know...

MR. BATTISTON: A few of them that follow.

THE COURT: A few of them and some of them that were sent to the WRPS and the By-Law were also copied to Mr. Ellis.

MR. BATTISTON: Unless - I believe this is a change from previous e-mails which appear to have gone to the By-Law Department and you know what I just clued into this and I'm going....

THE COURT: Well some have gone to By-Law, the police and Mr. Ellis, some have gone to By-Law and the police.

MR. BATTISTON: Not this one.

THE COURT: Some have gone to just By-Law. I mean it's been a variety of different people. I mean if Ms. Fiuza's choosing to waive her privilege she can do so. That's her right to do so and you can cross-examine her on why she didn't report this to By-Law or the police. One thing I do agree with is yes, this evidence is significantly repetitive. We've gone through I guess close to three-quarters of this

book. I'm hoping the end is near. That's why I brought up earlier today that perhaps we could move through this a little quicker than we have been doing and that's why I suggested perhaps we could pinpoint things that were of significance or things that the plaintiffs particularly wish to bring to the Court's attention but as Mr. Battiston has pointed out looks like from this point forward perhaps all of these e-mails are simply to Mr. Ellis.

THE WITNESS: No, they are to the By-Law. I may have also....

THE COURT: I haven't - I'm just flipping forward and a lot of them I see are from this point forward June, July, August, are to Mr. Ellis. Some are basically from - are just entries that you have written, almost like a diary entry. Some are to By-Law and to Mr. Ellis.

THE WITNESS: May I comment on why I had done this?

THE COURT: On why you'd done what?

THE WITNESS: Why I was not sending it to By-Law for a certain period.

THE COURT: Well I don't think I need to know the answer to that and like I said Mr. Battiston can cross-examine you about that. You've already give evidence, given evidence several times that By-Law and the police wouldn't respond or couldn't respond. There we have it. But as you can see Mr. Ellis...

MR. ELLIS: Yes.

THE COURT:...there is a particular batch that are just to you.

MR. ELLIS: Yes.

THE COURT: And, I mean...

MR. ELLIS: I apologize, Your Honour. I missed that.

THE COURT: You don't - there's no need to apologize. All I'm saying is there is nothing different that I see in these e-mails and say the ones that are also going to the police and the By-Law. There are some e-mails to you that say, well, you know for four days in a row we didn't hear anything. I mean there's some changes in June that perhaps all the parties would like to hear about regardless of the fact that they went to Mr. Ellis. I mean I'm not really putting much store by the fact that they went to Mr. Ellis. She could have written them in a diary and then produced them to her lawyer at a later point. I don't see what the difference is, from an evidentiary point of view. There we have it or perhaps the parties would like to cross-examine on those e-mails where she has indicated there has been no noise for maybe several days in a row. It's not for me to say what you want to do but I do make the point once again this evidence is repetitive.

MR. ELLIS: Yes.

THE COURT: So, if there's something of import or something that's different perhaps we could hear about that or else we're going to need five days of trial and not three.

MR. ELLIS: Yes. I understand Your Honour.

Q. When did the neighbours move out?

A. The neighbours had moved out on October 30th.

I'm not sure the date was 2013.

Q. And, how was life coming up to that date? Was it quieter, was it louder?

A. They had a one to two week - I'd have to look at my notes to get exactly. There was a little quiet period there where they had stopped and then on the very last day, they decided to play the bass noise on the very last day that we also called By-Law to document the occurrence. Prior to that there was a quiet spell.

Q. And how was it throughout the summer months?

A. It's the same. It's you know you've got the holidays it's - the music is constant you know. You might have a quiet day here or for some reason something might happen that we might get the odd quiet three or four days, but it was just - it was constant year-round. It started from when they moved in to when they moved out. It's - all I can say is it was - it happened more often than it did not. It was like constantly having a boom car in your house and you could not do anything about it.

Q. So how has life been since the neighbours have moved out, since the defendants have moved out?

A. It's been wonderful.

Q. Have you had any issues with the new neighbours?

A. No. With bass noise in the house, no we have not had any - there was one occurrence that it started because Mr. - the landlord had notified them of the situation. I had gone to knock on the door to let them know that the bass was coming through the wall and he turned off the speakers. He goes okay it was certain speakers. He did text me saying, I'm still playing music without the speakers, is there a problem? and I said, no and we established a level that was he could play his music without us hearing it in our house and the fact that he had

certain speakers that had subwoofers in them that he knew that did not carry well into the house.

Q. Do you know if the neighbours are the same neighbours since the Doolings have moved out - or the defendants I mean?

A. No, no they're different, ah, they're new neighbours.

Q. No, but has the neighbours changed since?

A. No, it's the same neighbours since Mr. Dooling and Ms. Ferguson have moved.

Q. So, how has your medical condition been since the defendants have moved out?

A. All our health...

THE COURT: I haven't heard any evidence on her medical condition before?

MR. ELLIS: Okay, sorry Your Honour.

A. Well we're no longer stressed to the degree that we are, and my mom and dad are no longer going to the hospital and their stress has improved. My dad's never been the same since the situation, but we've all put on because we'd all lost weight.

MR. ELLIS: Q. So how was your medical condition during this period of time that the defendants lived in the property?

A. I was stressed. I did not go to the doctor for myself. A lot of my - dealing with a lot of the medical stuff was dealing with my parents' health and wellbeing. I neglected myself but I was full of anxiety. I stressed. I was not eating. I had actually lost sixty pounds at the time which I have put back on.

MR. BATTISTON: How much was that?

THE WITNESS: Sixty pounds which I've put back on and none of this has been documented to a doctor like I had totally not focused on myself. I was concerned with my parents' health. My dad had lost weight. My mother had lost weight. My mom was put on anxiety medication. Through a naturopath my dad was also on depression. Once again, they had seen a - through the Geriatric Department they had a health assessment both done and the doctors deemed it to be a health crisis. We were told by the doctors when my dad went to the hospital because he was getting anxiety, his heart was beating. It was - he couldn't breathe, he had lost weight. My dad had stopped driving.

MR. BATTISTON: Is this all going to be hearsay or are there documents to support all this Mr. Ellis because I'm hearing a lot of they told us, they said and we were told so....

A. We have the doctors.

MR. ELLIS: I have medical documents that are coming in, but the medical documents are coming in through the patients, the parents.

THE COURT: Okay, that's fine.

MR. ELLIS: Q. Carry on.

A. So, the doctors had said there's no use bringing him in for the same situation when we can't help you right now but the assessment did....

MR. BATTISTON: So, we're still talking about dad? Why don't we wait to hear from dad? Why are we hearing it second hand?

THE COURT: Well, I think she's entitled to give evidence because she's the one that was taking her parents to the doctors.

MR. BATTISTON: Did I hear that?

THE COURT: Yes, I heard that. She's the one that said she was taking her parents to the doctors, but she didn't go herself.

THE WITNESS: I neglected my....

MR. BATTISTON: We don't have any dates about this. We're not dealing with specifics. I'm just trying to put a context in as evidence. Out of the blue now we have all of this medical evidence so I'm not sure what the framework is for the questions.

MR. ELLIS: Q. During the periods of February 14th, 2014 and October 30, 2015 did you take your parents to the doctors?

A. I can't give you the exact dates. I'd have to look at it but I did take my - my dad went to the hospital four times during the time which the Dooling - Mr. Dooling and Ms. Ferguson lived next door and I had taken my mom twice and we did not go any further time due to the fact that the doctor said there was nothing we can do to help you with the situation. At one time during one of my dad's visit, which we have a report, the geriatric nurse came down to take an assessment....

MR. BATTISTON: Well why don't we wait for the report, shall we?

THE COURT: I think she's entitled to say what the report says and then we will see the report.

MR. BATTISTON: Really? We don't have a report that I can....

MR. ELLIS: It's in the documents.

THE COURT: Are you producing a report? I understood you were producing these reports.

MR. ELLIS: Yes, I am producing them. I'm producing everything from Tab 7.

MR. BATTISTON: Why don't we let the report speak for itself because I going to have a problem of this evidence coming through this witness because you know I served a notice of summons on the doctor.

THE COURT: No, I don't know that.

MR. BATTISTON: Well, Mr. Ellis does.

THE COURT: What's the difficulty with her simply testifying to what transpired during any visits that she took her parents to because she was taking care of their medical issues?

MR. BATTISTON: Well, if there are documents they should be referable to the documents and we avoid the hearsay and we get some better evidence than what I'm hearing.

THE COURT: She's just testifying as to her memory. We're going to hear - in this court hearsay can be admitted. There's a specific rule about that, number one. Number two, hearsay can be admitted but it needs to be also supported with other documentation or oral evidence. So if I don't hear that then I'm certainly not going to pay any attention to the hearsay evidence that's been given.

MR. ELLIS: Q. Would you carry on?

A. At one point during one of our visits a geriatric nurse had come down and took a report which she also followed-up with the police and the By-Law to try and get some answers and....

THE COURT: All right. We heard this evidence last time, so this is just repetitive.

MR. ELLIS: All right. If I could just have one minute, Your Honour.

THE COURT: Certainly.

MR. ELLIS: Have you - let's move off of the evidence or off of the medical documents, Your Honour.

Q. Have you contacted people in regards to noise issues? Have you contacted experts?

5 A. Well I did contact some experts but they were not able to help us unless they were able to come to the house and be expensive. It was also where I contacted and off the top of my head I don't have their names right now and I did not - where how do we address the bass noise, why is this happening. You know 10 the fact that By-Law would say repeatedly, we can't hear it outside, so it doesn't really count in your house. So, to try and address the issues right. I looked for solutions but there was really nothing that came that was able to - 'cause we did not expect it to get to this - you know I figured it would have been 15 ask them a couple times and they would have turned it down. So, we didn't expect to escalate to the situation that it did. Never thought that we would be listening to constant ongoing bass noise for twenty months.

20 Q. So, did you ever go to the Mayor, the City By-Law, the other people in an attempt to try and get somebody to help you?

MR. BATTISTON: That sounds like a pretty leading question Mr. Ellis. I think we can avoid that, Your Honour. If there's a document, he wants to refer the witness to maybe that's the way that he should 25 proceed?

THE COURT: Well how about the question, did you go to anybody else?

THE WITNESS: Yes.

THE COURT: Who's that?

THE WITNESS: I did attempt - I contacted the Mayor. I contacted City Council; a couple of members of City Council. Even my mother had contacted, I don't know his last name but French, he's one of the City Council...

THE COURT: Who?

THE WITNESS: Frank in Cambridge. Don't know his last name.

THE COURT: I don't know who Frank in Cambridge is but okay. He's a City councillor?

THE WITNESS: City councillor that speaks Portuguese and my mom had contacted him for help also 'cause she spoke Portuguese so somebody who had spoke the same language. But, they would go back to By-Law and By-Law would say there's nothing we can do about it due to their by-law, the way the by-law's written. They would say there is nothing they could do about the situation because in the City of Cambridge they note that the bass noise has to be heard outside and what's coming through the walls is not relevant.

MR. ELLIS: Q. When you - did you attempt to do any mediation?

A. We had originally where mediation was brought up by police and the By-Law, Constable Neilson.

THE COURT: I'm going to stop you right there. I recall this evidence from last time.

MR. ELLIS: Okay, that's fine. I'm sorry, Your Honour.

THE COURT: Do you recall this - I mean if there's something in addition to what was already given in evidence in January, but I do recall there was an issue of mediation brought up. At first Fiuzas were interested in the Doolings and Fergusons refused and

then they were interested in and Fiuzas refused.
That's what I recall about that evidence and if I'm
incorrect any one of you can correct me.

MR. ELLIS: No, you're correct.

Q. Did you have anybody that was willing to give
any...

MR. ELLIS: I would like to submit this document Your
Honour with willsay statements and witness
statements.

THE COURT: Okay what is it?

MR. ELLIS: I have a book for you. I apologize.

THE COURT: Is it one of these books that's
referenced here on your trial brief.

MR. ELLIS: Yes, it is.

THE COURT: Book number 3?

MR. ELLIS: Yes.

THE COURT: And what are we doing with book number 2?

MR. ELLIS: Book number 2....

THE COURT: Well this hasn't been entered into
evidence. It hasn't even been referred to. It's all
the Freedom of Information documentation you gave to
me this morning.

MR. ELLIS: Yes, and I thought that we agreed that it
was being admitted for its truth and accuracy?

THE COURT: I'm not saying - you're not going to
refer to any of it?

MR. ELLIS: Well I can, Your Honour I was trying to
speed the trial up.

THE COURT: No, I mean I'm asking you. You can if
you wish but if you just want to file it and say to

me read it and we're content that you read it, is that what you're both proposing?

MR. BATTISTON: I will rely on it, Your Honour. That's why I made a point of the whole thing. I will, yes definitely.

THE COURT: Okay, somebody - okay so then let's have book number 2, which is the Freedom of Information documentation marked as an exhibit and I guess Mr. Battiston will refer to it in his examination. I hate to get these documents marked out of order. It makes it all the more confusing for everybody.

MR. ELLIS: Your Honour I'm just trying to speed up the trial and I figured that going through book number 2 when I know that it's going to be cross-examined on will be a waste of the Court's time.

THE COURT: All right that's fair enough. Can we mark that as an exhibit please?

CLERK OF THE COURT: Exhibit 2, Your Honour?

THE COURT: Yes. It's book number 2 of the trial brief of the plaintiffs and there's the exhibit list for you.

EXHIBIT NUMBER 2: Book 2 of Plaintiff's trial brief - produced and marked

THE COURT: Okay, you might as well keep that.

CLERK OF THE COURT: Thank you.

THE COURT: All right. So, we'll leave that aside for now and then book number 3 is what you wish to have marked as Exhibit 3?

MR. ELLIS: Yes, Your Honour.

THE COURT: And that again is of the trial brief of the plaintiffs.

CLERK OF THE COURT: Which one is book number 3?

MR. ELLIS: They are both, one's for the witness and one's for...

CLERK OF THE COURT: All right. Thank you. Exhibit 3, Your Honour.

EXHIBIT NUMBER 3: Book 3 of Plaintiff's trial brief - produced and marked

THE COURT: Thank you. Mr. Ellis is it Tab 6 that you wish to refer to now or are you going to start with Tab 5?

MR. ELLIS: We can start with Tab 5.

THE COURT: Well whichever you wish to do.

MR. ELLIS: We'll start with Tab 5.

Q. Can you please go to Tab 5, page 1 and tell us what this document is regarding?

MR. BATTISTON: Your Honour, I've got a problem.

THE COURT: What's your problem?

MR. BATTISTON: This page 1 is a letter from this person who appears to give opinion evidence. It was not tendered as an expert report and so this witness' opinions cannot be tendered into evidence because I was not given any qualifications. I was not told it was being relied upon as an expert's report so if that's the intention here then the opinions can be the subject of evidence. If it's not an expert's report, then opinions that are expressed here cannot be admitted into evidence.

THE COURT: Mr. Ellis?

MR. ELLIS: Your Honour, this document was served many years ago.

THE COURT: Okay, I don't think that's his complaint.

MR. ELLIS: Well his complaint is whether or not it's expert evidence. My friend has had plenty of time, like the document that he produced to me a week ago, has lots of time to summons the person to cross-examine them.

MR. BATTISTON: But is it an expert report, is that why you're producing this document?

MR. ELLIS: This is an opinion of this issue.

MR. BATTISTON: That's what I thought, then you can't be - the opinions cannot be tendered into evidence without a proper report that I can then evaluate for qualifications and impartiality. That's how you handle an expert's report otherwise this document is inadmissible because he's not a factual witness. This was a result of a phone conversation and that's where I start.

THE COURT: Well, that in and of itself is problematic. So, Mr. Ellis, you are tendering this letter from Mr. Colven(ph) who is a studio recording owner, right?

MR. ELLIS: Yes.

THE COURT: And, you think he's an expert in some fashion?

MR. ELLIS: I am not deeming him to be an expert, Your Honour. I'm deeming him to be the person that my client called in relation to this issue so that she could get opinions about dealing with this stuff.

THE COURT: Okay, well that's a little different than saying it's an expert report so....

MR. ELLIS: I never said it was an expert report, Your Honour.

THE COURT: I thought you just did.

MR. BATTISTON: I thought so too.

THE COURT: I'm totally confused.

MR. ELLIS: I apologize, Your Honour. I don't remember saying that this was an expert report.

THE COURT: If you want to - her to speak to the facts, facts not opinions, facts only.

MR. ELLIS: Okay.

THE COURT: That's fine. I'm sure Mr. Battiston will be on his feet as soon you stray from that but if he's an expert we do need to know what his qualifications are because if he simply owns a studio which deals with audio recording and production, that means nothing to me. I could own a studio like that, and I wouldn't be an expert. All I see is this letter and, well the next page has nothing to do with it and I guess from what I'm quickly reading it looks like pretty much a discussion between Ms. Fiuza and this owner about her issues. But, in the middle paragraph it seems to me that would get into some fairly technical information being wave lengths - wave forms, pardon me.

MR. ELLIS: Your Honour, I'll get off the topic and on the next trial date I'll summons that person to appear.

THE COURT: All right. You can summons him to appear, but you'd better get to Mr. Battiston and to

Mr. Dooling and Ms. Ferguson what qualifications this person has for tendering this particular, I'm going to call it a letter.

MR. ELLIS: Yes, I will Your Honour.

THE COURT: All right. Okay let me just make a note of that. Okay.

MR. ELLIS: Q. For now, can we go to Tab number 6 and can you tell us who the first statement is from?

A. The first willsay statement is from my dad, Gilberto Fiuza.

Q. The first statement is from your dad?

THE COURT: No, I have Nelson Fiuza as the first statement.

THE WITNESS: Oh, the book I have is Gilberto, okay.

THE COURT: Are you referring to Nelson Fiuza's statement, Mr. Ellis?

MR. ELLIS: Yes, I am, Your Honour.

THE COURT: As the first one? Okay. Somebody got the photocopying in the wrong spot.

MR. ELLIS: I apologize.

Q. Were you provided with this statement from Ms. - from your - who is this person?

A. Nelson Fiuza is my brother and he's also a constable with the City of Hamilton who also deals with noise complaints in the City of Hamilton.

Q. And, this was a statement that he provided you regarding these incidents?

A. It's a statement that was provided that during one visit with the By-Law officer and the police they requested that we provided so we provided them a statement to provide to the police department.

Q. Okay.

MR. BATTISTON: He's going to be called as a witness. He's on your list. So why don't we wait to hear from Mr. Fiuza?

MR. ELLIS: He's on my witness list but he wasn't available today and I didn't know that the trial was going past today.

MR. BATTISTON: But you told me he was going to be here.

MR. ELLIS: When the date was booked, he got booked into court for the police so he had to go to that one. I didn't summons him for the first one. He's on my list of witnesses. I didn't summons him because he voluntarily said he would come.

THE COURT: Any of these witness statements I've just looked at very quickly, I don't see any addresses in them.

MR. BATTISTON: Or contact number.

MR. ELLIS: I'll wait for each one of them to appear, Your Honour.

THE COURT: All right.

MR. ELLIS: Is there any chance we can take an early lunch break, Your Honour.

THE COURT: It's what twenty after twelve? I'm fine with an early lunch break. We will resume at quarter to two.

MR. ELLIS: Thank you, Your Honour.

THE COURT: All right, we'll adjourn to 1:45.

CLERK OF THE COURT: All rise. This court will recess until 1:45.

R E C E S S

(12:21:47)

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

(01:48:18)

THE COURT: Just so everyone's aware I have had an opportunity to review the entire book number 2 which was entered on consent. All right, Mr. Ellis?

MR. ELLIS: Q. Yes, so Ms. Fiuza if you could go to Tab 6 of book number 3. If you could refer to your willsay statement which I believe in your book is on a different page than everybody else's unfortunately.

THE COURT: It's at page 8 of my brief.

MR ELLIS: Q. Do you remember - oh, sorry.

THE COURT: Go ahead.

MR ELLIS: Q. Do you remember making this willsay statement?

A. Yes, I do.

Q. Can you tell us why you made it?

A. On that day a by-law officer and a police officer had come, and we were speaking regarding the noise situation and the police officer of the situation had asked if all the witnesses present would submit a will say statement to the police. So, we each - so it was written up.

Q. So, all the statements that are under the willsays are there because the police officer asked for those statements?

A. From my parents [...] and Nelson Fiuza and myself, yes.

Q. Okay. Can you tell us about your statement? I don't know if we really need you to read your whole statement. I'm sure that Your Honour can read the statement unless she would like you to read it into....

THE COURT: No, we don't need to.

MR ELLIS: Q. So, if you can just give me the gist of your statement?

A. I was just explaining the situation that day and explaining the outcome of when By-Law Officer Chris had come into the house. He was a new By-Law Officer and he originally came in and he was assessing it as noise but then By-Law Officer Ryan - I don't know his last name - had come to let him know that this was an ongoing situation and then he had changed his tune and just kind of explaining the situation that was going on. This is how we had felt that this was a criminal mischief charge also because this was an ongoing issue.

MR. BATTISTON: Sorry, who said that and where? Is she referring to something specific here?

THE WITNESS: On my willsay statement. I'm not reading it's in there on page - the second page.

THE COURT: It's about the fourth paragraph down. Where it starts,

[As read] Chris the By-Law officer and then it says Nelson informed he was a Hamilton Police Officer and that he had spoken to superiors at work and suggested criminal mischief charges.

THE WITNESS: But due to Cambridge's by-law being very vague and unenforceable and the police not addressing noise disturbances, they did not lay any criminal mischief charges. So we had talked about that and explained some of the situations, some of the issues that we had felt, repeat a little bit of history. Talked about some of the mediation, how the landlord Joe had been over with Shaun Elliott to try and assess the situation and address the situation also and then....

THE COURT: Ms. Fiuza, please. Do not speak so quickly because number one I hear about half of what you're saying when you do and number two, I can't write anything down 'cause you speak way too fast. So please slow it down.

THE WITNESS: Okay.

THE COURT: Okay? Continue. Let's go back to somebody talked about mediation. That's where, where I lost you.

THE WITNESS: Well I was - I had noted some of the points that I put on my willsay statement was that we had discussed mediation. The fact that the landlord Joe had been over with By-Law Officer Shaun to try and assess the situation and also address the matter. That this was a private nuisance and just kind of educated but the police will not lay any charges because they will not address any noise disturbances in the City of Cambridge. Apparently, it's due to political reasons.

MR. ELLIS: Q. And, what day was that statement given on?

A. January 18th, 2015.

Q. Okay. Have you received any other statements from witnesses that have witnessed?

A. I did get a statement from my neighbour - former neighbour, Shara Fryer.

Q. Is that at page 11?

A. Yes.

Q. Tab 6?

A. She at lived at 536 Elgin Street North but when I advised the By-Law and the police, they did not interview her. They did not follow-up with any witnesses and we had some

relatives visiting from California in August and my great aunt's husband had also provided us with a statement of the situation while he was visiting here.

Q. And, what page is that at?

A. Page 12 in my book.

Q. Okay.

A. For Hans Negelbauer.

Q. Yes. Is there anything else you feel the Courts need to know about the situation that you went through?

A. Just that it was a constant noise nuisance. We felt violated. The fact that we didn't have any reasonable peace. Our health all deteriorated, my parents and myself, and we were all on sleeping pills and I at one time would even take up to four sleeping pills to be able to sleep and still my sleep was disrupted and ear plugs and I also have improved greatly. We are no longer - well my dad still does take like half, but my mother and I are no longer on sleeping pills and we're able to sleep through the night and go to bed when we please and just be able to enjoy our home.

MR. ELLIS: Those are all my questions of the plaintiff, Your Honour.

THE COURT: Thank you Mr. Ellis. Mr. Battiston?

CROSS-EXAMINATION BY MR. BATTISTON:

Q. Ms. Fiuza, I'm showing you a letter that Mr. Ellis was nice enough to include in the claim when, when it was issued...

THE COURT: Thank you.

MR. BATTISTON: Q. ...and I believe it's in all those many multitude of pages there somewhere but I thought I'd deal with it separately because this is a document that - a

letter that you wrote on August 13th, 2014 when you were looking to go to the Justice of the Peace, is that correct?

A. And, I did go to the Justice of the Peace.

Q. Right, 'cause you had to lay a private complaint.

A. Yes, I was advised by Shaun Elliott, By-Law Officer.

Q. Just, just, we can make this much shorter if you just stick to the questions that I ask you and just give me the answers, okay.

A. Okay.

Q. All right. If you turn to page 2. This document confirms what you wrote in August of 2014 that summarized what you had done up until that time insofar as complaining about the noise, is that correct?

A. Yes.

Q. And, so you listed at the top left-hand corner calls to police and you listed one, two, three, four, five - nine, ten eleven occurrences from February to July, is that correct?

A. Yes, one, two, three -eleven yeah.

Q. Then beside that to the right you had, By-Law calls, some from police calls, others, e-mails or voice mails and they're as of August '14 you had one, two, three - eight, nine, ten, eleven, twelve, thirteen various occurrences, is that correct?

A. Yes.

Q. And then at the bottom you have, complaint e-mails to the By-Law, when no office available and you have a list of a multitude of e-mails that you wrote up until August of 2014, is that correct?

A. Yes.

Q. And, as of August of 2014 neither By-Law nor police laid any charges because of any noise disturbances against the Doolings, correct?

A. Yes.

Q. All right. Thank you. In fact, if you'll turn to Tab 1 of the large book at page 117, which I hope is a....

THE COURT: Exhibit 1?

MR. BATTISTON: The large book, Your Honour.

THE COURT: Exhibit 1?

MR. ELLIS: Exhibit 1.

MR. BATTISTON: Sorry?

THE COURT: Exhibit 1.

MR. BATTISTON: Q. Exhibit 1 yes. Page 117.

Sorry that letter - if I can have that entered as the next exhibit please.

THE COURT: Yes, yeah, I was going to ask you that.

So, this will be Exhibit Number 4.

MR. BATTISTON: Yes.

THE COURT: Ms. Fiuza's letter dated August 13, 2014.

EXHIBIT NUMBER 4: C. Fiuza's letter dated August 13, 2014 - produced and marked

MR. BATTISTON: Q. So, at page 117 Ms. Fiuza we have an e-mail sent to you by Nicole Papkee, is that correct?

A. Yes.

Q. And, as of that date you were advised that, we - being the By-Law Department of the City of Cambridge - will no longer have by-law officers responding to your noise complaints, is that what e-mail says?

A. Yeah, they temporarily stopped at....

Q. Yes or no?

A. Yes.

Q. All right. Thank you. It says,
[As read] We have been to your residence on over
thirty occasions this past year and have not
found there to be any violations of our noise by-
law.

Is that correct?

A. That's what they say, yes.

Q. And then if you can turn to page 290 of Exhibit
1. This is an e-mail from Chris Neilson. You remember who he
is, don't you?

A. Yes, I do.

Q. In an e-mail dated February 17th, 2015 because he
was referring to the - how many e-mails, five hundred e-mails
that you sent. Many to the By-Law Department, many to police, is
that how many there were Ms. Fiuza? Five hundred e-mails more or
less?

A. I can't, I don't know.

Q. I know there's just so many.

A. Yes.

Q. That we've spent a day and a half going through
and do you recall Mr. Neilson telling you,
[As read] I appreciate your intentions to be
thorough by forwarding me the updates relating to
your experiences on a daily basis.

Do you remember that?

A. Yes.

Q. And he says, while you are free to continue to
forward them to me, I notice that on this last e-mail you've
concluded the e-mail by stating - some of this is redacted and I

don't know why or by whom. This is complaint e-mail for this evening. Oh, I'm sorry that's emphasis on what you - what he wants to point out to you and he says that,

[As read] Please be advised that for my purposes and by extension the Waterloo Regional Police I cannot receive complaints of an on - in progress incident by e-mail. I am happy to receive updates however I will not consider them to be complaints.

Is that what that says?

A. Yes.

Q. So, when you were writing e-mails from this point on you knew you weren't going to get a response?

A. I already knew that.

Q. Oh, you knew that.

A. There's no process in the City of Cambridge for noise complaints.

Q. So, all these e-mails were entirely self-serving, right 'cause you knew that you weren't going to get a response?

A. It was research based on other Cities who had detailed by-laws that suggested....

Q. Research?

A. Research and advised....

Q. Your research?

A. Well I looked up other cities, so other cities....

Q. Hold on, hold on, hold on.

MR. ELLIS: Your Honour, I think that if he asks a question she should be entitled to answer.

MR. BATTISTON: Well I'm going - hang on, let me ask you a question.

THE COURT: Everybody stop talking over one another. Thank you. Your answer was research based on other cities' by-laws.

THE WITNESS: Other cities by-laws and Ms. Regan Camou(ph) who is a 911 dispatcher for the City of Hamilton suggested I maintain a log about the incident.

MR. BATTISTON: Q. That's your sister-in-law?

A. My brother's fiancé.

Q. Brother's fiancé? So, she's involved in police work as well?

A. Yes, she is.

Q. All right. She's family, almost?

A. Almost, yes.

Q. All right. And, we've heard your brother had a few things to say about all this stuff that he contacted his police buddies at the City of Waterloo and tried to get them to do something?

A. He did but unfortunately the way Hamilton handles noise disturbances and the way Cambridge handles it are two separate ways.

Q. Oh, I thought a disturbance is a disturbance?

A. No, Cambridge's by-law is very vague.

Q. Cambridge's by-law is very vague, wow. What authority do you have to say that?

A. I just based on what I've looked at other cities. It's a one-page document and compared to other cities where I've seen other cities.

Q. So, the by-law - so are you suggesting that the by-law officers that were involved in coming to your house on I don't know how many occasions, Shaun Elliott, Chris Dewar(ph), Ryan Ashley. When they said that they experienced no noise that

they considered to be a disturbance, weren't they in a better position to judge than you were?

A. In my opinion they were going based on opinion. They did not do any due diligence. There was never any decibel metres to come into test assess it. Chris, By-Law officer Chris had advised that they did not have a lot of training. We had that conversation when he first attended on the day that I wrote my willsay statement and I asked what kind of training he had. He advised he did not have a lot of training. As a matter of fact, By-Law officer Ashley, Ryan Ashley had to come to help assist him in the situation.

Q. So, you know better than the by-law officers?

A. No, I'm not saying I do know better.

Q. So, all right. We'll get to that, interesting. So, you're saying that all the by-law officers were inexperienced?

A. Well what I'm saying is the way they are assessing it in my opinion is when I research other by-laws, they assess it inside a home. By-Law is assessing it outside which I don't know why because we don't live outside. The noise complaint is inside our home, not outside Mr. Doolings' house at 536.

Q. So, are you saying that when you called and made these multitude of complaints to the By-Law Department and all these officers came to your house that they never entered the house to hear what you were complaining about?

A. They entered, sat - stood at the door and went a bit into the living room. They never went into the kitchen with the exception of Shaun Elliott; never went up the stairs.

Q. You sure, they never went into your house to listen?

A. I didn't say that. I said they didn't go through the house to assess the entire situation.

Q. But they came into your house?

A. They walked in and stood around the door.

Q. I'll get to that, yeah and they actually listened to hear what you were complaining about?

A. For about five minutes, yeah.

Q. And, still no charges, right?

A. Yes.

Q. Okay. E-mails, again I commend you because I've never seen this kind of diligence for this kind of a situation, but you're employed by a temp agency as a data clerk, aren't you?

A. Customer service, administered as a data entry clerk, yes.

Q. Data entry clerk?

A. Well right now I'm doing customer service.

Q. But you - my clients were doing their due diligence and they found on social media because I don't know how to do this stuff postings for yourself in experience with Kelly Temp Service - that's a temp service right?

A. Yes, and Office Team.

Q. And Office - right Office Team...

A. Yes.

Q. ...and one of those responsibilities include coordinating data collection and updating records.

A. Yes.

Q. So that's what you do when you're working?

A. Right now, it's not what I'm doing in my job but yes that is one of my assignments if I get assigned it.

Q. We're talking like 2014. I can't remember what I was doing then either.

A. I can't tell what I was doing....

Q. So, we'll have to put that into context but these dates include 2014, Kelly Services, a wide range of responsibilities such as data entry, right? Is that accurate?

A. Yeah.

Q. So, in other words if I was gonna, I don't know, write some by-laws on the side after I'm finished doing my day job, I could be pretty good at it because I think I could be because I'm a lawyer, right? You agree?

A. Yeah.

Q. So, if you're a data entry clerk by your job you'd be pretty good at preparing e-mails like the ones we've seen produced for this matter, isn't that correct?

A. I have no problem writing-up an e-mail, no I don't.

Q. What's that?

A. I have no problem writing an e-mail, no.

Q. No, I guess not or doing 500 of them.

A. Well when you're being disturbed that you are, but you can't do anything else....

Q. Right.

A. Yeah.

Q. You doing that at work?

A. No.

Q. You sure?

A. Yes.

Q. All right. So, this temporary - these temporary placements don't keep you busy on a fulltime basis, I assume?

A. No, one's a nine to five. You come home and then you've got the rest of the evening off.

Q. Hold on at that time 2000 - October, sorry February 2014 to February 2015 you're saying you went to work every day.

A. Not every day, no. I had some down time.

Q. No, you didn't. It was temp?

A. Yes.

Q. Whenever you were called?

A. Yes.

Q. All right.

A. But sometimes assignments are one week and sometimes assignments go up to eight months.

Q. Yeah. So, a lot of it was data entry?

A. Actually, at that time I was also doing customer service.

Q. And, you've lived in a house with your parents all this time?

A. No, I have not.

Q. Oh, where did you live when you weren't living with your parents?

A. I'd gone away to College to Etobicoke and I had stayed up there for about twenty years and then I came back in about 2010.

Q. Oh, I see.

A. So, I had moved up in Etobicoke and Mississauga.

Q. What's that?

A. I lived up in Etobicoke and Mississauga for about twenty years.

Q. Were you living with someone else then?

A. No, I had an apartment on my own.

Q. Oh, I see and this house that you live in or lived in with your parents from 2010 is a semi-detached house.

A. Yes, I grew up in the house also.

Q. You?

A. I grew up in that house also.

Q. Oh, all right, fine. I guess we're not interested in what happened before 2010 but as at 2010 you were back to live with your parents, correct?

A. Yes.

Q. And do you know as I've been told that the party wall between houses is a masonry cement block party wall?

A. Yes.

Q. All right. So, there's no complaint that the house wasn't constructed properly as I gather?

A. Well, we've never had issues prior to this.

Q. Right, and there's no complaint that there are any modifications to the house that made your side more prone to noise?

A. No.

Q. So, you've got a wall separating two residences. Do you expect noise to emanate from one side to the other in a situation like that?

A. You'll get certain noise but not ongoing bass noise like we had with the Doolings.

Q. I'm not asking that. I know about the - believe me, I've heard you talk about ongoing bass noise. I want to know do you expect noises to be transmitted through that wall from one side to the other.

A. You'll get the occasional noise and subtle noise.

Q. People have to live, don't they?

A. Yeah. We're not complaining about that.

Q. And you expect - are you more likely to hear noises during the day as people are carrying on their lifetime activities - everyday activities?

A. Yes.

Q. All right. So, when a family moves in next door with a small child you expect to hear some noise, don't you?

A. If the child's yelling and making a noise, yes.

Q. Of course, is that bothersome to you as well?

A. No.

Q. Really?

A. It's only if a child's yelling you don't get a lot of that....

Q. How about playing on your front lawn?

A. No, we've got neighbours on both - we've got kids on both sides.

Q. That doesn't bother you?

A. Well if they trespassing and hitting our car with the ball.

Q. Trespassing - right kids - kids trespass. They do that - they do that sometimes I know but when the Doolings moved in in February of 2014, you had some incidents right off the bat, didn't you?

A. Well with just with the music, yes.

Q. What's that?

A. With the music, yes.

Q. And you started banging on the walls?

A. I had on two situation as a hint of kind of turn it down, I banged on the walls. By-Law brought it to my attention. I've never done it.

Q. So, it says here two to four times you've done it. So more than two or three times. Two to four times.

A. Two to four times.

Q. Maybe five to six?

A. No.

THE COURT: Where are you reading that from?

MR. BATTISTON: Look at page - I've got an e-mail. I don't have a number on here. July 6th, 2014, sorry for what page I don't have a number.

THE COURT: I did see a reference to that in the Freedom of Information file, but I wasn't sure if you were taking it from there or somewhere else?

MR. BATTISTON: Yeah, you know what? Hello Shaun, well this is your e-mail Ms. Fiuza and I'll be glad to submit it as a, as an exhibit because when I....

THE COURT: Is it in book 1?

MR. BATTISTON: You know what, I don't know.

THE COURT: Well are you sure it's dated July 6th?

MR. BATTISTON: July 6th yeah, that's one.

THE COURT: I have....

MR. BATTISTON: You're looking in my book.

THE COURT: I have - I do have an e-mail from Mr. Shaun Elliott...

MR. BATTISTON: Why am I missing one?

THE COURT: ...to- I'm assuming Ms. Fiuza but it's been blocked out.

MR. BATTISTON: So is mine. I'm content to deal with this as a separate exhibit then, Your Honour because - let's identify this e-mail as an e-mail from you to Shaun Elliott I presume, Ms. Fiuza?

THE WITNESS: Yeah, that's my e-mail.

MR. BATTISTON: Q. And, you'll agree with me at paragraph 3 it says,

[As read] Third time they did not answer the door. Yes, will admit I did bang on the walls two to four times just two, three bangs at a time to let them know that it was too loud, they did not do anything with the music. I started calling By-Law to....

Is that when it started July 2014?

A. No, that - no that was regarding a situation after that. No, that started in February when they moved in. I would bang on....

Q. You started by banging on a wall?

A. Well I did it two to four times when I banged three times just to give a hint.

Q. Yeah, good way to welcome neighbours into the neighbourhood, don't you think?

A. That was after knocking on the door and they refused to answer the door and By-Law said that I could not do that, and I'd never banged on the door - the wall again.

Q. Yeah, I get it.

THE COURT: All right so that e-mail is Exhibit Number 5.

MR. BATTISTON: Yeah.

EXHIBIT NUMBER 5: E-mail from C. Fiuza to S. Elliott - produced and marked

MR. BATTISTON: Q. You know - and you knew at the time that Mr. Buonvivere and Mrs. Buonvivere live in Toronto, don't ya?

A. I do now. I did not know at the time.

Q. You did not know then?

A. I was until I was told by the By-Law officer. No, I was not aware of that situation. I was not aware of who bought the house.

Q. Interesting. So, when you started communicating with Mr. Buonvivere where did you think he was coming from?

A. Well once I was given his number, I saw that it was a Toronto number but prior to that I was not aware of that situation.

Q. I see so page 1 - now I'm going to look at - I'm going to start referring to book 2.

THE COURT: That's Exhibit 2?

MR. BATTISTON: Yeah, Exhibit 2, page 1.

THE COURT: Under Tab 3?

MR. BATTISTON: Yes, yes.

Q. So, this is the first notation I see of a complaint. March 9, 2014, is that accurate Ms. Fiuza?

A. Yes. I don't know the date off the top of my head, but I did not start calling....

Q. Did you want to put the book in front of your client, Mr. Ellis.

THE COURT: Did you say March 9th, 20...

MR. BATTISTON: I see March 9th, yes.

THE COURT: Okay, my page 1 refers to February 21, 2014.

MR. BATTISTON: Your page 1.

THE COURT: Yeah, under Tab 3 in book 2.

MR. BATTISTON: Let me straighten this out. I have page 1 up here.

THE COURT: I don't even have a March 9, 2014.

MR. BATTISTON: How come I have them?

THE COURT: But you do?

MR. BATTISTON: I do. Sorry, go to By-Law.

THE COURT: We're looking at By-Laws.

MR. BATTISTON: By-laws, by-laws, by-laws.

THE COURT: Okay, Tab 4 in the by-law documents starts with February 22nd.

MR. BATTISTON: I've got it.

THE COURT: I've got March 9 on page 2.

MR. BATTISTON: Yeah, okay but the numbers - okay sorry go to Tab 4 corrected.

THE WITNESS: Yeah, I don't have book 2 up here.

THE COURT: Do we have a book 2 for the witness please.

MR. ELLIS: Unfortunately, I have a whole pile of sticky notes in it. I'm hesitant to remove.

THE WITNESS: That's okay I'll just - I'll be okay.

THE COURT: Well, that's not the point whether or not you're going to be okay. I have sticky notes in mine too because I read it during the break.

MR. ELLIS: Just a second, Your Honour, I'll have them all out.

THE COURT: Sure.

MR. BATTISTON: Q. Actually, while we're doing that, I've got some questions. I'll let you do that Mr. Ellis.

THE COURT: Okay.

MR. BATTISTON: Q. Ms. Fiuza go back to your book 1 there please and turn to page 411. I just started noticing....

THE COURT: I'm not there yet, sir.

MR. BATTISTON: Sorry, sorry Your Honour.

THE COURT: Okay, I'm in the middle of an e-mail string.

MR. BATTISTON: Yeah.

Q. It's the e-mail string that caught my attention Ms. Fiuza as I noticed the thought changes. So when you're doing these lengthy e-mails like are you stopping and going back to them and interrupting your work and changing the font? Why has the font changed?

A. I don't know. I was stressed I would just be typing. Sometimes I would be doing these on my phone so 'cause as a situation would happen, I would update the e-mail.

Q. Why wouldn't the font continue the same? I think that's odd.

A. I don't know.

Q. Are these edited in any way?

A. No, they're not.

Q. 'Cause really this one for instance went to Mr. Ellis. Looks like it was done at different times. Look at page 411.

A. Well they are being done. I was putting something in at 9:30 p.m. At 10:51 I would be updating. I can't update 10:51 until I've gotten to that time.

Q. And, you changed the font for no reason?

A. The font is the last of my concerns.

Q. But this is done three days after the fact, right?

A. Well it could be why I was sending - I would do a week sometimes....

Q. June 1st and then you'd go back and think about what happened on May 29th, 30th, 31st?

A. No, I didn't do that.

Q. Well, you said you did it at different times.

A. Well as time was occurring so at 1:00 p.m. I would update my e-mail. When you come to 3:54....

Q. You're saying all those entries were concurrent with a notation entry?

A. As a time was happening at 3:54 I would put it at - that's what I would do 'cause I can't do an e-mail at 10:43 and remember what happened at 12:33.

5 Q. Ah, true and you happened to just change the font?

A. I wasn't concern with the font. Why the font changes....

10 Q. I have to be concerned. Turn to the next page 412. There's another indication. Not only does the font change but it changes from the heading to the entries. That's really unusual Ms. Fiuza. So, you're changing the dates on one font to a different font for the entry. That's really unusual. Nothing to say?

15 A. No.

Q. Okay. Page 423.

A. Sorry, what page?

THE COURT: 423.

20 **MR. BATTISTON:** Q. Boy, a full page and it goes back and forth. I find that really unusual for notes that were made about the same topics supposedly at the same time on July 1st. Is that when this e-mail was prepared?

A. No, it was sent on June 26th - sorry July 1st.

25 Q. I'm looking at July 1st. That's the date.

A. Yeah for 26, 27 and 28, so that's when I had sent.

30 Q. So, on July 1st you prepared this entire three-page e-mail.

A. No. As the time was occurring say on June 26th say the music would start, I'd come home from yoga, I would note it on my journal,

[As read] Came home, neighbours are sitting on the porch, daughter has not been seen. I hear no bass noise.

Q. Hold on, so you're telling me that you would start an e-mail on June 26th and leave it in the draft until July 1st when you pushed the button?

A. I was under a lot of stress. I may have forgotten to send it right away, yes.

Q. That's what happened?

A. I don't know.

Q. So, you can't explain how many days it took you to write this e-mail?

A. I'm lucky I even remembered when to drink or pee. I was under so much stress that....

Q. That's a little more information than I need.

A. Well, I'm just being honest sir.

Q. Interesting.

A. My priority was....

Q. Turn to page 459. There's a priority right now. In the middle of two e-mails then there's an entry in a completely different font which said, called dispatch, sent from Blackberry smartphone. How did that get there?

A. Probably because....

Q. That looks like a cut and paste job?

A. No, it's a re-send.

Q. It's a re-send?

A. You know when you send an e-mail and then you can re-send the same e-mail.

Q. Who redacted all these e-mails? Why are....

A. I was using the same e-mail to make it easier.

Q. Why are all these black marks on these e-mails?

A. For privacy, that's my e-mail address which I believe I have a right to privacy for my e-mail address.

5 Q. Not when you're involved in a lawsuit you don't. Why?

A. Police and By-Law remove confidential information.

10 Q. So, you have the same privileges as police and By-Law?

A. No, but I felt that....

Q. How do I know that you sent that e-mail?

A. Well my name's in front of it, Cesaltina.

15 Q. Well the recipient is never responding. How do we know you sent it, especially with this cut and paste look on this page 459. What the heck is that?

A. It's an e-mail sent then I reuse the same e-mail and forwarded and added to it.

20 Q. Well how come the note at the bottom isn't the same.

A. I don't have that technology background to explain that.

25 Q. You're just a simple little data clerk entering all these - making all these entries comprising about 500 e-mails, you can't explain why we have different fonts.

A. That's how you want to....

THE COURT: Sorry to interrupt one minute. The e-mail on the bottom of the page because there's two e-mails that page, correct?

30 **MR. BATTISTON:** Yeah.

THE WITNESS: Yes.

THE COURT: In the middle of the e-mail on the bottom of the page, within the same paragraph the font changes entirely.

MR. BATTISTON: Yeah.

5 **THE WITNESS:** Yeah, I don't know why the font was changing.

THE COURT: And then it changes back.

THE WITNESS: Yeah, I don't know why it was changing ma'am sorry. I wasn't paying attention to fonts.

10 **THE COURT:** Do you have a problem with your computer font changing when you're typing anything out?

THE WITNESS: With the Blackberry I did sometimes, yes.

THE COURT: Sorry Mr. Battiston for interrupting.

15 **MR. BATTISTON:** It's all right.

Q. Tab 4 on book 2 let's go over to that.

MR. ELLIS: Does she have book 2?

THE COURT: Have we got a book for the witness?

20 **MR. BATTISTON:** Q. This is - you know we kinda heard one side of a story up until now Ms. Fiuza so this is the other side or certainly another side which is the story that comes through the reports filed by By-Law officers and this one.....

A. Which page?

THE COURT: Page 2.

25 **MR. BATTISTON:** Q. Page 2, comes from Ryan Ashley. Now Mr. Ashley in the middle says,

{As read] That he explained the by-law to someone and advised by-law received the complaint regarding the banging.

30 Is that true?

A. That's when I guess....

Q. You were banging on the wall?

A. I had banged - yes that we had discussed the two to four times.

Q. And he must have come into your house because he says,

[As read] Very faint bass heard coming from 542 and spoke to the complainant.

Is that what happened?

A. When he came in based on his impression it was, he deemed not to be that loud, yes.

Q. He came in your house?

A. Yes, he stood at the door.

Q. Spoke to you?

A. Yes.

Q. The complainant, is you?

A. Yes.

Q. You were in charge of all these complaints, right?

A. Well my parents would be there sometimes. My mom was there and spoke to them sometimes.

Q. But they never phoned anybody, you....

THE COURT: Does somebody have a cell phone going off 'cause I can hear it up here?

MR. ELLIS: I can hear it too.

THE COURT: I mean I'm not imagining it.

THE WITNESS: I think it stopped wherever it was.

MR. BATTISTON: Q. That was very good in English by the way. So, in this case March 9th, 2014 is this the beginning? There was only one before that February 21st. If you turn back to page 1 Ms. Fiuza. So, the Doolings moved in on February 1st.

A. I think so, yes.

Q. Right?

A. It was in February.

Q. So, February 21st Craig Murray attends at 10:42.

A. What page are we on?

THE COURT: Page 1.

THE WITNESS: Okay.

MR. BATTISTON: Q. Page 1. So it's sometimes hard to understand who they're talking to because there are redactions here but it says here that,

[As read] Someone was seated at the kitchen table talking and they had a radio on at low volume.

So that would seem to be the Doolings, is that correct Ms. Fiuza?

A. I'm just probably talking about them, yes.

Q. They stated,

[As read] They had just moved in and their neighbour was constantly banging on their share of the wall.

See that?

A. I only did it two to four because there's no response there's no use banging on the shared wall.

Q. So, you were constantly banging, is that fair or is that exaggeration?

A. No, an exaggeration. I said it two to four times. I would go like this and there was no response.

Q. All right. Page 4. Mr. Elliott on March 29th, complaint received re loud music. So, at 8:03 spoke with property owner so, well I'm not going to ask you because the property owner is Mr. Buonvivero but at 7:00 p.m. - so this was

March 29th, 2014. So, you know what, to assist me Ms. Fiuza I printed out or I had Stephanie print out a 2014 calendar because I think it's relevant to know what days of the week we're talking about.

MR. BATTISTON: Can I have this marked as an exhibit, Your Honour?

THE COURT: Yes, Exhibit Number 6.

MR. BATTISTON: 2014 calendar.

EXHIBIT NUMBER 6: 2014 calendar - produced and marked.

MR. BATTISTON: Q. So, I show Monday - sorry March 29th, 2014 as a Saturday.

A. Yes.

Q. You agree, you see it there Mr. Ellis maybe you can assist your client. So, unless someone tells me otherwise, I see it as a Saturday and at 7:00 p.m. Shaun Elliott shows up at your house because of a noise complaint, is that correct?

A. Yes.

Q.

[As read] Music causing disturbance and while speaking with complainant...

He spoke to you on that occasion, did he not?

A. Yes.

Q. And, he was in your house?

A. Yes, 'cause we asked him to attend.

Q. [As read] And could faintly hear unit's bass.

Is that it?

A. If that's what he says.

Q.

[As read] And music volume at a reasonable level upon inspection.

See where it says there a couple of lines down?

A. Mm-hmm.

Q. I'm sorry, that's a yes?

A. Yes.

Q. So, if that is Mr. Elliott's opinion do you have a problem with what he concluded on that occasion?

A. I do 'cause it was not faint. The fact is that we were constantly listening to that and it was disruptive and it was hard to sleep with.

Q. I get it. Let me ask you the next question. Further down it says,

[As read] Insufficient evidence to proceed with noise by-law violation. Music at a reasonable level upon inspection semi-detached dwelling.

Do you challenge that conclusion?

A. No, it's a semi-detached yes.

Q. Insufficient evidence to proceed with?

A. Based on the by-law, yes.

Q. You don't challenge that?

A. Well they say it's insufficient but they didn't take - they just came in, listened to five minutes going I don't think it's that loud and then they would leave.

Q. Didn't do a thorough job?

A. Well because based on Cambridge's by-law....

Q. No, no, no. I'm looking at these words. Let me focus your attention. It says, music at reasonable level. Do you challenge that conclusion?

A. Yes, I do. I don't believe it was a reasonable level.

Q. On that occasion you do again?

A. Yes.

Q. All right.

A. If it was a reasonable level, we would not have been complaining about it.

5 Q. You don't - you're not seriously suggesting Mr. Elliott was inexperienced at the time, do you? Do you have evidence to that effect?

A. No.

10 Q. All right. Now that was March 29th. I still don't hear or see any entries, in fact no evidence, that any communication took place between you and Mr. or Mrs. Buonvivere about these incidents, is that correct?

A. At this point no.

Q. Thank you.

15 **MR. BATTISTON:** And if you go to - sorry, Your Honour. Another one of those for some reason I don't have a page number.

20 Q. I'll show you another e-mail from you, said to Dale Cobb, remember him? Noise complaint at 542 Elgin. Do you remember writing that e-mail to Dale Cobb?

THE COURT: And, this is something that didn't get into book 1 as well?

MR. BATTISTON: What's that?

25 **THE COURT:** This is another one that didn't get into book 1?

30 **MR. BATTISTON:** I'm not getting the correct page. Remember the first time I was here the pages weren't numbered Your Honour. I got kind of screwed-up with that.

THE WITNESS: I don't remember Dale Cobb but I'm sure....

MR. BATTISTON: Q. That e-mail? You don't remember telling him,

[As read] If the issue continues, I will file a complaint and will look for owner's information.

Do you remember that on April 7th?

A. No, I seen so much e-mails that...

Q. You don't remember that?

A. ...I don't remember that off the top of my head.

Q. When did you get Joe Buonvivere's telephone number?

A. That was through Shaun Elliott. He provided where he was going to set up an appointment for...

Q. For him to come.

A. ...him to come and try to address the issue.

Q. But before that you hadn't spoken to Mr. Buonvivere?

A. No, I haven't but I had....

Q. That happened on June 10th remember?

A. Yes. But I had asked By-Law officers to contact the landlord to advise them - whether they did nor not I don't know - to advise him of the situation.

THE COURT: Did you want to enter that e-mail as an exhibit?

MR. BATTISTON: Oh, well she said she didn't recognize it, so.

THE COURT: Okay.

THE WITNESS: Well if my name's on it. It doesn't mean I remember all the e-mails.

MR. BATTISTON: Q. Book 1, page 5 Ms. Fiuza.

THE COURT: Before we move to that can I see that e-mail that you just showed to the witness.

MR. BATTISTON: The last one, Your Honour the one that I ripped from my notes?

THE COURT: The one that she didn't recognize.

MR. BATTISTON: Oh, sure.

THE COURT: Because I didn't catch everything that you said it contained.

MR. BATTISTON: We can mark for identification purposes if necessary, Your Honour. Number 1, page 1 on Volume I, Your Honour. That's where it came from.

THE COURT: Oh, that's where it is?

MR. BATTISTON: It's with the e-mail, sorry not with the by-laws.

THE COURT: Oh, it is. Okay. Yeah, I see it. All right. Thank you.

CLERK REGISTRAR: Would you mark that separately?

THE COURT: No, no. We don't want that marked separately. It's already in.

CLERK REGISTRAR: Sure.

THE COURT: It can go back to counsel.

MR. BATTISTON: Q. So, Ms. Fiuza sorry let's deal with that document again. It's page one in your book 1. Can you confirm that you wrote that e-mail on April 7th?

A. Confirm I wrote it. I don't remember it.

Q. All right, no, that's fine. Probably can't go further with that.

THE COURT: Okay. So now we're going to page 5 in book 1?

MR. BATTISTON: Yeah, page 5.

Q. Now we're into May and an e-mail dated May 29th from you to By-Law Department. First line says,

[As read] It looks like they are still playing music but it is very faint that I almost do not hear it.

Did you say that at the time Ms. Fiuza?

A. Yes, there are times when the music was it was so faint....

Q. I'm just asking if you said that at the time. I don't need an editorial.

A. Yes.

MR. ELLIS: Your Honour if he's going to ask a question, he should let her finish the question.

THE COURT: Well you want her to finish the answer. Well he's asking her basically yes and no questions and what she's doing by giving a big long explanation for everything is repeating her evidence in-chief and I think that's entirely unnecessary. If it's a yes/no answer it's a yes/no answer.

MR. BATTISTON: Q. Ms. Fiuza the next line says,

[As read] I would like this documented and also report that Joe's our landlord.

So, is it fair to say as at May 29, 2014 you had not spoken with Mr. Buonvivere yet?

A. No.

Q. And, you don't know what - whoever this e-mail to did with respect to your request or reported to Joe, do you?

A. No. No.

Q. No. Thank you. So, you said that Mr. Buonvivere attended on June 10th, is that correct?

A. Yes.

Q. That shows up on page 21 of your book 1. Page 21 if you can't find it.

A. Book 1 or book 2?

Q. Book 1. Right?

A. Yeah, yeah, correct.

Q. So, this is Thursday at 5:30 on June 12th.

THE COURT: Are you look at the top one or the bottom one?

MR. BATTISTON: The top one is - if you were looking at page 21 which I hope is correctly numbered.

Thursday June 12th at 5:26 p.m.

Q. Ms. Fiuza, is that correct?

A. Yes.

Q. That e-mail at the top?

A. Mm-hmm.

Q. And, at that time - at that time of the day on a day in the summer or late spring, the music playing was disturbing to you, is that what you said?

A. Yes.

Q. To us or to you?

A. To my family.

Q. So, you were home at 5:30 doing what?

A. 5:30? I would have been having dinner and also unwinding on probably to do homework or to watch tv.

Q. At 5:30 this is disturbing to you. What kind of music was playing, do you know?

A. It's just the....

Q. I heard that, right. Because, you have recordings of that right?

A. Well I tried....

Q. The way you were banging on that, on that counter that's very audible to me, is that how you represented the pounding [...pounding on table]?

A. Yeah.

THE COURT: All right, I don't think we need to keep doing that.

MR. BATTISTON: Q. All right. Thank you. So, the bottom e-mail says, Shaun had been over on June 11th, so just as a matter of accuracy, is that correct too? It was Wednesday June 11th that they were there 'cause you said June 10th?

A. I don't have my days memorized but maybe Shaun was over again on June 11th. Could have been....

Q. How many times did Joe come over?

A. Joe?

Q. Yeah.

A. He was only over the once - that I know of that was set up was the one time.

Q. And this is the one that Shaun had been over on June 11th with Joe the landlord. Just a little slip there it wasn't June 11th; it was June 10th, wasn't it?

A. I don't have the dates memorized but it was in June, so yes.

Q. Oh, okay. That's fine. So, here it says, Joe the landlord tried to assist to resolve the issue. Is that what he did?

A. Well they had gone over to Andrew's house, yes.

Q. Did you go there?

A. No.

Q. Okay. So, you don't know what he did?

A. No, I was just informed by Shaun Elliott what steps they had taken afterwards. He sat in my house after.

Q. There were positive steps taken to try and deal with your complaints, is that correct?

A. Well based on he said they were going to try and do some steps to try and resolve the issue, yes.

Q. And they did. And they did do that. You have no reason to question that they did?

A. To my knowledge no I don't. I'm not aware of the steps they took.

Q. You're not?

A. Aware of the steps...

Q. I see.

A. ...that were taken because the issue continued.

Q. And this is June 12th at 5:03. It's the same complaint. So, this e-mail preceded the one above, correct? Where you're complaining about music is an issue at 5:03 - 5:15 p.m.?

A. Yes, and then I followed-up with - we sent this e-mail.

Q. What's that?

A. And then I sent another e-mail, yes.

Q. Okay. Were you recording these things at that time?

A. In June, no.

Q. Were you taking decibel readings at the time?

A. No.

Q. Did you hire a professional to assist you to prove or to establish evidence that would support what you're saying about the music?

A. No. I had interviewed some but we had not....

Q. Didn't do it?

A. No, because my parents needed to leave their house and they didn't want to.

Q. All right. So, June 12th, this was after Joe had attended and I don't see anything here that you called him. So, you didn't call him, did you?

A. I had asked the By-Law officers to call him.

Q. Oh, not according - is this what your - now you recall that?

A. Well on numerous occasions I did.

Q. I don't see anything here about that.

A. It's because I didn't write it down.

Q. I'm sorry?

A. Because I didn't write it down.

Q. You remember that today that on June 12th you called Joe?

A. I didn't call Joe. Did I say I called Joe?

Q. You recall telling the By-Law representative to call Joe.

A. Well the only time I called....

Q. I don't see that here.

A. It's not written down. The only time I attempted to call Joe was when I could not reach By-Law. So, I think I called him two or three times only. It was not a positive experience and I did not....

Q. Let's just, just, we were dealing with a very specific point Ms. Fiuza. You said you tried to call Joe. I don't see that here.

A. Okay. I didn't say I tried to call Joe on this day. I said I asked the By-Law officers to call Joe.

Q. To call Joe.

A. Yes.

Q. I don't see that on this e-mail either.

A. Because I didn't write everything.

Q. You didn't write everything down did you?

A. Well I didn't write that down because I know - I didn't feel it was important.

5 Q. Better still today is February 27th, 2018 you have a recollection that on Thursday, June 12th you asked Shaun to call Joe. Is that what you're telling us today?

A. I don't know exactly on that day if I asked him to call Joe.

10 Q. Okay so....

A. On numerous occasions...

Q. So, the answer's no?

A. Exactly on that day no I cannot tell....

Q. Thank you. Turn to page 24 Ms. Fiuza.

15 A. Book 1?

Q. Book 1, yes. So, this is at 5:30 p.m. on a Monday and you said, you would like to have called Joe - or you would like to have Joe notified 'cause you're writing to who? Shaun?

20 A. It went to By-Law which is a continuation of....

Q. I can't see who you wrote it to because it's kind of a funny notation.

A. It's on a continuation. It's page 3 of 3.

Q. So, this was to By-Law? Somebody at By-Law?

25 A. Yes.

Q. And, do you know if Joe was notified on that date?

A. They did not communicate that back, no.

30 Q. So, so far, we have his attendance on June 10th, right? That's all we have so far.

A. Well in June yes, there was an attendance, yes.

Q. All right, where Joe made attempts to resolve the issue, right?

A. Yes, well that's what I was advised, yes. I was not there.

Q. Page 28. This is an e-mail to Dale Cobb. Who was that, is he a councillor or something?

A. I don't remember who Dale Cobb is.

Q. You don't remember who he is?

A. No. I think he....

Q. You sent him an e-mail on July 2nd?

A. Yeah, I don't....

Q. So, July 2nd, 2014 was a Wednesday and I guess that's after the holiday of July 1st and you said, you're still waiting for the Mayor to call. Is that what you said?

A. Yes, I followed-up with the Mayor for assistance.

Q. Instead of calling Joe, you called the Mayor?

A. Yes.

Q. That's what that said?

A. Yes.

Q. And then you called the Tenant and Landlord Board?

A. Yes.

Q. To see if Joe can also do more?

A. Yes.

Q. You reached them, didn't you? You spoke to a guy there?

A. I have....

Q. Do you recall that?

A. Probably afterwards but the lines were busy on that day.

Q. Okay, yeah, we'll get to the Landlord and Tenant Board 'cause you recall what they told you?

A. No, I don't.

Q. You don't? Okay. Well, if I can direct your attention to the e-mail you've got at page 31 maybe this will help you recollect what happened on Friday July 11th at 11:30.

THE COURT: I'm looking at page 31 for me is July 4th. It's the last of an e-mail.

MR. BATTISTON: Okay, hold on. Oh, July 5th - July 4th at the bottom, Your Honour. Page 30.

THE COURT: Yeah.

MR. BATTISTON: Q. And, if you turn the page you said, called Landlords and Tenants and Joe needs to get involved. So that means you spoke to somebody, does that trigger any recollection for you today?

A. No.

Q. Don't recall what they told you?

A. No, I don't.

Q. Got it. Turn to page 32. Your e-mail looks like to Shaun Elliott and the Mayor. One, two, three, four, five paragraphs down.

A. I've got a different e-mail.

THE COURT: I've got a different e-mail.

MR. BATTISTON: Q. Oh yeah?

A. Yeah, I've got something from Shaun Elliott saying they forwarded this case to the police.

Q. I really don't understand, page 32.

THE COURT: I think the e-mail that you might be referring to is on page 34 in my brief. If it's dated Sunday July 13th?

100.

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C. Fiuza - Cr-ex.

MR. BATTISTON: Yeah, there's one at page 32, Your Honour, should be.

THE COURT: At page 32 it's got a one-line e-mail.

MR. BATTISTON: At the bottom....

THE COURT: At page 32 I have an e-mail from Shaun Elliott to Ms. Fiuza that is one or two statements, okay?

MR. BATTISTON: Oh, hold on. Can somebody show me....

THE COURT: Can you tell me the date 'cause I know there was a mix-up...

MR. BATTISTON: July 13, there's an e-mail, a long one that starts dated Sunday July 13th at 9:03 a.m.

THE COURT: Yeah and that's at page 34 of my brief.

MR. BATTISTON: 34?

THE COURT: Yeah.

MR. BATTISTON: Let me fix it.

THE COURT: And that's to Shaun Elliott and to the Mayor and to By-Law.

MR. BATTISTON: Yeah, that's the one. That's the one.

MR. BATTISTON: Q. One, two, three, four, fifth paragraph down Ms. Fiuza it says,

[As read] Also in the future at such times I will be calling Joe to address the issue. If I can be awakened to such low music, he can deal with the issue as he is the one that has brought this issue into our home.

Is there a problem with bringing the family into rent someone's house Ms. Fiuza, is that....

A. No, there is not.

Q. There is not, right?

A. No.

Q. Family with a child. They had one daughter at the time, right? Young couple?

A. You didn't even hear those babies cry to the wall.

Q. You can't?

A. No, you didn't. Never heard those babies cry through the wall.

Q. 'Cause the twins came after?

A. Yeah but you never heard the twins. Ever heard them cry.

Q. I don't know. I wasn't there.

A. Never heard those twins cry.

Q. Why are you saying that? You didn't say that in any of your notes.

A. No, it wasn't an issue.

Q. Right.

A. We were just addressing the bass.

Q. People have kids, right?

A. Sorry?

Q. People have kids.

A. Yes.

Q. People have young kids that watch tv and play video games?

A. Our current tenants have kids.

Q. Right.

A. Yeah so, they're not a problem.

Q. So, you have no problems with the current tenants? Zero, never complained about noise violations?

A. Well, not, we've never complained to By-Law, no.

Q. Oh, to them?

A. There's not - he's got a boom car.

Q. So what you're saying because....

THE COURT: Hold it. Don't speak over one another. Wait until the question's finished and then answer.

THE WITNESS: Okay.

MR. BATTISTON: Q. You have complained about noise to the present tenants, isn't that true?

A. I've asked them to address the boom car, yes.

Q. The boom?

A. He's got a boom truck. His truck has got speakers in his truck that go boom, boom, boom.

Q. Right.

A. I asked him to turn it down.

Q. Oh, that's cool. Oh geez okay well we'll come back to that one. More boom, boom, okay. Go back to paragraph 5, the middle sentence says,

[As read] As the landlord he is responsible for assisting with this issue.

So, you're writing to Shaun Elliott and making that statement on July 13th at 9:00 a.m., Ms. Fiuza. What did you expect him to do?

A. I'd asked him to follow-up with the landlord to keep him involved.

Q. What did you expect Joe as the landlord to assist at 9:30 a.m. on July 13th?

A. To help address the issue and address the bass noise and address the noise.

Q. How?

A. To consider all options whatever he may needed to do.

Q. What exactly were you talking about?

A. If he needs to ask them to turn it down or try to consider more options.

Q. You had Shaun Elliott there asking them to turn it down. What more do you want than a By-Law officer as an officer of authority with this particular thing? What did you expect Joe to do from Toronto?

A. Well he may need to come down if necessary.

Q. For what?

A. To try to address the issue.

Q. When the By-Law officer was already there dealing with it?

A. Under the Tenants law his tenants should not be disturbing the other neighbours.

Q. Really, where does it say that? Is that more research you did?

A. I don't have it in front of me.

Q. Well, what is the research you did?

A. I know when I lived in apartments. When I lived in apartments, I had to live within a certain reason that I was not disturbing.

Q. That's at the heart of the problem here, isn't it?

A. What?

Q. That you expected Joe to start termination proceedings with the Doolings, is that correct?

A. I expected him to do what was necessary. If it meant giving out notices, if it meant having a talk with them. If it meant coming to the point that that was what was needed 'cause I know on various conversations with the police and By-Law they said somebody would need to move.

Q. Well, I'm dealing with some very specific conversations so...

A. If that was necessary....

Q. I'm also very particularly interested in your conversation with the Landlord and Tenant Board and what did they tell you?

A. I don't remember. It's not documented.

Q. You don't remember. God. How much more important does something need to be? Did you research that issue Ms. Fiuza?

A. I spoke to somebody.

Q. Yeah, who?

A. I don't, I don't have it documented so I can't give you a name.

Q. You can't remember who you spoke to, when was it?

A. It was over four years ago.

Q. Right.

A. Three and a half, four years ago.

Q. Tough to remember things from four years ago? So, if I ask you if you remember what they told you, you have difficulty remembering?

A. Yes. I was under a lot of stress.

Q. I'm sure you were. July 13th, that was that e-mail I just referred you to. In the future I will be calling Joe. That was it; you didn't call him?

A. I did call him on a couple of situations and it didn't go well so I never called him back.

Q. Well that's not what you said here. Remember four years ago now, careful what you're saying 'cause I know your recollection might be a little foggy at this point.

A. At this time, I did not call him but....

Q. Correct. Thank you. Page 37, July 19th. This is a Saturday night at 11:20. Now this was after - so this was the date, the timestamp on the e-mail which then meant you had to sit down and type it and send it but regardless, you see what I'm looking at where it says, called Joe.

A. Yes, on July 19th.

Q. So sometime after 11:00 on a Saturday night you called Joe to deal with his tenants as no By-Law officer on duty and got voicemail?

A. Yes.

Q. Is that what happened on that occasion?

A. What it says, yes.

Q. And further down you said, music lower but can still lightly hear it, is that what that says?

A. Yes.

Q. Was that accurate, I mean you wrote that at the time?

A. Well yeah, it's low but you also get vibration.

Q. I didn't hear no boom, boom, boom?

A. No, you can....

Q. Hold on, that's not what that says.

A. It's lower, yes.

Q. I don't hear no boom, boom, boom, do I?

A. No, it's more of a thump, thump, thump.

Q. I don't see no thump, thump, thump there.

A. I didn't write it all the time.

Q. You didn't write it all the time? Oh, you forgot?

A. No.

Q. But you called Joe at 11:00 at night?

A. Yes.

Q. In Toronto thinking that he was going to do something for you when all you're complaining about is you can still lightly hear music, is that what happened?

A. Bass can be....

Q. Did it happen?

A. Yes.

Q. Thank you. On July 26th, page 43. Now you start using boom, boom, boom, right, there's one right there. You see it? But, it's not a straight-forward boom, boom, boom. It's muffled. Is that how you describe it in that e-mail?

A. It was like a muffled, boom, boom....

Q. It's a muffled boom, boom, boom?

A. I'm awakened. I'm groggy.

Q. Right.

A. Yes, but I'm hearing the boom, boom, boom come through the wall.

Q. Muffled, is that what that says?

A. Yes.

Q. So instead of that you're getting. Is that better?

A. No, that's not muffled.

Q. Oh, it's more muffle.

A. It's kind of more.

Q. That's not muffle.

A. Yeah, but it was....

Q. That's a sharp banging.

A. That's not a bang that's a thump.

Q. That's a thump. But, that's not a muffled thump with two fingers banging on....

A. You're still getting....

Q. That's not accurate?

A. No, it was louder than that.

Q. Did you record it?

A. No.

Q. Oh. Did you take a decibel metre reading?

A. No.

Q. You just woke up?

A. 2:20 I'm groggy, I'm on sleeping pills...

Q. Sure, you are.

A. ...I'm not functioning properly.

Q. Sure, you are and you called By-Law at 2:20 a.m. or shortly - was it before 2:20, I hope so?

A. Well it would have been 2:20 because by the time I'm writing an e-mail it would have been, yes.

Q. And then you sit down and write an e-mail at 2:20 a.m. You're groggy, can't make out what's going on but you sit down and type this e-mail which looks to me again that funny two font thing happening. When did you write this e-mail?

A. It was written at 2:20 in the morning.

Q. Why does the date look so funny at the top, why is July in small caps and it says 2:00 a.m.? Who wrote that?

A. I did.

Q. Oh, so you're inserting the subject and then it says the date which is an automatic timestamp only July is capital fonts, it's capitalized and then the print on the body of the e-mail is two different fonts. Were you groggy again and just hit a wrong font button?

A. I don't know.

Q. Can't explain it, eh?

A. No.

Q. But you called Joe and left a message?

A. Yes.

Q. Sometime at around 2:00 a.m.?

A. Yes.

Q. Thinking?

A. It's to let him know what's going on.

Q. Really? And, what's he going to do from Toronto?

A. He can make a phone call. They are awake.

Q. What's he going to do from Toronto, Ms. Fiuza?

Not much, right?

A. He's aware of the situation that that....

Q. How do you know?

A. I've left a message for him.

Q. You think he's waiting for you to call at 2:00 a.m. on July 26th?

A. No, but when he answers his phone, he'll have a message waiting for him.

Q. So, what's the point of calling him at 2:20 a.m.?

A. My sleep was disrupted and I was just....

Q. So, you had to wake up somebody and let him know.

A. No.

Q. No? You knew he wasn't going to answer the phone.

A. I'm stressed. I'm sleep deprived....

Q. And you had to reach out to somebody?

A. Yes.

Q. Got it.

A. For help.

Q. Turn to page 44. It's the same night. We're going backwards. At the bottom, it's an e-mail July 26th. I don't know who you're writing - two noise complaints. Why is that recipient line always different? Who you writing to here? What's noise complaints Monday to Friday. That the place where

you send e-mails where you don't know if he's going to be there to answer them?

THE COURT: Which e-mail are we looking at because....

MR. BATTISTON: I've got page 44.

THE COURT: Yeah. There's a variety of them on there.

MR. BATTISTON: Yeah, the one at the bottom, Your Honour.

THE COURT: The one at the bottom continues - is a continuation from page 45?

MR. BATTISTON: Yes, the one I'm concentrating on is right at the bottom.

THE COURT: But there's no from or to, that's my concern.

MR. BATTISTON: I have a from. It's blocked out.

THE WITNESS: That's my e-mail address.

MR. BATTISTON: Q. It's your e-mail, right?

A. Yes.

Q. And two noise complaints, Monday to Friday Shaun Elliott. You reading the same thing I am?

A. Well, it's two different names. It's Monday to Friday.

Q. Yeah.

A. Monday to Friday. It's one phone number to call for noise complaints.

Q. Well, it's not a phone number. This is an e-mail.

A. But it's what is set up on my phone.

Q. So, what's the point of sending it there?

A. Because the e-mail's the same.

Q. On a Saturday you're sending some - an e-mail that you know you're not supposed to?

A. No. The e-mail is under that heading because the phone number is also under that heading. So because I've got the phone number set for the Monday to Friday, the e-mail's also on that heading so I still need to send it to that at all times 'cause there's somebody that responds to e-mails; that's monitored e-mails that's not a By-Law officer.

Q. All right. So, all these e-mails in your book don't have responses. You saying you were getting responses to these e-mails?

A. No, I was not getting responses, no.

Q. You weren't?

A. No.

Q. Oh, and you knew if you sent an e-mail to this thing that says, noise complaints Monday to Friday, you knew you weren't expecting a response?

A. No, somebody would have responded to it.

Q. Eventually.

A. Yeah, 'cause somebody's watching the e-mails from what I was advised.

Q. But nothing that could have helped you with Saturday July 26th at 12:00 p.m.?

A. No, there's somebody on duty at 12:00 p.m. if they're on duty.

Q. You called the By-Law officers?

A. By-Law is on from 8:00 in the morning 'til about 2:00 to 4:00 in the morning.

Q. You knew their schedule pretty good at this point, didn't you?

A. That's what I was advised, yes.

Q. Right? So, on this occasion, this was July 26th, flip over the page and it says - hold on, go back, go back to the page - the page is page 44 so it's Saturday July 26th you're complaining at noon that you had just awakened up at 2:00 p.m. and did not get back to sleep until 4:00. Like are you complaining about nap time?

THE COURT: Where are we looking?

THE WITNESS: Which one are you looking at?

MR. BATTISTON: The e-mail bottom - page 44, right at the bottom, Your Honour.

THE COURT: Page 44 right at the bottom I have an e-mail sent at 2:11 p.m. I don't have something at noon.

MR. ELLIS: 46, Your Honour.

MR. BATTISTON: Go to 46.

THE COURT: 46, I have a variety of e-mails.

MR. BATTISTON: My book says 44, Your Honour.

THE COURT: Okay.

MR. BATTISTON: Sorry, if I can correct the reference.

THE COURT: I think the stream goes in my book from page 44 to 47 and unfortunately of course they're always backwards. So....

MR. BATTISTON: There's a page - if you're looking at 46, Your Honour the e-mail that I hope is the one that I now....

THE COURT: July 26th at 12:16?

MR. BATTISTON: That's it.

THE COURT: Okay.

MR. BATTISTON: All right. Sorry.

THE COURT: Page 46.

MR. BATTISTON: I can see your confusion. We'll have to do that on every e-mail because I have different page numbers.

THE COURT: I know. It's carried over from last time.

MR. BATTISTON: Got it.

THE WITNESS: Yes, it states that I was taking a nap here as I'd not slept well during the night.

MR. BATTISTON: Q. I didn't ask a question because we're now all looking at the same e-mail. Are you looking at that e-mail...

A. Yes.

Q. Ms. Fiuza 12:16 p.m. on a Saturday July 26th? Middle of summer, is that right?

A. Yes.

Q. You were lying down?

A. Yes.

Q. And you're awakened just after 2:00 p.m., so you're complaining about your nap time on that day?

A. Yes.

Q. Correct?

A. Yes.

Q. And, you were lying down sometime during that beautiful summer day and at the top of the next page you say, [As read] And you could hear their music in my room, no bass but music and light words.

THE COURT: Okay, well this doesn't make any sense. Your previous e-mails said you were awakened at 2:00 a.m. or 2:20 a.m. and then you're saying you had - you were awakened just after 2:00 p.m. and you didn't get back to sleep. You mean 2:00 a.m.?

THE WITNESS: I may have meant 2:00 a.m. on that one.

THE COURT: And, you didn't get back to sleep until 4:00 a.m.?

THE WITNESS: Yes.

THE COURT: Okay, so that's not correct what's in the e-mail.

MR. BATTISTON: Well the e-mail is....

THE COURT: Because you're sending the e-mail at 12:16 p.m.

THE WITNESS: Yes.

MR. BATTISTON: Q. So that was a mistake?

A. Well on the font here that would have been. Like I said I was typing and I was very stressed.

THE COURT: Well that's not a font issue. It's p.m. or a.m.

THE WITNESS: No, I know.

MR. BATTISTON: Q. Oh, okay well the reference at the top of the next page that you're writing at 12:00 p.m. was that current at 12:00 p.m. on July 26th that you were lying down and you could hear music?

A. Yes.

Q. So that was at 12:00 noon on July 26th you could hear light music?

A. It would be around that time where I send an e-mail.

Q. And, you're complaining about hearing light music on a Saturday in the middle of the summer?

A. I was....

Q. Isn't that just regular noise Ms. Fiuza?

A. When you're tired and you're sleep deprived.

Q. Right?

A. And you're getting constant bass....

Q. You just get a little sensitive.

A. It's a noise nuisance. It was just constant nuisance day after day.

Q. Nuisance is a legal word. Was it disturbing to you?

A. Yes, it was.

Q. Was it - did Shaun Elliott find it disturbing? Did you complain to him about this?

A. Did I complain about it?

Q. Yeah.

A. I put it down in an e-mail.

Q. Well did you get a response to this?

A. They did not respond to any of my e-mails.

Q. No, all right. All right. Page 45, an e-mail dated July 26th, 2014 at 1:50 p.m.

THE COURT: 1:50?

MR. BATTISTON: Maybe page 47, Your Honour. Mine is 45.

THE COURT: That's page 45 in my book.

MR. BATTISTON: 45? Good, good then we're trued up again.

Q. Okay, Ms. Fiuza do you have in front of you page 45?

A. 1:51 p.m.?

Q. Yeah. Saturday July 26th same day. 1:51 p.m. afternoon, correct?

A. Yes.

Q. Says, just spoke to Joe, so these are one of the few times you actually - actually this is the only time you spoke to him after June 10th, correct?

A. I don't know if it's the only time 'cause I have the dates remembered that I spoke to him.

Q. No, I know but here you said, just spoke to him so that recollection was fresh when you wrote this, correct?

A. Right.

Q. And he says,

[As read] He's doing nothing cause as per Shaun it is subjective and nothing can be done.

So, he told you that?

A. Those would have been....

Q. And you don't know when he spoke with Shaun except what you're being told here in this message, correct?

A. Mm-hmm.

Q. Is that a yes? You can't say mm-hmm. Is that a yes?

A. Yes.

Q. Thank you. Third paragraph down it says,
[As read] As per Shaun there's not really anything anyone can do.

Do you know anything that is the contrary of that statement?

A. Well the only thing Shaun advised....

Q. Well, hold on. This is Joe advising you and you say, I guess it is our problem. That's what you said in your e-mail, correct?

A. Based on the way it was being handled it was our....

Q. Did you say that in your e-mail? This is our problem?

A. From the way it's being handled, yes.

Q. Thank you. You didn't say it is Joe's problem.
You didn't say that?

A. No.

Q. Thank you. What he did tell you in the next
paragraph is that he accused you of harassing him and his
5 tenants, do you remember that?

A. Yes.

Q. When you were talking to the Landlord and Tenant
Board did, he - the person that you spoke with, did they tell you
that a landlord has to be careful about harassing his tenants, do
10 you know about that?

A. No.

Q. No, you don't. Okay, we'll get to that. Next
paragraph, Joe even told you that he advised Andrew that he was
willing to buy him a new stereo but they refused?

15 A. Yes.

Q. You can't quarrel against that. He tried,
correct?

A. Advised that by By-Law, yes.

Q. Oh, you were told that. Okay. So, at the bottom
20 in the next paragraph the first line you said, so I guess asking
Joe for help is not an option and after this date you never did
speak to him again, did you?

A. Well no because he wasn't willing to get
involved.

Q. Right. So that was July 26, 2014 so Joe was
25 dealing with Shaun. Shaun had been to your house. Shaun had
heard - been in your house to hear the noises that you were
complaining about and you will agree that as of July 2014 there
hadn't been a charge against the Doolings, correct?

30 A. Correct.

THE COURT: Mr. Battiston?

MR. BATTISTON: Yeah?

THE COURT: Can you let me know when it might be convenient to you to take a morning break, or an afternoon break, sorry.

MR. BATTISTON: What time is it?

THE COURT: It is ten after three?

MR. BATTISTON: We could take a break.

THE COURT: Okay. All right.

MR. BATTISTON: I've got a new folder so that means we're moving onto something....

THE COURT: All right. Then let's take a fifteen-minute break.

CLERK OF THE COURT: All rise. This court will recess for fifteen minutes.

R E C E S S

(03:09:13)

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

(03:25:19)

CLERK OF THE COURT: Okay, we're on the record.

THE COURT: All right. Thank you and before we resume, I am going to caution.

MR. BATTISTON: Sorry?

THE COURT: Before we resume, I am gonna caution everyone once again no speaking over one another. When he asks a question, you listen to it and you wait for him to finish before you start talking and you listen to the question because the question will often just suggest a yes or a no answer. Not another monologue, not a repetition of your earlier evidence. Similarly, when you're answering, Mr. Battiston,

you're not to interrupt the witness. All right. Mr. Ellis, I see you've sent your clients home.

MR. ELLIS: Yes, I have and my witness. Just because my friend is - he's not going to get done today.

THE COURT: Yeah, no I didn't expect so. We'll deal with clean-up issues at the end of the day.

MR. BATTISTON: Book 3 has been tendered as an exhibit has it not?

THE COURT: Yes, it's Exhibit 3 actually.

MR. BATTISTON: Exhibit 3, oh.

Q. Book 3, Exhibit 3, page 6.

A. Which tab?

Q. Pardon?

A. Which tab?

Q. Tab 5. This is one lengthy e-mail Ms. Fiuza that you wrote on July 6th. Sunday July 6th, correct?

A. I've got a January 31st e-mail on page 6.

THE COURT: Yeah, I have that as well.

MR. BATTISTON: January?

THE COURT: January 31, 2015 e-mail. What e-mail are you looking for?

MR. BATTISTON: Is this book 3?

THE COURT: Yeah.

MR. BATTISTON: Tab 5?

THE COURT: Yeah.

MR. BATTISTON: I've got an e-mail July 6th with my number page 6.

THE COURT: Okay well we've got a problem once again with the documentation and the briefs.

THE WITNESS: Pardon...

THE COURT: Can you just tell - please. Can you just tell me what date it is you're looking for and I'll see if I can find it within my....

MR. BATTISTON: Right at the top it says, on Sunday July 6th.

THE COURT: Sunday July 6th.

MR. BATTISTON: 2014 11:18:20 a.m.

THE COURT: Okay. I have one at 3:40 a.m. and there's - oh, they're out of order. Okay they're out of date order. There is one that I have that says on Sunday July 6th, 2014 11:18 a.m. but it's got no e-mail heading. Is that the one?

MR. BATTISTON: No, it doesn't have an e-mail heading, you're right. It says, Cesaltina Fiuza wrote, hello Shaun.

THE COURT: Yes. Okay.

MR. BATTISTON: What page is that?

THE COURT: In my brief it's page 12.

MR. BATTISTON: Twelve?

THE COURT: Yeah.

MR. BATTISTON: Okay.

THE COURT: So, we're just going to have to muddle through because the briefs obviously are not the same.

MR. BATTISTON: That's fine as long as we can get all synced.

THE COURT: Yes.

MR. BATTISTON: Q. Page 12 Ms. Fiuza. That is the lengthy e-mail you wrote on Sunday July 6th, is that correct?

A. Yeah. That's what it looks like.

Q. Sorry?

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C. Fiuza - Cr-ex.

A. Yes. What it looks like.

Q. It's not just an e-mail but that's a long, long letter, isn't it? Two pages. Am I stating the obvious?

A. Yes.

Q. Second page at the bottom. No, I'm starting to see different fonts, no. Forget that. Turn back to page 12 at the bottom the middle of that paragraph the sentence starting, you and Joe came over on June 10th. See that?

CLERK OF THE COURT: Sir, would you leave the microphone tipped back up.

MR. BATTISTON: Up?

THE COURT: Yeah. It's - they're very, very sensitive and cause the reporters a lot of grief.

MR. BATTISTON: I thought they needed to be....

Q. Do you see in the middle of that sentence - the second last paragraph at the bottom?

A. Second last on page 13?

THE COURT: Page 12.

THE WITNESS: Page 12.

THE COURT: So, if you look up from the bottom if you look up about seven, eight lines on the right-hand side it starts, you and Joe came over on June 10th to see if we could resolve this issue.

MR. BATTISTON: Q. See that?

A. No.

THE COURT: It's on page 12 which is....

MR. BATTISTON: Q. Paragraph at the bottom and it's the paragraph above that. The last five lines.

THE COURT: Yeah. Do you see the large paragraph on the bottom of page 12?

THE WITNESS: What does it start with?

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C. Fiuza - Cr-ex.

THE COURT: It says Shaun.

THE WITNESS: Okay, he discovered that it was the speaker. Okay.

THE COURT: Yes, so it's that paragraph but if you go down.

THE WITNESS: Okay, no I found it.

THE COURT: You see it?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: Thank you.

MR. BATTISTON: Q. All right. Remember the discrepancy between June 10th and June 11th, well this time you say,

[As read] You and Joe came over on June 10th to see if we could resolve this issue.

You see that?

A. Yes.

Q. Confirmed it was the speakers and put pillows under the speakers and turned down the volume which seemed to help. On that day you're writing to Shaun, correct?

A. Yes.

Q.

[As read] You even sat in our living room and spoke to us after they made the changes and it could barely be heard. Even discussed with you that this was good and it was acceptable.

That's what you said on that day.

A. Yes.

Q. So, in other words Joe's efforts seemed to resolve the problem on that day, is that correct?

A. Yes.

Q. But this is after. This is July 6th. This is like almost a month later and you're summarizing the whole situation for Shaun at that time, isn't that right? 'Cause turn over the next page.

THE COURT: I didn't hear an answer. I didn't hear an answer to your question.

MR. BATTISTON: Q. You're summarizing everything as of that date, isn't that correct?

A. Just let me review the - looks like I'm summarizing a few things and some of the things that I've yeah, people that I've spoken to and things that have happened.

Q. Pretty lengthy e-mail. I think you're trying to summarize everything as of that date, isn't that correct?

A. Well, I've summarized a couple of things. Whether it's everything or not, I can't say that.

Q. All right well we'll get to some of those. So, turn over to page 13 in your brief and the second paragraph says, [As read] Then on Canada Day the music in the bedrooms was raised to a level that you walk into the bedrooms and you can hear music blaring through the walls.

Do you remember what time on Canada Day that was? I mean what a holiday in the middle of the summer? What are we talkin' afternoon?

A. It was probably in the afternoon, yes.

Q. That was a problem?

A. It was during the day.

Q. That was a problem?

A. What do you....

Q. That disturbed you as well?

A. Well, if I wanted to be in my room resting, yes.

Q. Resting on the afternoon of July 1st? Would you normally rest in the afternoon? Is that part of the problem?

A. Sometimes, yes. Not always, sometimes yes.

Q. Two times a week, three times a week?

A. In that situation considering I was sleep deprived. Rest at any time would have been greatly appreciated.

Q. Sleep deprived. Okay, let's go down to the third paragraph from the bottom. You started taking melatonin. So that was on July 6th. You said you started, correct? Is that what that says?

A. Yeah. Well that day I started taking melatonin to help fall asleep during - which did not help, yes.

Q. I could read that too but I'm asking you about the melatonin. You started taking it that day?

A. I don't know if it was on this day but I did start taking melatonin, yes.

Q. Started taking melatonin. Okay well when did you start taking melatonin?

A. I didn't document that exactly but I started, sorry.

Q. That's a non-prescription drug, isn't that correct?

A. Yes, it is.

Q. It's like a sleep-aid?

A. I don't know. I've never taken a sleep-aid so it's...

Q. Well that's what melatonin is; it helps you sleep.

A. Yes.

Q. That's what it is.

A. Okay.

Q. It's not a prescription drug.

A. No, it's not.

Q. You make reference to sleeping pills later on.
Those were prescription sleeping pills?

A. I was prescribed sleeping pills by my doctor,
yes.

Q. When were you prescribed the sleeping pills?

A. I'd have to look at my prescription.

Q. Well none of the documents here indicate who your
- that you have a doctor?

A. Like I said, I did not focus on my health. I
focused on my parents and I neglected and just carried on myself.
I was not focusing on my health.

Q. If you have to go to a....

THE COURT: Ms. Fiuza. Your evidence earlier was you
didn't go to the doctor.

THE WITNESS: That's what I - I didn't go and get...

THE COURT: You did not go to the doctor yourself.

You took your parents. That was your earlier
evidence.

THE WITNESS: I didn't go to address my issues. I
went and asked for sleeping pills.

THE COURT: Well, that's totally different than what
you said earlier today.

MR. BATTISTON: Q. Maybe just a little thing that
slipped your mind about going to a doctor to get a prescription
for sleeping pills?

A. Yes.

Q. Who was the doctor?

A. Dr. Kamala Smith.

Q. Oh, the same doctor?

A. Well she's our family doctor.

Q. She's supposed to be here today.

A. Was she?

Q. 'Cause I served a summons on her. Why isn't she here today, do you know?

A. I have no idea.

Q. Did she call you within the past three weeks?

A. No, she has not.

Q. Interesting. So Kamala Smith is your doctor as well?

A. Yes, she is.

Q. And she prescribed you sleeping pills?

A. Yes, she did.

Q. And she will have records confirming that?

A. Yes, she will.

Q. Interesting. You haven't produced any of those records, have you?

A. I wasn't focusing on my health.

Q. Even when I had a motion to require production of medical records including prescriptions for sleeping pills?

A. I cannot....

MR. ELLIS: Which, Your Honour he was dismissed.

MR. BATTISTON: Exactly. Of course, I shouldn't have asked that because it wasn't jurisdiction.

THE COURT: That's an issue I'll deal with in the context of this trial regardless of Justice or Deputy Judge Winny's decision because it's a matter of evidence and proving your case, Mr. Ellis.

MR. BATTISTON: Q. Okay so on July 6th, I don't see any notations here about adverse health consequences.

THE COURT: Are we looking still....

MR. BATTISTON: Yeah, the same two-page summary.

THE COURT: Okay.

MR. BATTISTON: Q. I don't see anything here about adverse health consequences to you or your father or your mother. I see the paragraph above the one I just showed you.

[As read] Being able to go to sleep at a reasonable time without struggling, taking naps and sleeping.

That pretty much summarized it at the time, did it not?

A. Yes.

Q. I did not see anything here about loss of weight for your dad, do I?

A. It's in the medical records.

Q. I'm asking you a question about this lengthy summary on July 6th, 2014. So, February, March, April, May, June we're now five months into the tenancy of this boom, boom, thump, thump, correct?

A. I would have been distressed.

Q. And, we're five months into the tenancy, are we not?

A. Based on - it was February to - could be, yes.

Q. I don't see anything here about your dad losing weight, do I?

A. Five months into the tenancy we were not addressing those issues yet.

Q. Addressing them?

A. Well they were starting to come up as time was building up. The issues were starting to come up later.

Q. So, what did your dad weigh in July of 2014?

A. You'd have to ask him. I don't have his weight.

Q. What did weigh in July of 2014?

A. 2014 before I had lost all the weight?

Q. Yeah. What did you weigh in July of 2014?

A. The exact - I can't tell you exactly what I weighed at that time but I know when my....

5 Q. You have recovered to your normal weight, is that correct today?

A. Yes.

Q. How much do you weigh today?

A. I'm at - around 240.

10 Q. 240. You're around or is that exact?

A. I don't weigh myself every day so it's around....

Q. And this is your normal weight?

A. Yes.

Q. So, in July of 2014 did you weigh 240 pounds?

15 A. Probably did at that time still yes.

Q. I see, okay. So that's the gauge. So as of July 6, 2014, you hadn't lost this weight due to the stress.

A. I did not notice that....

Q. Did you?

20 A. I don't know.

Q. You don't know what you weighed?

A. I weighed around 240.

Q. Right?

A. But I do not weigh myself on a monthly basis.

25 Q. I'm not asking you now. I'm asking you then. Weight was not an issue at that time correct?

A. Well I was overweight if that's what you're asking, yes.

30 Q. Okay but you hadn't started losing weight at this point.

A. Honestly, I don't know when I started losing the weight. I did not....

Q. I'll come back to that question. This was - I'm just asking you quickly here as of July. So you don't know so we'll come back to that later. But you did speak to the Landlord and Tenant Board. You see where it said that on the second page of this letter on the fourth paragraph. Funny how you didn't remember speaking to Dan. See where it says that?

A. Yes.

Q. I guess it was fresh in your mind when you wrote this summary on July 6th, correct?

A. Yes.

Q. Yes, and Dan briefly explained - sorry, you briefly explain the situation and he said that Joe could call to see what steps he can take to resolve the situation. Is that what he told you to do?

A. That's what I wrote down that's what I was told, yes.

Q. And did you tell Mr. Buonvivere that this is what the Landlord and Tenant Board said?

A. I don't remember 'cause....

Q. It's not written here so I don't know. You remember that now?

A. No, I don't remember whether I, no.

Q. The next sentence says,

[As read] Dan would not get into deals with me.

I'm not sure is that details maybe...

A. Probably details, yes.

Q. ...you wanted to say. But he said, Joe could do more. Is that it? That's all he said. Didn't give you any more details?

A. No, that's it.

Q. Did you ask that specific question to Dan, why can't he as the landlord terminate the lease? Did you ask that?

A. No, because I don't know what the rights are. He would have had to follow certain steps.

Q. Oh, okay did you ever inform yourself as to what the rights are?

A. Well yeah. I was....

Q. When?

A. I was once a tenant myself.

Q. Okay. So, you know.

A. Yes, but there's certain processes....

Q. What's the answer?

A. Well I know you've gotta do verbal, you gotta do written and you gotta follow-up processes and then....

Q. You who as a landlord?

A. Yes.

Q. So, you lived in a multi-unit residential building?

A. I've lived in apartments, yes.

Q. I see and you were - did you complain of noise in those situations as well?

A. No, I did not.

Q. With apartments surrounding three walls?

A. No, I had no problems with my neighbours.

Q. I see. So you never experienced those issues?

A. Not with bass noise, no.

Q. Not with noise disturbances?

A. Not constant....

Q. Correct?

A. Not constant noise disturbance. No, you get certain....

Q. I didn't say constant. I'm asking you if you had experiences while you were at tenant with noise issues in buildings?

A. Well yeah you get certain noises coming through walls.

Q. You're right. Let me be more specific. With noise issues involving the Landlord and Tenant Board?

A. No.

Q. Okay. So you never filed a complaint with your landlord when you were a tenant in a multi-unit residential building?

A. Never.

Q. Were you ever a landlord yourself?

A. No.

Q. And, you don't remember anything more that Dan told you?

A. Not other than what's been written down, no.

MR. BATTISTON: Your Honour, page 14 in the same volume.

THE COURT: Yes.

MR. BATTISTON: I assume you're looking at a letter to re: possible meeting to Mayor at Cambridge?

THE COURT: No.

MR. BATTISTON: No?

THE COURT: No.

MR. BATTISTON: Try page 8.

THE COURT: Try page 8. All right. Let me try page 8.

MR. BATTISTON: It's dated September 10th.

THE WITNESS: September 10th?

MR. BATTISTON: Yeah. I mean yes.

THE COURT: No, page 8's not going to work because that's - it might be page 7 though.

MR. BATTISTON: You're, hello Mayor Doug Craig?

THE COURT: No, hello Mr. Goodyear and Ms. Liggett who is a councillor at the City of Cambridge at the time. But we're looking for a letter to the Mayor?

MR. BATTISTON: An e-mail to the Mayor dated Wednesday September 10th.

THE COURT: Okay.

THE WITNESS: Twenty-two?

MR. BATTISTON: Should be early on in that - Tab 5 Your Honour is that, we're at Tab 5?

THE COURT: Yeah, I'm in Tab 5. Okay.

MR. BATTISTON: No?

THE COURT: Yeah, I think I have it.

MR. BATTISTON: Okay.

THE COURT: It is September 10, 2014 at 10:27 a.m.? That one?

MR. BATTISTON: Yeah, that's the one. What page is that?

THE COURT: That is actually page 22 e-mail to the Mayor.

MR. BATTISTON: Whoa - twenty-two and that follows....

THE COURT: These pages are really mixed-up.

MR. BATTISTON: Okay pages 22 and 23.

THE COURT: Okay.

MR. BATTISTON: Q. So, Wednesday September 10th 10:27 a.m. Ms. Fiuza, are you at work?

A. I don't know. Can't tell if I was working that day or not?

Q. You could possibly be doing this at work when you're working as a temp at a company?

A. No.

Q. So, you're home?

A. I may be, yes or maybe on a break that I was able to send it off.

Q. Maybe and this is your e-mail to Mayor Doug Craig. The first line,

[As read] I can see you have not responded to my request to speak with us with - speak to us with the issue that we are experiencing with noise from our neighbours.

Does this follow-up from the e-mail below on August 27th - 22nd Ms. Fiuza?

A. Probably which is why I used - yes.

Q. What's that?

A. Yes.

Q. So, September 10th you're telling the Mayor in the third paragraph,

[As read] We are no longer able to call By-Law for assistance as these people know they are not charging them or doing anything.

Was that the case on September 10th, Ms. Fiuza? They weren't calling you anymore or they weren't allowing you to call anymore?

A. Why it stopped for a little while and then I would go back to calling 'cause they had stopped and then they came back.

Q. Of course. Then on the last third line down - well last three lines of that paragraph. You start a sentence, [As read] We have found a way thanks to Long McQuade Musical Instruments to record what we are listening to and be able to play it back with the proper equipment as it is vibration noise which does not record easily.

So, this is where the recording starts?

A. Well that's where I got to the fact it would record half decent.

Q. And, did you hire somebody to do that?

A. No, it's not professionally recorded so it's not quality recording.

Q. And then you're telling the Mayor - this is in your e-mail to the Mayor.

[As read] It seems in Cambridge no one is familiar with the common law nuisances and neighbour disturbances.

Really?

A. Based on the by-laws and when I spoke to them that's what they use to tell us.

Q. You didn't have your lawyer or Mr. Ellis write this letter but you're telling the Mayor about common law nuisance?

A. Based on my research, yes.

Q. Did you get an answer to this letter?

A. No, I did not.

Q. Okay. Next line down you said in this letter, [As read] We spend ninety-eight percent of our evenings listening to boom, boom, boom, from the neighbours' bass.

Did you think that was a little exaggerated?

A. No.

Q. Ninety-eight percent of your evening?

A. There are weeks that it was....

Q. Ms. Fiuza, answer the question. That is an accurate reflection of what was happening on September 10th, 2014?

A. I would give it at least ninety percent and up, yes.

Q. At least ninety?

A. Well, if you're - every week. Want to average out all the weeks.

Q. What's the number?

A. Sorry?

Q. What's the number today?

A. Well we're not listening to boom, boom, boom.

Q. What's the number today...

THE COURT: No, what he meant is what is the number you're giving it today?

MR. BATTISTON: Q. I asked you if ninety-eight percent was an accurate figure?

A. There are days....

Q. You said it could have been ninety.

A. There are days ninety-eight percent would have been accurate.

Q. What was it on September 10th, 2014?

A. I couldn't answer that question.

Q. So, ninety-eight percent is not an accurate figure as you stated here?

A. For an everyday thing maybe not but it was accurate for certain days, yes.

Q. That's fine. That's fine. And again, here you didn't mention - well you say at the bottom, we have lost our right to nap and sleep properly. This was now September 10th. It didn't mention anything about adverse health consequences at this time, did you?

5 A. As you can see, I was asking to meet with the Mayor and he....

Q. You didn't say anything about it did you?

A. No.

Q. What?

10 A. No, I was waiting to speak with the Mayor.

Q. Seems some pretty important detail to throw in a letter like this don't you think? Do you agree with me?

A. It's important, yes.

15 Q. All right. And yet at this time on September 10th By-Law - Cambridge By-Law officers had not filed any charges against the Dooling's, is that correct?

A. No, they had not.

Q. What?

A. No, they had not.

20 Q. So Long McQuade sold you some recording equipment?

A. I bought some little recorder that they said had a good recording vibe that it didn't record to the level that I expected it to record.

25 Q. What did it record?

A. It just recorded very light. It didn't record accurately because it requires....

Q. Can't hearing anything on the recording, can you?

30 A. No, and you need to connect it to a subwoofer to try and get some....

Q. How about I connect it to this amplifier that's here in court?

A. You can try. It's not - I said it's not professional.

Q. Let's try.

THE COURT: Are we doing to do that now?

MR. BATTISTON: Yeah.

THE COURT: Okay.

MR. BATTISTON: Yeah, sure. Good time for that.

THE COURT: I see you brought technical assistance with you, Mr. Battiston.

MR. BATTISTON: Ms. DiBiase is an in-house techie. She is a brilliant assistant and she knows about this stuff.

THE COURT: Always find a very young person.

MR. BATTISTON: This stuff we save for the phone staff.

THE COURT: No, I knew what you meant.

MS. DIBIASE: Where would you like the amplifier placed?

MR. BATTISTON: Where we can hear it here. Put it up here. Can you reach it from your desk?

MS. DIBIASE: Not from my desk but I can....

MR. BATTISTON: Are we on? Careful when we turn it on.

THE COURT: And maybe Madam Reporter if you're having difficulty with the level let us know.

MR. BATTISTON: Exactly. There is - now I've sent this to Mr. Ellis which is the printout of the screen shot of the recordings that we were - were provided to us. Provided to us on the USB stick given to Mr.

and Mrs. Dooling. So this is going to be an exhibit. Mr. Ellis, you've checked the accuracy of this listing as far as how the files are listed and described?

MR. ELLIS: Yeah, I don't have the files.

MR. BATTISTON: But you had....

MR. ELLIS: I used that one.

MR. BATTISTON: Okay, so this is the one.

THE COURT: Okay so the printout is going to be Exhibit 7 and in terms of the USB stick do you wish to enter it as an exhibit?

MR. BATTISTON: Enter it as an exhibit, is that the USB.

THE COURT: Is it a USB?

MR. BATTISTON: It's a USB. Where is it?

MS. DIBIASE: It's in my computer.

MR. BATTISTON: It's in your computer?

THE COURT: Yeah, no then that's fine but I'm just saying for the purpose of the Court I think it's going to have to be filed.

MR. BATTISTON: I think we'll make it Exhibit 5?

THE COURT: Seven, seven together with this.

MR. BATTISTON: Okay, good.

EXHIBIT NUMBER 7: Printout of screen shot of recordings and USB stick - produced and marked

THE COURT: Okay, I've got the printout.

MR. BATTISTON: Q. So, Ms. Fiuza I have reproduced the file listings on this USB stick which were provided I think through Mr. Ellis to the Doolings and for some reason....

THE COURT: Do you have a copy for the witness, Mr. Battiston?

MR. BATTISTON: Oh, did I not give her. I have an extra....

THE COURT: I don't think so, no.

MR. BATTISTON: Sorry.

Q. And, just so I know these are the recordings that you yourself made?

A. I tried to make. I guess I didn't have the proper equipment.

Q. Are these the recordings that you made?

A. Yes.

Q. Okay and I gather that you picked the right time to make these recordings 'cause you wanted to catch him.

A. When it was playing, I'd be sitting - I'd be in the living room and I would start the recording so I would just take a certain thing 'cause I wouldn't be sitting there for five hours recording. I would just kind of take a small snapshot of the recordings.

Q. And you were told how to operate that mechanism?

A. I was....

Q. Was a hand recorded?

A. No, it's some fancy recorded thing to this day I still don't know what properly.

Q. Fancy. How much did you spend on the recorder?

A. I spent about \$200 bucks on it.

Q. That's fancy?

A. It was something I hadn't seen. I can bring it in next time if you....

Q. All right but you did confirm to By-Law officers and through e-mails. We've seen some of the e-mails. I have recordings that I'm taking to court, you said that didn't you?

A. Well 'cause I thought it was doing a better job recording them when it actually was.

Q. So, these are all the recordings and why then are the first one, two - the first nine date stamped January 11th, 2011?

A. May have been when I was fixing a date - putting the dates so....

Q. They have nothing to do with anything we're talking about here?

A. Well, they probably do. I don't know. They probably do but I just put in the wrong dates but maybe they don't and they were - I don't know what's on these recordings you'd have to...

Q. So, you didn't have a professional do it but this is the result of what happens when you did it on your own?

A. Yes.

Q. And these are all recordings that you were - you took while you were sitting in your living room?

A. Yes.

Q. Was the house quiet?

A. There are times I'd have the tv going in the background so you could record it with the tv going in the background.

Q. Some of these have a tv in the background?

A. There are times I had and other times yeah. Well if I was....

Q. But you could still hear. What did you expect to hear boom, boom, boom?

A. Well I thought bass because it's a vibrational sound I thought it recorded better and it does not record as well.

Q. Vibrational sound. Could you hear something that you could record?

A. Recording bass requires special....

Q. You're not an expert.

A. No.

Q. You can't even tell me what kind of hand recorder you were using. Could you hear sound that you wanted to record?

A. I could hear sound, yes.

Q. All right and that's what you tried to do?

A. Yes.

Q. Thank you.

MR. BATTISTON: I don't know. Stephanie or Ms.

DiBiase go down to the first one marked September 11, 7:04 p.m. What do we hear? Are we on?

MS. DIBIASE: I'll just turn it on.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: That's at volume 7.

CLERK OF THE COURT: Your Honour, in order to record that accurately I need that amplifier brought a little closer to the microphone.

THE COURT: Okay. How about at the podium?

MR. BATTISTON: I can hold it.

THE COURT: Or even at counsel table you could put it in front of your microphone.

MR. BATTISTON: Lots of extension cord.

CLERK OF THE COURT: Back it up.

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THE COURT: Back it up so we have no feedback. Is it possible to balance it on the bar? That'd be great, sure.

MR. BATTISTON: All right. Can we go back to that last one Ms. DiBiase?

THE COURT: What was that date again?

MR. BATTISTON: September 11th 7:04 p.m. 14.9 megabytes waveform.

THE COURT: Yeah.

MR. BATTISTON: Let's try that one.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Stop for a second.

THE COURT: It says 5:02 p.m.

MR. BATTISTON: Q. We have your words giving us a different time Ms. Fiuza, what's going on?

A. I might have been just fixing. When I was downloading them into another USB that I had to fix the dates. I don't know.

Q. Fix the dates? What do you mean fix the dates?

A. When you had to put dates in, whether the dates were being - I don't know it just....

Q. Did you take this recording on - recording on September 11th?

A. The recording would have been what was announced on the recording.

Q. And how do you know that?

A. Because I'm saying what I'm announcing on the recording.

Q. So, this is incorrect? The timestamp on the file itself?

A. It could be, yes.

Q. It could be.

A. Yes.

Q. Still don't know. But you did record this....

A. I did record which is why I spoke and said the date and time into the....

Q. Play it again.

MS. DIBIASE: From the beginning or just resume?

MR. BATTISTON: Go to the beginning again.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Q. Stop. Do I hear a bird in the background?

A. Yeah, we have birds in the house.

Q. Where are the birds?

A. They're in the basement.

Q. And I can hear them on this recording. Could you hear them?

A. Mm-hmm.

Q. How many birds have you got there?

A. How many birds have we got in the house?

Q. Yeah.

A. Over ten.

Q. You can hear the birds in the recording. Do you agree with me you can hear the birds in the recording...

A. Yes.

Q. ...that you took in the living room of your house.

A. Yes.

Q. Very faintly.

A. Mm-hmm.

Q. But I cannot hear music, do you?

A. Well it's not music I was recording. It was the
5 bass that I was trying to record.

Q. I cannot hear music on this recording Ms. Fiuza.
Do you agree?

A. No, I heard some faint bass. Very faint.

Q. Play it again.

A. I felt the vibration.

Q. Stop. We'll play it again. I'll turn up the
10 amp. The volume amp is now at 8.

A. Do you have bass on that that you can turn up?

Q. Turn up the bass. It is set at the 8, 9.

15 ...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Q. Stop it. It is what it is.

Let's move on. This is now September 11th. Go to the one that's
20 8.5 megabytes. Ms. DiBiase which is like....

MS. DIBIASE: Two down?

MR. BATTISTON: Q. Two down. Try that one. So,
hold on before you do. So that's timestamped 9:30 p.m. Is that
25 an accurate timestamp?

A. Probably not. It would be the recording - it
would be on the recording what exact time it is.

Q. Did you do it two hours later, two and one-half
hours later?

A. I don't know.

Q. Can't remember?

A. No.

Q. Let's hear what you say. Turn it on.

...AUDIO RECORDING IS PLAYED

5 **MR. BATTISTON:** Q. Is that - stop. Is that traffic
outside? Are you fronting on a busy street?

A. Yes.

Q. That's traffic I can pick up on this recording,
do you?

10 A. Mm-hmm.

Q. And I heard the birds.

A. Yes.

Q. Otherwise your house is completely silent.

A. No, if you've got the tv or other stuff going on.

15 Q. I can't hear a tv on the recording.

A. I didn't have the tv....

Q. You're sitting in the living room?

A. Yes.

Q. You didn't have it on?

20 A. I do sit in the living room without the tv on
sometimes.

Q. I'm asking the questions. So, you're sitting in
the living room without the tv on?

A. That day, yes.

25 Q. Catching them 'cause that sound is coming through
your wall.

A. Yes.

Q. And that's what you get?

A. No, that does not justify what we are getting.

30 Q. Is that the recording you made at the time?

A. It is the recording.

Q. Did you take a decibel reading of what was going on in your living room at the moment you were making the recording?

A. At that time, no '[cause By-Law did not recognize it.

Q. Pick a random book. Go to the first one for September 17th.

MS. DIBIASE: 115?

MR. BATTISTON: Q. Well oh yeah sorry - it says zoom zero 115 WAV. Yes, try that one.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Q. What's that subtle beeping in the background, Ms. Fiuza?

A. I have no clue.

Q. Other than that, some chirping of birds. Stop there for a second. Stop there for a second. Tab 5, page 8.

THE COURT: Page 8?

MR. BATTISTON: That letter from the Mayor was that page 22, Your Honour?

THE COURT: The letter to the Mayor?

MR. BATTISTON: To the Mayor, yeah.

THE COURT: It was page 22.

MR. BATTISTON: 22.

Q. Ms. Fiuza in that letter I'll refer you back to that letter. Bottom of the third paragraph you said,

[As read] Thanks to Long & McQuade instruments to record what we are listening to and be able to play it back with proper equipment.

Were you saying that you actually had recordings or had you not even tried yet on September 10th?

A. I think I just purchased the equipment then and we were just....

Q. So, you weren't sure what was going to happen?

A. No.

Q. All right. September 27th. This is By-Law. Book 1, the large one, page 77.

THE COURT: We hope.

MR. BATTISTON: Exhibit 1.

THE COURT: All right. My page 77 is an e-mail dated September 27th at 10:57 a.m.?

MR. BATTISTON: We're back. Page 77.

THE COURT: Yes, okay.

MR. BATTISTON: Q. This is an e-mail you sent on that date Ms. Fiuza. Are you looking at it?

A. Yes, I am.

Q. And you say you...

[As read] ...now have a decibel metre to record levels and you're recording on your phone to show how high getting.

Is that what you said?

A. Yes.

Q. Did you write down any figures for that day?

A. No, I did not.

Q. You sure because look over the next page. September 27th.

A. Okay so I did, between fifty to sixty.

Q. At 5:30 in the afternoon on - in September?

A. Yes.

Q. Did you keep a separate journal of these entries for these decibels?

A. No, I did not because when I mentioned it to By-Law, they advised me that they did not recognize decibel metres so it did not have any meaning to them.

Q. Oh, okay. So, when you say page 81, I hope it's still in the same book. I think you certainly emphasized it in your testimony in your answers to Mr. Ellis.

MR. BATTISTON: Sorry Your Honour I can't find what I'm looking for here. Okay let's go to page 130. Here's a good one. Page 130 in volume - Exhibit 1 if I may because we should have....

THE COURT: Now we're into November?

MR. BATTISTON: Yeah.

THE COURT: Okay.

MR. BATTISTON: Q. Okay we're on the right place - two pages over, page 132. Hopefully your pages are as good as mine or the same as mine. So, this is the one. November 17th e-mail 6:30 p.m., correct?

THE COURT: 6:30? Yeah.

THE WITNESS: I have 6:49 but....

MR. BATTISTON: So, you've got it.

THE COURT: Well 6:30 p.m. is below 6:49.

THE WITNESS: Oh, at the bottom okay, yes, yes.

MR. BATTISTON: Q. Ms. Fiuza you got him. November 17th 6:30 p.m. Not an ungodly hour, do you agree? Sixty-thirty's dinner time.

A. Yeah but it was constant bass.

Q. I didn't ask you that. We know what you said in your testimony. This e-mail says, once again we're having to listen to boom, boom, boom. At the bottom you say, we are so

tired of this once again got some recorded material. You got him.

A. It was in the....

Q. You got him, right? 'Cause you got one, two, three, four, five, six, seven, eight recordings on November 17th. You looking at that page?

A. Mm-hmm.

Q. Right? So, we're going to try it.

THE COURT: On my list I only have two recordings on November 17th.

MR. BATTISTON: Oh, 16th?

THE COURT: Yes.

MR. BATTISTON: You're right, you're right.

THE COURT: Sixteen there's a lot.

MR. BATTISTON: You're right, you're right. November 17th, I was distracted. November 17th 8:21 p.m. is the timestamp but you're probably going to say something else.

THE COURT: But are we going to listen to November 16th?

MR. BATTISTON: Nope, 17th WAV number 235.

THE COURT: So, the volume levels are the same?

MS. DIBIASE: Yes.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Stop there for a second. It did say November 17th, right?

THE COURT: The e-mail says November 17th.

MR. BATTISTON: That's what the e-mail says. We have - it was November 17th at - isn't that what was

stated on the recording about 6:30? Is there another one?

THE COURT: 6:20 p.m. was what was on the recording.

MR. BATTISTON: Okay, there's the other one zoom 0116 also September 17th, 2014, can you play that one.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: September?

THE COURT: Yeah, we're....

MR. BATTISTON: November 17th.

MS. DIBIASE: Oh, I'm sorry you asked for 116.

THE COURT: Yeah, you asked for....

MR. BATTISTON: Oh, I'm sorry. You know what I'm looking at the wrong thing.

THE COURT: We want WAV 237.

MR. BATTISTON: Sorry, we played 235, right?

MS. DIBIASE: Yes.

MR. BATTISTON: This one's 237. My mistake, sorry go ahead.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Stop there for a second. I'm going to put the volume to 10. I'll put the base to 10. Play that one again. This is a Fender amplifier that is pretty much cranked-up all the way. Play that one again.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Okay, stop it.

Q. Is that the way all these recordings came out?

A. Yes, they did not turn out.

Q. So, when you wrote this e-mail saying, we have the recordings, we got him, you didn't really have them, did ya?

A. No, I did not.

Q. You've got ten on November 19th. Ten of them. Is it worth us to listen to those?

A. No, it's not they'll give the same results.

Q. And this is where at page 133 - just a minute let me find this. One-thirty three, if you go to book 1, Exhibit 1, page 133 you see in the middle it's an e-mail - whoa, now again we're dealing with different fonts on this day for some reason but that e-mail on November 19th is an e-mail you wrote to someone. Ms. Fiuza who'd you write that e-mail to?

A. Looks like it was all going to By-Law.

Q. You said,

[As read] Called police for neighbour dispute and cancelled forty-five minutes later. Had to wait too long and getting sleepy from sleeping pill. Third pill to knock me out 'cause even with ear plugs can't sleep as it does not block it out.

Is that the same day you were trying these recordings?

A. Could be.

Q. November 19th?

A. Yes.

Q. We didn't get anything on that recording and you can't even fall asleep with three sleeping pills?

A. As I said I did not have a proper recorder. It did not justify what I was listening to.

Q. The recording speaks for itself, doesn't it?

A. No, it does not.

Q. Oh, okay. At this time, you're taking your third sleeping pill?

A. Yes.

Q. Where's your prescription for that drug?

A. I did not bring it in. If you like I can bring it in.

Q. Don't have a chance. Talk to Mr. Ellis. Page 136. Page 136 I think - again hopefully it's the same page as what I'm looking at and it is in the middle e-mail.

THE COURT: Which one?

MR. BATTISTON: November 20th 9:03 p.m. which according to my list indicates November 20th. Wow, look at the list and you've got one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen recordings for that day.

Q. Is that correct Ms. Fiuza? Fifteen?

A. That's what the list says, yes.

Q. And then that e-mail back on page 136 in the middle. The e-mail from 9:03 the last paragraph says,

[As read] I can't even start preparing for bed for work this is such a nightmare. At least I got some recordings tonight for court.

This you were representing to the By-Law Department?

A. We did not get any copies of the recordings.

Q. But you said you got some recordings for court.

A. I thought....

Q. You had them. It was that loud the music.

A. It was recording, it was a thing. I thought that it was recording better and it was recording the way I expected it to record, the vibration of sound.

Q. So, you agree these recordings were no good for court?

A. No, which is why we didn't....

Q. That's probably what the prosecutor told you when you filed that private complaint, correct?

A. Well he said based on speaking with the police and By-Law they did not feel that there was a case.

Q. That was more than I expected, thank you. That's fine. Okay, let's try this one. December 2nd, one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen recordings on December 2nd. Turn to page 164 please. There's an e-mail at the bottom December 2nd. The last line in the e-mail says,

[As read] Got some recordings of trying to watch tv with the bass noise in the background.

Let's hear it. December 2nd, first one WAV 276. amplified turn it up to 10.

...AUDIO RECORDING IS PLAYED

MR. BATTISTON: Q. Stop there for a sec. You had the tv on in the living room?

A. Yeah as you can see the recorder did not record.

Q. I could hear the tv.

A. I can hear it very light - very light.

Q. Everything's light.

A. Yes.

Q. But I could hear the tv.

A. Yes.

Q. And I could hear the birds.

A. Yes.

Q. And I can hear you speaking.

A. Yes. Well, I'm right in front of it.

Q. I don't hear any music, do I?

A. It was there.

Q. Do you hear music here?

A. Thumps, no.

Q. So, it wasn't music, it was thumps?

A. Once again, we've been discussing it was bass noise that we've been addressing.

Q. Hold on. Hold on. The e-mail said, trying to watch tv with the bass noise in the background.

A. Yes.

Q. I didn't hear any bass noise, did you?

A. No.

Q. Do we have to hear more or are the other ones just the same?

A. No, I've already advised you; did not record the bass as I expected.

Q. All right. We're good thanks.

THE COURT: Counsel, can we have the USB stick to attach to Exhibit 7?

MR. BATTISTON: I didn't hear the first part, sorry?

THE COURT: The USB stick?

MR. BATTISTON: Oh, the USB stick. We don't need it. Let the Court take care of it.

THE COURT: Yes, it's an exhibit.

MR. BATTISTON: It is.

THE COURT: It shouldn't leave the courtroom with the witness or anyone.

MR. BATTISTON: We have an envelope for it, too right?

THE COURT: Okay, perfect. All right. Thank you.

MR. BATTISTON: I'm not sure if this is a good time to break?

THE COURT: I'm leaving that in your hands if you feel this is a good time to break and you're going to be resuming your cross-examination when we return. Okay that leaves the issue of next dates.

THE WITNESS: May I return to my seat.

THE COURT: Yes, you may return to your seat. And, who is going to take care of the witness briefs?

MR. ELLIS: I am.

THE COURT: You will? Okay and I take it there's probably other copies of other exhibits there too so they're in your hands Mr. Ellis and I hope you've got your other books when we return.

MR. ELLIS: If I don't, I'll be making copies of these books.

THE COURT: If you don't, I won't be very happy, put it that way.

MR. ELLIS: I understand that.

THE COURT: So, next date. I am sitting March 22nd and I appreciate....

MR. BATTISTON: I'm out of the Country.

THE COURT: Okay, well then, we'll forget that. I thought that might be too soon in any event. So that leaves April 13 and 23rd and also Ms. Ferguson and

Mr. Dooling, this is also going to apply to you so if you have conflicts with any dates let me know okay? The sooner the better.

MS. DIBIASE: Those dates were April?

THE COURT: 13 and 23rd.

MR. ELLIS: The 23 my one witness can't make it but the 13th we're all available.

THE COURT: Okay, keep your fingers crossed for April 13th.

MR. BATTISTON: I'm the opposite, Your Honour I'm in Ottawa on a pre-trial on the 13th. I can't do the 13th.

THE COURT: Well, that won't work.

MR. BATTISTON: April 23rd looks good. And you were saying?

THE COURT: Mr. Ellis isn't available.

MR. ELLIS: One of my main witness that you were talking about today is in court....

THE COURT: Isn't available on the April 23rd.

MR. ELLIS: We have his schedule in front of us.

THE COURT: Oh, okay good, good. So, then the next date is May the 18th.

MR. BATTISTON: That's the start of the weekend?

THE COURT: I'm not even going down that road. Telling you right now 'cause I don't want to look because it may very well be.

MR. BATTISTON: It's a Friday.

THE COURT: It's a Friday. Yeah and I'm going to keep you all 'til 5:00 just as punishment if you don't get finished. Well I think that will make the

parties more efficient in providing their evidence and getting the matter wrapped-up.

MR. BATTISTON: Let's do it.

THE COURT: Okay. Mr. Dooling, Ms. Ferguson would that day be okay with you? Friday May 18th?

MR. DOOLING: Fine for me.

MS. FERGUSON: Yes.

THE COURT: Okay, so I'll endorse the record to adjourn it to May 18th. Mr. Ellis has promised. He's given an undertaking to this Court he will have all his briefs for the return.

MR. ELLIS: I have, Your Honour.

THE COURT: And what else. I'll need the USB stick to put in the court file. One other thing I wanted to mention to you Mr. Ellis is I know you had an interpreter for your other two plaintiffs. What is the status of that interpreter because I will not accept a family member or anybody like that.

MR. ELLIS: She's not a family member. She was from the Multicultural...

THE COURT: Okay, she's from the Multicultural Centre. Okay fine, good.

MR. BATTISTON: Is she certified?

THE COURT: They - I think they are there. They often - we often use interpreters. I have run into many problems when people come to court with their sister, brother, grandmother and want to use them and it's just - I will not accept that so. Just give me a second here. All right time estimates. I just know you're going to say another day. I just know everybody's going to say another day, right?

MR. BATTISTON: We're still dealing with the cross-examination of the first witness.

THE COURT: I know, I know. Okay. So, I'm going to encourage both of you to come up with creative ways of moving this forward but - okay trial adjourned to May 18th on consent of the parties.

MR. BATTISTON: Actually, we have affidavits for - which could facilitate matters - those affidavits.

THE COURT: Yeah, no and that's great and they just need to be cross-examined on if the parties choose and....

MR. BATTISTON: By-Law people are all gone, police are all gone.

THE COURT: Yeah, so that will save time. Mr. Dooling has filed his affidavit but he'll be cross-examined on that.

MR. BATTISTON: I have served a summons on Dr. Smith.

THE COURT: Yes, yes and she was to appear today?

MR. BATTISTON: She'll be bound over. She did not get back in contact with me. I knew that she would not be reached today but I would like an order binding her over.

THE COURT: You better make sure she appears. Okay, okay.

MR. BATTISTON: 'Cause I'm letting the By-Law people and the police out.

THE COURT: Right so that would be your only outstanding summons then?

MR. BATTISTON: The important one, yes, thank you. I will summons Mr. Dooling but I don't have to.

THE COURT: I don't think you'll need to but summons
for Dr. Smith. Is it C. Smith, K. Smith?

MR. BATTISTON: C.

THE COURT: C. Smith.

MR. BATTISTON: Does that order extend the records be
produced in advance, Your Honour. I know I tried it
with a motion but....

THE COURT: I can tell you that I've not had success
with that in Superior Court so parties are often....

MR. BATTISTON: I don't do personally injury. It's
been a long time. I don't know.

THE COURT: Well the parties are often reluctant to
produce them in advance but they certainly have to
show up with those records.

MR. BATTISTON: Interesting.

THE COURT: Provided you put that on the summons.

MR. BATTISTON: I did.

THE COURT: Okay. Dr. Smith to carry over to May
18th along with her clinical notes and records for
the plaintiffs, is that what it was?

MR. BATTISTON: Yes. All three of them as we found
out today, Ms. Fiuza was also a patient.

THE COURT: For plaintiffs. You may have to amend
your summons then in that respect.

MR. BATTISTON: Okay.

THE COURT: Anything else? All right this is what
I've endorsed for today. Trial adjourned to May
18th; not completed. One day required for trial.
Summons for Dr. C. Smith to carry over to May 18th
along with her clinical notes and records for the

plaintiffs. I think that's sufficient and I still need that USB stick.

MR. BATTISTON: Thank you.

MS. DIBIASE: Yes, I handed it to Madam Clerk.

THE COURT: Oh, she has it okay 'cause we can just attach it to Exhibit 7 and our court file's growing so you're going to have to get another expansion folder. Okay. Thank you everyone.

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

(04:29:36)

160.
*Fiuza et al v. Creekside Real
Estate Group Inc.*
Certification.

FORM 2

Certificate of Transcript
Evidence Act, subsection 5(2)

5

I, **Gloria Scheerer**, certify that this document is a true and accurate transcript of the recording of ***Fiuza et al vs. Creekside et al*** in the Small Claims Court, Superior Court of Justice held at **85 Frederick St., Kitchener**, Ontario, taken from Recording No. **4411-CRTRM-504-20180227-083057_2_SCC**, which has been certified in Form 1 by Patrick Kennedy.

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August 7, 2019

CCR, ACT

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(Date)

(Signature of authorized person)

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