No. S132325
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE MR. JUSTICE VOITH and JURY)

Vancouver, BC
September 3, 2019

BETWEEN:

HIROKO D. CRAWFORD also known as DONNA CRAWFORD

Plaintiff

AND:

PROVIDENCE HEALTH CARE, DR. ANNA NAZIF

Defendants

AND:

NICHOLAS OSUTEYE, PROVIDENCE HEALTH CARE, DR. ANNA NAZIF

Third Parties

PROCEEDINGS AT TRIAL
(Day 1)

COPY

No. S132325
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE MR. JUSTICE VOITH and JURY)

Vancouver, BC
September 3, 2019

BETWEEN:

HIROKO D. CRAWFORD also known as DONNA CRAWFORD

Plaintiff

AND:

PROVIDENCE HEALTH CARE, DR. ANNA NAZIF

Defendants

AND:

NICHOLAS OSUTEYE, PROVIDENCE HEALTH CARE, DR. ANNA NAZIF

Third Parties

PROCEEDINGS AT TRIAL
(Day 1)

Counsel for the Plaintiff: S. Kovacs
J.T. Mackoff

Counsel for the Defendant Anna Nazif: J. D. Meadows
D. J. Reid
A. Catalino, A/S

PROCEEDINGS AT TRIAL
SEPTEMBER 3, 2019
(DAY 1)

PROCEEDINGS

EXHIBITS

September 3, 2019

Vancouver, BC

(Day 1)
(PROCEEDINGS COMMENCED AT 9:59 A.M.)

THE CLERK: Order in court. In the Supreme Court of British Columbia at Vancouver this 3rd day of September calling the matter of Crawford versus St. Paul's Hospital, My Lord.

MS. KOVACS: My Lord, last name Kovacs, K-o-v-a-c-s, first initial S.L., here for the plaintiff, Donna Crawford, and with me Ms. Mackoff, M-a-c-k-o-f-f, first initials J.T.

MR. MEADOWS: My Lord, Meadows, M-e-a-d-o-w-s, initial J, for the defendant Dr. Nazif, and with me is Mr. Reid, R-e-i-d, initial D. And also I would ask Your Lordship to allow our articled student who has just dashed to the office right now to sit up with us at counsel table. Her name is Ms. Catalano, C-a-t-a-l-a-n-o, initial A.

THE COURT: So we've had a series of questions that arose out of what I was looking at over the weekend, Mr. Meadows, but for today's purposes, are you lead counsel? Will you be addressing the jury, or is it your colleague who spoke to me on Friday in connection with the application?

MR. MEADOWS: I will be addressing the jury.

THE COURT: And you'll be -- to the extent you made challenges, it will be you who's doing that?

MR. MEADOWS: That's correct.

THE COURT: So I've had to change my names -- that's fine. There were three things I wanted to talk to you about, and I thought I was right, but it's not the kind of thing I can ask you about with 150 people in the room.

The first was I have a trial record that was prepared only two weeks ago, but I expect, based on what happened Friday, that things have significantly changed, even in those two weeks.

The dominant concern I had was that I wasn't certain what the role, if any, of Providence Health was. On the style of cause I had they were no longer a defendant, but they were still a third party. The trial record did not include third party pleadings to the extent they're a third party they would have had some right to make peremptory challenges, and again I just didn't know who would be doing what today. So I would like some clarification of that, please.

MS. KOVACS: My Lord, I'm happy to give some clarification. I'm going to hand up just -- it's unsigned and unfiled at this point but it's the further amended notice of civil claim which still needs to be signed by all counsel and entered.

And we were hoping Mr. Bell from Providence Health Care would be here today to sign it as well as Ms. Gilewicz for Mr. Osuteye. We'll track them down. I'll run my student by their offices if we have to.

My friends also have an amended third party notice directed to Mr. Osuteye simply seeking a declaratory apportionment of fault. So my thought is, once these two documents are filed, I'll prepare an amended trial brief and get that to you, which eliminates Providence Health Care from the equation and simply includes Mr. Osuteye as a declaratory third party.

THE COURT: All right. Well, that -- that's -- those were my expectations, but I wasn't certain. And certainly that's how I prepared my reasons arising from our application on Friday, based on that expectation, but again I wasn't certain, and for today's purposes I need to be certain. And this trial record didn't have third party pleadings as against Mr. Osuteye. So again, I just -- I understood that it was only declaratory relief being sought against him but I couldn't for the love of money figure out why there was no pleading of any sort, not -- no record of any sort. So I leave that aside, and I understand those things.

The last matter of some note is that generally I provide the jury, once they're selected, with some description of the issues. So again, in relation to the selection of the jury, you provided me with a summary of a description of the case. When you describe what the jury can reasonably expect in the next three or four weeks, there's some succinct summary of the issues. I've done that in a relatively cursory fashion.

The one issue that struck me as I was doing that was that damages are not at issue here. And in relation to that, depending on how it's phrased, a jury may or may not draw certain inferences from that fact; right? I can reasonably foresee that a jury might draw something from an acknowledgment or an agreement on damages one way or the other.

And so while I'm quite happy to say, you know, one of the issues is whether Dr. Nazif met the standard expected of her when she dealt -- Dr. Osuteye [sic], that's sufficiently generic, that I have no concern with that. I wanted to know what, if anything, I should say because, at some point relatively early, it seems to me the jury should know that. And again, in relation to that finite issue it strikes me that I'd like some guidance, some agreement on how that should be phrased and presented to the jury. Okay.

So I don't have to do that this morning, or I can because again I have a little space where I can include that issue. You don't have to think about damages, that's been agreed to. But on reflection, I was thinking, well, that's something that, again, a jury may misunderstand what that means, which is quite innocuous to all of us in this room, but not necessarily so for a panel of laypersons.

MS. KOVACS: My Lord, perhaps the wording -- and I don't think my friends would have objection to this -- I don't think it actually needs to go before the jury that damages are agreed but simply that they're not in issue, which I think would probably immunize them from any inferences being drawn.

MR. MEADOWS: I agree in -- in principle. I think, perhaps we can say that damages will be dealt with separately other than in front of the jury or something like that. Because I do share your concern, My Lord, that the idea that damages have already been pre dealt with may lead to the inference that there's some concession being made here. So I think something that just says that it's done separately and not before the jury is fine with me.

MS. KOVACS: I think just that they're not an issue because they have been dealt with. They're not going to be dealt with separately. They're just simply not an issue.

MR. MEADOWS: Right. I agree.

THE COURT: I can leave that out for today's purposes. But it does strike me that as some point maybe in your opening you can speak to your friend Mr. Meadows, you can figure out how to say that in a way that you agree to. And say these are the issues, but this is not an issue, and then you can reflect on that a little bit further. I need not for present purposes deal with that, but I think the issue I raise is self-evident. Okay.

That's it. That's all I need. We can make our way to -- to courtroom 53 and move forward from there. And what I'll do is we'll pick our jury; we'll reassemble here shortly thereafter. I will provide them with some opening comments, the usual opening comments. I'll then let them speak to their families, their bosses, let them know what's going on. We'll resume at 2:00, I think, and I will give you my reasons arising from Friday's application when we break. That's the way I thought I would forward, if that's okay.

MS. KOVACS: Sure. My only concern is I do have Dr. O'Shaughnessy scheduled this afternoon, but again, he's going to be a short witness so he can wait until 3:00, I would think.

THE COURT: Well, I'm not worried about that. Well, a little bit but...

You will see that the reason I want to get you those reasons now is that I've accepted parts not others of the external review. In relation to certain pages I've marked up what I think can go, what can't. I want to get that to you, so that you can tailor your examination in chief to properly accord with my reasons. And so I want to get that to you before the lunch hour, so that you can look at that, reflect on it, meet with Dr. O'Shaughnessy, and tailor your direct examination of him appropriately.

MS. KOVACS: Yes.

THE COURT: All right.

THE CLERK: Order in court. Court is adjourned.

(PROCEEDINGS RECESSED AT 10:06 A.M.)
(PROCEEDINGS RECONVENED AT 11:48 A.M.)

THE CLERK: Order in court.

5

THE BAILIFF: The jury, My Lord.

(JURY IN)

THE COURT: Okay. Before we have the opening address of counsel for the plaintiff and begin to hear the evidence, I want to tell you something about what I expect will happen over the next few weeks and about your duties as jurors. You must follow the instructions that I give you respecting the law. Do not do your own research on the law by using the internet or any other sources.

In terms of our daily schedule, we usually sit from 10:00 to 12:30 when we break for lunch. The sheriffs can give you more information about where to arrive in the mornings and where to go and so on and I expect they'll do that.

The sitting hours in the afternoon are from 2:00 P.M. to 4:00 P.M. During the trial, you may leave for lunch and go home at the end of the day. However, once all the evidence is heard and I finish giving you my instructions on the law, you'll be sent to a jury room to reach a verdict.

At that stage you will be sequestered. That means that you'll be kept together as jurors during the day until you reach a verdict. And again, once we get there, I'll tell you more about that process. And again, I'm certain the sheriffs will give you more information as well about what you can expect and what you'll have to do.

As soon as conveniently possible, you should select a person to act as your representative and to lead you in your deliberations. That individual will be your foreperson. He or she will speak on your behalf to the sheriff, or to me, should you require any assistance during these proceedings. You can make your selection today, but you've got a little bit of time and you may wish to wait until you get to know each other a little bit better. Once you've picked someone, just give that foreperson's name to the sheriff, and then we can have it for the record.

I want to say something about note-taking. During the course of the trial, I'll be taking my own notes as best I can. We have a reporter who will be taking notes. This is being taped, so

6

there's notes being taken every which way from Sunday.

But some of you may also wish to take your own notes. There's nothing wrong with doing that if you find it to be a good way to remember the evidence and my instructions. As I said to you just a little awhile ago, this is a 20-day trial, and I don't think it's a bad idea, if you're inclined to, to take some notes of the witnesses.

You heard they're listed. There will be a number of them. A week or two or three from now that evidence may be a little bit distant. That doesn't mean you take every word, but you may wish, when we break, to capture it, to reflect, if somebody makes an admission that you think is significant or says something that you think is important, you may want to make a note of that for your own purposes. But I want to remind you that your primary duty is to observe the witnesses as they testify, so that you can understand the evidence and decide on their credibility or trustworthiness. And sometimes when you're scribbling furiously you sort of lose what's actually happening in the room itself. So, as I said, a tape recorder will keep track of what everybody says. And there is a procedure for us to play back that evidence if you want it precisely at some point in time. If you want to hear what somebody said with exactitude, we can do that. But there's no record for the behaviour or the attitude of a witness as they testify, so your memory of that will be your only guide. And so, therefore, if you decide to take notes, you must be careful and not get distracted from that primary duty.

The judge and jury system is one of the oldest and most important of our legal traditions. I think it's an amazing system. I've done a number of jury trials and will interact as it goes forward, and it's something that collectively we can be quite proud of. You and I work together as a team. You're the judges of the facts, and I'm the judge of the law. Although I may be commenting on the evidence, I expect I will, at the end of the trial, it is your view of the evidence that prevails. You're the exclusive judges of the evidence. That

7

means, you must reach conclusions about what happened between these parties. Because I'm the exclusive judge of the law, when I tell you what the law is, my view must prevail. It will be wrong for you to decide the case on what you think the law is or what you think it should be. You must accept the law as I tell it to you, and you must reach a verdict based on those instructions.

Before we started the jury-selection process, I gave you a brief summary as to what the trial is about. I said to you it's a civil trial. It's not a criminal trial. We're not here to decide guilt or innocence. And from the pleadings, it appears that you'll be called upon to decide a number of issues, and you may have gleaned some of that from what I said to you early. Those issues will include these and likely others, whether Dr. Nazif, the defendant in this case, met the standard of care that was expected of her when she treated Mr. Osuteye, whether Dr. Nazif caused the harm that Ms. Crawford suffered, and whether Mr. Osuteye was capable of forming the intent that was necessary for the assault that occurred.

The party who has the burden of proving an issue must produce evidence that proves an issue on the balance of probabilities, and I'll explain that to you in due course, and I'll tell you more about the burdens that exist and the standards that exist in this case as we go along.

Ms. Kovacs, who is counsel again for the plaintiff, will begin the trial at the conclusion of my remarks. And to be more precise, we will break. I have to interact with counsel in relation to another issue for a period of time, but we'll resume at 2:00, and I expect at that point she'll be ready to start her opening.

She'll take the opportunity to explain to you what she expects the evidence will disclose and give an overview of the plaintiff's case. Counsel for Dr. Nazif will likely do likewise when the defendant's time comes. These opening remarks are made, so that we can better understand the nature of the evidence parties intend to call. However, what counsel say is not evidence, and you cannot rely on them or what

8

they say to you to prove any of the facts that you have to decide in the case.

After her opening remarks, Ms. Kovacs, counsel for the plaintiff, will call her first witness and question that witness about the matters in issue. This is called an examination in chief or a direct examination. And in direct examination, leading questions are not permitted except with respect to matters that are not in dispute. A leading question is one that suggests an answer. And I might need, as the evidence is lead, with either the first witness or with subsequent witnesses, to rule on whether questions are leading questions. If I allow the question to be asked, then the answer carries the same weight as answers to any other question.

After the direct examination of that first and subsequent witnesses, Mr. Meadows, who's counsel for Dr. Nazif, will have the opportunity to cross-examine that witness. Like direct examination, cross-examination is a series of questions and answers. However, the purpose of a cross-examination is to test the evidence given by the witness and to bring up facts that may assist the defendant. Leading questions are now permitted.

Counsel may ask questions designed to test the truthfulness of a witness or to test the ability of the witness to perceive or to remember things. Or they may ask no questions. There's no obligation to ask any questions on cross-examination, and the witness's answer to a question on cross-examination carries the same weight as the answer to a question on examination in chief.

After the completion of the cross-examination, the witness may be re-examined by plaintiff's counsel, Ms. Kovacs again, on any new matters brought up during the cross-examination that may require further explanation. And this procedure continues for each witness until you hear all of the evidence in support of the plaintiff's case.

After counsel for the plaintiff closes her case, counsel for Dr. Nazif makes his opening remarks, if he chooses to do so, and he will call evidence on behalf of his client. A similar

procedure will then be followed with the witnesses called during the plaintiff's case except that now Mr. Meadows will be examining in chief and Ms. Kovacs will be doing the cross-examinations.

Depending on the nature of the evidence, the plaintiff may be allowed to call rebuttal evidence after the close of the defendant's case. And that procedure will be the same as when the plaintiff presented her case at the start of the trial. We'll see what happens.

In relation to counsel's final addresses, when all of the evidence is in, they make their final submissions to you. They will review the evidence. They explain why they think the plaintiff should succeed or fail and to what extent. I remind you again that what counsel say at that point is not evidence. Counsel may also touch upon the law. If what they say about the law is different from what I tell you, you must accept my instructions on the law again.

While you're listening to the evidence, I urge you to pay close attention to what each witness says and how he or she behaves while giving evidence. You must eventually decide which witnesses to believe and what evidence to accept. You need not accept or reject all of the witness's testimony. You may choose to believe part of a what witness says and reject the rest. It is entirely up to you.

But there are some guidelines that may help you in assessing the credibility of a witness. I'll give you some; you may rely on others. You consider the witness's attitude and behaviour as he or she testifies, but remember that some people may be nervous about testifying in court while others are able to lie without appearing nervous. Also remember that there are cultural and individual differences between people that may affect the way they appear to you when testifying. Consider the ability and the opportunity of the witness to observe or remember things referred to in their testimony; consider the ability of the witness to express themself, or herself, to understand the questions, and to give straightforward answers. Ask yourself whether the witnesses has any reason to be biased

regarding the outcome of the case. That is, does the witness have any interest in the outcome of this case that might affect his or her ability to give impartial testimony. And has the witness's testimony possibly been influenced by questions or events between the time of the observation and the time of trial. These are events that occurred seven years ago, and you'll hear about that from counsel. Remember you don't have to accept a witness's testimony simply because no other witness has testified to the contrary. On the other hand, consistency between what a witness says and other witnesses can be important. Understand that these, again, are only guidelines. You should use your common sense when deciding which evidence to believe and which to reject.

During the course of the trial, some of you may wish to ask a question or two of a witness or, in fact, to the court. Where possible, it is best to put the question in writing, so that counsel and I can review it. This is because there are rules of evidence that prevent -- that may prevent the question from being asked.

Keep in mind that counsel know the case better than we do. Each of them will be attempting to place before you all the evidence that will assist you in reaching a proper verdict, and, therefore, I expect that you will have very few questions, but if you do, don't hesitate to ask.

From time to time during the trial, it may be necessary for you to retire to jury room, so that counsel can argue points of law or points of evidence. Please don't speculate on the specific reasons you're being excluded, there's often nothing to it. If there's an objection to evidence, we'll argue that through. They don't want you to hear the evidence until I've ruled that it's appropriate. And then once we've made a determination, you'll be called back in. This happens in order, again, to ensure that you hear only properly admissible evidence and argument.

You should be aware as well that the evidence may include more than just testimony and that is oral evidence from a witness. Documents, photos, audio recordings are often part of the

evidence at trial. And if any documents or objects become part of the evidence of the trial, you'll have them with you in the jury room when you retire to consider your verdict.

In a civil case, and again this is a civil case, the parties usually conduct what is called a pre-trial examination for discovery of each other, and this is a procedure where a party is asked questions under oath before a court reporter, and the questions and answers are later typed up in the form of a transcript. From time to time, either counsel may refer to the transcript or to that examination during the trial. Often, and I don't know what will happen in this case, a plaintiff will read into the record certain admissions that were made by the defendant. When reference is made to the discovery you should pay close attention to it since the answers were made under oath and carry the same weight as evidence given in the courtroom. Evidence read in from the discovery of one party is evidence only against that party.

The onus or burden of proof is on the plaintiff to prove that Dr. Nazif was negligent or that she otherwise acted improperly, and the plaintiff, as I said, has to prove that on the balance of probabilities. From time to time, during the trial, that onus of proof may shift to a defendant on certain issues. Again, I don't know if that will happen in this case. If it occurs, I'll instruct you on the applicable law at the end of the trial.

I will give you my final instructions after counsels' addresses at the end of the trial. I will tell you the law that applies to this case and will review some of the more important evidence with you. Please keep in mind it is your memory of the evidence that counts and not counsels' or mine. You're the exclusive judges of the evidence and the facts arising from the evidence.

I will also give you, at that time, a list of questions to answer. They will form the basis of your verdict, and they'll serve as a checklist during your deliberations. You can answer them either with a simple yes or no, in most cases. You will retire to the jury room after I finish

my final instructions in this case in order to consider your verdict. Once you reach a verdict and deliver it in open court, that will be the end of your duties in this trial.

Now, people may be interested in the trial and in your experiences as a juror. They may try to discuss the trial with you. Do not do so. During the course of the trial, you are not allowed to discuss the trial with anyone who's not on the jury, nor should you write or speak to either party, any witness, or counsel at this trial outside of this courtroom. No texts, no emails. These are serious matters, and they can potentially give rise to a mistrial. So it's not something to play with. All right. I'm saying this as clearly as I can.

If someone tries to discuss the trial with you in an improper manner before you reach a verdict, please report it to the sheriff, and I will deal with it. Once the trial is over and you reach a verdict, you may discuss what occurred in this courtroom with anyone you choose. However, your discussions in the jury room remain secret and are to be kept confidential by you, and I'll repeat those instructions again at the end of the trial for you.

Now, under our system of law, you may only return a verdict on the basis of evidence presented in open court at this trial. Things you see or hear in the media are not evidence; you must ignore them. I don't know what media coverage this will get, if any. The same thing applies to any rumours that may circulate about the case and there's a good reason for the rule. Media reports or rumours may be entirely unreliable, and indeed quite fictional. Neither party has an opportunity to reply to these out-of-court rumours or accusations, nor can they cross-examine their source and present evidence, and, therefore, you cannot pay any attention to any such thing.

Since you must decide this case solely on the evidence you hear in this courtroom, do not go about gathering evidence on your own. It is the responsibility of counsel to present all the relevant and admissible evidence. If one or more

of you reach a verdict on the basis of evidence that was not given to other jurors in this courtroom, you would not be obeying your oath as jurors. And, in other words, please don't try to play the role of a private detective. Do not under -- do your own investigation or research on the internet or on any other source into any aspect of this case. If you're to ignore those instructions, again, it could result in a mistrial, which means the trial would be stopped and the plaintiff/the defendant would likely have to go through a new trial some months from now; all right?

Finally, and above all else, I want to stress the importance of keeping an open mind. You have a duty to be fair and impartial throughout. You may develop tentative views about matters early on, but you should only decide the case after you've heard all the evidence and counsel have addressed you, after I've given you the questions and the instructions, and you deliberate as a jury.

And there's a good reason for this caution. I mean, I regularly hear trials. I'm often impressed by evidence as I hear it, but then there's another side to that story, and you should keep an open mind until you've heard all of it, and that will allow you to make the decision that's required of you. Only then, with all of that information, should you decide. The law expects no more from you and it will accept no less.

So let me summarize again succinctly for you what we've talked about. You and I are working together as a team. You are the exclusive judges of the evidence and the findings of fact that flow from that evidence, and I'm the exclusive judge of the law. This is a civil not a criminal trial. We are here to determine the liability of the defendant. The burden of proof will generally be upon the plaintiff throughout to prove her case on the balance of probabilities. You should pay attention to the witnesses as they give evidence, so that you can decide what evidence you want to accept. Avoid discussing the trial with anyone except your fellow jurors while the trial continues. Avoid reaching any

final decision until you retire to the jury room to begin your deliberations. In reaching your verdict, consider only the evidence that was presented in this courtroom. Do not take into account anything you might hear outside the courtroom, and keep an open mind until you've heard all of the witnesses, the addresses of counsel, and my instructions to you at the end of the trial.

Should you have any difficulty hearing any of the witnesses, counsel, or myself, I tend to speak softly, let me know, so that the evidence or statements can be repeated. And that completes what I want to tell you. As I said, we will break until 2:00 o'clock, and at that point Ms. Kovacs will open the case for the plaintiff. All right. You're excused. Thank you.

(JURY OUT)

THE COURT: Does anything arise from that? All right, thank you.

I've got two sets of counsel shaking their head no. Let me give you reasons arising from the application that I heard this past Friday. These are oral reasons. If they're ordered, you will get them in exactly this form substantively. There will be no substantive additions. There may be some cosmetic changes, but, again, I think they're largely done.

(REASONS FOR JUDGMENT)

THE COURT: Now, again, this was raised before me as a pre-trial application, and so I've said that as a success of the parties on these matters was divided costs would be in the cause. I mean, I've made a cost order, but I don't know if that matters or not. No one spoke to that. I mean, the trial had an open proper, but that's my view of it, so that you have it for the record. Okay. Let me do this if I can --

MS. KOVACS: My Lord, my apologies to interrupt you, but just before we move on from that, my friend passed me a note as well that we've missed page 10 of the external review, which we also sought to admit, which does have some comments. And I

wonder if we could just quickly revisit that.

THE COURT: All right. I have my -- your affidavit upstairs, you know, when I was taking notes, I clearly didn't capture that page so I missed that.

MS. KOVACS: I have an extra copy.

THE COURT: Let me take a peek, please.

MS. KOVACS: So page 10, My Lord, most of it is factual. The last paragraph may well be opinion that should be blacked out. And the relevance of this really comes in with the group of patients being assessed, of course, and what the contributing factors are to the situation, but also if you look to paragraph number 2 -- sorry, actually paragraph number 3 is really the important one. The very last sentence:

> Vancouver is exceptional in having individuals with mental illness, substance abuse and homelessness concentrated in a very small geographical area of the Downtown Eastside.
>
> That's really the critical sentence out of this paragraph -- out of this page.

THE COURT: Let's do this. Let me read the whole of this.

MS. KOVACS: Sure.

THE COURT: We can resume at 10 to 2:00 and -- if everyone is available then? Does that work? And I will let you know what I think at that time. I just want to read this sufficiently carefully, then I can give you a measured assessment.

MS. KOVACS: Sure. And I wonder if -- given that there are some redactions that you proposed to page 5 --

THE COURT: I have them here.

MS. KOVACS: I wonder if I can photocopy those, so I can have them ready to go for Dr. O'Shaughnessy this afternoon.

THE COURT: Page 5. So let's just go through them. My redactions are primarily related to pages 13 and 15.

MS. KOVACS: Yes.

THE COURT: I do have copies for those. I will give one copy to each set of counsel. I have one. What I did was I highlighted it rather than

blacked it out so that you could see what's under it, that was intentional. If you want to use one, you'll have to black it out. I'll leave that to you. I also propose that we make what I now provide you as the first J exhibit. It should be an exhibit proper that goes to the jury. Is counsel content with that?

MR. MEADOWS: Yes, My Lord.

THE COURT: All right. So let me give each counsel the same thing, and that is pages 13 to 15 from the external review. As soon as you open it, you'll see that I've highlighted portions in blue. Those are the portions that are being redacted, and there's one copy for Madam Clerk, which can be marked as exhibit J(1).

THE CLERK: Exhibit J(1), My Lord.

EXHIBIT J1: 3 page, St. Paul's Hospital: Emergency Department and Urgent Psychiatric Services

THE COURT: And when it came to exhibit, at page 5, let me just tell you. I think it was the last --

MS. KOVACS: That one is not going in at all. My apologies, I misspoke.

THE COURT: All right. Another -- the other redaction -- I mean, there are certain things I just excluded in their entirety, but I also excluded the last paragraph of page 4, and I thought that was sufficiently explicit. I didn't have to provide you with a copy of that.

The reason I dealt with pages 13 to 15 differently is the redactions are interspersed through the text, and I didn't want there to be any confusion. All right. Are there any questions that arise on what I've given you?

MR. MEADOWS: No, My Lord.

MS. KOVACS: No, My Lord.

THE COURT: So I'll see you at 10 to 2:00. I've cautioned you about your opening.

MS. KOVACS: Yes. And, in fact, I've actually given it to my friend so we're okay.

THE COURT: Good. Good, good, good. And we'll get started then. Thank you.

THE CLERK: Order in court. The court is adjourned for the lunch break.

17

(PROCEEDINGS RECESSED AT 12:43 P.M.)
(PROCEEDINGS RECONVENED AT 1:56 P.M.)

THE CLERK: Order in court.
MS. KOVACS: My Lord, just before we call the jury in, a couple of housekeeping matters.
THE COURT: I take of you page 10.
MS. KOVACS: Oh, yes, of course.
THE COURT: And then you can deal with housekeeping matters.
MS. KOVACS: Absolutely.
THE COURT: So rather than, you know, provide some context framework for page 10, again, what I intend to do is just include page 10 in the text of the reasons I provided this morning; okay? Do you understand?
MR. MEADOWS: Yes.
THE COURT: So if it's ordered, it will simply flow as though I had given it at the time, if that's okay. Because I could -- I started by saying I inadvertently missed page 10, and I gave reasons, and it just struck me as unnecessary redundant. All right.
So as it relates to page 10, I say this:

(REASONS FOR JUDGMENT)

THE COURT: And I've provided counsel with a marked-up copy of page 10 that reflects these various conclusions. So I've done the same thing with page 10 as I had earlier. Beside the paragraph on page 10 that I just read, I've got a question mark. So that describes its nebulous character and that'll be J2.
MS. KOVACS: My Lord, given your -- your ruling on that, I'm happy not to put it in, if it's hearsay and --
THE COURT: I leave it to you. I didn't know what its foundation was, and the reasons I've described has struck me as either appropriate or inappropriate, I wasn't sure.
MS. KOVACS: Page 10. And so I'm going to abandon page 10, that's fine.
THE COURT: All right. And so do you want the marked-up version of it for the record or not?
MS. KOVACS: Sure.
THE COURT: Because there's other portions of it that

18

are admissible, I think. I've said that. So a copy of this can go to each of counsel. One copy can be marked as J(2).

EXHIBIT J2: One page, numbered page 10, said to be 'from the External Review

THE COURT: And can I ask one question of counsel? I think I have the answer to this, but I just want to ensure that we're not unreasonably delayed for no reason. Do the defendants see any difficulty with counsel for the plaintiff putting any part of the reports to Dr. Nazif? Because it strikes me again that -- well, I won't express my view, so I'm asking the question.
MR. MEADOWS: Any part of the reports other than -- than what are here or -- I certainly have no problem with counsel putting the report to Dr. Nazif and asking her if she was aware of it prior to seeing ...
THE COURT: Aware of it and agrees with various propositions. She can do that.
MR. MEADOWS: Yeah, she can do that, yes.
THE COURT: I agree with that. All right.
MS. KOVACS: With respect to other housekeeping matters, My Lord, I will get you an amended trial brief hopefully tomorrow, but in the meantime I can hand up to you the now stamped copy of the amended notice of civil claim as well as the amended third party notice if you'd like that now?
THE COURT: Please.
MS. KOVACS: And my friends and I have been very co-operative in terms of preparing for this trial. We've created the common book of documents, and my friends have kindly created some reading for Your Lordship on the duty-of-care issue further to the request for decisions that we'll be referring to at the end of the trial. So I'm happy to hand that up.
MR. REID: The particulars as well.
MS. KOVACS: Right. There is also -- my friends want me to include in the amended trial brief a demand for particulars that we issued in respect of Mr. Osuteye and the response, since these form part of the pleadings. And so I just want to ensure that Your Lordship has those as well, but

19

they will be in the amended trial brief.
THE COURT: If we're not likely to refer to them this afternoon, then I don't think I need them, and I'll wait for a copy of that amended record and then I'll -- use them there. Thank you.
MS. KOVACS: With that, My Lord, we're ready for the jury. I do have a document agreement as well that my friends and I have endorsed and signed. Would you like us to make that the first exhibit?
THE COURT: Why don't we deal with that from the outset because I don't think we have to deal with that with the jury present. Let me take a peek at that please. All right. I think I understand that. Should we mark that as the first exhibit.
MS. KOVACS: Yes, My lord.
THE COURT: Mr. Meadows, you're content with that, yes?
MR. MEADOWS: Yes, My Lord.
THE COURT: Exhibit 1, it is.
THE CLERK: Exhibit 1, My Lord.
THE COURT: Yes, thank you.

EXHIBIT 1: 2 page, original, Document Agreement, Date 3/Sept/2019

MS. KOVACS: My Lord, if there aren't any other matters that my friends wish to address, I think we're ready to do the opening.
THE CLERK: Thank you.
THE BAILIFF: The jury, My Lord.

(JURY IN)

MS. KOVACS: Ladies and gentlemen of the jury, good afternoon. My name is Sandy Kovacs and with me is my co-counsel Jannelle Mackoff. We are the lawyers representing the plaintiff, Hiroko, who also goes by Donna, Crawford.
In this lawsuit, Donna Crawford's claim against Dr. Anna Nazif falls under the law of negligence. Negligence is a difficult word to define for all situations, but in this context the negligence alleged is medical for doctor malpractice. The doctor must exercise the degree of care and skill reasonably expected of a normal prudent doctor in the same circumstances.
In this situation, the defendant, Dr. Nazif,

20

is a psychiatrist. As a general rule, a psychiatrist must exercise reasonable care when choosing to discharge a psychotic, schizophrenic patient from hospital. If she does not and someone gets hurt, then she should compensate the injured party for the harm that results.
Now I want you to understand that the quantification of damages is not an issue in this case, only fault, so a matter of who should have to pay, but not how much. In this opening statement, I'm going to summarize the issues as well as the evidence that I expect you will hear in the course of this trial and in the plaintiff's case.
I want to take you back to the night of December 5th, 2012. It is almost midnight. Mr. Osuteye has been wandering all around the city of Vancouver for 19 hours. He is tired. He is thirsty. He is cold. He is wet. His thoughts are racing. He is hearing voices. He doesn't know where he's been. He feels like he's lost hours from his day. He is confused. It is dark.
He finds his way back to the Salvation Army's Beacon Shelter where he has been staying since November, the month before. Mr. Osuteye is staying at the Beacon Shelter because he is not from Vancouver. Mr. Osuteye's home is in Edmonton, Alberta. The Beacon Shelter is located at 138 East Cordova Street in the Downtown Eastside of Vancouver.
Mr. Osuteye has missed curfew at the shelter. He speaks to the evening staff. He tells them he wants to go to hospital. The staff offered to arrange a SafeRide Shuttle for him. Mr. Osuteye declines. He says he will instead go nearby to the police station to ask for help.
He walks down the block to the police station also on East Cordova Street. He buzzes the help box at the front door. He tells the police he needs help. The police call for an ambulance. Two paramedics arrive, one of whom you're going to hear from in this case.
Mr. Osuteye tells the paramedics he's been walking around since 7:00 A.M. He says he's been having hallucinations, that he is hearing voices and music. He tells them he suffers from

schizophrenia. He tells them he takes a drug called risperidone. He gives his birthdate, June 22nd, 1977. He is 35 years old.

The paramedics examine Mr. Osuteye. They check his vital signs. They make several observations. He is unable to focus. He is struggling verbally. He tends to drift off when speaking. He appears to be talking to someone. He has disorganized thoughts. He is demonstrating "bizarre behaviour." The paramedics record all of this in a patient care report form, a form that goes with Mr. Osuteye to St. Paul's Hospital in the ambulance.

St. Paul's Hospital is located at 1081 Burrard Street in Downtown Vancouver not far from this courthouse. Mr. Osuteye is admitted to the emergency room at seven minutes past midnight early on December 6th, 2012. On admission he gives his home address: 2739 - 41 Street Northwest in Edmonton, Alberta. A triage nurse assigns him to bed 14. Bed 14 is an acute bed in the emergency room near the nursing station. At 12:45 A.M. Registered Nurse Alison Jordan performs an intake assessment on him. Nurse Jordan will be a witness in the plaintiff's case. I expect you will hear from her about her observations of Mr. Osuteye on intake.

He is calm and co-operative. He is not aggressive. He follows directions, but he is guarded. He won't make eye contact. He's laughing and smiling inappropriately. He gives mostly one word answers to her questions, and he appears to be responding to internal stimuli, meaning he's responding to internal voices or inside voices.

Nurse Jordan removes Mr. Osuteye's belongings and his clothing. She gives him a hospital gown. And amongst his belongings she finds two blister packs of risperidone.

Medical student Dr. Rachel Li is working the graveyard shift in the emergency room at St. Paul's. She performs an emergency physician assessment on Mr. Osuteye. She takes a history from him. He tells her that he's been walking around since 7:00 A.M. He says he doesn't know where he's been. He says he had just had his prescription of risperidone filled but he's not

taken it in one to two days.

He says he is hearing music; he says he is hearing voices. He does not express any suicidal or homicidal thoughts. He says he uses marijuana and that he last used it a couple of days ago. He tells Dr. Li he's from Edmonton and that he's been in Vancouver for about one month.

She observes that he has oriented to person, meaning he knows who he is, but he's not oriented to time or a place. He doesn't know what time it is. He doesn't know where he is.

She makes several other observations. The whites of his eyes are red. His eyes are darting around. His thoughts are disorganized. He has some range of emotion but not a full range. He's hearing voices and he is responding to them. She sees this on observation. I expect Dr. Li will tell you that she recommends a form for involuntarily committal under the *Mental Health Act*. And that will be explained to you what that is.

Dr. Reza Pourvali is Dr. Li's supervisor and the attending emergency room physician. Dr. Nazif's lawyers confirm that he will be attending their case and I expect you will hear the following evidence from him. He performs his own independent assessment of Mr. Osuteye separate and apart from Dr. Li, but he concurs with Dr. Li's assessment. Mr. Osuteye is suffering from hallucinations. And he concludes it is unclear if he is compliant with his medications.

Dr. Pourvali fills out the form 4 certificate. The form 4 certificate authorizes St. Paul's Hospital to hold Mr. Osuteye against his will for up to 48 hours. Mr. Osuteye cannot leave the hospital. It is Dr. Pourvali's view, and he records this and I expect he will speak to this in his evidence, that Mr. Osuteye has a disorder of the mind that is causing him a serious impairment. He requires treatment and a referral for a full consultation with a psychiatrist.

In the form 4 certificate, Dr. Pourvali certifies that he has examined Mr. Osuteye and that it is his opinion that Mr. Osuteye is suffering from psychosis in the context of an

underlying history of schizophrenia. Dr. Pourvali also believes that Mr. Osuteye is at a "risk of deterioration." He writes this exact phrase down on the form 4.

I expect you will hear evidence from Dr. Nazif and other doctors in this case that psychosis is a severe mental disorder in which thought and emotions are so impaired that the person suffering from it has lost contact with external reality. I expect you will hear from Dr. Nazif herself that some patients with psychosis may feel that their body is being controlled by something else, and some patients with psychosis can become violent causing harm to themselves or others.

I expect you will hear from several witnesses including Dr. Nazif that, as a general rule, patients do not recover from psychosis without treatment. Without treatment, a schizophrenic with psychosis will usually get worse. And the standard treatment for someone exhibiting signs of psychosis is antipsychotic medication. Risperidone is a common type of antipsychotic medication.

After Dr. Pourvali certifies Mr. Osuteye, his blood work comes back from the lab. It is mostly normal with the exception of two markers, his lipase and his CK. CK stands for creatine kinase. It is an enzyme protein that's found in the body's muscles. If the muscle is breaking down, the CK trickles out into the bloodstream and can be measured with a simple blood test. Mr. Osuteye's CK level is informative, it's elevated. Mr. Osuteye has walked so much and for so long before his admission, for 19 hours by his own self-report, that he's actually started to cause some mild but measurable muscle damage.

To treat Mr. Osuteye's elevated CK, Dr. Pourvali, the emergency room doctor, orders IV fluid replacement. A nurse inserts the IV into Mr. Osuteye's left hand at 1:50 A.M. The nurse who inserts the IV, I expect you will hear, observes that Mr. Osuteye is smiling and unsure of the situation. Nurses check on him frequently throughout the early morning hours. At 3:00 A.M., his eyes are noted to be closed, but he's not sleeping, he's mumbling to himself.

Nurse Alison Jordan returns to Mr. Osuteye's bedside at 4:45 A.M. to replace his IV bag. She finds him lying in his bed with the bed sheet pulled over his head. He is muttering to himself. She can't decipher what he's saying.

She tells Dr. Pourvali that Mr. Osuteye might need some medication to keep him calm and help him sleep. Dr. Pourvali orders a 2 milligram dose of Ativan. I expect you will hear that Ativan is a benzodiazepine. It is a drug that acts on the brain and nerves to produce a calming or sedating effect. It's an antianxiety agent, and it makes the patient sleepy and drowsy.

Nurse Jordan gives Mr. Osuteye the Ativan at 5:00 A.M. So at this point he's been in hospital for almost five hours. His restlessness subsides. He falls asleep. And in fact at 7:00 A.M. he's noted by the nurse's chart to be snoring.

The defendant, Dr. Anna Nazif, is a medical doctor and a psychiatrist. To qualify as a psychiatrist she received additional education and training over and above her medical doctorate degree. She comes on shift at St. Paul's Hospital at around 8:30 in the morning on Thursday, December 6th, 2012. It is unusually quiet that morning at St. Paul's Hospital. She is told that she has just one patient waiting for a psychiatric consultation. She is actually training a medical student, Dr. Sebastian Ko.

She reviews Mr. Osuteye's ambulance report, some community social worker notes that are made available to her through an electronic system, and the emergency department hospital chart. She also has some records from the Grey Nuns Hospital in Edmonton. Those are records received after someone at St. Paul's Hospital made fax requests to three hospitals in Edmonton knowing that this patient is from there.

Grey Nuns is where Mr. Osuteye was first hospitalized and diagnosed with schizophrenia back in 2009 three years before his admission to St. Paul's Hospital.

The 2009 records contained some information. First, Mr. Osuteye is university educated. Second, he has a mother and two brothers in

Edmonton. It was his family who actually took him to hospital in 2009. Also, his admission to Grey Nuns was an involuntary admission that followed his attempt to leave Edmonton without any planning. His brother had picked him up at the airport and drove him straight to the hospital.

At around 9:30 A.M., Dr. Nazif and her student, Dr. Ko, approached bed 14 where Mr. Osuteye is waiting. He is sitting on the end of the bed, his feet are dangling over. Dr. Nazif and Dr. Ko pull up two chairs and sit directly in front of him. They begin by taking a history. Mr. Osuteye is polite and he's co-operative. In fact, I expect you will hear that Dr. Nazif describes him as a "lovely, pleasant person."

He tells them he's been walking all over the city for 19 hours the day before. He also tells them he's been hospitalized. He tells them he's been hospitalized six months earlier at the Misericordia Hospital in Edmonton. He says he was hospitalized for three weeks.

Dr. Nazif observes Mr. Osuteye to stop talking mid sentence. I expect you will hear that she considers that this might be thought blocking, a symptom of psychosis, but she accepts Mr. Osuteye's explanation that his interrupted speech is due to his stutter. She also sees that his eye contact is limited, and he's distracted, but she thinks maybe the explanation for that is that they're in a busy area of the ER, and of course they're right next to the nurses' station. And in response to specific questioning, he denies that he's hearing any voices.

Dr. Nazif inquires into his medication compliance. The community health social worker system notes suggests that Mr. Osuteye filled his prescription for risperidone just one week before this admission. Mr. Osuteye tells Dr. Nazif that he's been taking his risperidone since refilling it one week ago. She believes him.

He tells her that he was living with his mom in Edmonton before moving to Vancouver. He tells her his mom's first name, Mercy. He gives her a phone number and an address. Dr. Nazif writes this information down.

But Dr. Nazif doesn't call Mercy Osuteye. I expect she will say because Mr. Osuteye asked her not to. She doesn't call Dr. Dewart who Mr. Osuteye identifies in the interview as having been his treating psychiatrist at Misericordia, that's something that Dr. Nazif wrote down. She doesn't follow up on getting his records from that recent admission to the Misericordia. She doesn't ask to look at Mr. Osuteye's risperidone supply to see if he actually has been taking his medication because she assumes that his supply is at the shelter.

She's of the opinion that Mr. Osuteye has "slight psychosis," but that he is stable. She concludes he is not at a risk to himself or to others. She chooses, in her own words, to "decertify" Mr. Osuteye. She clears Mr. Osuteye psychiatrically, permitting his discharge from hospital less than 12 hours after his submission.

I expect you will hear from another psychiatrist, Dr. Ian Gillespie. He will be an expert in the plaintiff's case. He is scheduled to testify next week. Dr. Gillespie has prepared a written report giving notice of his opinion of Dr. Nazif's exercise of care in decertifying Mr. Osuteye. Based on what is in his expert report, I expect Dr. Gillespie's evidence will be critical of her decision to decertify.

But Dr. Nazif did certify Mr. Osuteye -- did decertify Mr. Osuteye from St. Paul's Hospital on the morning of December 6th, 2012. The nurse removes his IV and he's on his way out the door by 11:34 A.M. Mr. Osuteye gets back to the shelter.

The next morning, Mr. Osuteye is smoking a cigarette outside the shelter. He sees a woman nearby. She's also smoking a cigarette. He feels a sudden urge to attack her. This alarms him. He runs down the street. He turns a corner into an alley. He sees an older Asian woman. He walks past her. He feels an urge again. He stops. He turns around. He looks at her. He takes a running jump and kicks her in the head. A man interrupts him as he's beating her and yells at him. Mr. Osuteye runs from that scene.

He runs for a few blocks to Pacific Boulevard near BC Place. He sees another elderly

woman. He walks past her a few steps, and he walks back up beside her, he trips her to the ground and he starts kicking her and stomping on her.

Donna Crawford, then age 63 and retired, lives in a small studio apartment in the 1300 block of Hornby Street. On the morning of December 7th, 2012, she's out walking. It is a typical Vancouver day: cool, overcast with rain clouds moving in. It's 9:50 A.M. Ms. Crawford is walking in the 700 block of Pacific Boulevard near the Edgewater Casino in the Plaza of Nations. Nicholas Osuteye is there. He's already attacked two elderly women as you've heard me describe. He sees Donna Crawford. He walks up beside her. He sweeps her legs out from under her, she hits the ground, he winds up, and kicks her in the head as hard as he can. He continues to kick her and stomp on her. With full force, he jumps with both feet into the air and stomps her face and her torso repeatedly.

Carla Soregaroli is driving to her morning massage therapy appointment. From her car she witnesses Mr. Osuteye's attacks on Ms. Crawford and the victim before. She pulls over and she runs at Mr. Osuteye screaming as loud as she can. Another man is also nearby trying to distract Mr. Osuteye. Mr. Osuteye starts to chase him.

Ms. Soregaroli attends to the second victim, the woman before Ms. Crawford. She calls 911. But she doesn't go near Donna Crawford who she can see is lying motionless on the ground nearby. She can't because Mr. Osuteye is still standing too close to her. She watches as Mr. Osuteye calmly throws his jacket over his shoulder and walks away. Walks, not runs. She watches as Mr. Osuteye goes down the street calmly.

Michael Jacko is also nearby. He's actually doing some urban gardening in the area. He witnesses the attack on Donna Crawford and the woman immediatley before her. He also witnesses Mr. Osuteye's subsequent attack on a car stopped in traffic as he's walking away from the beating. He also calls 911. He's on the phone with 911 as he watches Mr. Osuteye strip down to his underwear and surrender to police. You'll recall it's December. He stripped down to his underwear

and surrender to police.

Vancouver Police Constable Mike Dewar and his partner Constable Brad Cook are the first officers on the scene. You will hear from Constable Mike Dewar who is now retired who will be coming as a a witness in the plaintiff's case. I expect you will hear from him that by the time they arrive Mr. Osuteye has already dressed down to his underwear.

Mr. Osuteye submits. He is calm. He is co-operative. They arrest him without challenge. They handcuff him. They sit him down on the curb. They give him a blanket because it's cold and it's starting to rain.

Mr. Osuteye's talkative. Constable Dewar gets a digital audio recorder out of his squad car. You will hear that audio recording of Mr. Osuteye's arrest. You will hear Mr. Osuteye say in his own words that he was hunting human beings like animals.

I expect you will hear that Constable Dewar searched Mr. Osuteye's clothing and his pockets. You will hear about what he found. Amongst other things, he found a note from Mr. Osuteye's visit to St. Paul's Hospital the day before. He also found four blister packs of ten risperidone pills each unopened. There were no pills missing from those packs.

The paramedics take Donna Crawford to hospital. She survives but with injuries. Donna Crawford does not remember the attack. I expect you will hear from her and in fact she will be the first witness in our case. But she has amnesia over a significant period of time both before and after this attack. But I expect she will say that she knows she suffered a severe head injury, multiple facial fractures, rib fractures, a fractured forearm. She required months of rehabilitation before she could walk again. She continues to suffer from poor balance, and she has no sense of taste or smell, and she continues to struggle with her memory.

Now, before she takes the stand, I think it might be helpful for me to tell you what it is that Donna Crawford, as the plaintiff in this case, is asking you to do. Ms. Crawford is not suing Nicholas Osuteye, but Mr. Osuteye is a

third party to this lawsuit and Dr. Nazif's election.

I expect Dr. Nazif will say, and her counsel will argue, that you should find Mr. Osuteye liable to Ms. Crawford for civil assault, and that she herself -- and that Dr. Nazif herself was reasonable and careful in her decision to decertify him on December 6th, 2012. She will say that even if she made a mistake, that, in hindsight, not every mistake constitutes negligence. He will say that she did just as any other psychiatrist would do or would be expected to do in these same circumstances.

But Donna Crawford brings this lawsuit against Dr. Nazif only. And as the plaintiff, she is asking you to find that Dr. Nazif was negligent when choosing to decertify Mr. Osuteye when she did.

My Lord, with that, that is the plaintiff's opening. I'm happy to call the plaintiff's first witness.

THE COURT: I'm content to do that. I wonder if your friends have anything to say just before we moved on. Is there anything that arises from that that I should hear about.

MR. MEADOWS: No, My Lord.

THE COURT: All right, then. Then we should do that. Thank you.

MS. KOVACS: The plaintiff calls the first witness which is the plaintiff, Hiroko Donna Crawford, to the stand.

HIROKO DONNA CRAWFORD,
the plaintiff,
affirmed.

EXAMINATION IN CHIEF BY MS. KOVACS:

Q Ms. Crawford, you are the plaintiff in this action?
A Yes.
Q And Hiroko is a Japanese name; is that right?
A Yes.
Q Donna is the name you prefer to go by?
A Yes, that's my second name.
Q How old are you today, Ms. Crawford?
A 70.
Q Where do you live?

A I live at 1316 Hornby Street in the West End of Vancouver.
Q Is that an apartment?
A Yes.
Q How long have you lived there?
A Probably about 24 years or more.
Q Long time?
A Yes.
Q You're retired?
A Yes.
Q What did you do for a living before retirement?
A I worked for the Legal Services Society of BC.
Q What did you do for them?
A I did all different things. When I retired, I worked in their publications department, and I worked in their IT department as well and the supervisor in data entry.
Q And how long did you work with them?
A Oh, gee. I guess between 25 and 30 years. I can't remember now.
Q And I understand you have two daughters; is that right?
A Yes.
Q And you have grandchildren?
A Yes.
Q And I understand you recently became a great grandmother?
A Yes.
Q I want to take you back to December 7th of 2012. Do you remember what happened that day?
A No.
Q You have no memory of being attacked and beaten by Nicholas Osuteye?
A No.
Q Do you remember being on Pacific Boulevard that day?
A No.
Q Do you have any understanding based on your practice of why you were there?
A No.
Q I take it you have a problem with your memory?
A Yes.
Q What's your last memory from before the attack?
A I don't remember anything from before -- I mean, I know -- I don't remember doing anything or -- so I don't really have any memories of what I was doing.

Q What is your first memory after the attack?
A Waking up at GF Strong.
Q And GF Strong is a rehabilitation hospital?
A Yes.
Q Okay. And what did you understand at that point in time when you woke up?
A I didn't really understand anything because I didn't know what happened. I just was very confused, and I had no idea where I was -- or why I was there.
Q Do you have an understanding of how long you were in hospital?
A No. I think -- it could have been anywhere, I guess, from two months or more. I don't remember because I don't remember being there.
Q And when you say you woke up, were you -- to your understanding, were you in a coma?
A I was in an induced coma in the hospital. When I -- at GF Strong, I only remember that I was there, and I was in a wheelchair, and I didn't know why.
Q Did you -- why were you in a wheelchair?
A Because I couldn't walk, but I didn't know I couldn't walk. So I tried to get up, and I fell, and I banged my head. I remember that.
Q What do you understand of the injuries that you suffered in the attack on December 7th of 2012?
A I know I had a traumatic brain injury, and my eye sockets were all smashed in, and my nose was broken, and my gum was all broken, and my jaw, and my broken ribs. I had a broken forearm. And my foot, I think it was fractured or something, and my ribs were fractured. And my memory -- I didn't have a memory.
Q Aside from the memory, how has the head injury also impacted you in terms of any disabilities?
A I've lost my balance, so I have to use a stick or a cane because I'm always dizzy. So even if I'm not moving, everything is, kind of, like, not still. And I can't taste or smell anything.
Q You can't taste or smell anything?
A No.
Q And those are -- are issues that you're still experiencing today?
A Yes.
MS. KOVACS: My Lord, those are my questions for Ms. Crawford.

MR. MEADOWS: My Lord, we have no questions for this witness. Dr. Nazif acknowledges that it was a horrific assault and that the injuries you suffered were very significant.
THE COURT: Ms. Crawford, you're excused. Thank you very much for your help.

(WITNESS EXCUSED)

MS. KOVACS: My Lord, the plaintiff's next witness is Dr. Roy O'Shaughnessy, but I think we need to organize the document that's going to go in through him. I wonder if we might take the break now.
THE COURT: Sure. Let's do that. So normally, as I said to you, we sit 2:00 to 4:00. Normally we take a break somewhere around 3:00 o'clock for 10 minutes or thereabouts, but that's flexible and here we're going to accommodate a witness so we'll break now, and the sheriff will tell you when we're ready to proceed again. Madame Clerk will let us know that, so we'll just stand down until the next witness.

(JURY OUT)

THE CLERK: Order in court. Court is adjourned for the afternoon break.

(PROCEEDINGS RECESSED AT 2:40 P.M.)
(PROCEEDINGS RECONVENED AT 3:04 P.M.)

THE CLERK: Order in court.
THE BAILIFF: The jury, My Lord.

(JURY IN)

MS. KOVACS: My Lord, just before we call the next witness, we need to -- we have a common book of documents which we'd like to distribute. We have one for Your Lordship as well as one for the exhibit, and it's missing two tabs that we're still sorting out. And we will hand up the aid to the sheriff.

My Lord, I might propose that we -- this is a common book of documents that my friends and I have agreed on subject to the document agreement,

which is Exhibit 1. And I wonder if we might mark the binder as Exhibit A for identification, and then our intention is to mark the individual documents as numbered exhibits as we move through the evidence.

MR. MEADOWS: Yes, My Lord.

THE COURT: That's what we'll do. Exhibit A for identification.

THE CLERK: Exhibit A for identification, My Lord.

THE COURT: Yes, thank you.

EXHIBIT A for IDENTIFICATION: White binder, Joint Book of Documents

MS. KOVACS: And, My Lord, the plaintiff would like to call her next witness, which is Dr. Roy O'Shaughnessy.

ROY O'SHAUGHNESSY, a witness called for the plaintiff, sworn.

EXAMINATION IN CHIEF BY MS. KOVACS:

Q Dr. O'Shaughnessy, you are a forensic psychiatrist qualified to practice in British Columbia?

A I am.

Q If you can just briefly explain to us what forensic psychiatry is.

A Forensic psychiatry is a subspecialty in the field of psychiatry. Psychiatry is that branch of medicine basically dealing with mental disorders. And forensic psychiatry is the subarea that addresses interface issues between mental disorders and legal issues, things such as testifying in court, people who have difficulties cognitively, can they stand trial, things of that type. As well as doing civil evaluations for damages, things of that instance.

Q Thank you, Dr. O'Shaughnessy. I understand you have or had a relationship with St. Paul's Hospital?

A I was on active staff at St. Paul's Hospital for a number of years. I stepped down I think three years ago now as I'm kind of paring back my practice.

Q Are you familiar with the defendant in this

action, Dr. Anna Nazif?

A Yes, of course.

Q All right. And can you just briefly tell us how you are familiar with her?

A Well, she -- at the time I was on staff, she was the head of the emergency psychiatry services. So we were staff colleagues together, and I spoke with her many times over the time I was on staff.

Q Okay. And I understand at one point in time you interviewed her in a more formal capacity with respect to a review.

A We -- I was part of an -- well, I was in internal, but as part of an external review of issues in dealing with very complex, difficult patients. And Dr. Nazif, in her role as head of the emergency psychiatric services, was interviewed by our committee.

MS. KOVACS: I wonder if the witness could be given Exhibit A.

Q Dr. O'Shaughnessy, we're going to be looking at one document only and it's at tab 1.

A Yes.

Q And can you tell us what this document is at tab 1?

A That is the external -- the report from the external review committee regarding the issues at St. Paul's at the time, primarily dealing with the sudden increase in very severely ill complex patients and challenges in managing them in the community.

Q Right. Okay. And just so we can decipher what -- what is said on page 1, which is the cover page. It says "Vancouver Coastal Health Authority and Providence Health Care." Those are two health authorities that operate in this province?

A Well, they're the ones in the Lower Mainland, yes.

Q Yes. And they both commissioned this external review; is that right?

A Yeah, they're -- simple answer is yes. It's complicated but yes.

Q All right. And "ED" stands for emergency department?

A Emergency department.

Q "MHA," *Mental Health Act*?

A That's correct.

Q All right. "Case external review." When it says "case external review," what does that mean?

A I think that's just a nomenclature, means nothing really. The review was prompted by a very severe case of an individual who had left the emergency department and committed a violent act. And -- but it was emblematic of many issues that had been clearly identified. So this was kind of a, if you will, a prompt to do this, but the issues that had occurred both before and after this case -- particular case, were, in fact, well known.

Q Okay. And if you turn to page 3, at page 2 there's an index. Page 3 there appears to be an executive summary.

A That's correct.

Q Do you have that before you?

A Yes.

Q And you'll see halfway through the page what the review team consists of, and there are four bolded names there, and your name is the last bullet?

A Yes.

Q So you were a member of -- of a -- you were one of four review team members?

A That's correct.

Q And you had said as well that this was prompted -- this review was prompted by an incident with a patient. And it looks like that's actually mentioned in paragraph 1.

A It is.

Q All right. And what was the purpose? And I see that there's a comment with respect to purpose at paragraph 2.

A Basically review and look at ways of improving the care system is a quick-and-dirty description of the purpose of the review.

Q Right. And looking at the last line, one of the purposes was also to ensure public safety; is that right?

A Yes.

Q Okay. And penultimate paragraph, so the second-to-last paragraph, over a three-day period --

A Yes.

Q -- the review team had the opportunity to meet with an impressive range of leaders. So there

was a three-day interview period; is that right?

A There were three days of interviews plus an awful lot of documents and representations -- written representations.

Q Okay. And last paragraph, it says "for further context there's an Appendix C," which isn't included in this redacted report. And you'll agree with me this is a redacted version of the report that you assisted in preparing?

A Yes. This is a very brief -- and even then there's redactions in this brief part of it, yes.

Q Right. And you'll see in the last paragraph, though, it references "connecting relationships," so I take it this review wasn't confined just to the internal processes at St. Paul's Hospital?

A Oh, no. It -- it was interviewing a number of people. I mean, it's a very complex issue because you don't stand alone as a hospital in a place like Vancouver. You interact with many other agencies. So police are interviewed, mental health courts, other hospitals that are intertwined, Vancouver Hospital forensic services, a variety of others. So then of course family members, people have a vested interest in assisting individuals who have mental disorders. So it was a wide spectrum of individuals interviewed.

Q I see. Okay. And in terms of the wide spectrum of individuals interviewed and connecting relationships with outside agencies, why was that important in the context of this review at St. Paul's Hospital?

A Because the case that prompted it, it was a man who we admissibly termed complex in presentation, meaning it was a person who not only had a mental disorder but had a longstanding history of criminal activity, substance use disorder, personality dysfunction, social dysfunction, who was highly resistant to receiving any mental health treatment, had been itinerant, moved all over the country, had been in different hospitals, different jails throughout the country, different provinces. So it was really looking at where these individuals fit in.

So it's not simply a mental disorder. Individuals who have criminal activity, a mental disorder involving the justice system, the police

37

services, Crown counsel, the penitentiaries, prison systems. As well, people with substance-use disorders cross over into other areas that are kind of adjacent, but not necessarily directly involved in mental health services. So it was that kind of issue.

And then of course the whole social network of the homeless problem we have in Vancouver, particularly amongst severely mentally ill and drug addicted individuals and how to provide that kind of social support to a population that doesn't want it, may not recognize the need for it, lacks any insight into the severity of their illness and behaviour. So it was -- that's why the complexity of the -- of the patient, and in turn why we had interviews with so many people involved in dealing with people who have these kind of complex difficulties.

Q And if you turn the page over to page 4, first line, it says:

> There was a tour of the Downtown Eastside including visits to an emergency shelter.
>
> What can you tell me about that?

A Only that you never, ever, ever want to be visiting an emergency shelter and staying overnight. They are places that are -- most folks have no idea just how difficult the living circumstances are in these facilities. And frankly, we're seeing it played out right now at Oppenheimer Park where many individuals would prefer to live in a tent than in a shelter.

Shelters are not safe places. They're often finding their belongings stolen. They're dealing with people who are actively psychotic and potentially aggressive and difficult; often who have criminal histories and think nothing of stealing and creating mayhem. They're just very challenging places. They're crowded. They're not very clean. The people that are there are often agitated, boisterous, difficult. They're not very clean. I mean, they're really -- words really have a hard time describing how challenging these places are.

Q Why was it important for this review panel to visit Downtown Eastside shelters or a shelter?

38

A Well, because in our local jurisdiction we generally operate on catchment areas, and it's often done by ambulances. So if you're injured in a certain place, they take you to a certain hospital, this is the closest catchment area. So the catchment area for St. Paul's are the Downtown Eastside.

And what's happened in the last number of years, this is a bit dated now, this is back in 2012, but in the three to four years prior to that there had been a huge increase in the number of complex, very ill patients being admitted to the emergency room. Used to be St. Paul's was much less numbers than in Vancouver Hospital. And, as an example, Vancouver Hospital was geared up for addressing these kind of issues. They had what we call a psychiatric assessment unit right attached to the emergency room. A 20-bed rapid-access admission facility. They had a number of quiet rooms to deal with people who were psychotic and very agitated.

But in the four to five years prior to this review, the tables turned. And, in fact, if you look at the admission data, which we did, the data showed that there had been a huge increase, like 50, 60 percent or more, I believe -- I can't recall the figure offhand right now -- of complex patients being sent to St. Paul's. And, in fact, St. Paul's was seeing more than VGH, but St. Paul's didn't have the resources that were sent to VGH because that was -- initially in years past that was the place we -- the folks went.

But with the changes sociologically, demographically in the Lower Mainland, now with the Downtown Eastside being a huge area where there's estimated 5,000 mentally disordered people who live in the Downtown Eastside, the majority of whom are not getting medical attention let alone psychiatric care. So they were then being brought to St. Paul's and they were overwhelming the resources of St. Paul's Hospital.

It was often the case that in the emergency department virtually every single bed was filled with a psychotically ill person displacing cardiac, trauma, other seriously ill people. So

39

it was quite a crisis in terms of the demographics.

Q And so that crisis led to this other case -- it was a culmination of the crisis and an example of the crisis in effect with this man that was released and stabbed a person in a nearby cafe. Is that -- sorry, my apologies. I don't know if you've actually talked about what had happened in that case.

A We did in -- we didn't focus so much on the case as we did on the systems issues. We did review the case in terms of psychiatric records or notes on that particular person as a ballpark to look at it.

But you're quite correct. What became clear after the fact on this particular man was that he had come from a different province recently. We -- they did not have information about his criminal behaviour, or his psychiatric illness in other provinces, not readily available. There had been attempts earlier to have him assessed. They were thwarted in part because he didn't want to receive any care or treatment and in part because of systems issues where there was issues of communication, meaning that, for example, St. Paul's and Vancouver Hospital have different computer systems that don't connect. They don't communicate. So it was a real problem if somebody went to Vancouver Hospital emergency room and you're looking online to see if there's been any kind of medical care in the past, you couldn't do that; you couldn't get that information available.

Likewise, there were -- there were problems in communications from the justice system, and both sides were kind of having problems in terms of communicating. So a host of communication issues that this particular case demonstrated, and that was one of the reasons why it was thought to get all these other people involved.

Q Okay. And if we turn over to page 14, you talked a little bit about VGH or Vancouver General Hospital and the resources available there. And I understand partway through the page here under "Vancouver psychiatric acute care services," there's some reference to that --

A Yes.

40

Q -- the beds that are available both at the St. Paul's and at VGH?

A Yeah, the physical plan at St. Paul's is hopelessly inappropriate for the number of patients that are being sent there compared to Vancouver Hospital.

Q And partway through that paragraph it says "St. Paul's has a four-bed secure observation unit in the ED," emergency department, "and a 13-bed psychiatric assessment unit upstairs."

A Yes.

Q All right. And that's what existed as of circa August 2012?

A That's correct.

Q Okay. And turning over to page 15, at the very top of the page -- and you touched on this already, Dr. O'Shaughnessy, but the very last sentence of the first paragraph you talked about the Downtown Eastside and the growing numbers from that region to St. Paul's Hospital, but you've talked about the closer proximity as between the Downtown Eastside and St. Paul's?

A Yes.

Q All right. And so the recommendation is to increase resources?

A It was. There's more to it than that. St. Paul's, the medical and psychiatric staff, had a very good reputation for dealing with these very difficult patients because of the experience that they had. So there was strong push by the police and courts to have St. Paul's continue its role in dealing with this clientele as opposed to have them shifted -- so one of the options was simply to take people and move them to VGH. Have to tell the ambulance crews if they -- if you got a person, just -- VGH, not St. Paul's. But there was strong push by the people in Downtown side -- Eastside not to have that happen. So the -- ultimately the conclusion was instead of shifting the burden to VGH, increase the resources to deal with the problem at St. Paul's, one of the recommendations.

Q And looking at page 15, there's some blacked out portions, but there's a sentence at the bottom of the -- what appears to be the third paragraph halfway through the page, "given its proximity"; do you see that?

41

A Yes.
Q And it says that "St. Paul's emergency department receives the majority of patients in crisis from that neighbourhood." So that was true at the time?
A Yeah, we had the data on that. It's just very clear. The people -- we know where they're being brought from the hospital ambulance with it all. So that was one of the issues we looked at in the -- in the review.
Those are kind of dry until you saw the startling increase in numbers year after year, the previous four to five years, which I think was a surprise to many people that hadn't really understood the severity of the crisis.
Q And if you look at page 41 -- and 40 and 41 appear to be an Appendix B "people interviewed"?
A Yes.
Q You have that before you?
A Yes.
Q And there's a long list of people that were interviewed for the purposes of this review?
A Yes.
Q Page 41, it looks like at the very top, there are a number of names, and Dr. Anna Nazif, the defendant's name, is listed as the second?
A Yes.
Q So she was interviewed for the purpose of this review?
A Yes.
Q All right. And Dr. Mark Levy was also interviewed?
A Yes.
Q And again, just looking at page 1, then, this was published August 2012; is that right?
A That's correct.
MS. KOVACS: Dr. O'Shaughnessy, those are my questions for you.

CROSS-EXAMINATION BY MR. MEADOWS:

Q Yes, Dr. O'Shaughnessy, do you practice in the emergency department yourself?
A I do not.
Q And have you ever done so?
A Not since I was a resident.
Q Not for many, many years.
A You don't have to rub it in. Yes, quite a few

42

years.
Q All right. And so in reviewing the report and what portions of it we have it seems clear that this is a systems review primarily; is that correct?
A That's correct.
Q All right. And so you were not asked -- the team was not asked to look specifically at the issue of the standard of care of the psychiatric assessments being provided at St. Paul's Hospital?
A No, not at all.
Q All right. Looking at page 3 on the second paragraph, I'm just -- with respect to the purpose, it's "the provision of optimal care -- you want to support the provision of optimal care to people with acute mental health and substance abuse service needs." So those two things are listed in combination. Is that something that the reviewers did on purpose, or were those two conditions considered to be coincidental at all times?
A No. That was part of the essence of the review was dealing with what -- again what we call, the complex patient. These are simply euphemisms. We have -- let me give you a history.
When I first started in psychiatry, and granted it was a long time ago, substance abuse and mental illness were related but really quite different, and different doctors kind of took care of that issue. And in the last number of years they've merged much more closely. We were a little late to the ball game in Canada compared to the United States where they merged much earlier into addictions. And we now call it either complex care or comorbidity kind of care. And it's recognition that for many individuals with mental disorders, they also have co-occurring, comorbid substance use difficulties. So for some individuals with mental disorder, they seek substances to make themselves feel better. For some individuals who have abused certain type of substances, in particular the type we're seeing more commonly in Downtown Eastside, methamphetamine, these kind of horrible drugs. They can actually induce mental disorder and some of them, unfortunately, reduce

43

-- or result in permanent brain changes and permanent mental disorder from the drug use itself.
So there's become an increased recognition in the last decade, perhaps longer, of the joining of the severely mentally ill and then the substance abuse into this complex group that is very challenging to treat. And it's challenging because if they're continuing to abuse substances, the medications we give for the mental disorder are effectively ineffective. Coupled with the fact that the substance addiction creates such a huge craving that that's mostly all they think about is getting their substance abuse satisfied. So it affects their insight, affects their motivation. And when we tell them they've got to quit doing drugs, of course, it's a standing joke. They think we're idiots. But, you know, that's also driving the mental disorder. So it's a very challenging group.
And the particular case that prompted this review was a man who had not only the substance abuse and the mental illness, but also personality difficulty, criminal behaviour, social dysfunction, relationship -- multi-disfunctional kind of individuals. And what we've recognized for some years is that that's now the kind of core of many of the people who live in the Downtown Eastside.
So Bill McEwan, who was also interviewed, is a psychiatrist who works in the downtown core. They've been doing active research on the SRO population, single room only, spelled S-R-O, study, looking at the individuals and examining them in terms of a broad variety of parameters. And what you're finding in this group is shocking and disturbing. So not only are they mentally ill, they have virtually all severe substance abuse. The majority have brain damage of some form or other, either from mental retardation or brain injury or drug abuse. They all have social dysfunction. They often are alienated from their families, have little in the way of social supports. And that's kind of the complex patient that is being brought to St. Paul's and that became the substance of this review.

44

Not all the patients going to St. Paul's are of this group. It's that subset of the complex patient. In St. Paul's, there are also individuals who have a mental disorder but no substance use. Although, in fairness, look at the wards. There are a relatively small percentage now of those getting -- being admitted. The majority have substance use difficulties.
Q And I take it that not all of the patients from the Downtown Eastside have those conditions as well?
A Well, no. Because St. Paul's also takes the West End, which is, you know, a higher functioning well-to-do community. They deal with all that cohort as well, so individuals who have depressions or schizophrenic illnesses or bipolar disorders. They all will also be treated at St. Paul's. It's that core area -- what we call DERA, the Downtown Eastside, that houses many of these complex patients, but not everyone in the West End is in that category.
Q Right. Now -- now, on page 13, if I could just ask you to turn to that page, this is a related matter here. In the very first paragraph you say:

> St. Paul's is an inner city hospital with a mandate to provide excellent care to Vancouver and residents of British Columbia.

So St. Paul's treats patients from all over Vancouver and in fact all over British Columbia at times; is that correct?
A It can, but because the catchment areas we have. So if you're in the North Shore, you go to Lion's Gate. If you're in, kind of, West or East Vancouver, you're -- east side of Vancouver -- what side -- you're going to go to the -- Vancouver Hospital or UBC. Downtown West End you're going to go to St. Paul's. It's really -- -- we do a line on a catchment-area basis.
Q Right. Now, that -- when you say "catchment," that's relating to when people are brought to the hospital rather than people voluntarily attending at the hospital; is that correct?
A That's correct.

Q So somebody from the North Shore could go over and go to the St. Paul's emergency department? Nothing prevents them from doing that?
A Not at all. They could do that.
Q Right. So it's care of residents of British Columbia?
A You don't get turned down if you don't live in the downtown corridor, yeah.
Q Thank you. All right. So the complex patients that you were reviewing as part of this review or looking at in terms of the systems review, it's primarily those patients that had the sort of dual diagnosis, both the substance abuse disorder and the mental health disorder, and some sort of intersection with the criminal system; is that correct
A Basically.
Q Thank you. And are you aware as to whether or not this report was communicated to the -- to the physicians at St. Paul's Hospital by December 2012?
A I'm not sure the actual time. It was -- it was a public report. I mean everybody got copies. It's not a secret document. It was disseminated, but, I'm sorry, I can't recall when it was disseminated. I think it was disseminated soon after, but I -- don't quote me. I could well be wrong.
Q And do you have any awareness yourself as to whether or not any of the things that were discussed in this report or recommended in the report were instituted by December of 2012?
A By the time I left there had been inroads in doing so. There was a big debate about -- I think it was --
Q Oh, sorry, when did you leave?
A I left three years ago, St. Paul's.
Q So 2016?
A Yeah. They were in the process of -- how to put this correctly -- there was a huge debate as to how to manage the recommendations as reported, in particular to provide increased facilities at St. Paul's. So a number of things were going on concurrently.
One was a shift of many of the patients in the outpatient department, especially those with mood disorders, regular kind of -- people from a

variety of areas, in fact, from all over Lower Mainland, shifted them out of St. Paul's and into the Mood Disorders Association building which was nearby. Such that all the psychiatrists in the outpatient department went there and saw people -- the innovative -- and are still doing innovative changes to management of mood disorders by doing group medical visits and things of that type. It got them out of the St. Paul's Hospital and more into the downtown community.
In addition, there were plans made to build a facility adjacent to the ED that could be dealing with short-term housing issues. That was under huge controversy, and there was great concerns that they were creating a thing that could be a monster in hiding it. So there was a lot of debate and confusion. And then of course there was real problems in getting funding for the actual construction costs. So that by the time I left, there were many plans not much in the way of lumber being built. And in fairness, I don't really know what's happened since I left, only from colleagues who talked to me about the issues.
Q Thank you. All right. Now, if I can ask you to turn to page 14, and in the top part of the page, there's a paragraph that starts the "EDMDs are assessing every patient" --
A That's right.
Q -- "who registers in the ED." And then there was an indication later on that "the review team learned that ED physicians are conducting assessments on patients brought to the ED under section 28 of the *Mental Health Act*." And just to clarify for those who may not be familiar with that, section 28 of the *Mental Health Act*, what does that refer to?
A It's the area where police can bring a person in because they think they have -- suspicious of a mental disorder, and they can be brought into a hospital under the *Mental Health Act* for evaluation by a doctor.
Q So the police themselves apprehend the patient?
A That's correct.
Q All right. And then -- so the concern was that sometimes the police apprehend a patient, bring

them to the hospital for assessment, and then they're discharged without ever seeing a psychiatrist; is that right?
A That was part of the problem, yes. Just to clarify, they were seen by physicians. They were emergency room doctors. They were not psychiatrists.
Q Right. Now, you mentioned that you did interview Dr. Nazif and that that was as part of her role in administration; is that correct?
A That's correct.
Q Okay. So what was -- what was your understanding of her role at the time?
A She was the head psychiatrist in the emergency department.
Q So you wanted to speak to her about their input into this issue?
A Yes, of course. Obviously she was a central figure.
MR. MEADOWS: Those are my questions, thank you.
MS. KOVACS: My Lord, no redirect, but we haven't marked it as an exhibit. I had forgotten to do so.
THE COURT: And by each you mean the tab itself?
MS. KOVACS: Sorry? The tab itself. Yes, so I would propose to mark that as Exhibit 2.
MR. MEADOWS: Yes, My Lord, I'm satisfied.
THE COURT: Exhibit 2 so that'll be tab 1.
THE CLERK: Exhibit 2, My Lord.
THE COURT: Yes.

EXHIBIT 2: Tab 1: 9 page Vancouver Coastal Health Authority Providence Health Care, ED MHA Case External Review, August 2012 Text

THE COURT: Let me say this to the jury: It may be useful for you to just make a note of the exhibits on the tabs because ultimately when I charge you and I direct you to a document it might be to Exhibit 2. I'll probably refer to the tab as well and counsel may do the same, but just to assist you going forward it will be easier for you to follow. All right.
Yes, thank you, Doctor. Thank you for your help, sir.
THE WITNESS: Thank you, My Lord.

(WITNESS EXCUSED)

MS. KOVACS: My Lord, the plaintiff is going to call its next witness, which is Mercy Osuteye and my colleague, Ms. Mackoff, is going to be asking her some questions.

MERCY ODOKAI OSUTEYE,
a witness called for
the plaintiff, sworn.

EXAMINATION IN CHIEF BY MS. MACKOFF:

Q Ms. Osuteye, you are the mother of Nicholas Osuteye, the third party in this case?
A Yes, I am.
Q And I understand that you're originally from Ghana?
A Yes.
Q And that's in West Africa?
A Yes.
Q And Nicholas is your oldest child?
A Yes.
Q When was Nicholas born?
A Nicholas was born June 22nd, 1977.
Q And where was he born?
A He was born in Ghana.
Q I understand you have two other sons as well?
A Yes, I do.
Q What are their names?
A Michael Nortei Osuteye; Brian Christopher Osuteye.
Q When was Michael born?
A Michael was born September 29th, 1978.
Q And when was Brian born?
A Brian was born October 27th, 1989.
Q When did you move to Canada?
A We moved in August 3rd, 1981.
Q And what brought you here?
A My husband. He's a systems analyst, and he felt he could use his skills better in Canada.
Q Nicholas would have been four years old when you came to Canada?
A That's correct.
Q Whereabouts in Canada did your family settle?
A Edmonton, Alberta.
Q Do you still live in Edmonton?
A Yes, I do.

49

Q What is your current address?
A 2739 - 41 Street Northwest, Edmonton, Alberta T6L 5H9.
Q How long have you resided there?
A Since 1989.
Q And what type of residence is that? Is it a house? An apartment?
A It's a house.
Q And I understand your family built the house.
A Yes.
Q Do you consider that house to be your family home?
A Yes.
Q You are a Canadian citizen?
A Yes, I am.
Q And all three of your sons are also Canadian citizens?
A Yes, they are.
Q I understand you're currently retired?
A Yes, I am.
Q What did you do for work before you retired?
A I was administrative clerk at the University of Alberta human resources department, and it's a school, not the hospital.
Q Okay. I'd like you to talk a bit about Nicholas's childhood. So to start, did Nicholas go to elementary, junior, and high school in Alberta?
A Yes, he did.
Q How did Nicholas do in school academically?
A He was very bright student.
Q Did he enjoy school?
A Yes, he did.
Q Did he participate in any recreational activities while growing up?
A Yes.
Q What type of activities?
A He played soccer. He was involved in karate. He did figure skating. He was also a Beaver and a scout.
Q How would you describe Nicholas's nature and personality as a child?
A Actually Nicholas is a very loving person. He's very polite. He's very friendly, makes friends very easily. Very respectful. Very healthy.
Q Did Nicholas get along with his brothers when he was growing up?

50

A Yes, he did.
Q And I understand Nicholas is quite a bit older than Brian?
A Yes.
Q Approximately 12 years older?
A That's correct.
Q So how did he interact with Brian when he was growing up?
A He actually played with him a lot. Like, they go to the park together and also help Brian with his school stuff.
Q Was Nicholas close with his father and yourself?
A Very close.
Q He had no issue making friends when he was a kid?
A No, no.
Q Was Nicholas generally well behaved as a child?
A He was very well behaved. His dad was very strict and so...
Q I understand Nicholas developed a stutter in his childhood?
A Yes, he did.
Q Did he get any therapy or help for that stutter?
A He did get therapy through the institute of stuttering as well as public school system.
Q And did those treatments seem to help with the stutter?
A They did.
Q Does he still have a stutter?
A He still have a stutter.
Q Did Nicholas graduate from high school on time?
A He did.
Q I understand there was an incident that happened near the end of his high school years --
A Yes.
Q -- when he got injured.
A Yes.
Q Can you tell me a bit about that?
A He went to a hall party with some of his friends, and they were playing wrestling. He's pretty tall, so when he got thrown he landed on his neck, and he fractured his C5 and 6.
Q The C5 and 6 are in the neck?
A In the neck, yeah.
Q And he was hospitalized for that?
A He was.
Q How long was he hospitalized for, approximately?
A Quite a few weeks actually, and then he moved --

51

they moved him to -- he had surgery to correct it, and then they moved him to the Glenrose Hospital to learn how to walk again.
Q So he had to completely relearn how to walk?
A Yes.
Q How long did that take?
A It took a few weeks actually.
Q Did that impact his schooling?
A It did.
Q But he still graduated from high school?
A He still graduated.
Q And then did Nicholas go to university?
A Yes, he did.
Q Which one did he go to?
A University of Alberta in Edmonton.
Q What did he study?
A He studied agriculture, environmental policy studies.
Q Where did Nicholas live while he was in undergrad?
A He lived at home.
Q Did he join any social groups at university?
A He was a member of the Phi Delta fraternity.
Q Did you spend much time with Nicholas when he was in university?
A Yes.
Q And Nicholas completed his undergraduate degree?
A Yes, he did.
Q What year was that?
A 2005.
Q And after completing his undergraduate degree, did Nicholas pursue any further education?
A He pursued his master's.
Q And which university was that?
A At the University of Alberta.
Q Did he end up completing his master's degree?
A No, he did not.
Q While he was working on his master's degree, what were your observations of Nicholas's health?
A I noticed that he was always looking very tired, and he also said that he was finding it very overwhelming. He was also teaching statistics at that time, so I believe that it was a bit too much for him. But you could always tell that he's always tired, although he was able to teach his undergrad students statistics.
Q I understand you lost your husband to cancer in

52

February of 2008.
A That's correct.
Q How long had he been dealing with cancer?
A He was diagnosed in 2003, had surgery within the same year, survived the five years, and passed away in February of 2008.
Q How did Nicholas handle the passing of his father?
A Not very well actually.
Q Was Nicholas present when his father passed away?
A Actually not.
Q Can you tell me a bit about that moment?
A Yeah. What happened was his father has gone to the hospital for close to a week and they told us that he wouldn't survive. And the day that things started going downhill, Nicholas and Brian had gone home to spend the night, and I was in the hospital with Michael.
So in the morning, the nurses came and told us that things don't look good, so I should ask them to come over. And they delayed a little bit because they had just woke up and having breakfast and everything. So as soon as their father passed, about three minutes before Nicholas and Brian got in.
Q And you were there when your husband passed?
A I was, yes.
Q And what happened when Nicholas arrived three minutes after he passed?
A When he arrived and realized that his father had passed, he went and laid on top of him and said that you are not dead, you need to get up. And he was crying like a little child. So one of our friends who was there decided to take him to the cafeteria to calm him down. And our friend came back later and he said Nicholas told him to come back and call him when his dad wakes up.
Q Were you concerned about Nicholas's behaviour around this event?
A I was.
Q Was he acting unusual?
A Only at that point that he didn't seem to realize that his dad was dead.
Q How did Nicholas seem during the months following his father's passing?
A He was very, very fine around that time until December when I noticed some changes in his

behaviour.
Q Okay. What changes did you notice in behaviour around December -- and this is 2008 you're talking about?
A That's correct, yeah.
Q What changes did you notice?
A He was -- I noticed he was talking to himself, and also he kept to himself in his room. He wasn't socializing with us as much except to come for dinner or something like that. And then he left his room. He said he was hearing voices, so he didn't feel comfortable sleeping in the room.
So he moved and started sleeping on the couch and we noticed -- I noticed that he sometimes has his hand over his hear as if he was muttering something, and then shaking his head. And at times you'll see him, you know, with his arms like that like he was embracing somebody. And when he was talking and you ask him what he's saying, he said "I'm singing. I'm busy. I'm bored." And every time you confront him on that, he'll say the same thing.
I also notice that he was vacuuming his room very often, and the family room, like compulsively, no reason. And he's always making his bed, even if the bed is clean, he'll still make it. And then he was also taking a lot of smokes outside. Sometimes he'll just get up, like he's talking to somebody. You don't hear what he's saying. And then he'll pace up and down in the living room and then go outside, come back in, go into his room, and slam the door, and stays there.
Q And this was new behaviour for him?
A Very new behaviour.
Q Around this period in late 2008, how was Nicholas supporting himself financially?
A He was working very odd jobs: Dollar Store, Canadian Tire, Boutique of Leather, just to name a few, and Fuddruckers, but he wasn't making a lot of money, so I supported him.
Q So you said he was not making a lot of money?
A No, he wasn't.
Q How much would you say you were contributing financially to his upkeep?
A Well, I'll give him $50 here, $20 here, $100 here.

Q Were you feeding him?
A Yes.
Q Was he living with you at the family home at this point?
A Yes, he was.
Q I understand on Christmas Day of 2008 there was a particular incident that happened. Can you tell me a bit about that?
A Yes. After we had our family dinner, he asked his brother Michael to take him downtown to see a rabbi, and I told him no businesses were open at that time, and I didn't understand why he wanted to go and see a rabbi, but he insisted on going. So Michael drove him, but before they left I told Michael to stay with him and bring him back home.
So they were gone for about an hour and then he came back, and Michael said there was nobody there where they went. I don't even know where they went, whether they went to a church or where.
Q Is Nicholas Jewish?
A No.
Q Are you Jewish?
A No.
Q I understand in January of 2009 you received a phone call from Nicholas from an airport. Can you tell me a bit about that?
A Yes. He called me early evening that he's at the airport and wanted to go to Calgary, so I should buy him a ticket, a plane ticket. And I had to think very fast, and I said to him that I forgot my credit card at work, so I will send his brother Michael to come and buy him the ticket. So I called Michael, he was just coming back from work, and I said go to the airport, and Nicholas is at the airport and bring him home.
So then Nicholas called again, and I said where are you? And he said he's by WestJet counter. So at that point, I told him don't go on the plane without a ticket because you will get arrested. So just before Michael got there, Nicholas called me and said he has a headache, so he wanted to go to the U of A hospital. So I called Michael, and I said he wants to go to the hospital, so I'm going to meet you guys at the U of A. So I drove there before they got there.
Q Okay. So you arrived at the hospital before they

arrived at the hospital?
A Yes, I did.
Q And you saw Nicholas arrive at the hospital?
A Yes, I did.
Q How was Nicholas behaving when he arrived at the hospital?
A He was very calm actually when he arrived there. But prior to his arrival I had talked to the nurse that I wanted to be there when he's talking to her.
Q And did you notice any changes in his behaviour after he arrived at the hospital?
A He was kind of surprised I guess to see me there as well.
Q And you spoke with the nurse and the nurse then spoke with Nicholas?
A Yes.
Q And what was your role in that interaction?
A I wanted to listen to what he had to tell the nurse because I was concerned at this point about his behaviour.
Q And did you take part in the conversation?
A Yes, I did.
Q What were your observations of Nicholas during that conversation?
A He spoke actually calmly with the nurse that he has a headache and wanted to see a doctor. So actually at that point the nurse told me that he had been at the U of A, the psychiatric clinic, in the morning, but I wasn't aware of that.
Q Was Nicholas admitted to the U of A hospital at that point?
A Yes.
Q And once he was admitted, did you continue to watch his behaviour?
A Yes, I was given a seat outside the room he was in, and I noticed that he was talking to himself. He had his hand on his left ear, and also he was pretending like he was beating drums. Then suddenly he pulled the sheets over his head. And at that point one of the doctors came in -- went in to talk to him.
Q At what point did Nicholas leave the University of Alberta hospital?
A He was -- he left on the following -- that would be the 8th.
Q Okay. Where -- do you know where he went?

A Yeah. He was transferred to the Grey Nuns Hospital in Millwoods.
Q Sorry, where?
A Grey Nuns Hospital.
Q Did you go with him to Grey Nuns Hospital?
A I drove there. He went in the hospital transfer ambulance, but I drove there.
Q How long in total are you aware that Nicholas was in Grey Nuns Hospital at that point?
A He was there for a few weeks actually. He was there for a few weeks.
Q Did you meet with any doctors at the hospital regarding Nicholas?
A Yes. I met with Dr. Chris Mills.
Q And were you given any diagnoses by the doctor?
A Yes. Actually, prior to meeting with Dr. Mills, I had met with the doctors at emergency, and they told me what was wrong with Nicholas, that he's got psychosis and schizophrenia.
Q From your perspective, did it seem like Nicholas wanted to be at Grey Nuns hospital?
A No.
Q What makes you say that?
THE COURT: Just one second. That issue, counsel, how is that going in and for what purpose, that diagnosis? I mean, I'm not hearing an objection, so it's not for me to raise that. Is there any issue about any of this? Is it part of a narrative? Is it for the formal diagnosis?
MR. MEADOWS: My Lord, I think that the records will be in evidence, in any event, and the diagnosis itself is not in dispute. What exactly Nicholas knew at the time is something I don't know if this witness can give us an answer on but the diagnosis itself --
THE COURT: Well, she's speaking to what she was told.
MR. MEADOWS: She's speaking to what she was told.
THE COURT: And you're content with that?
MR. MEADOWS: I'm content with that.
MS. MACKOFF: My Lord --
THE COURT: And again I've asked you wither it's for the truth of what it's going in and you're content with that? You say the records support that. You have no issue?
MR. MEADOWS: That it's going for the fact that this witness heard that diagnosis, that she was given that diagnosis by the doctors.

THE COURT: All right. Okay. So let me just hear that last answer. So she said that she'd met with Dr. Chris Mills. She had already met with the doctors in emergency earlier, and she was told, and I'd like to hear that answer again, please, if I could.
MS. MACKOFF:
Q Ms. Osuteye --
THE COURT: So Ms. Osuteye, you can tell me. You don't have to go indirectly --
THE WITNESS: Yes, My Lord.
THE COURT: No, no. That's okay. I'm always one or two questions behind. And so, as I said, I was reflecting on the answers you gave and whether, from a legal perspective why it was being used, and I have that answer, so -- but you told the court that you'd met doctors in the emergency department prior to speaking to Dr. Mills, and the doctors in the emergency department told you certain things, and I'd like to hear that again, please.
THE WITNESS: Yes. Actually, Dr. Rasuka, he saw Nicholas first and then Dr. Cojocaru -- I'm not sure of the spelling now -- yeah, they told me that he's got psychosis, schizophrenia, and disorganized thinking.
THE COURT: Yes, thank you.
THE WITNESS: Thank you.

MS. MACKOFF: My Lord, I'm aware of the time. It's 4:01. Perhaps continue tomorrow?
THE COURT: That's just fine, yes, thank you.
THE CLERK: Order in court. Court is adjourned to Wednesday, September 4th, 2019, at 10:00 A.M.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED AT 4:01 P.M.)

CERTIFICATION

I, Glaucia R. Fadigas de Souza, Official Reporter in the Province of British Columbia, Canada, do hereby certify:

That the proceedings were transcribed by me and the same is a true and correct and complete transcript of said recording to the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of September 2019.

_____
Glaucia R. Fadigas de Souza, RCR
Official Reporter