

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

RICHARD LING

Grievor

and

**TREASURY BOARD
(Veterans Affairs Canada)**

Employer

Before: Muriel Korngold Wexler, Deputy Chairperson

For the Grievor: Pierrette Gosselin, The Professional Institute of the Public
Service of Canada

For the Employer: Agnès Lévesque and Michel LeFrançois, Counsel,
and Jean-Louis Okomono, Student-at-Law

Heard at Montreal, Quebec,
April 14 to 18; August 18 to 22 and 25 to 29; December 1 to 5 and 8 to 11, 1997;
May 4 to 8 and 11 to 13; and August 31 to September 4, 1998.

DECISION

This decision concerns two grievances presented by Mr. Richard Ling and duly referred to adjudication. On May 22, 1996, Mr. Ling presented a grievance contesting the employer's decision to terminate his employment effective March 13, 1996 (Board file 166-2-27472). This grievance was duly referred to adjudication on September 12, 1996 and heard from April 14 to 18, 1997; August 18 to 22 and 25 to 29, 1997; December 1 to 5 and 8 to 11, 1997; May 4 to 8 and 11 to 13, 1998; and August 31 to September 4, 1998.

On April 29, 1997, Mr. Ling presented a second grievance (Board file 166-2-27975), that is also the subject of this decision, whereby he contested the introduction of evidence by the employer during the April 14 to 18, 1997 adjudication hearing concerning the termination of his employment. Mr. Ling alleged that the evidence introduced by the employer violated clause 38.03 of the Master Agreement between Treasury Board and The Professional Institute of the Public Service of Canada covering the Nursing Group (Exhibit 98).

During the hearing of these two adjudications, I reserved my decision and allowed the introduction of the evidence at issue with the understanding that I would decide the matter later in this decision. The evidence objected to is the basis in support of the employer's allegation that it had grounds to terminate Mr. Ling's employment.

In his grievance contesting the termination of his employment, Mr. Ling requested:

1. *That the employer revise his decision to discharge me of my functions and that I be reinstalled in the position I was occupying on March 13, 1996.*
2. *That any salary loss and social benefits be reimbursed as of March 13, 1996, date of my suspension.*
3. *That all documents pertaining to this disciplinary measure be destroyed in my presence.*

The adjudication of these two grievances was heard during 37 days. Mr. Ling was represented throughout these 37 days of hearing by Ms. Pierrette Gosselin, counsel. On the other hand, the employer was represented by three different counsel, at various times. From April 14 to 18, 1997, Ms. Agnès Lévesque and

Mr. Jean-Louis Okomono were counsel. From August 18 to December 11, 1997, Ms. Lévesque alone was counsel for the employer. Then, from May 4 to September 4, 1998, Mr. Michel LeFrançois took over the employer's representation.

On May 5, 1998, Ms. Gosselin informed the adjudicator and counsel for the employer, Mr. LeFrançois, that she would adduce evidence in support of Mr. Ling's request for damages. Mr. LeFrançois objected to the introduction of this evidence at this stage on the ground that such a request for damages amended Mr. Ling's original grievance presented on May 22, 1996. Mr. LeFrançois argued that this additional corrective action requested was a new element and could not be read or implicit in the original grievance. I decided to reserve my decision on this matter and hear the evidence in question.

The Evidence

The evidence introduced by counsel in these two cases was very extensive, technical and difficult. Counsel had a very difficult time adducing evidence because of a confidentiality issue. Mr. Ling was employed as a nurse (NU-HOS-03) on the evening shift, Unit 9A, at Ste. Anne's Hospital. The employer terminated his employment, effective March 13, 1996, on the grounds stated in the letter of termination signed by Mr. Dennis Wallace, Assistant Deputy Minister, Veterans Services, dated April 26, 1996 (Exhibit 1):

This is further to the letter sent to you by Rachel Corneille Gravel, Acting Executive Director of Ste. Anne's Hospital, on April 3, 1996, confirming your suspension without pay for an indefinite period effective March 13, 1996, while an investigation into your alleged unprofessional behaviour was being finalized.

The investigation is now complete and the findings revealed the following serious incidents of misconduct:

1) Improper administration of prescribed medication and treatments:

During the months of February and March 1996, the investigation has uncovered that on several separate occasions, you committed errors in administering prescribed medication or treatments to patients. These errors are documented as follows:

- i) *on numerous successive occurrences, you proceeded to administer a second dosage of the drug "Vasotec" despite the fact that the prescription had been reduced to a single daily dosage to be given in the morning;*
- ii) *on another occasion, you omitted to initial the medication sheet for two separate dosages of the prescribed medication, "Colace" and "Lactulose";*
- iii) *there is also reason to believe that, over the course of several days, you did not administer the 5 p.m. dosage of the drug "Colace" to a patient because you did not initial the medication sheet as required;*
- iv) *there is one incident where you neglected to treat a patient who needed a saline compress treatment and only proceeded to do the procedure after an orderly prompted you to do so;*
- v) *on another occasion, you proceeded to initial the medication sheet for the 4 p.m. dosage of the drugs "Lasix" and "Maltevol" [sic] and the 5 p.m. dosage of the drug "Diabeta", as well as, administer a "pressure point treatment" on a patient's foot, only after the evening nursing coordinator indicated to you that you had failed to do so; and*
- vi) *it was also uncovered that on one occasion, you did not follow proper procedure of entering a notation in a patient's record that he was absent from the unit at the time that medication was to be administered.*

2) Failure to take monthly vital signs readings:

The investigation has also uncovered several instances between August 1995 and March 1996, where you failed to take the vital signs of patients but deliberately made false entries in various patient's medical records.

3) Improper delegation of nursing responsibilities:

In early February 1996, you asked an orderly working under your supervision, to perform a treatment on a patient's genital area, ignoring directives that this particular type of treatment can only be performed by nurses. You later initialed the medication sheet indicating that you had personally performed the treatment even though it was determined that you were not present during the procedure. It was also determined that the treatment was not performed under sterile conditions.

These acts are very serious as it is indicative of a type of behaviour that not only shows total disregard for the well being of patients but can also have serious consequences to their health, including death. Consequently, I consider each one of the above-mentioned infractions serious enough to warrant termination for cause.

In addition to the above acts of misconduct, our investigation has also identified incidents where your behaviour towards patients and/or members of their families show a significant lack of professionalism. Specifically, on February 5, 1996, you treated a patient in a rough manner because he was uncooperative with you.

Finally, there is evidence to show that you have been using vulgar language and gestures while treating patients and interacting with their family members. This behaviour is unacceptable as it greatly tarnishes the reputation that our hospital wishes to maintain with patients and their families.

I have given this matter serious consideration, have considered your previous disciplinary record, your recent performance appraisals and your demeanour when presented with the above-mentioned evidence. I am also satisfied that you were made aware of what was expected of you in your capacity as an assistant head nurse. Not only did you choose to ignore various procedures and directives but attempted to cover up your negligence by making false entries in patients' records. By virtue of your actions, you have irreparably broken the bond of trust that is a key element of the employer-employee relationship.

Consequently by virtue of my authority under article 11(2) (f) of the Financial Administration Act, I am terminating your employment for misconduct effective March 13, 1996, which coincides with the date that you were indefinitely suspended.

If you feel aggrieved by this decision, you have the right to present a grievance in accordance with the provisions of your collective agreement.

A Pay and Benefits Advisor will be in touch with you to complete the documentation required on termination of employment.

Since most of the allegations concerned the health care, treatment and behaviour towards patients at this Hospital, and/or family members, counsel for the employer reluctantly opened its medical files, being very concerned with the patients' rights to confidentiality. In addition, a number of the patients who had made

allegations against Mr. Ling had died or had become mentally incompetent by the time these two adjudications were heard. All of this created great difficulty in the presentation of the evidence and, in particular, to counsel for Mr. Ling in her preparation of the case. However, I note that counsel for the employer, Ms. Lévesque, was helpful in this regard and did her best, within the constraints placed by her client, to assist in the availability and production of witnesses and evidence. Therefore, I am conscious of both counsel's difficulties in the preparation and presentation of these two adjudications.

Counsel for the employer called to testify:

Hélène Ouellet	April 14 to 18, 1997 and August 18, 1997
Émile Faubert	April 15, 1997
Alexander William Pink	April 15, 1997
Lillian Chatterjee and Evelyn Chatterjee	April 16, 1997
Aurèle Ménard	April 17, 1997
Nelly Bordès	April 17, 1997 and May 6, 1998
Donat Legault	April 17, 1997
Carole Paris	April 18, 1997 and May 5 and 7, 1998
Élène Lanciault	August 18, 1997
Shirley Kelly	August 19, 1997
Nicole Giroux	August 19, 1997
Francine Sauvé	August 19, 1997
Dr. Pierre Paquette	August 20, 1997
Johanne Martel	August 20, 1997
Francine Beaulieu Préfontaine	August 20 and 21, 1997
Marie-Claude Di Pietro and Simone Di Pietro	August 22, 1997
Jacqueline Marriott	August 25, 1997

Clarisse Castonguay	August 25, 1997
Andrée de la Chevrotière	August 28, 1997
Marie-Hélène Rivard	December 5, 1997
Sylvie Boucher	May 6, 1998
Agnès Morin Fecteau	May 6 and 7, 1998

Counsel for the grievor called to testify:

Madelyn Lacombe	August 25, 1997
Louis Bastien	August 26, 1997
Annick Hébert	August 26, 1997
Norma Hughes Longtin	August 26 and 27, 1997
Chantal De Léseleuc	August 27, 1997
Sylvie Poupart	August 27, 28 and 29, 1997 and December 1 and 2, 1997
Dr. Luis Briones	August 28 and 29, 1997
Patricia Lefebvre	December 2, 1997
Isabel Barbas	December 2, 1997
Dr. Bernard Groulx	December 3, 1997
Yves Turgeon	December 5, 1997
Dr. Hyman Batalion	December 10 and 11, 1997
Lucie Baillairgé	December 11, 1997

Moreover, I granted the exclusion of witnesses.

Richard Ling testified on his own behalf on August 21 and 22; December 2, 3, 4, 5 and 9, 1997; and May 5, 1998. In addition, the parties introduced 98 exhibits, a number of which contained multiple documents.

The hearing of these two adjudications involved a large number of witnesses. To better understand the allegations and reproaches retained by the employer against Mr. Ling, it is necessary, at this stage, that I provide a short description of the major protagonists in the events leading up to Mr. Ling's dismissal.

In January, February and March 1996, Mr. Ling was employed as the Assistant Head Nurse (NU-HOS-03) on the evening shift in Unit 9A. He was responsible for the nursing (treatments, care, dressings, etc.) of 34 patients. He was the only nurse in Unit 9A during the evening shift. Messrs. Aurèle Ménard and Donat Legault and Ms. Nelly Bordès were three orderlies who reported directly to Mr. Ling. Mr. Anibal Osman had been Mr. Ling's immediate supervisor until temporarily replaced by Ms. Hélène Ouellet, Acting Head Nurse. Mr. Osman was not called to testify. Mr. Osman had repeatedly evaluated Mr. Ling's performance as fully satisfactory. Ms. Ouellet came to the Acting Head Nurse position in January 1996 and left the position in October 1996 upon the return of Mr. Osman.

Ms. Carole Paris was the Human Resources Advisor between January and April 1996. Ms. Ouellet was in charge of the investigation into the various allegations against Mr. Ling. The investigation took place in February and March 1996 and concluded with a recommendation to Mr. Dennis Wallace, Assistant Deputy Minister, who signed the letter of termination. However, it was Ms. Francine Beaulieu Préfontaine, Director of Nursing, who decided to recommend the dismissal on the basis of Ms. Ouellet's investigation when he transferred to Unit 6B. Ms. Francine Sauvé had been Mr. Ling's immediate supervisor from February 1992 to February 1995. Ms. Élène Lanciault has been employed as a part-time nurse and Ms. Bordès and Messrs. Ménard and Legault were three orderlies who reported directly to Mr. Ling. Ms. Norma Hughes Longtin, Ms. Johanne Martel and Ms. Shirley Kelly were nurses on the day shift. Ms. Nicole Giroux was the Co-ordinator of Nursing on the evening shift and to whom the nurse on the evening shift would report any incident or matter of importance. She replaced Ms. Ouellet during the evening shift; Ms. Ouellet only worked days. Mrs. Simone Di Pietro and Ms. Marie-Claude Di Pietro, Ms. Lillian Chatterjee and Mrs. Evelyn Chatterjee and Ms. Madelyn Lacombe are family members of patients. Messrs. Alexander Pink and Émile Faubert have been patients at the Hospital.

Mr. Richard Ling started his employment at Ste. Anne's Hospital on January 18, 1988, as a nurse on the night shift. Three months later, he was transferred to the evening shift at his request; Mr. Ling wanted more interactions with the patients. Mr. Ling's immediate supervisor from 1988 to early 1993 was Mr. Anibal Osman, in Unit 9A. Mr. Osman evaluated Mr. Ling's performance as fully satisfactory. Moreover, Mr. Ling's relationship with Mr. Osman had always been good and congenial. According to Mr. Ling, Mr. Osman seemed to care for his employees. Mr. Ling respected him. Mr. Osman would inform Mr. Ling if something was amiss in the unit. Mr. Osman showed his concern and made suggestions. He was very calm and deliberate in his approach. Mr. Ling was satisfied with his relationship with Mr. Osman. Then, on April 1, 1992, Mr. Ling (NU-HOS-03) transferred to Unit 6B and reported to Ms. Francine Sauvé. He remained in Unit 6B until April 1, 1994, when he transferred back to Unit 9A under Mr. Osman.

The event leading to Mr. Ling's dismissal occurred on February 5, 1996 when Mr. Arthur Di Pietro complained that Mr. Ling had treated him in a rough manner. This complaint led to the employer's investigation of Mr. Ling's performance as a nurse and his relationship and behaviour towards patients and their families. As a result of this investigation, Mr. Dennis Wallace, Assistant Deputy Minister, terminated Mr. Ling's employment for misconduct effective March 13, 1996. Mr. Wallace was not called to testify. The employer's evidence concerning the investigation was delivered by Ms. Hélène Ouellet, Acting Head Nurse in Unit 9A, who replaced Mr. Osman from January to October 1996, and Ms. Carole Paris, Human Resources Advisor. It is also worthy of note that Ms. Ouellet and Ms. Paris attended the adjudication hearings religiously, without missing a day. On the basis of this investigation, Ms. Francine Beaulieu Préfontaine, Director of Nursing at the Hospital, recommended the termination of employment to Mr. Wallace, who acted upon it.

Ms. Hélène Ouellet testified that she has been employed at Veterans Services since June 1991 and, in March 1996, she occupied, in an acting capacity, the position of Head of Nursing, Unit 9A. Ms. Ouellet referred to the preamble of "Ste. Anne's Hospital Charter of Patient's Rights and Responsibilities" (Exhibit 2). She pointed out that the Hospital thrives to provide care of the highest quality and this is, in particular, important in light of the Hospital's clientele being veterans of various wars.

Ms. Ouellet's responsibility was to manage a unit of 34 patients and their families as well as some 20 employees on three different shifts, seven days a week.

The hours of work were divided into three shifts as follows:

Day:	07:30 to 15:30
Evening:	15:30 to 23:30
Night:	23:30 to 07:30

Ste. Anne's Hospital has 20 wards. Ms. Ouellet's function was to collaborate with the other members of management in the development and implementation of the Hospital's activities. The Co-ordinator replaces the Head of Nursing and the Director General of the Hospital during the evening and night shifts.

Ms. Ouellet was Mr. Ling's immediate supervisor in March 1996. The title of Mr. Ling's substantive position was Assistant Head Nurse.

Under the supervision of the Supervisor or the Head of service, cooperates in planning the continuity of short and long term patient care in; organizes and directs the activities of a nursing team; provides direct nursing care and controls the quality of care being provided; participates in the training of subordinate staff and implements and maintains good communication; and performs other duties.

(Exhibit 3)

Ms. Ouellet declared that she started her employment at Ste. Anne's Hospital in June 1991 as a Nursing Co-ordinator (NU-HOS-05) and became a Head Nurse (NU-HOS-04) in September 1994. From September 1994 to October 1995, she was the Head Nurse in Unit 10B and from October 1995 to January 1996, she went to work as Head Nurse in Unit 4B. From January to October 1996, she went to Unit 9A to replace Mr. Osman during his leave of absence. At Ste. Anne's Hospital, she never worked as a nurse performing nursing duties. Ms. Ouellet explained that the Nursing Co-ordinator job was a part-time position on evening and weekend shifts. Ms. Ouellet wanted a day job; thus, when the Hospital posted vacancies for Head Nurses' positions, she applied

and eventually was offered a position. However, she continued to be remunerated as a NU-HOS-05.

Ms. Ouellet was the first witness called by the employer. She explained in detail Mr. Ling's duties and responsibilities as the evening Assistant Head Nurse (Exhibit 3). He was in charge of 34 patients and supervised 2.7 orderlies. On each evening or weekend shift, the administration of the nursing care was left in the hands of two Co-ordinators. Ste. Anne's Hospital has 14 floors (and 325 patients) and these two Co-ordinators would divide their responsibilities accordingly. One would be in charge of the medical wards, whereas the other would look after the psychiatric units. On their shift, the Co-ordinators would make the round of their units and, thus, during the shift, all the units would have been visited by a Co-ordinator. The Co-ordinators do not provide nursing care.

During this visit of each unit, the Co-ordinator would check the care provided to the patients. The Assistant Head Nurse on evenings was responsible to organize and direct the activities of the orderlies; provide direct nursing care; control the quality of the care provided; establish and record the facts related to corrective actions required in cases of repetitive errors in the performance of work assignments; maintain records of treatment and observations on each patient; apply professional nursing principles and techniques; communicate to the Head Nurse any problems with the administration of the prescribed drugs; assist the orderlies; ensure that the patients received all their entitlements; and brief the night nurse. The nurse was responsible for the administration of medication and treatments. Mr. Ling had to interact also with the family of patients, show empathy and reassure them that the patients were safe and properly cared for. The orderlies' duties comprised of washing patients, assisting them to ensure they were comfortable, turning them over in their beds, and reporting to the nurse all relevant information; they also had the responsibility for the meals and to ensure that patients ate their meals, etc.

Ms. Ouellet explained that the patients of Unit 9A require a lot of care; it is a very heavy medical unit. The unit is divided in two: on one side there are rooms with two or four patients each and, on the other side, there is one large room with 16 patients where the most dependent, sick and less alert are lodged. Room 34 is left

for the sickest patient. The patients are usually put to bed around 19:00 or 20:00 hours.

Each unit has a number of books, charts, Kardex, etc., to which orderlies do not have access; these are used by the nurses to note observations on each patient, that medication was administered as required, etc. The medical file or chart contains nursing notes. Observations are also contained in the physician's book when there is a particular symptom or medical problem. There is also a book used for communications between services. The Kardex notes particular problems for each patient. In addition, the evening nurse would leave a note in the Head Nurse's office if the problem warranted such a measure. It is the responsibility of the nurses (Mr. Ling) to keep all these books or charts up to date and to write their observations. Nurses may even call the Head Nurse at home if the problem warrants it. Moreover, all serious problems must be reported to the responsible Co-ordinator on the shift.

All health care professionals (physicians, nurses, etc.) have access to the medical files. There is also a book for communications between the Assistant Head Nurse and the Head Nurse. The Kardex is only used by the nurses; it contains information on the administration of medication. Unit 9A had three books concerning medication to be administered to each patient. In January, February and March 1996, Unit 9A had two books on medication (patients 1 to 16 in one book, and patients 17 to 34 in another). These two books were kept on the medication cart. These books contained the physician's prescriptions and the treatments required for each patient. Each time the nurse administered the medication and/or treatment, the nurse had to initial in the appropriate square aligned with a date and hour. Each patient had a sheet containing the date, the patient's name, hour for administration (e.g. 08:00 or 18:00 hours) and prescription, followed by squares. Once a year, the initials were verified by comparing them to the nurses' signatures and initials contained on a separate sheet. This procedure allowed the hospital administration to identify the nurse who had or had not administered a certain medication. The Hospital had issued directives on the procedure for the use of medication and treatment sheets.

Ms. Ouellet reviewed the procedure provided for the use of the medication and treatment sheets and pointed out the following. The procedure provided that, where the nurse failed to initial the appropriate square within 30 minutes of the administration of the medication or treatment, such a failure constituted a "medication incident" (Exhibit 4). Ms. Ouellet explained the process to be followed by a nurse in the administration of medication or treatment. The medication or treatment was administered to the patient and the nurse's initials were written in the appropriate square on the sheet. This procedure was very important because it was an instrument used to verify whether the patient had received his medication or treatment as prescribed. According to Ms. Ouellet, if there were no initials, it was considered a "medication error" and was followed by an incident/accident report. It was the responsibility of the Co-ordinator or Head Nurse to complete such an incident/accident report that was then forwarded to the Hospital's Risk Management Team. The nurse involved was met and the problem discussed; a record was kept of this meeting. Moreover, if required, the responsible physician was informed of the medication incident. Appendix 1 to Exhibit 4, "Codes for Medication Sheet", was posted for the use of the nurses in each medication room where the medication was kept.

When, in January 1996, she arrived in Unit 9A, Ms. Ouellet immediately noticed that it was a "problem unit". She met the employees and reviewed their performance evaluation reports; she was already aware that there were "problem employees" in that unit. She realized that she had "problems" with Mr. Ling when she read Mr. Ling's performance evaluation reports signed by Ms. Francine Sauvé (Exhibits 8, 10 and 11).

On February 6, 1996, Ms. Ouellet received Ms. Nicole Giroux' report on Mr. Arthur Di Pietro's complaint against Mr. Ling (Exhibit 5(b)). Ms. Giroux had been the Nursing Co-ordinator (the position Ms. Giroux occupied was of a higher level than Ms. Ouellet's) on the February 5, 1996 evening shift. At 10:00 hours, Mr. (François) Di Pietro (Ms. Ouellet did not provide the first name; she simply declared "Mr. Di Pietro's son") telephoned her, complaining "formally" and requesting an investigation into the previous evening's events that had upset his father. François Di Pietro was upset. Ms. Ouellet replied that she was going to investigate this incident. Later on, Ms. Ouellet telephoned Mr. François Di Pietro back to provide him with her conclusions of the investigation and to tell him that Mr. Ling had been

suspended. On February 6, 1996, Ms. Ouellet started her investigation into Mr. Ling's actions and it became her priority for the day. She met with Mr. Arthur Di Pietro. She found him alert and he confirmed Ms. Giroux' report to her (Exhibit 5(b)). Ms. Giroux' report reads as follows:

[Translation]

*Mrs. Hélène Ouellet
Head Nurse
Unit 9A*

*Reference: Report of
Mr. Di Pietro*

At about 5:20 p.m., Richard Ling, evening NU-3 contacted me to invite me to meet with Mr. Di Pietro who was to make a report to me on Mr. Ling.

At Mr. Di Pietro's request, I met with him one-to-one. Our conversation was as follows:

*Mr. D.: "I'd really like to be left in peace."
"I'm tired of being shaken around."
"He took both my arms and put them to the side."
"He was mad because I didn't touch my supper."
"I'm not concerned about my supper because I have something brought in."*

What makes you say he was mad?

A "The way he was talking."

How was he talking to you?

A "He was curt."

How did it happen?

*"I was lying down in my bed; that seems to annoy him; there are two people beside me who are always lying down."
"He got me up about three-quarters of an hour ahead of time."*

Ahead of supper time?

*A: "Yes, I had time to smoke a cigarette."
"He came to the smoking room to tell me that the trays had arrived."*

The patient went back to his room alone.

During supper, did he come to see you to check how things were going?

A *"Yes."*

What did he say to you?

"You have to eat."

"I didn't want any."

"He took the tray and put it aside. Then he said: I'm going to report this to the doctor."

"That I didn't eat."

What was he like?

: *"A few minutes later, he shook me in my chair."*

That's what you were referring to earlier?

: *"Yes."*

"He flung my arms onto the edge of the wheels."

Do you have any marks?

"No."

Does it hurt?

"No."

"I said: You're the one who put me here."

"You have to move." "I wasn't in anyone's way."

Where were you at that point?

"In the hall."

Where exactly?

"At the entrance to my room."

Did anyone see what he did to you? Who witnessed this?

"I don't think so."

"He grabbed my hands two or three times and then he flung them to the side."

Why did he do that?

"Well, he's tried to force me to eat a few times; it's not the first time that I refuse to eat; it's not my fault if I don't like that."

Did anything happen the other times you refused to eat?

"No."

When you say it's not the first time he's tried to force you to eat, what do you mean?

"He picked up some potatoes and ham with a spoon and tries to get me to eat; That, I won't put up with."

And you told him so?

"Yes."

He continued?

"When he saw that it wasn't worth the trouble, he stopped. He said: I'm going to report this to the doctor. I told him I was going to make a report too."

What is it that you expect from me?

"I don't want to make trouble for him."

"He's the one who suggested that I call you."

What you want is to be left alone when you don't want to eat?

"Yes."

Do you think he was disrespectful towards you?

"Aside from shaking me?"

In wanting to help you or encourage you to eat, is it disrespectful towards you?

"No."

"He told me: I don't want to see you in the fruit basket this evening."

Was he serious?

"Yes."

I asked Mr. Di Pietro if he would agree to meet with

(1) the doctor to discuss his wishes (refusing or agreeing to eat);

"Yes."

(2) the dietician to discuss what food he prefers or what he does not want to eat.

"Yes."

The meeting with Mr. Di Pietro lasted from 5:00 to 6:20 p.m. and was held in the small room used by the pharmacy attendant on the 9A side.

I advised Mr. Di Pietro that you would be advised of the evening's events.

I also reassured him that I would meet with him on Thursday and that he could see the co-ordinator on duty at any time when I am not here.

Mr. Di Pietro was taken to the lounge at the end of our discussion.

I then met with Richard Ling, evening NU-3, in order to obtain his version of the events.

"Basically, nothing happened."

"I called Mr. Di Pietro for supper but he didn't come."

"I called him again; he still didn't come."

"He was apathetic."

"I told him you've got to eat." "I encouraged him."

"Finally I decided to feed him."

"He would not open his mouth."

"I picked up the tray & removed it."

"Don't come back later telling me you're hungry. You wouldn't eat a perfectly good supper."

"I asked him to move: Would you please kindly move."

"3 or 4 times, Mr. Di Pietro would not move in front of his door."

"2 or 3 times I took his hands and placed them on my hands to the side of his wheelchair."

Did he touch anything during this move?

"No I would have noticed, my hands were there too."

Did you talk about eating during the evening?

"No."

Did you talk about a fruit basket?

"Please don't come to me later saying you're hungry because you're not eating your supper which is perfectly good."

Is this the first time this happened when he refuses to eat?

"It's been going on for a while. He is apathetic, mask-like."

"I certainly had no bad intention in handling the situation." "I encouraged him to eat."

"Do you want me to report you? That's when I called you."

Earlier on had you talked with him about a report?

"Yes I told him I would report to the doctor."

"I am obliged to write a note to the doctor to the effect of this behaviour."

Mr. Ling informed me that patient had "his meds changed lately", "that he had 2 transfusions for chronic anaemia" and "that family had been spoken to."

Mr. Ling was asked about the position of Mr. Di Pietro's hands when he moved them. He demonstrated using a sharp downward movement.

"His hands might have ended up close to the wheels."

“Certainly not rough, my hands were there.”

Mr. Ling reported that when he was first admitted Mr. Di Pietro ate and that he is currently depressed.

“It’s straight rejection, he compensates by eating junk food downstairs, I’ve seen him eating hot dogs.”

Could this be his choice?

“Yes.”

Is this patient competent?

“Yes.”

Mr. Ling was informed that a note would be sent to you concerning the evening’s events. Mr. Ling wanted to know what had been said during my conversation with Mr. Di Pietro. I informed Mr. Ling that Mr. Di Pietro wanted to meet with the doctor and the dietician and that I could not tell him what we had said to each other.

This report is submitted to you for your information.

*Nicole Giroux
Acting Evening Co-ordinator*

*c.c.: Nicole Poisson
Claire Babin*

N.B. It should be noted that Mr. Di Pietro reported this incident to Mrs. Nelly Bordès and Mr. Aurèle Ménard, evening attendants. These two persons confirmed this fact during a one-to-one meeting: Mr. Di Pietro was apparently grabbed by the arms on 2 or 3 occasions and to have had his arms pulled downwards and he would have been shaken.

Ms. Ouellet testified that Mr. Di Pietro told her that “he was shaken by Ling”. (« Il s'est fait brasser par Ling. »). Mr. Di Pietro cried in front of Ms. Ouellet; he was upset when she met with him on February 6, 1996.

At 15:30 hours that same day, she met with Mr. Ling to inform him that Mr. Di Pietro had lodged a complaint against him. Ms. Ouellet met him at the start of his shift. She mentioned only that she had received a report from Ms. Giroux concerning Mr. Di Pietro's complaint. She did not show him the report because “she did not want to bother him with these eight pages”. He was starting his shift and she did not want to replace him for this shift. Moreover, she wanted to do her own

investigation. It was Ms. Ouellet's job to investigate the incident in collaboration with Ms. Giroux. Ms. Ouellet was responsible for the patients' well-being and the staff, not Ms. Giroux. The Co-ordinator's job was to initiate an investigation. Mr. Ling replied that he had tried to stimulate Mr. Di Pietro to eat his meal; Mr. Di Pietro had a recurrent problem of not wanting to eat. Ms. Ouellet informed him that she would start an investigation into the complaint and she would eventually meet with him to obtain his version of the incident.

The nursing notes written by various nurses caring for Mr. Di Pietro for the period November 27, 1995 to March 1, 1996 (Exhibit 6) demonstrate that he was an extremely difficult patient. He was abusive towards the nurses, manipulative, and constantly refused to eat his lunch and supper. He wanted to remain in bed all day and in the evening, and became belligerent if not allowed to do as he pleased. On January 25, 1996, Ms. Élène Lanciault, a nurse also assigned to the evening shift in Unit 9A, wrote that the patient had "refused to eat sandwich". On February 6, 1996, Ms. Norma Longtin, the nurse on the day shift, wrote:

Nutrition - Problem - he doesn't like the food - the dietician has been in to talk to him to see what he prefers. They try their best to please him and make the meals he likes....

On February 11, 1996, Ms. Longtin noted:

Becoming more aggressive verbally especially when he can't spend all morning in bed. Explained this problem to his son who said he was always like that. Therapeutic necessity to circulate explained to Mr. Dipietro [sic]

On February 16, 1996, Ms. Longtin observed that he was very aggressive with the orderly because he wanted to go back to bed after lunch.

Ms. Ouellet declared that, normally when a patient refuses to eat, "one tries to find alternatives". Moreover, "one should find the reason for the refusal to eat. If the patient does not like the food, another choice can be offered." A meal can be ordered from a restaurant or a place other than the Hospital, notes can be left with the dietician for "her verification", and a note for the physician when the patient has suffered weight loss. In the case of Mr. Di Pietro, an alternative meal could have been offered and the nurse could have returned later to insist, although the nurse should adopt a soft approach to try to make him eat. According to Ms. Ouellet, "with

Mr. Di Pietro, it is all a question of the approach". In her view, Mr. Di Pietro had never complained before about the staff and there had never been an investigation before because of a complaint by this patient.

Ms. Ouellet started her investigation on February 6, 1996 by meeting with Mr. Arthur Di Pietro, Mr. Ling and Ms. Nelly Bordès. She also questioned Mr. Aurèle Ménard, Ms. Élène Lanciault, and various patients, and obtained various written declarations. Ms. Ouellet declared that she met Ms. Bordès in her office who told her, in confidence, that "evenings were not going well with Mr. Ling". Ms. Bordès confirmed Ms. Giroux' version of the Arthur Di Pietro complaint. Ms. Bordès stated that things happened during Mr. Ling's evening shift and she questioned whether he did his job. She questioned whether Mr. Ling did the patients' treatments, took the monthly vital signs, etc. Ms. Ouellet had the impression that Ms. Bordès thought that, because there was now a new Head Nurse she could talk more freely, whereas before she was afraid to mention these concerns. Ms. Ouellet understood that the patients and orderlies were afraid to report Mr. Ling's shortcomings because of reprisals on Mr. Ling's part. Mr. Ling wrote the orderlies' performance evaluation reports.

On April 2, 1996, Ms. Bordès signed a written declaration witnessed by Ms. Johanne Martel, a nurse on the day shift in Unit 9A (Exhibit 5(c)). Ms. Ouellet declared that she prepared the written declaration with Ms. Carole Paris, Human Resources Advisor. Ms. Ouellet met with Ms. Bordès twice to discuss Mr. Ling. Ms. Ouellet explained that the same process was followed with all the persons from whom she obtained written declarations in this case.

Ms. Ouellet questioned Ms. Élène Lanciault, a part-time evening nurse in Unit 9A, about Mr. Ling's performance. Ms. Lanciault had never worked with Mr. Ling; they alternated on the evening shift; she replaced him on his days off. Ms. Lanciault told Ms. Ouellet that Mr. Ling did not do the bandages. Ms. Ouellet did not retain this allegation because she relied on the declarations of Ms. Giroux, Ms. Bordès and Messrs. Ménard and Ling.

Ms. Ouellet also met with Mr. Ménard who, in her view, was comfortable during his meeting with her. In her opinion, he trusted her and her ability to resolve the problems of Unit 9A. He told her that when Mr. Ling was at work, patients were not receiving the quality care to which they were entitled. Mr. Ménard confirmed

Ms. Bordès' version. Mr. Di Pietro had told Ms. Bordès that Mr. Ling had taken both his arms and pulled them down (on each side of the wheelchair) and he “shook me” (« m'a brassé »). Mr. Di Pietro repeated this same statement to Mr. Ménard. Mr. Ménard added that Mr. Di Pietro was upset when he made this statement and Ms. Bordès saw that he was sad and despondent. Ms. Shirley Kelly, a day nurse in Unit 9B, witnessed Mr. Ménard's signature. Ms. Ouellet doubted whether Mr. Ménard knew how to read so she was careful to ensure that he understood his declaration.

Having heard the comments of the orderlies and Ms. Lanciault's, Ms. Ouellet reviewed Mr. Ling's disciplinary file and found that, on January 4, 1996, Mr. Anibal Osman, Head Nurse, Unit 9A, had written the following letter:

Last December 6th, I have given you [sic] an oral reprimand because you did not follow the medication policies and procedures.

On December 28th, at 17h00 you failed to observe a medical prescription: you did not give the Lopresor 25 mg to a patient as ordered by Dr. Batalion and as indicated in the medication Kardex.

This is considered as a professional negligence. This constitutes a serious professional offence which is unacceptable and is not tolerated.

As result of this above [sic], this letter constitue [sic] a written reprimand. Furthermore, I must warn you that if you persist in your practice of negligence regarding the medications and their policies and procedures, this could make you liable to more severe disciplinary action.

(Exhibit 7)

In light of this, Ms. Ouellet decided that she had to further investigate Mr. Ling. Ms. Ouellet was on vacation during the period February 8 to 23, 1996, and Ms. Francine Joannette replaced her. Ms. Ouellet met with Ms. Francine Sauvé, Head Nurse, Unit 6B, and consulted the performance evaluation reports signed by the latter (Exhibits 8 to 11). Ms. Sauvé had been Mr. Ling's supervisor from 1992 to early 1995 and she had noted various shortcomings. Mr. Osman wrote Mr. Ling's performance evaluation report for the period April 1, 1995 to March 31, 1996 (Exhibit 12). However, this appraisal does not contain comments and signatures by the Review Committee. Thus, Ms. Ouellet took into consideration the fact that the Review

Committee had not completed this evaluation. In her view, this performance evaluation was incomplete. In Exhibit 12, Mr. Osman noted similar shortcomings as Ms. Sauvé. (Mr. Ling needed to be reminded to take the monthly blood pressure; sometimes he did not respect the established medication policies and procedures as required.) However, Mr. Osman commented that, overall, Mr. Ling:

... knows and applies all required professional basic nursing techniques for the patients' comfort and well-being. But he must constantly stay alert while applying them in order to ensure maximum conformity and security.

His leadership is effective. He maintains professional relationships with colleagues, supervisors, subordinates, Doctors and families.

(Exhibit 12)

Ms. Ouellet did not meet with Mr. Osman to discuss Mr. Ling's performance.

Ms. Sauvé pointed out that Mr. Ling made frequent medication errors, had not proven himself worthy of supervisor confidence, did the strict minimum, and treatments were sometimes neglected (Exhibit 8). Ms. Sauvé found that Mr. Ling had improved during the period March 31 to November 1993 (Exhibit 9) and even a further improvement was noted for the period December 1, 1993 to March 31, 1994 (Exhibit 10) when she gave him a fully satisfactory rating. However, his performance was assessed "satisfactory" for the period April 1, 1994 to March 31, 1995. Ms. Sauvé wrote that Mr. Ling had to be frequently reminded to chart his periodical nursing notes and patients' vital signs and he occasionally forgot to perform certain nursing tasks (dressings, tube feedings). At the time, Mr. Ling had a problem with one of the orderlies under his supervision. However, Ms. Sauvé did remark that Mr. Ling was always polite with patients, staff and superiors (Exhibit 11).

Ms. Ouellet's investigation brought to her attention, in addition to Mr. Di Pietro's complaint, various other allegations against Mr. Ling. During the period February 1 to 29, 1996, a prescription for "Vasotec" for one of the patient's had been reduced from twice a day to once a day. However, from February 1 to 16, Vasotec continued to be administered to the patient (S.C.) in the evening when it should not have been (Exhibit 5(e)). (Mr. Ling and another three evening nurses had erred in this regard.) On February 2, 1996, Mr. Ling failed to initial in the appropriate

square of a patient's (D.P.) chart for the 17:00 hours "Colace" dose and for the 21:00 hours "Lactulose" (Exhibit 5(f)). On February 9, 1996, Colace was prescribed for a patient (C.A.), to be administered twice a day. The nurse on the day shift forgot to register the 17:00 hours dose and the nurse on the evening shift, namely Mr. Ling, who had worked three evening shifts during that period, did not notice the error and failed to administer Colace at 17:00 hours from February 10 to 19, 1996 (Exhibit 5(g)). On February 29, 1996, Ms. Giroux noticed that Mr. Ling had failed to initial a patient's (P.B.) chart for the 16:00 hours "Lasix" (or "Furosemide") and for the 17:00 hours "Maltlevol" medication (Exhibit 5(h)).

On March 6, 1996, Ms. Giroux noticed that the 16:00 hours Furosemide and Maltlevol had not been initialled in the patient's (P.B.) chart (Exhibit 5(i)). Mr. Ling should have written the code "X", but failed to do so. The patient (P.B.) had been absent from the unit at 16:00 hours. He returned at 17:30 hours, at which time Mr. Ling did administer the said medication. On February 5, 1996, Mr. Ling asked Mr. Aurèle Ménard (an orderly) to disinfect, with "Hibidil", the genital area of a patient (Mr. Faubert) (Exhibits 5(d), (k) and (l)). Mr. Ling told Mr. Ménard to do this while wearing gloves and with a washcloth drenched in Hibidil. Ms. Ouellet explained that this was contrary to the Hospital's directives (Exhibit 5(j)) that list the tasks that orderlies are allowed to perform. Disinfections are the responsibility of professional nurses. Ms. Ouellet learned further that, on February 27, 1996, Mr. Ménard had to remind Mr. Ling to do a patient's (R.G.) bandage (Exhibits 5(d) and (s)). Mr. Ling also failed to take the patients' monthly vital signs (Exhibits 5(c), (d), (m), (n) and (r)).

Mr. Ling lacked professionalism in his behaviour towards patients. In the fall of 1995, he asked Mr. Chatterjee (one of the patients in Unit 9A): "Do you remember when the medical doctor was doing this (by showing his middle finger covered by a condom) into your ass?" (Exhibit 5(q)). Furthermore, he joked and touched a patient's (Mr. L) penis with the rounded points of the scissors (Exhibits 5(c) and (d)). Mr. Ling also joked with a patient's (Mr. Pink) stepdaughter. While massaging her shoulders, Mr. Ling allegedly said: "This is as good as a piece of tail" (Exhibit 5(p)). In addition, Mr. Ling used his personal computer during his shift (Exhibit 5(e)), read books, and used his personal cellular telephone (Exhibits 5(c) and (d)).

Ms. Ouellet explained that the Compendium on Pharmaceutical Products and Specialities (CPS, 1994, 29th Edition) describes "Colace", "Diabeta", "Lasix", "Lopresor", "Maltlevol" and "Vasotec". This reference book is located at each of the nursing stations throughout the Hospital. It is left there for easy access by the nurses. Colace is administered to older people for constipation; it is to prevent constipation, during the evening, of cardiac patients. Diabeta is for diabetic patients. Lasix or Furosemide is a diuretic for cardiac patients. Lopresor regularizes the blood pressure; it is also prescribed to cardiac patients. Lactulose is a liquid similar to Colace. Maltlevol is a multi-vitamin to maintain a patient's diet when there is a nutrition problem. Vasotec is prescribed for hypertension. Moreover, the Hospital's policies and directives with respect to reporting accidents or incidents of patients or visitors (Exhibit 26) are kept in a blue book on each floor of the Hospital. Each report is forwarded to the Risk Management Co-ordinator who may start an investigation into the accident or incident when required. Dr. Pierre Paquette, Director of Professional Services, is the Co-ordinator in question. In case of a medication error, a report is forwarded to a special committee for study. Exhibit 27 provides for the reporting procedure in case of a medication error. The procedure for the reporting of a medication error is found in a special book of departmental policies and procedures, a copy of which is placed on each floor at Ste. Anne's Hospital.

Ms. Ouellet declared that, during her investigation, she consulted the nursing notes concerning Mr. Di Pietro. She read that he was very depressed, with changing moods. Ms. Norma Longtin also informed her that he was a difficult patient who did not co-operate with his care and had periods of aggressiveness. Mr. Di Pietro refused to wear a safety belt and he signed a declaration excusing the Hospital of all responsibility in case of an accident because of this. He was manipulative. Ms. Longtin told her that, with Mr. Di Pietro, it was a question of how he was approached. Ms. Ouellet learned about the remaining incidents described in her report (Exhibit 5(a)) when she met with the three orderlies. She took notes when she met with Ms. Bordès and Mr. Ménard. Mr. Ménard told her about patients' (R.G.; Mr. Faubert; and Mr. L) monthly vital signs. According to Mr. Ménard, he never saw Mr. Ling take the patients' monthly vital signs.

Ms. Ouellet and Ms. Paris met with Mr. Ling twice to discuss the allegations. Officially, the first meeting took place on March 14, 1996. On March 13, Ms. Ouellet first met with her immediate supervisor, Ms. Claire Babin, Assistant Director of Nursing, with Ms. Francine Préfontaine, Director of Nursing, and with Ms. Carole Paris, Human Resources Advisor, to discuss her findings. Ms. Ouellet informed them of her findings with respect to Mr. Ling (Exhibit 5(a)) and it was decided to suspend him. They found that Mr. Ling could not be left alone with the patients. He could no longer work alone during his evening shift; they did not trust him. Thus, Mr. Ling was suspended as of March 13, 1996.

Ms. Paris, Ms. Babin and Ms. Préfontaine asked Ms. Ouellet to telephone Mr. Ling to advise him not to return to work, that he would be met at a formal disciplinary meeting at 14:00 hours on March 14, and that he had the right to union representation. However, it is on March 14, 1996 that Ms. Paris informed him that he was suspended pending an investigation. Ms. Ouellet declared that she "had nothing to do with the letter of suspension (or discharge)". Ms. Ouellet had no authority to suspend.

The interviews of March 14 and 28, 1996 are considered formal disciplinary meetings by all parties concerned. Mr. Ling was assisted by Ms. Sylvie Poupart, his union steward, and Ms. Ouellet was assisted by Ms. Paris. Ms. Ouellet testified that, on March 14, Mr. Ling appeared surprised by the accusations and questions. He was red in the face and looked at Ms. Poupart several times. He looked at Ms. Poupart when questions were asked. She added that, on March 1, 1996, Mr. Ling arrived at 16:00 hours and told her that he was stressed and was afraid of being suspended. Ms. Ouellet sent him home on sick leave. Ms. Ouellet thought that Mr. Ling was aware of the commotion in Unit 9A; people coming and going to and from Ms. Ouellet's office.

During the disciplinary interview, Mr. Ling told her that he had administered the Vasotec in the evening as a routine. He had not noticed that it had been reduced to once a day. He explained that he knew the patients well. When he was reminded of his January 1996 reprimand, he replied that he promised not to fail to respect the medication procedures from then on and that he would not do it again. He promised to reform himself, to correct such errors. However, in Ms. Ouellet's view, he had not

learned anything from his reprimand of January 1996. Ms. Ouellet re-read to him Mr. Osman's letter (Exhibit 7).

Concerning Mr. Di Pietro, he explained that he had tried to stimulate him to eat and that Mr. Di Pietro had blocked the unit's passage with his wheelchair. Ms. Ouellet explained that if Mr. Di Pietro wanted to eat a fruit instead of his dinner, he had a right to do so. There was always a basket of fruits available for the patients at the nursing station. Moreover, Mr. Di Pietro had the right to refuse his evening meal; he could eat something else. It was childish on Mr. Ling's part to threaten Mr. Di Pietro. Ms. Ouellet did not show Mr. Ling Ms. Giroux' report (Exhibit 5(b)) because she and Ms. Paris "already had all the necessary information". Ms. Ouellet and Ms. Paris refused to provide Mr. Ling and Ms. Poupart with a copy of Ms. Giroux' eight-page report and other documents.

Ms. Ouellet testified that Mr. Ling's reply that he administered medication routinely was unacceptable. He should have followed the Hospital's procedure for the administration of medication. Ste. Anne's Hospital is a chronic gero-psychiatric hospital where prescriptions are issued every day and patients are known to the staff. The prescription sheet written by the physician was inserted in the medical section of the medical file of each patient. The nurses had to review the wheel (roulette) which had been glued to the blue medical file of the patient. If the wheel was yellow, it meant that there was a new prescription or there was something new for the nurse to note. When the nurse had noted this change of prescription, the nurse turned the wheel to black. Then, the nurse wrote the change or new prescription on the medical sheet (green sheet). The nurse wrote the new prescription in pencil. The nurse then took the medical prescription (a detachable piece of paper) from the medical file, leaving a carbon copy in the medical file, and the detachable part was sent to the pharmacy for its use. The pharmacy then returned the medication and a label to the nurse.

The nurse on the following shift had to verify again all medication with the green medical sheet and the medical file. The nurse placed the label on the green sheet. Normally, the change in prescription occurred during the day shift. Thus, the same nurse who turned the wheel placed the label on the green sheet. The label indicated the date of expiration of the medication. Each patient received his own

medication bottle where, on the label, his name, the medication name, dosage, mode and frequency of administration appeared. Thus, it was absolutely unacceptable to administer medication routinely. At the end of the month, the green medical sheet was replaced by a new green sheet to cover the following month.

Ms. Ouellet's responsibility was to check the proper administration of medication. She delegated that responsibility to Ms. Nadine Jadotte, Assistant Head Nurse on the night shift. Ms. Jadotte identified medication errors and put an "X" in red ink when she found squares without initials. Every two weeks, Ms. Ouellet would randomly check these squares.

At the March 14 and 28, 1996 meetings, Ms. Ouellet recalled that she had in front of her the relevant green medical sheets as she questioned each allegation. Ms. Poupart asked for copies but Ms. Ouellet and Ms. Paris did not provide any. According to Ms. Ouellet's recollection, Ms. Poupart had asked for copies of these green sheets but she could not recall if Ms. Poupart had asked also specifically for Ms. Giroux' report.

At the March 14 disciplinary meeting, Mr. Ling replied that he recalled having administered Colace and Lactulose (to patient D.P.) on February 2, 1996 (Exhibit, 5(f)), that he had made an error in not writing his initials, that he would pay attention in future, and that he had been distracted. This was a new prescription that Mr. Ling had to start. Ms. Ouellet recalled raising this incident with Mr. Ling. (However, the evidence showed that the incident report is dated March 17, 1996 and Ms. Jadotte dated her green sheet March 20, 1996.)

Ms. Ouellet declared that the evening shift is very busy; it is heavier than the night shift and the nurse works alone with 2.7 orderlies. Thus, Ms. Ouellet considered it possible that Mr. Ling may have been distracted that evening when he prepared the medication. However, this was not a valid excuse because he should have concentrated on his task. Ms. Ouellet recognized that Unit 9A had a very heavy workload. She checked with Ms. Lanciault, Mr. Ling, and the orderlies the need for the continuation of the .7 orderly. Ms. Lanciault and the orderlies told her that it was required. On the other hand, Mr. Ling explained that he was not sure. In his view, it was not really needed. The orderlies commented that Mr. Ling did not take advantage of the .7 person/year (PY). Ms. Ouellet decided to keep this .7 PY.

The "Colace" incident was reported by Ms. Joannette during Ms. Ouellet's vacation (Exhibit 5(g)). Ms. Johanne Martel, the day nurse, erred and did not register that it had to be administered twice a day (at 08:00 and at 17:00 hours). She only wrote 08:00 hours. Mr. Ling failed to check the prescription; he should have read the label on the green medication sheet where "BID" was written. The error was discovered on February 17, but, at this point, for 10 days the patient did not get the evening dose. (Three other nurses committed the same infraction on February 13, 17, 18 and 19.) None of these nurses on the evening shift noticed Ms. Martel's error. Ms. Ouellet commented that three of these "other nurses" were not employees of the Hospital; they came from an agency.

At the March 14 disciplinary interview, Mr. Ling replied that he did not recall whether or not he had administered the 17:00 hours Colace. However, on March 28, he commented that he had, and "to believe him". Ms. Ouellet declared that the procedure was to write the initials immediately following the administration of the medication; this avoided any possibility of error. If the patient was absent from the unit when the dose should have been administered, the nurse wrote an "X" in the square. When the patient returned to the unit, the medication was administered and the hour registered on the green medication sheet, as well as the time of the patient's return.

The February 29, 1996 incident reproached was noticed by Ms. Giroux (Exhibit 5(h)). She came to Unit 9A at around 18:45 hours and noticed that the initials for the Maltlevol, Furosemide and Diabeta doses for patient P.B. had not been written on the green sheet. Ms. Ouellet received Ms. Giroux' report on March 1, 1996. She raised it for the first time with Mr. Ling at the March 14 meeting. On March 14, Mr. Ling replied that he had been distracted and, on March 28, he added that he could not recall the reason for his distraction.

The March 6, 1996 incident was also reported by Ms. Giroux (Exhibit 5(i)) to Ms. Ouellet on March 7. Mr. Ling explained that the patient (P.B.) had been absent from the unit when the medication should have been administered. Thus, Mr. Ling could not give him his medication and could not place his initials in the appropriate square. Ms. Ouellet declared that Mr. Ling should have written an "X", indicating "patient absent". The case of the February 29, 1996 incident regarding patient D.F.

(the point of pressure (Exhibit 5(h))) was raised by Ms. Ouellet on March 14, 1996. She informed Mr. Ling that, at 16:00 hours, he should have checked the patient's point of pressure and changed the patient's position. Mr. Ling commented that this was not a medical prescription. Ms. Ouellet recognized that this was true.

Ms. Ouellet checked with Ms. Giroux as to whether Mr. Ling had told her that he had been distracted concerning the February 29, 1996 incident regarding patient P.B. where no initials had been written for the 17:00 hour dose (Maltlevol, Furosemide and Diabeta). Ms. Giroux replied that she could not recall whether Mr. Ling had told her that he had been distracted. Ms. Ouellet recognized that originals of the incident reports concerning the Vasotec (Exhibit 5(e)), Colace and Lactulose (Exhibit 5(f)) incidents and C.A.'s Colace (Exhibit 5(g)) had not been completed properly and forwarded to the Risk Management Co-ordinator. Ms. Paris had advised Ms. Ouellet to keep the originals and not to send the two copies to the appropriate Co-ordinator. The policy did not provide for delays in forwarding the copies of the incident reports to the appropriate Co-ordinator. Thus, in this case, the Risk Management Co-ordinator (Dr. Pierre Paquette) had no knowledge of these incidents and could not do his job in this regard. Moreover, no incident report was completed for the Di Pietro complaint, the Furosemide, Maltlevol, Diabeta, point of pressure, and Hibidil incidents, and the monthly vital signs (Exhibits 5(b), (h), (e), (k) and (r)). Thus, of the 12 incidents reproached to Mr. Ling (Exhibits 5(e), (f) and (g)), only three were the subject of accident/incident reports and, in all of the alleged incidents, no incident report form was sent to the Risk Management Co-ordinator.

Concerning Mr. Faubert's disinfection treatment, Ms. Ouellet explained that a nurse could not delegate this task to an orderly. She talked to Messrs. Ménard and Faubert and they both confirmed that the orderly (Mr. Ménard) had performed this task. Mr. Faubert was very unhappy with Mr. Ling's services. He told Ms. Ouellet that Ms. Élène Lanciault did the disinfection treatment in question but not Mr. Ling (who, in her opinion, did it only once). Mr. Ménard did it instead (Exhibit 5(k)) at Mr. Ling's request and in his absence. Ms. Ouellet added that it made no difference whether Mr. Ling was present when Mr. Ménard did the disinfection treatment because, pursuant to the professional code of ethics, the orderly was not allowed to do it regardless. At the disciplinary meetings, Mr. Ling tried to minimize this incident by indicating that Hibidil could be obtained anywhere and that "it was a small

disinfection". Mr. Ling saw no problem in having Mr. Ménard do this treatment. Mr. Ling explained to Ms. Ouellet that this was a delegation to the orderly. Ms. Ouellet testified that, at Ste. Anne's Hospital, nurses could not delegate nursing duties to orderlies; there was no such authority. At the March 28 meeting, Mr. Ling recognized that the disinfection with Hibidil was not one of the tasks enumerated in the policy concerning the orderlies' tasks (Exhibit 5(j)).

Ms. Ouellet added that the disinfection with a facecloth was further unacceptable because the facecloth, in the hospital environment, could be contaminated; it could fall on the floor. It is not a sterile pack or compress found in the specially packaged dressing tray (Exhibit 16) located on the trolleys or nursing carts. Each week Ms. Ouellet placed an order for sterile dressing trays and other necessary nursing materials that were then placed on the nursing carts for use by the nurses. The nurses had all the necessary equipment, utensils, and material to do their work properly. At the start of duty, the nurse verified the cart to ensure that he/she had everything necessary to do the required treatments. This cart had drawers containing the specially packaged sterile dressing trays and instruments (Exhibit 16). Ms. Ouellet demonstrated how the nurse handled these dressing packages. The package contained three small forceps, a tray, eighth pieces of gauze sponges in two sizes, an under-pad, a waste bag with tie, and a sterile wrap. These sterile dressing trays were for a single use only. The wound was cleaned from the inside out. The nurse had to first open all the bottles and jars before starting the disinfection treatment. The nurse then put on the proper gloves, opened the package, and removed the under-pad and the three forceps. The nurse used the forceps to remove the old bandage, compress and wick. If this was the case, then a new fresh pair of forceps was used to insert a new pack or gauze and wick. The nursing cart provided also irrigation kits, etc. Moreover, the orderlies informed Ms. Ouellet that Mr. Ling never used the nursing cart. Ms. Ouellet declared that this was a busy shift. Ms. Lanciault told her that she had little time to spend with patients because of the workload and produced, at her request, a list of treatments and bandages to be done during the evening shift (Exhibit 17).

Ms. Ouellet did not check Mr. Faubert's medical and nursing charts to see whether this "disinfection" had been prescribed and what the prescription provided for. Ms. Pierrette Gosselin, counsel for Mr. Ling, pointed out to her that this treatment

had not been done on February 5, 6, 7, 9, 10, 11, 12 13 and 14 inclusive (except for February 8 at 14:00 hours). If this treatment had been prescribed and not done, then an incident report should have been written in this regard. In Ms. Ouellet's view, the seriousness of the error is the same whether Mr. Ménard did the treatment or whether no treatment was administered, as was the case for the period from February 5 to 14 inclusive (except for February 8).

Concerning Vasotec administered twice during a period of 16 days, Ms. Ouellet did not check as to whether Ms. Lanciault had also committed this error. (Four nurses other than Mr. Ling had been on the evening shift during these 16 days.) Exhibit 30 indicates that Ms. Lanciault had been on duty on December 14, 1995 when Vasotec had been erroneously administered twice to a patient (C.A.). Ms. Ouellet checked only for medication errors made by Mr. Ling. (Ms. Gosselin raised a number of similar medication errors that had occurred when other nurses had worked the evening shift in Unit 9A.)

The incident of February 17, 1996 (where Mr. Ménard had to remind Mr. Ling to do a patient's (R.G.) bandage) was reproached because it was not up to the orderly to remind the nurse to do his/her job. It was up to the nurse to know his/her duties. The orderlies compared the different care provided to the patients by Ms. Lanciault and by Mr. Ling.

Ms. Ouellet was also informed that Mr. Ling did not record the patients' monthly vital signs (temperature, respiration, blood pressure and pulse). These monthly vital signs are taken from all patients throughout the Hospital once a month. According to Ms. Ouellet, this task was assigned to the evening nurse who recorded the data in a large black book (Exhibit 5(r)). At Ste. Anne's Hospital, it took from one to three minutes to take each patient's blood pressure, and it was done with a very large "machine", on wheels, called a sphygmomanometer, and with a stethoscope. Thus, the nurse went to each patient with this sphygmomanometer (pushing it), a stethoscope, and the black book in his/her hands. The wheels of the sphygmomanometer made a lot of noise when in motion. The Hospital's sphygmomanometer measured about four and one-half feet high. The monthly vital signs were taken within the first two weeks of each month. Mr. Ménard and Ms. Bordès told Ms. Ouellet that they never saw Mr. Ling with the Hospital's

sphygmomanometer. This was confirmed to Ms. Ouellet by some of the patients. Ms. Ouellet asked patient Chappell about it; she went to see him with the Hospital's sphygmomanometer and a stethoscope and did all the gestures Mr. Ling would have done to take his vital signs. Mr. Chappell replied that he could not remember whether Mr. Ling had done this but had he done it, he would have remembered. Messrs. Pierre Brisson and Elliott Frosst confirmed the same statement. According to Ms. Ouellet, these three patients were alert when she questioned them about Mr. Ling. At the March 14 meeting, Mr. Ling told her that he had taken the vital signs as required. Mr. Ling explained that Mr. Chappell had been asleep when he took his monthly vital signs. Ms. Ouellet doubted his statement because of the noise the machine made and because the orderlies would have seen him with the equipment.

During her investigation, family members and patients raised several incidents involving Mr. Ling. Mrs. Evelyn Chatterjee told her about Mr. Ling's comment to her husband and that she was afraid of repercussions against her husband. The jokes with Mr. L. were also unacceptable. Mr. Pink described Mr. Ling's behaviour with his stepdaughter and Mr. Ling's remark to her. Mr. Pink was furious and mad at Mr. Ling; he could not accept that Mr. Ling had made such a remark to his stepdaughter.

Ms. Ouellet reproached Mr. Ling the use of his personal computer. In her view, Mr. Ling should have assisted the orderlies if he had free time. She added that the use of cellular telephones is forbidden. However, she could produce no directive or policy in this regard. She explained this prohibition by saying that "it is common sense". According to Ms. Ouellet, Ms. Francine Beaulieu Préfontaine informed her orally of this prohibition, "to confiscate all cellular telephones and to advise the employee affected not to bring his cellular telephone again to work". According to Ms. Ouellet, cellular telephones and personal computers were not required at the Hospital.

Ms. Ouellet alone questioned the staff, the patients and their family. She did the investigation alone and took notes. Ms. Paris was not present during this investigation but provided her with advice when so asked. Moreover, Ms. Paris drafted the report on her computer. When asked by Mr. Ling where Ms. Ouellet had obtained her information (e.g. Mr. R.'s dressing or bandage), she replied "from the orderlies". Ms. Ouellet questioned Mr. Ling about his way of doing dressings. He assured her that he always wore gloves and used forceps. He was very surprised when she told him

that the orderlies had accused him of not doing the prescribed dressings. He became very red (in the face) and, according to Ms. Ouellet, left the meeting room with Ms. Poupart for about five minutes. When they came back in, his response was "No comment". When he asked where this information was coming from, Ms. Paris allegedly replied: "Does it make a difference?" Mr. Ling added that the orderlies were not in a position to judge the performance of their immediate supervisor. Ms. Ouellet wanted to have a reply from Mr. Ling to her questions.

During the March 28 meeting, Mr. Ling assured Ms. Ouellet and Ms. Paris that he had done the prescribed dressings. He mentioned Mr. Émile Faubert. Ms. Ouellet and Ms. Paris replied that Mr. Faubert was ready to sign a declaration that Mr. Ling had done so only twice. Mr. Ling did not reply, and maintained his position that he had done the dressings. Ms. Ouellet admitted that she did not respect the Hospital's policy requiring that she discuss with Mr. Ling, within 24 hours, medication errors or other incidents that were the basis of his dismissal (paragraphs 3.2 and 3.3 of Exhibit 27). Concerning the double dose of Vasotec given to C.A., Mr. Ling made the remark that it was "not a big deal; the patient was stable" (Exhibit 28). Ms. Ouellet had no knowledge as to C.A.'s state of health as a result of this medication error. There were no medical notes in this regard; the physician made no comments; he wrote: "BP is OK, no hypertension". Ms. Ouellet testified that she said, in jest, to Ms. Chantal De Léseleuc and to Mr. Michel Godin, both social workers at Ste. Anne's Hospital, that she had been appointed Head Nurse in Unit 9A to "clean up"; that this unit was a problem. This conversation took place in the cafeteria.

Ms. Ouellet testified that she was very surprised to find such a "large file" against Mr. Ling. She did not expect this when she did her investigation. She had noticed in Mr. Ling's performance evaluation reports that there were certain elements, but she found many new ones. She could not recall asking Mr. Ling if there was something that could have caused these shortcomings. In her view, he had ample opportunity to inform her and Ms. Paris at the two disciplinary meetings in this regard. When Ms. Ouellet finished her investigation, she concluded that she could not trust Mr. Ling. She felt that it was unsafe to leave the 34 patients under his care. She questioned his competence and professionalism. In addition, she had doubts about his interest in his job.

Mr. Aurèle Ménard had been employed as an orderly at the Hospital for 19 years; he retired in October 1996. He was assigned to Unit 9A for 15 or 16 years. Mr. Ménard was asked by Ms. Ouellet to sign a declaration (Exhibit 5(d)). Mr. Ménard was involved in the Arthur Di Pietro incident. He recalled that he was working in Room 32 when Ms. Nelly Bordès came to get him between 19:30 and 20:00 hours. She was nervous and reported that Mr. Di Pietro had accused Mr. Ling of pulling his arms down hard on either side of his wheelchair. She did not say when this alleged "incident" had occurred. Mr. Ménard replied that there was nothing to do and to report it to the "boss" (Ms. Nicole Giroux) or to the Head Nurse on days. Mr. Ménard explained that Mr. Di Pietro was usually nervous and stayed in bed. Mr. Di Pietro had never complained to Mr. Ménard. Mr. Ménard had been advised that when a patient refused to eat, not to force the patient but to ask repeatedly and if the patient still refused, to report this to the nurse for his/her intervention. He had once observed that when Mr. Di Pietro had refused to eat, the nurse ordered a sandwich from "downstairs".

Mr. Ménard described various patients. He noticed that Mr. Ling had used a liquid from a bottle and washcloths. Mr. Ling had asked him to wash the penis area of Mr. Faubert with this "liquid" and a washcloth. They threw the washcloth in the dirty laundry and the gloves in the garbage. Ms. Bordès had been present when Mr. Ménard did this procedure on Mr. Faubert. Mr. Ling requested that he do this only once and he was the only nurse who made such a request of Mr. Ménard. Both Messrs. Ling and Ménard had worn gloves during this procedure. When Mr. Ménard did this "cleaning", Mr. Ling had absented himself. Mr. Ménard did not discuss this request with Mr. Ling, he just did it.

With respect to the dressing (« pansement ») of patient R., Ms. Lanciault had always asked Mr. Ménard to accompany her when she went to do this procedure on the patient because she was afraid of this patient. He noticed that Ms. Lanciault used the sterile dressing tray (package containing a sterile dressing and three sterile implements) (Exhibit 16) to take care of this patient. On the other hand, Mr. Ling used the scissors, which were attached to the medicine cart and left to soak in a container with alcohol, to cut the gauze wick or pack, the same gloves to take the old dressing out and clean the wound and place the new one on. Moreover, Mr. Ling used his fingers to place the pack in the wound. Mr. Ling never asked Mr. Ménard to assist him

or be present when he did the dressing on this patient. However, out of curiosity, Mr. Ménard watched Mr. Ling take care of the patient. Mr. Ménard did not see the special dressing tray on Mr. Ling's medicine cart when he did this dressing. According to Mr. Ménard, Mr. Ling did not use the dressing of the sterile package and sterile scissors because he did not have these on his cart when he did the patient's dressing. Mr. Ling used the scissors attached to the cart that, in Mr. Ménard's opinion, were not sterile. Mr. Ménard did not see Mr. Ling change gloves between the removal of the old dressing and the placing of the new one. The patient's dressing had to be changed every evening, but this was stopped at some point in time. Mr. Ménard provided no dates. Mr. Ménard added that it took Ms. Lanciault and other "agency nurses" from three-quarters to one hour to do the round of patients with the cart. Mr. Ménard declared that when the patient's dressing was discontinued, he no longer saw Mr. Ling use the cart.

Mr. Ménard related that, one day, he could not remember the date, when Mr. Ling returned from his meal break with his coffee, the former asked Mr. Ling if he did not have to do R.G.'s dressing. Mr. Ling replied that he did not think so. Mr. Ménard insisted that the preceding evening Ms. Lanciault had done a dressing on this patient. Mr. Ling responded that he would check the file, which he did. After checking, Mr. Ling said to Mr. Ménard that, "yes, he was right", and he would go do it. Mr. Ménard did not know whether Mr. Ling had actually done the patient's dressing as he said he would. Mr. Ménard added that it was the responsibility and duty of the day nurses to brief the evening nurses. Thus, the day nurse should have told Mr. Ling if there were changes to treatments, etc.

Mr. Ling joked with Mr. L., who had a catheter and dressing that had to be changed every evening. Mr. Ling did properly change the patient's (Mr. L.) dressing as prescribed. However, on two occasions he had taken the scissors attached to the cart and jokingly placing them on the patient's naked penis and said: "I'm going to cut it." Mr. L. would at first get mad but then he would laugh. Mr. Ménard added that he himself would joke with Mr. L. and touch his arms, legs, knees, thighs, shoulders, etc. but, in his opinion, his jokes had never gone as far as Mr. Ling's. Mr. L. would react in the same manner to Mr. Ménard's and to Mr. Ling's jokes; he would at first cry and then laugh.

With respect to the allegation concerning the patients' vital signs, Mr. Ménard commented that the sphygmomanometer makes a lot of noise. He saw Mr. Ling leave the nursing station with the machine in question when patients were "sick", but he did not see him use it every month. It takes two to three minutes to take the blood pressure of a patient. He observed Ms. Lanciault use the sphygmomanometer every time she was in the unit, whereas he saw Mr. Ling use it only when patients had pneumonia, a cold, a cough, etc.

Mr. Ling would read during his breaks or when there were no duties to perform, whereas Ms. Lanciault would spend her time talking to the orderlies or writing in her files. Mr. Ménard noticed also that Mr. Ling had a cellular telephone that he would use for five to ten minutes between 22:00 and 23:00 hours. Sometimes, Mr. Ménard could not see him but could hear his voice. Mr. Ling was entitled to talk on the telephone and there was nothing Mr. Ménard could do about it. Patient F. also had a cellular telephone. According to Mr. Ménard, he (Mr. Ménard) got along with Mr. Ling. However, he would not like to have him as a nurse or work with him.

Ms. Nelly Bordès was called to testify twice: first, on August 18, 1997, by Mr. Jean-Louis Okomono, a student-at-law for the employer, and then on May 6, 1998, in rebuttal evidence by Mr. Michel LeFrançois, counsel.

On August 18, 1997, Ms. Bordès testified that she has been employed as an orderly at Ste. Anne's Hospital since June 1987. Mr. Ling became her immediate supervisor in 1990. She was also asked by Ms. Ouellet to sign a written declaration (Exhibit 5(c)). Ms. Bordès testified that she recalled very well the Arthur Di Pietro incident. When, on February 5, 1996, she went to Mr. Di Pietro's room, she asked him, out of politeness, how he was doing. He replied: "You know, Madam, Mr. Ling took my two arms, he pulled each arm on each side [of the wheelchair] and he shook me" (« Il m'a brassé. »). Mr. Di Pietro showed Ms. Bordès how, allegedly, Mr. Ling had pulled on his arms. Mr. Di Pietro was seated in his wheelchair. He was depressed. Ms. Bordès went over to Mr. Ménard, who was in the next room, and repeated what Mr. Di Pietro had reported to her. Mr. Ménard followed her back to Mr. Di Pietro's room where Mr. Di Pietro repeated his story. Ms. Bordès interpreted the word "brassé" as "shaken". Ms. Bordès explained that Mr. Di Pietro had difficulty expressing himself, so one had to wait and be patient when he spoke. That same evening,

Ms. Nicole Giroux, the Co-ordinator on the shift that evening, questioned Ms. Bordès concerning Mr. Di Pietro's complaint and other matters. Ms. Bordès added that patient R.G. (who did not testify) had also complained about Mr. Ling (no dates or specifics were provided). Ms. Bordès confirmed that Mr. Di Pietro did on occasion order food from a restaurant.

Concerning Mr. Faubert, Ms. Bordès confirmed Mr. Ménard's testimony that Mr. Ling had asked Mr. Ménard to wash the patient's penile area with a washcloth. What caught her attention was Mr. Ling's reference to the washcloth. Ms. Bordès told Mr. Ménard not to use a washcloth, but Mr. Ménard shrugged his shoulders and went ahead and did as requested. Mr. Ling, in the meantime, busied himself elsewhere. Ms. Bordès questioned this procedure because she had watched other nurses use the medicine cart and they had never asked the orderlies to use a washcloth. Ms. Bordès declared further that she never did observe Mr. Ling do dressings or disinfection of patients' wounds.

Ms. Bordès added that she had observed Mr. Ling joke with Mr. L. every time they did their rounds. Ms. Bordès declared that she saw Mr. Ling often touch with his hand the patient's (Mr. L.) penis, which was covered by a sheet, and she sometimes saw him do it with the scissors also. Mr. Ling would do this even when Mr. L. was asleep and he would then wake up with a jump. In her view, Mr. L. was upset by these jokes. Mr. Ling would only do this to Mr. L.

Later on in her testimony, Ms. Bordès declared that Mr. Ling did not follow the other nurses' procedure for dressings. Ms. Bordès once observed Mr. Ling using his bare hands to apply gauze with cream on it on Mr. Chatterjee. She could not recall seeing him with gloves on or using the sterile dressing package. Ms. Bordès did see Mr. Ling administer the prescribed medications. Ms. Bordès estimated that reading the blood pressure takes two or two and one-half minutes per patient.

The Hospital had a policy that, at least once a month, the blood pressure of each patient had to be taken. The sphygmomanometer provided by the Hospital to do this task was stored at the door of the nurses' station or in the medication room. This equipment was very large and made a loud noise when rolled on its wheels. If she paid attention, Ms. Bordès could hear it from one room to another; however, if she did not pay attention, she could not hear it. Ms. Bordès did not see Mr. Ling go off with

the machine except in March 1996, when he did take it for about 15 minutes. Mr. Ling showed her the book where the blood pressure entries were inscribed. However, Ms. Bordès did not pay attention to Mr. Ling's remarks. She asked herself why he would show her the book and note which patients he had taken the vital signs of because the "other nurses" had never shown the book to her.

Ms. Bordès noticed Mr. Ling reading books that she did not think were related to his work. She mentioned one in particular concerning "different tortures".

Ms. Bordès noticed Mr. Ling's cellular telephone and she saw him use it when he was in the medication room. Mr. Ling had also a laptop which he would use daily after the supper hour. He was the only nurse with a computer. In her view, it is simply good judgement not to use a computer. She did not know if there was an employer directive forbidding the use of a computer. She explained that the workload in Unit 9A was heavy; there was lots of work to do. According to Ms. Bordès, patients Frosst and Chappell were alert and lucid.

Ms. Bordès explained that she was not going to voluntarily report Mr. Ling to his superiors for fear of what he might write in her performance evaluation report. Ms. Bordès declared that she would not want to work again with Mr. Ling. He did not perform his duties in the same manner as the "other nurses". She was adamant that she would not want Mr. Ling to be her nurse.

In cross-examination, Ms. Bordès conceded that, on January 24, 1994, a nurse had accused her of assault. The nurse alleged that Ms. Bordès had kicked her. As a result, Ms. Francine Beaulieu Préfontaine, Director of Nursing, disciplined Ms. Bordès and imposed an undisclosed suspension.

On May 6, 1998, Ms. Bordès was recalled by counsel for the employer, Mr. LeFrançois, to the stand and testified to the following. She never saw Mr. Ling take the blood pressure of the patients throughout the five to six years they worked together, including the period from February 1995 to March 1996. Ms. Bordès worked in Unit 9A since 1990. She declared that she was familiar with a small portable sphygmomanometer (blood pressure cuff) (that is a portable instrument for measuring blood pressure). Mr. LeFrançois showed Ms. Bordès one identical to the one Mr. Ling is alleged to have used to take the blood pressure of patients once a month.

This instrument was kept in a small black pouch. Ms. Bordès swore that she never saw Mr. Ling with this instrument or stethoscope. The Velcro of the blood pressure cuff makes a certain sound and she would have heard it had he used it as he alleged. However, she never heard the sound of the Velcro. She did notice that he came to work with a briefcase, but Ms. Bordès could not recall the colour, material, or shape of this briefcase even though he would leave it open on his desk. Ms. Bordès added that she observed the contents of his briefcase and she never saw the instruments in question. She noticed pens and a book. However, she could not recall if the computer and the cellular telephone were also in the briefcase. When Ms. Gosselin, counsel for the grievor, showed Ms. Bordès a briefcase used by Mr. Ling throughout the hearing, she replied that it was not the one she saw him use during his employment at the Hospital, even though this one "said" something to her. She pointed out that Mr. Ling arrived at work before her.

Mr. Donat Legault has been employed at Ste. Anne's Hospital for 33 years and in Unit 9A, since 1995. He also signed a declaration at Ms. Ouellet's request (Exhibit 5(l)). He declared that he reproached Mr. Ling his attitude in general. He explained that he worked with Mr. Ling for about a year and he reproached him his omissions, the usage of his computer, which he used too much, the fact that he did not use the cart with the dressings, that he spent little time in the "big room", and the use of his cellular telephone.

He compared Mr. Ling's performance of his duties to the "other nurses". The other nurses used the cart for one or one and a half hours whereas Mr. Ling did not always do it, and he was seen less often in the large room. Mr. Legault had once observed Mr. Ling open the dressing package with his bare hands (no gloves) and then throw it in the garbage. He also saw him sign a file. Mr. Legault interpreted this as if Mr. Ling wanted to destroy one of the dressing packages and then sign as if to indicate he had used it on a patient. Mr. Legault conceded that he did not see what Mr. Ling had signed or written in the file. He could not swear that that was what Mr. Ling had signed for. Mr. Ling never asked Mr. Legault to do a dressing or treatment on a patient. Mr. Ménard told Mr. Legault about the case of Mr. Faubert. Mr. Legault saw Mr. Ling at his computer at least four days a week. He would be at it after 20:00 hours and for at least a couple of hours. With respect to Mr. Ling's cellular telephone, Mr. Legault declared that Mr. Ling used it occasionally when he was in the medication

room. Mr. Legault saw him talk on the phone while he did other tasks. However, Mr. Legault did not pay attention in this regard. Mr. Ling prepared the medication at 16:00 and at 20:00 hours. According to Mr. Legault, Mr. Ling had no patience with the patients. Mr. Legault conceded that they all had to advise the patients to wait. The patients were demanding and if the staff was busy, they had to be told to wait; they could not be taken care of forthwith.

Ms. Nicole Giroux has been employed at the Hospital for more than 15 years. Since January 14, 1995, she has been the Acting Co-ordinator on evenings, responsible for the units on floors 9 to 14. There was another Co-ordinator on the evening shift who was responsible for the remaining units. Ms. Giroux explained that she usually visited each unit at least once during her evening shift. Her duties included obtaining medication from the pharmacy in case of emergency; meeting injured employees; talking to the staff, the patients and their families; and responding to staff absences. Furthermore, she was the one that would provide assistance in case of emergency and she ensured her presence in such cases. On an average, she may have spent 10 minutes on each unit.

Concerning the Di Pietro complaint of February 5, 1996, Ms. Giroux wrote an eight-page letter to Ms. Ouellet (Exhibit 5(b)) describing her meetings with Messrs. Di Pietro and Ling. Ms. Giroux explained that Mr. Ling had telephoned her requesting that she meet with Mr. Di Pietro. She met with Mr. Di Pietro alone in a small room. The meeting took place between 17:20 and 18:30 hours. Mr. Di Pietro was upset and Ms. Giroux took notes during their meeting (Exhibit 38). Mr. Di Pietro told her that he was sitting in his wheelchair when Mr. Ling grabbed his two arms roughly and placed them at each side of his wheelchair. According to Ms. Giroux, Mr. Ling also spoke to Mr. Di Pietro in a rough manner. Mr. Di Pietro explained to her that Mr. Ling had been upset earlier because he had not touched his supper. Furthermore, earlier in the evening, Mr. Di Pietro had been lying in his bed and Mr. Ling had got him up three-quarters of an hour earlier than required. Mr. Di Pietro had enough time to smoke a cigarette in the smoking room. Then, Mr. Ling came to tell him that his supper tray had arrived. Mr. Di Pietro returned to his room. Mr. Ling came back later to check on him and told him that he had to eat. Mr. Di Pietro replied that he did not want to. Mr. Ling took the tray away and responded that he would tell the doctor that he had refused to eat (Ms. Giroux' notes - Exhibit 5(b)). Then, when

Mr. Di Pietro was sitting in his wheelchair in the hallway at the entrance to his room, Mr. Ling told him to move. Mr. Di Pietro felt that he was not in anyone's way. This is when Mr. Ling grabbed his hands two or three times and placed them at each side of the wheelchair.

Mr. Di Pietro added that Mr. Ling had forced him to eat on previous occasions; it was not the first time he had refused; "It was not his fault that he did not like to eat." However, this was the first time an "incident" occurred with Mr. Ling when he refused to eat. Mr. Ling tried to feed him with a spoon and Mr. Di Pietro did not like that. Mr. Di Pietro had told Mr. Ling that he did not like to be fed like that. Mr. Ling stopped trying and replied that he would report Mr. Di Pietro's refusal to the doctor, to which Mr. Di Pietro replied that he would also make a report. Mr. Di Pietro said to Ms. Giroux that he wanted to be left alone when he decided not to eat. Mr. Di Pietro added that Mr. Ling told him that he did not "want him in the fruit basket". Ms. Giroux was of the opinion that this incident amounted to abuse. Mr. Ling was disrespectful towards Mr. Di Pietro when he forced him to eat. If a patient can feed himself, one should not try to feed him with a spoon like a baby. Moreover, the Hospital provides each unit daily with a basket of fruits for the patients' consumption. After her meeting with Mr. Di Pietro, Ms. Giroux met with Mr. Ling, who told her that Mr. Di Pietro was mentally competent. Mr. Ling told Ms. Giroux that he conceded that he had tried to feed Mr. Di Pietro with a spoon, but to no avail because he had refused to open his mouth. He took the tray away when Mr. Di Pietro refused to eat. Mr. Ling added that he had first tried to encourage Mr. Di Pietro to eat. Mr. Ling told him: "Don't come back later telling me you're hungry. You would not eat a perfectly good supper." Later on, Mr. Ling asked Mr. Di Pietro three or four times to kindly move away from the hallway. The hallway in question is about seven and one-half feet wide. Mr. Di Pietro refused and Mr. Ling then placed his hands at the side of the wheelchair. Mr. Ling explained to Ms. Giroux that Mr. Di Pietro's refusal to eat had been going on for a while; he was apathetic. Mr. Ling added that he had no bad intentions; he encouraged him to eat and he was obliged to write a note to the doctor about Mr. Di Pietro's behaviour. Mr. Ling denied having been rough with Mr. Di Pietro.

Ms. Giroux also met with Ms. Nelly Bordès and Mr. Aurèle Ménard who reported that Mr. Ling had requested that he (Mr. Ménard) disinfect Mr. Faubert's penis. Ms. Giroux declared that she was also involved in another alleged incident concerning Mr. Ling. Ms. Giroux wrote a report on February 29, 1996, whereby she noted that medications had not been administered to patients P.B. and C.C. (Exhibit 5(h)). Ms. Giroux had discovered these omissions during her verification at 18:45 hours. Her report indicated that Lasix, Maltlevol and Diabeta (for P.B.) had been omitted during the evening administration (16:00 to 17:00 hours). Moreover, C.C. had not received a "puffer", and D.F.'s point of pressure had not been checked.

Mr. Ling had told her that he knew the patients so well that he made his notations in the various files at the end of the evening. Ms. Giroux reported an omission that had occurred on December 5, 1995 and when she confronted Mr. Ling, he told her that the patient had not required the treatment.

On March 6, 1996, Ms. Giroux completed a further report to Ms. Ouellet on Mr. Ling (Exhibit 5(i)). She wrote that when she checked the administration of the medication, she noticed the omission of Mr. Ling's initials to confirm that P.B. did receive the prescribed medication. P.B. was absent from the unit from 16:00 to 17:30 hours. Mr. Ling noted that he administered the medication at 18:00 hours when the patient returned to the unit (Exhibit 5(i)). When Ms. Giroux presented herself to the unit, P.B. was absent. She found that the medication had been prepared and was ready for administration. Ms. Giroux discussed with Mr. Ling the Hospital's policy in cases where the patient was absent and missed his medication. Mr. Ling replied that "the day he would stop making omissions (errors) was the day he would retire".

Ms. Giroux declared that, when, in October 1995, Mr. Ling requested additional staff, she asked the orderly Donat Legault if this was necessary. The orderly replied that it was not needed and that Mr. Ling was lazy. Mr. Legault told her that he (Mr. Legault) had another two years before his retirement and he wanted to be left alone. (It is worthy of note that when Mr. Legault testified, he made no reference to this conversation and such a remark.)

Ms. Giroux testified that she had been Mr. Ling's "supervisor" from January to August 1995. She had noticed that Mr. Ling was the only person in all the units who used a computer at his workplace. Mr. Ling had even demonstrated to her the

operation of the computer. She added that a computer is not necessary for the performance of the nurses' duties at Ste. Anne's Hospital.

Ms. Giroux declared that, between January 1 and April 12, 1996, she submitted 35 incident/accident reports of which three or four concerned incidents in the administration of medication. Ms. Giroux referred to the notes of L.B., a nurse, (Exhibits 42(a) and (b)) who had written remarks to the effect that the doctor found it amazing that the patient had become alert in the morning after being comatose since the preceding week. The doctor had expected the patient to die. Ms. Giroux explained that the nurse should not have made these written remarks; it was inappropriate. Ms. Giroux did not know whether the nurse (L.B.) had been disciplined in this regard.

Ms. Giroux referred further to a note written on April 9, 1996 concerning Mrs. B., the spouse of a patient, who had complained that the evening nurse (Ms. M.) had asked her not to disrobe her spouse at the nursing station and not to enter the patients' common washroom. The spouse had his own washroom in his room. Mrs. B. reacted strongly and disregarded the evening nurse's (Ms. M.) suggestions. The nurse did not want Ms. Giroux to meet Mrs. B. (the patient's spouse). Thus, Ms. Giroux reported this incident to Mr. Pierre Landry and to Ms. Madeleine Hébert, Head Nurses (Exhibit 43). Ms. Giroux did not know whether the nurse (Ms. M.) had been disciplined for her remarks (Exhibit 44) and lack of control of Mrs. B. (Exhibit 43).

On March 20, 1996, Ms. Giroux wrote another report concerning an agency nurse, Mrs. P. Ms. Giroux informed the Head Nurse that the Medicys Agency, who provided replacement nurses on contract, was not fulfilling its mandate. On March 11, 1996, Ms. L.L., Acting Nurse, wrote to Ms. Giroux concerning a certain procedure in the administration of medication. Ms. Giroux informed this nurse to follow the proper procedure (Exhibits 45(a), (b) and (c)). On March 13, 1996, Ms. Giroux wrote a report concerning the omission of medication on the cart for a patient. Ms. Giroux did not know why there was no medication for this patient (Exhibit 46). Ms. Giroux did not know who had made this error in medication. On April 2, 1996, Ms. Giroux reported to Mr. Pierre Landry that the evening nurse (Mrs. R.L.) did not initial in the chart the administration of a certain medication. The evening nurse had told her that she had given the medication to the patient. Ms. Giroux was simply informing Mr. Landry of this incident. Ms. Giroux did not

know if a report was completed and whether the evening nurse was disciplined for her omission. On March 23, 1996, Mr. Brisson returned late to the unit from his tests at the Royal Victoria Hospital. His spouse was concerned. Ms. Giroux did not know who was at fault for this late return and the break in communication between these two hospitals. Ms. Giroux wrote a note to Ms. Ouellet about the spouse's discontent (Exhibit 48).

On March 26, 1996, Ms. D.M. refused to complete an incident/accident report concerning patient R.B. (Exhibit 49). The morphine for R.B. had been discontinued but the prescription had not been changed. Ms. D.M. had discontinued the administration of the morphine on the basis of a simple oral debriefing to that effect from the day nurse. There were no written doctor's instructions in this regard. Ms. Giroux had no knowledge as to whether this incident was investigated or whether the nurse was disciplined. Ms. Giroux completed the incident/accident report since the nurse told her that she would not do it because she had not committed the error and that Ms. Giroux should do it herself (Exhibit 41).

On January 7, 1996, the family of patient M.B. informed the nurse that they wanted to curtail the patient's use of the telephone. He was making 40 to 50 calls a day to his family. The Hospital followed the family's wishes. Ms. Giroux wrote to Ms. Benoît, Head Nurse, in this regard (Exhibit 50). On January 12, 1996, Ms. Giroux found unsigned and incomplete notes made by a nurse. Thus, she wrote a report to the Head Nurse in this regard (Exhibit 51). Ms. Giroux did not investigate this incident further. She simply informed the Head Nurse concerning this incident. Ms. Giroux declared that, following the dismissal of Mr. Ling, the "staff" was "worried, shattered, distressed and relieved; they were worried that Mr. Ling would return to the unit".

Ms. Marie-Claude Di Pietro is the daughter of Mr. Arthur Di Pietro who has been admitted twice to Ste. Anne's Hospital. The first time Mr. Di Pietro was admitted was in early 1994, and he left the Hospital on May 5, 1994. He was re-admitted in September 1995. Mr. Di Pietro was described by all witnesses as a very unhappy, unpleasant, and extremely difficult patient. Even his own family (sons) had great difficulty caring for him. His care became an impossibility for his son, Robert Di Pietro, in Calgary. Mr. Di Pietro went to live at the Veterans' Hospital in

Calgary but when this proved an impossibility for Mr. Robert Di Pietro, he returned to Montreal where he stayed one week with his daughter Marie-Claude. On September 26, 1995, she returned Mr. Di Pietro to Ste. Anne's Hospital.

Since 1994, Mr. Di Pietro can no longer stay with his wife, Simone Di Pietro. Ms. Marie-Claude Di Pietro explained that her father had been physically and emotionally abusive towards his immediate family; "He was not a nice father." For a period of seven to eight years, Mr. Di Pietro had about a dozen mini strokes (« arrêts cerebro-vasculaires ») and major strokes. During those incidents, Mr. Di Pietro was still living at home with his spouse. However, since his condition became more severe and he became less independent and more incoherent, he was placed, in 1994, at Ste. Anne's Hospital. Mr. Di Pietro was upset, shocked, and revolted by his placement at the Hospital. In the beginning, the family visited him two to three times a week but since 1996, they do not visit as often or as long. When the family came to visit, Mr. Di Pietro was happy. According to Marie-Claude Di Pietro, Mr. Di Pietro is very alert and lucid. (However, counsel for the employer indicated that he could not be called to testify because he was no longer lucid and competent.)

Ms. Marie-Claude Di Pietro testified that her father did not complain about the Hospital staff but the family had noticed that he had contusions and/or bruises on his arms in the winter of 1995-96 for a period of five to six months. These contusions were located on the inside and outside of the arms, between the wrist and the elbow, as if someone had hit Mr. Di Pietro on the outside and, on the inside, as if pressure had been applied. There were several, one over the other. The family never mentioned these to the Hospital and they did not complain about them. Mr. Di Pietro never mentioned that someone may have been rough with him except when he did point to Mr. Ling and said: "It's that bastard." (« C'est ce christ-là. ») Mr. Di Pietro mentioned this to Ms. Di Pietro two or three times. According to Ms. Di Pietro, Mr. Di Pietro did not bruise easily. Often, Mr. Di Pietro refused to eat. He ate little and he could lose his appetite during ten days, but he would also order meals from a nearby restaurant. He did not like the Hospital meals.

In early 1996, and more than once, Mr. Di Pietro said to Ms. Di Pietro that it was Mr. Ling, "that bastard", (« ce christ-là ») who forced him to eat, that he forced the spoon into his mouth. Even the day before her testimony, on August 21, 1998,

Mr. Di Pietro told her that Mr. Ling tried to force him to eat and when he refused, Mr. Ling got mad. Mr. Di Pietro feared when Mr. Ling got upset. Ms. Di Pietro explained that her father had difficulty talking. Sometimes he could make a sentence but most often it was a series of unrelated words that ended up making a sentence. It was a very long process and it required a lot of patience; one had to suggest words to assist him. He has been in this condition for about three years (since 1995). Moreover, when he was under stress, he had even more difficulty articulating and making sentences. Furthermore, he cried, which complicated this process further.

In her opinion, it was impossible for Mr. Di Pietro to have invented the incident with respect to Mr. Ling. She added that Mr. Di Pietro had a lot of faults but he was not a liar. Had the family not believed his version of the incident with Mr. Ling, they would have investigated the incident on their own. She always called the Hospital to verify her father's complaints and then she confronted him about it. However, when the family noticed the bruises, they questioned the Hospital's version. Mr. Di Pietro's son, François, lodged the complaint leading to Mr. Ling's dismissal. Mr. Di Pietro told his son that Mr. Ling had physically abused him. Following the incident with Mr. Ling, Mr. Di Pietro refused to see Mr. Ling. She speculated that he feared Mr. Ling.

Ms. Di Pietro conceded that her father attempted suicide a number of times. He has been depressed all his life. Ms. Di Pietro explained that, although she knew Ms. Ouellet well, she never mentioned the bruises because the occasion never presented itself. Ms. Di Pietro indicated that she saw Mr. Ling two or three times. She found his attitude "cold, frosty, and closed". She testified that she never spoke to Mr. Ling because "he had an unpleasant attitude" (« Il avait un air bête. ») She felt that "Mr. Ling did not mingle with the Di Pietro family".

Ms. Di Pietro added that she did recognize Mr. Ling at the adjudication hearing, and added: "Yes, it's him. He looks unpleasant as usual." (« Oui, c'est lui. Il a l'air bête comme d'habitude. »)

Mrs. Simone Di Pietro testified that her husband had never complained about the treatment he received at the Hospital. He never complained that he had been mistreated or abused. She confirmed that Mr. Di Pietro hated Mr. Ling, but he never told her that Mr. Ling had mishandled him. However, he did not want to be touched by Mr. Ling. Mr. Di Pietro never told her the reason for this. However, Mrs. Di Pietro

guessed the reason was because Mr. Ling had manhandled him. Mrs. Di Pietro also noticed contusions on her husband's arms.

However, it is important to note that the evidence demonstrated clearly and unambiguously that none of the nurses and doctors taking care of Mr. Di Pietro or any other person (except for the testimony of Mrs. Simone and Ms. Marie-Claude Di Pietro) noticed these contusions or bruises or made any remarks about such a serious matter that could amount to physical abuse.

Mr. Émile Faubert has been a patient at the Hospital since 1991. Mr. Faubert testified that Mr. Ling did not do his dressing or bandage often. He recalled that his dressing had been done once by each Mr. Ling, Mr. Ménard (an orderly) and Ms. Lanciault (a nurse). At first, Mr. Faubert could not recall that he had had a meeting with Ms. Hélène Ouellet on March 28, 1996 that resulted in a written declaration signed by him (Exhibit 5(k)). Later on, and when pressed by counsel for the employer, he did remember that Ms. Ouellet was present when he signed the declaration. In his declaration, Mr. Faubert indicated that Mr. Ménard did his dressing twice. He used the word dressing (« pansement »). Mr. Faubert added that Ms. Ouellet had come to see him a couple of times to talk about Mr. Ling.

Mr. Alexander William Pink, a patient at the Hospital, was called by counsel for the employer to testify concerning an incident involving "his daughter". He declared that he remembered an incident when his daughter was visiting. When asked the name of his daughter, Mr. Pink gave the name of Joan Lillian Lagrois (which he had difficulty spelling). Throughout the description of the incident, Mr. Pink used the name Joan Lillian. However, the evidence disclosed that the person in question was his stepdaughter, Ms. Madelyn Lacombe, who was called to testify by counsel for Mr. Ling. The recollections of Mr. Pink and Ms. Lacombe differ.

Mr. Pink testified that one evening when his daughter, "Joan Lillian", was visiting and sitting in a wheelchair and he was lying on his bed, Mr. Ling stood behind her and "placed his arms around his daughter's shoulders and on her breasts". He was rubbing and massaging her shoulders and then he said to her that "this was as good as a piece of tail". Mr. Pink was insistent that these were the words uttered by Mr. Ling. On hearing Mr. Ling's remark, Mr. Pink tried to get up but he could not because his arm was tied to the bed. His daughter tried to calm him down; she said to

forget it. Mr. Pink recalled that his daughter did not reply to Mr. Ling's remark. Mr. Pink wanted to hit Mr. Ling in the nose; he was angry and upset.

It is worthy of note that Mr. Pink declared that he noticed that "when there was a woman in the room, Mr. Ling tried to make it with her". He would tell jokes and stories. Mr. Pink was upset by this.

Mr. Pink is very fond of his stepdaughter. He testified that he married her mother. "She is wonderful to him; she looks after the house and children. She keeps him nice and clean and looks after his needs". Mr. Pink added that, had Mr. Ling said instead (of as good as a piece of tail) that "it is as good as sex", he would have remembered because she would have smacked him. Mr. Pink signed a declaration dated March 25, 1996 (Exhibit 5(p)) where he indicated that this incident occurred in February 1996. Mr. Pink testified further that Mr. Ling took his blood pressure only once. Mr. Pink added that "he had no problems with Mr. Ling" concerning the speed at which the former pushed his wheelchair. He could not recall an incident in this regard. However, he did remember asking Mr. Ling to call a nurse whom he referred to as "that fat bitch". Mr. Pink conceded that he has a quick temper. Mr. Pink did apologize to the nurse he had insulted. Mr. Pink did tell this nurse in her face that she was fat. At the time, he was aggravated "by what had been said".

Ms. Madelyn Lacombe recalled the incident with Mr. Ling differently. She explained that Mr. Pink is her stepfather and her mother was his second wife. Mr. Pink was married three times. Ms. Lacombe was about 34 years old when Mr. Pink married her mother. When Mr. Pink's third wife died, Ms. Lacombe made arrangements to place him at Ste. Anne's Hospital because he could not take care of himself. He was admitted in January 1993. Ms. Lacombe explained that Mr. Pink has a good memory and he knows what is going on around him, but sometimes he gets confused. Mr. Pink has a real blood daughter, Ms. Joan Lagrois (63 years old), living in London, Ontario. Ms. Lagrois does not take care of Mr. Pink; she does not want to. Since 1993, Ms. Lagrois has visited her father only once and the last time Mr. Pink telephoned her, she hung up on him. Ms. Lacombe is the only one responsible for Mr. Pink; she inherited that responsibility when his third wife died. Mr. Pink's third wife's sister was married to Ms. Lacombe's uncle. Ms. Joan Lagrois did not want to care for her father. Mr. Pink had given Ms. Lagrois all of his possessions thinking that

he would go to the Veterans' Hospital in London, Ontario. Ms. Lagrois told him a lie and Ms. Lacombe had no other option but to have him admitted to Ste. Anne's Hospital.

Ms. Lacombe explained that Mr. Pink refers to her as his daughter. Ms. Lacombe visits Mr. Pink regularly, once or twice a week. Ms. Lacombe knew Mr. Ling for about a year. She discussed Mr. Pink's care with Mr. Ling as she did with all the other nurses on the floor. Mr. Pink received "Rivatril" for his aggressiveness. She explained that sometimes Mr. Pink was confused; his mind was elsewhere. Ms. Lacombe was confident that Mr. Pink was getting better care than she could have provided at home. Mr. Pink did not manage his financial affairs; Ms. Lacombe did it for him. She declared that Mr. Ling sometimes joked with Mr. Pink. He tried to make the Hospital atmosphere more familiar and this was not unusual.

Concerning the specific incident with Mr. Ling, Ms. Lacombe could not recall the precise date. She indicated that it happened long ago. Ms. Lacombe was sitting in Mr. Pink's wheelchair, Mr. Pink was lying on his bed facing the door and she was facing Mr. Pink. Mr. Ling came into the room and took care of the other patients. At first, Mr. Ling was jokingly playing with Mr. Pink's toes. As he passed by her, he massaged the back of her neck quickly and said to her: "Doesn't that feel like sex", to which she replied: "No, not exactly". Then, he moved on to the next bed. Ms. Lacombe was not shocked by this exchange. It was an unimportant event; it meant nothing to her and she did not give it much thought. Ms. Lacombe did not find the "event" offensive. However, Mr. Pink reacted with a long face; he was angry. Mr. Pink did not like that Mr. Ling had touched her shoulders. Ms. Lacombe did not know why. She speculated that Mr. Pink may have been protective and jealous or that, in his mind, Mr. Ling was a "smart ass", as he would say. Mr. Pink refused to forget this occurrence.

Prior to this hearing, Ms. Lacombe met with Ms. Lévesque, Ms. Ouellet, Ms. Paris and Mr. Okomono to discuss the event and she advised the employer's counsel and representatives that she did not read anything into this occurrence; it was not important. She told them that she did not think that Mr. Pink would make a good witness, mainly because he was on medication. She knew how he felt; he took a dislike to Mr. Ling. Ms. Lacombe did not think that Mr. Pink was reliable. She

indicated to them that Mr. Pink would be more than glad to testify because he thinks that Mr. Ling was out of line and he does not like him. Ms. Lacombe never complained about anyone in that Hospital or how Mr. Ling treated Mr. Pink because Mr. Pink had been taken care of very well. She added that, like anyone else, Mr. Pink does not like being in a nursing home. In her view, Mr. Ling interacted with Mr. Pink in the same manner as he did with the other patients. Sometimes, Mr. Ling could be abrupt and short with the patients. He lacked patience and he had a twisted sense of humour with sexual innuendoes that used to upset Mr. Pink. Ms. Lacombe never told Mr. Ling that his jokes upset Mr. Pink and that he should stop.

Ms. Lacombe declared that she did not know that Mr. Ling was a homosexual until one of the nurses on the unit told her about it and after she met with the employer's counsel and representatives to discuss the "event". Ms. Lacombe did notice that Mr. Ling had a cellular telephone. To Ms. Lacombe, it made no difference whether Mr. Ling worked at the Hospital or not. However, since Mr. Pink does not like him, she rather not have Mr. Ling take care of Mr. Pink because it upsets him.

Ms. Lillian Chatterjee testified that her father (who was born in 1924) had been at Ste. Anne's Hospital for at least four years, and possibly more. She visited her father when he came home on weekends. Ms. Chatterjee added that she did not go to the Hospital often; she would go when her mother was unable to visit Mr. Chatterjee. Ms. Chatterjee had seen Mr. Ling, on occasion, during some of these visits. She recalled that, some time in January 1996, when her mother was on vacation, she visited her father every day as she had promised her. Ms. Chatterjee indicated that, on her first visit after her father had returned to the Hospital from his weekend at home, she found him different, unresponsive; he did not seem to realize that she was there when she spoke to him. Ms. Chatterjee found the change so dramatic that she asked Mr. Ling what had happened to her father. Mr. Ling responded that he had probably had a stroke. She said: "A stroke?", showing surprise, and Mr. Ling replied that it happened.

Ms. Chatterjee was adamant that this was what Mr. Ling had told her. According to her recollection, Mr. Ling did not say "minor or mini-stroke". The word "stroke" caused her a strong emotional reaction. Ms. Chatterjee was very upset by Mr. Ling's response and she was worried. She did not want to telephone her mother

during her vacation and make her come back to Montreal. Her mother, Mrs. Evelyn Chatterjee, had provided her with the telephone number of Ms. Shirley Kelly, the nurse on the day shift in Unit 9A, whom her mother trusted. Ms. Kelly had given her mother permission to contact her at home in case of emergency. Ms. Chatterjee declared that she did not meet Mr. Ling often and she had always assumed that Ste. Anne's Hospital had provided proper care to her father. She did not question the quality of the care. She decided to telephone Ms. Kelly at home because, looking at her father, it was quite possible that he had had a stroke. She told Ms. Kelly that she had just found out that her father had had a stroke and that she did not know what to do, whether she should ask her mother to come back home from her vacation; she needed advice. Ms. Kelly replied that her father had not had a stroke. Ms. Chatterjee insisted that Mr. Ling had told her this. Ms. Kelly informed her that she would look into it and call her back. Some time later that evening, Ms. Kelly did call her back and reassured her that everything was fine with her father, that he had not had a stroke and there was no need to call her mother. This incident really upset Ms. Chatterjee because she did not know whether to ask her mother to come back. The next day, her father was much better and Ms. Chatterjee felt relieved. On her mother's return from vacation, Ms. Chatterjee told her about this incident.

Ms. Chatterjee declared that she had never had any bad rapport with Mr. Ling. She never reported this "incident" to anyone at the Hospital. She had been asked to testify by the employer's counsel some time during the week of April 4 to 8, 1997. Ms. Chatterjee indicated that when she and her mother were asked to testify on behalf of the employer, they discussed this "incident". Ms. Chatterjee insisted that she got along with Mr. Ling and she had nothing to say about him. Ms. Chatterjee added that this "incident" upset her mother even though nothing had happened.

Mrs. Evelyn Chatterjee testified that her husband had been admitted to the Hospital on February 4, 1993 after having suffered a stroke. Mrs. Chatterjee wanted her husband transferred to the Perley Veterans' Rideau Hospital in Ottawa which she was successful in obtaining in March 1996 after Mr. Ling's dismissal. At the time of her testimony, on April 16, 1998, Mr. Chatterjee was already residing at this Veterans' Hospital in Ottawa. Mrs. Chatterjee declared that she visited her husband regularly, in the evenings, three or four times a week. She related a few incidents involving Mr. Ling. One of those incidents occurred in the fall of 1995 (no precise date was

provided). Mrs. Chatterjee recalled that she was sitting by her husband's side when Mr. Ling came by wearing a catheter condom over his raised third finger. Mr. Ling, with a smile on his face, asked Mr. Chatterjee "whether he remembered when he went for a physical, that the medical officer stuffed this up his 'ass'; it must have hurt like hell". Mrs. Chatterjee was very taken aback and embarrassed; she was upset and saw no reason for Mr. Ling to come over to her husband. Mr. Chatterjee did not respond and Mrs. Chatterjee replied: "Not everyone is so sadistic". Mr. Ling became red in the face and left the room. Mrs. Chatterjee explained that, at the time, Mr. Ling was bent over a patient on the opposite side of the room. He did not shout when he made this remark and Mrs. Chatterjee insisted that she heard every word. She was adamant that Mr. Ling used the word "ass". On March 26, 1996, Mrs. Chatterjee signed a written declaration at the request of Ms. Hélène Ouellet and in the presence of Ms. Shirley Kelly (Exhibit 5(q)).

Mrs. Chatterjee mentioned the incident to Ms. Jacqueline Marriott, Nursing Co-ordinator, who had shown a great deal of compassion when Mr. Chatterjee slipped into a coma. Ms. Marriott asked her to report it; however, Mrs. Chatterjee replied that she did not want to report it because she did not want any repercussion to her spouse. Mrs. Chatterjee explained that she was afraid "to leave a helpless patient in the hands of other people, and you always worry how he will be treated".

Mrs. Chatterjee went on to describe various incidents that she did not include in the signed declaration of March 26, 1996 (Exhibit 5(q)). Mrs. Chatterjee recalled that one evening (no date or year was provided), when she was visiting her spouse, around 19:00 hours, "orderlies were transferring a patient from a wheelchair to a bed and the patient slipped". Mr. Ling shouted, cautioning them, and this is how Mrs. Chatterjee noticed the incident (the slip). At the time, Mrs. Chatterjee was sitting next to her husband's bed some 20 feet away from the patient in question. She described that there was a hallway between the patient and herself. As she was leaving, Mrs. Chatterjee related to Ms. Marriott that "there had been a little excitement because a patient almost slipped". A few evenings later, when Mrs. Chatterjee and her daughter were visiting Mr. Chatterjee, Mr. Ling called her aside. Mr. Ling wanted to talk to her. He appeared rather agitated and was red in the face. Mr. Ling inquired as to whether she had reported the incident of the patient who had almost slipped.

Mrs. Chatterjee replied that she had just made an observation and that it was up to him to report it.

Mrs. Chatterjee also related the "incident" described at this hearing by her daughter. Again, no specific dates were provided except that it occurred some time in January 1996 when Mrs. Chatterjee was visiting one of her daughters in the United States. Upon her return, she asked her daughter how Mr. Chatterjee was. Her daughter's reply was not forthright and Mrs. Chatterjee sensed that something was wrong. Thus, Ms. Chatterjee told her about Mr. Ling's remark that Mr. Chatterjee had probably had another stroke. Mrs. Chatterjee became very upset because her daughter had not told her about this earlier. Then, when Ms. Chatterjee told her mother that Ms. Kelly had indicated that he had not suffered a stroke, Mrs. Chatterjee became even more worried. She telephoned Ms. Kelly to inquire about this. Ms. Kelly reassured her that "they had looked into it and there was no evidence of a stroke". Mrs. Chatterjee repeated that she had not included this last incident because she was afraid of repercussions and she was now sharing them because the employer was asking about "things that worried her". In leaving the bench and the hearing room, Mrs. Chatterjee turned towards Mr. Ling and added that she had no animosity towards him whatsoever.

Ms. Shirley Kelly has been employed for 22 years as a NU-HOS-2, Team Leader Nurse, Unit 9A, day shift. Since 1989-90, Ms. Kelly has been assigned the care of eight very dependent patients. She described in detail her duties as a Team Leader Nurse and added that she had to do a lot of family interaction because "the level of insecurity is very high". Ms. Kelly was present when Messrs. Chappell and Frosst signed the declarations prepared by Ms. Ouellet. These two patients died before the start of the hearing in this case (Exhibits 5(m) and (o)). Ms. Kelly explained each signed their respective declaration at different times on March 25, 1996. Ms. Ouellet would repeat to each of them what "they had told her during previous conversations" and they would then sign their "declaration". Ms. Kelly indicated that they were very co-operative. The employer submitted in evidence three declarations (Exhibits 5(m), (o) and (p)) witnessed by Ms. Kelly.

Mr. Chappell signed the following:

Two weeks ago I don't remember that Mr. Ling took my blood pressure. I would have remember [sic] if he did.

(Exhibit 5(m))

Mr. Frosst's declaration is the following:

I don't remember that Mr. Ling took my blood pressure every month. Somebody, but not him.

(Exhibit 5(o))

Mr. Pink's declaration is the following:

Mr. Ling took my blood pressure in March not before.

He is a very sarcastic man. He gives the impression that "I am the boss and you do what I say". One day, in February 1996, I was having my daughter [sic], she was sitting in my wheelchair. So he came in and he began to rub (massage) her shoulders. He said at that time "This is as good as a piece of tail".

I wanted to report him but my daughter said "Forget about it". I was very angry at him.

(Exhibit 5(p))

According to Ms. Kelly, all three patients had been competent and alert when they signed their respective declaration. She recalled when Mr. Chappell signed his; she and Ms. Ouellet went to the hallway where he was sitting. Ms. Kelly added that he was joking and still alert, even though his physical condition had deteriorated. Mr. Chappell managed his own money and he was "very conscious about it". Mr. Chappell died on April 9, 1996. Mr. Frosst came to the office to meet with Ms. Ouellet and Ms. Kelly in his electric wheelchair. Ms. Kelly indicated that "he was very, very alert". He was a very polite man, intellectual, and well read; "He was agreeable to sign his declaration" (Exhibit 5(o)). Mr. Frosst passed away in July 1996. Ms. Kelly was also present when Mr. Pink signed his declaration (Exhibit 5(p)).

Ms. Kelly described Mr. Pierre Brisson as he was in March 1996. She found him slow in responding to questions. She did not witness when he signed his declaration (Exhibit 5(n)). He had just been admitted to Ste. Anne's Hospital and he had to think before answering. He was very dependent for care. In her view, he understood the

questions but the staff had to be patient with him and wait for his response. When Ms. Kelly testified, Mr. Brisson was still alive and he was no longer assigned to her.

Ms. Kelly declared that, on several occasions, she had replaced Mr. Ling on the evening shift. She was referring to the period from 1988 to 1993 when Mr. Ling was the evening nurse in Unit 9A. She could not recall the year, but guessed it to be 1991. She remembered that she had been approached by Ms. Clarisse Castonguay and Mr. Aurèle Ménard (orderlies) when she did a bladder irrigation for Mr. L., prepared a tube feeding (« gabage ») for W., and a dressing for Mr. R. that required a fairly intense packing. The doctor had told her that he wanted the nurses to manually irrigate Mr. L. Ms. Castonguay and Mr. Ménard said to Ms. Kelly that they did not understand why "she had to do these treatments and Mr. Ling didn't". Ms. Kelly was quite annoyed about this; she concluded that this was the reason why it took these three patients so long to heal. The next time Ms. Kelly was on the day shift, she decided to count all the irrigation cases for Mr. L. and dressing cases for Mr. R. and she found the same amount of unused trays. To her this meant that the evening treatment had not been given. The treatment was prescribed to be given twice a day (at 10:00 hours and between 19:00 and 20:00 hours). She then decided to angle her dressing on the patient. When she returned to work the next day, she found the dressing in the same way she had placed it. Finally, Ms. Kelly did the two treatments during her shift and reported her findings orally to Mr. Anibal Osman. (She did not speak to Mr. Ling about her "findings".) Two weeks later, Mr. Ling transferred to Unit 6B.

Ms. Kelly did not recall placing a washcloth in the diaper of a patient (R.G.) but she conceded that she might have done so. The patient did not require a sterile procedure.

Ms. Kelly remarked that she never discussed Mr. Ling's sexual orientation with the staff. She saw nothing sexual about him. She added that "it was not a topic of conversation and she would not waste her time on such a topic of conversation".

Ms. Kelly testified that if she were sick, she would not like to be taken care of by Mr. Ling. She would feel insecure because of complaints and his negative attitude on several nursing interventions. Mr. Ling never asked her about the interventions and the reason for them. Thus, to her, it seemed that it was not important to him and he wanted to take shortcuts. Ms. Kelly speculated about Mr. Ling's lack of interest

even though she never discussed the treatments or other related health care matters with him.

Ms. Élène Lanciault has been a part-time Assistant Head Nurse on evenings since 1986. She has been assigned to Unit 9A since late 1989 or early 1990. She worked two evenings a week. She testified at length concerning complaints reported to her by orderlies (Ms. Clarisse Castonguay, Mr. Aurèle Ménard and Ms. Nelly Bordès) as well as patients' family members (Mrs. Chatterjee and a Mrs. Serre). Ms. Lanciault had no first-hand knowledge of, and had not observed Mr. Ling with respect to these complaints. I refer to these events as described by orderlies Castonguay, Bordès and Ménard, and Mrs. Chatterjee in their testimony. As to the remaining "complaints", since they were not confirmed by other witnesses and Ms. Lanciault could only report hearsay evidence, I have decided to give them no weight. Thus, there is no need to elaborate further on this matter. The only comment worthy of note is that Ms. Castonguay told Ms. Lanciault that she did not think that "Mr. Ling liked women" (because he had referred to a nurse in an unkind manner).

Ms. Lanciault declared that she noticed that patient C.A. had been given Colace only once when it should have been administered twice a day (Exhibit 5(g)). Thus, when she came to work on February 19, she administered the second dose at 17:00 hours. Ms. Lanciault could not recall if she mentioned this to anyone. Ms. Lanciault identified a list of treatments to be administered on the evening shift that she had prepared at the request of the Head Nurse (Exhibit 17). Ms. Lanciault indicated that the work in Unit 9A is heavy but it does not require difficult care. The work is constant and there is little time to relax or for breaks. She personally does not take coffee breaks. Ms. Lanciault described in detail every duty she performed during her shift.

Ms. Francine Sauvé has been a nurse at Ste. Anne's Hospital for 27 years. From February 1992 to early 1995, Ms. Sauvé worked with Mr. Ling. She was the Head Nurse while he was the Assistant Head Nurse on evenings in Unit 6B. Ms. Sauvé declared that when Mr. Ling worked under her supervision, he had difficulty relating to co-workers and he was forgetful. He forgot to make notes on files and do some treatments and dressings; he did not take the patients' monthly vital signs (blood pressure) on time; he failed to lead and control the staff he supervised; he lacked

interest. Ms. Sauvé had noted in one of Mr. Ling's performance evaluations during the period April 1, 1992 to February 1995 (Exhibits 8, 9, 10 and 11), that he had lacked judgement when he failed to get a patient from the cafeteria for treatment. Ms. Sauvé did not trust Mr. Ling. Mr. Ling made medication errors and sometimes neglected treatments. The orderlies (Messrs. Aurèle Ménard and Jacques Parent and Ms. Jacqueline Hamelin) complained to her that there was no team spirit. In general, Ms. Sauvé commented that Mr. Ling needed to be motivated and reminded of certain basic routines (vital signs), he failed to chart his periodical nursing notes, and he occasionally forgot to perform certain nursing tasks.

However, Ms. Sauvé did indicate that Mr. Ling was always polite with the patients, staff, and superiors. Ms. Sauvé evaluated his performance in 1992, 1993 and 1994 as satisfactory (Exhibits 8, 9 and 11) and for the period March 31 to November 30, 1993, as fully satisfactory (Exhibit 10).

In 1994, Mr. Ling requested to be transferred out of Unit 6B because of an incident involving Mr. Jacques Parent, an orderly under his supervision. Mr. Ling told her that he needed a change. Ms. Sauvé explained that her relationship with Mr. Ling had deteriorated. She did not trust him and she would not like to be treated by Mr. Ling (as a nurse). She added that if Mr. Ling were reinstated, she would worry. She would not feel that the patients would be safe with him. She could not recall if Mr. Ling told her about his personal problems. Ms. Sauvé did not think that the fact that Mr. Ling was an anglophone contributed to his communication problems with his staff of francophone orderlies. No one raised that issue with her. Personally, she had no problems communicating with Mr. Ling; she spoke to him in French and he replied in English, and when he asked that she speak to him in English, she complied.

Ms. Sauvé recounted that Mr. Ling had told her about an orderly (Mr. Jacques Parent) on Unit 6B who had abused patients. According to Ms. Sauvé, Mr. Ling never formerly complained to her of this in writing. Mr. Ling did write a report to her concerning Mr. Parent but with respect to an incident involving himself. Mr. Ling informed her that Mr. Parent had tried to kill him. As a consequence, Mr. Ling took a week's leave; he was very upset. Meanwhile, Mr. Parent was transferred to another unit for a period of two months and then was returned to Mr. Ling's unit. Ms. Sauvé conceded that this incident had been very serious but

Mr. Parent denied it. Ms. Sauvé declared that she was surprised how well Messrs. Ling and Parent got along when the latter returned to Unit 6B. Ms. Sauvé added that, at her request, Mr. Ling produced a computer-generated list of all medication administered in the unit with their purpose and side effects. Ms. Sauvé congratulated Mr. Ling on this project but "she forgot to mention it in his performance evaluation report". It was a 40- to 50-page document.

Ms. Francine Beaulieu Préfontaine was called to testify on August 20 and 21, 1997 by Ms. Lévesque, counsel for the employer. Ms. Préfontaine declared that she has been employed at Ste. Anne's Hospital since 1984, and she has been the Director of Nursing since 1992. Ms. Préfontaine added that Ste. Anne's Hospital has 20 wards or health care units, each with a Chief of Service. The Head Nurse worked only days. However, there were Assistant Head Nurses on days and evenings. Mr. Ling was supervised by a Head Nurse who, in turn, reported to one of the four Assistant Directors. Ms. Préfontaine had under her direction the four Assistant Directors of Nursing. The Co-ordinators of Nursing worked evenings, weekends, and on statutory holidays. The Co-ordinators also reported directly to the Assistant Director of Nursing.

On November 3, 1994, Ms. Préfontaine issued a memorandum detailing the "care-related tasks that nursing orderlies can perform" (Exhibit 5(j)). She listed the following tasks:

take the temperature orally and rectally, insert glycerine suppositories, give "Microlax", give a fleet enema, apply emollient creams and give a medicated shampoo when ordered. All other tasks not listed had to be stopped and are the professional and legal responsibility of the nurses. The nurses cannot delegate nursing tasks to the orderlies; some are of their exclusive domain.

This memorandum was brought to the attention of all staff.

Ms. Préfontaine described her role in the decision to dismiss Mr. Ling. In February 1996, Ms. Claire Babin, Assistant Director, informed her that Ms. Ouellet was conducting an investigation involving Mr. Ling. Ms. Babin and Ms. Carole Paris (Human Resources Advisor) met with her to keep her up to date in this regard. Finally, a report was presented to her on or about April 1, 1996 (Exhibit 5(a)).

Ms. Préfontaine, Ms. Babin and Ms. Paris brought this report to the attention of Ms. Rachel Corneille Gravel, the Director General.

Ms. Préfontaine telephoned Mr. Dennis Wallace, Assistant Deputy Minister, in the presence of Ms. Corneille Gravel and Ms. Paris to discuss the content of this report (Exhibit 5); Ms. Préfontaine could not recall the date of this telephone conversation. Ms. Préfontaine recommended orally to Ms. Corneille Gravel and to Mr. Wallace that Mr. Ling's employment be terminated. Ms. Préfontaine did not know whether Mr. Wallace had received a copy of Ms. Ouellet's and Ms. Paris' report (Exhibit 5). Ms. Préfontaine explained her decision to recommend the dismissal. In her opinion, there was a complete breach of trust since Mr. Ling was the only professional nurse in the unit on evenings. He was the only nurse on duty responsible for 34 patients. The Co-ordinator's role was to simply assist him. She saw this breach of trust in that he had not registered or taken the monthly blood pressure of the patients; he delegated nursing tasks to the orderlies; he failed to deliver certain treatments he should have done on patients; he made errors in the administration of medication; he did not respect the established procedure in cases of error (he failed to write his initials in the appropriate square of the patients' charts); he administered medication (e.g. Vasotec) when it had been discontinued; and patients had complaints about him (verbal abuse, etc.).

At no time did Ms. Préfontaine meet with Mr. Ling to discuss the allegations against him. Ms. Préfontaine relied on the findings as reported by Ms. Ouellet and Ms. Paris (Exhibit 5). Ms. Préfontaine had no confidence in Mr. Ling. She decided that he did not take his "breaches" seriously and he would not improve his performance. She came to that conclusion on the basis of what Ms. Giroux had reported to Ms. Ouellet (and as written by the latter in her report of April 1, 1996 (Exhibit 5)). According to Ms. Préfontaine, Mr. Ling had allegedly told Ms. Giroux that he would stop making errors when he retired and that he had been distracted. Ms. Préfontaine added that the doctor who prescribed the medication had to be assured that the nurse would follow the prescription accurately. However, Mr. Ling had made a variety of "errors". Ms. Préfontaine was also concerned with the frequency of these errors. He did not check the prescriptions and there was no pattern in his errors. Thus, Ms. Préfontaine concluded that it would be difficult to correct such a situation. Mr. Ling had experience and he knew the nursing methods.

Notwithstanding "all the advice from the persons involved, Mr. Ling continued to err". He delegated to orderlies treatments reserved for professional nurses. This delegation was forbidden according to the "Code of Conduct". Mr. Ling did not respect this Code and he used vulgar and disrespectful language towards patients and their families. The patients had the right to receive health and mental care by professionals. Mr. Ling's behaviour was unacceptable. The patients had a right to trust Mr. Ling; they were totally dependent on him. The incidents with Messrs. Di Pietro and Chatterjee could be considered as an abuse of power and threats. The Hospital considered such complaints very seriously. Moreover, Ms. Préfontaine was of the opinion that the error involving Vasotec could have been so serious as to result in death (Exhibit 1, last paragraph of page 2). Moreover, the Di Pietro incident showed verbal and physical abuse by Mr. Ling.

Ms. Préfontaine declared that, when she recommended Mr. Ling's dismissal, she consulted and was aware of his performance evaluation reports and the letter of reprimand of January 4, 1996 signed by Mr. Anibal Osman (Exhibit 7) concerning medical errors. Ms. Préfontaine decided to terminate Mr. Ling's employment even though he had at least six fully satisfactory performance evaluation reports and only an oral and a written reprimand in his disciplinary file (Exhibits 7, 8, 9, 10, 11, 12 and 39). Ms. Préfontaine found no mitigating factors because Mr. Ling was not sincere in his regrets and he did not want to mend his ways; he did not seem unhappy or saddened by his errors. However, Ms. Préfontaine conceded that she had not met with Mr. Ling personally to observe this. She added that she did not judge it necessary for her to discuss his case personally with him. Ms. Préfontaine added that she had not been made aware that Mr. Ling may have had family or personal problems. Ms. Préfontaine based her conclusion solely on Exhibit 5.

On July 9, 1997, Ms. Préfontaine filed a complaint with the Order of Nurses of the Province of Quebec against Mr. Ling (Exhibit 52). It is worthy of note that this hearing had started on April 14, 1997, and that Ms. Ouellet, Ms. Paris, the orderlies (Messrs. Ménard and Legault and Ms. Bordès) as well as Ms. Lillian and Mrs. Evelyn Chatterjee and Messrs. Faubert and Pink had already testified when Ms. Préfontaine decided to file this complaint to the Order of Nurses of the Province of Quebec (Exhibit 52). Ms. Préfontaine explained the delay between Mr. Ling's dismissal in April 1996 and the complaint in July 1997 in that it took "them" a year to

"build the file" even though the evidence presented in support of the complaint to the Order of Nurses of the Province of Quebec was the same as the one prepared for this adjudication. Ms. Préfontaine testified that she was the one who decided to file the complaint with the Order of Nurses of the Province of Quebec. Moreover, she was the one who presented it after discussion with Ms. Babin and Ms. Ouellet. Her decision to file this complaint was not discussed with Ms. Paris. She did ask Ms. Paris to inform Mr. Ling that the Hospital intended to file a complaint with the Order of Nurses of the Province of Quebec "to give him a chance or opportunity to think this over and act differently".

It was important for Ms. Préfontaine that Mr. Ling be made aware of the reasons for the complaint to the Order of Nurses of the Province of Quebec. However, Ms. Préfontaine added that, in her opinion, it was not necessary that she discuss personally with Mr. Ling the allegations against him even though Ms. Ouellet's and Ms. Paris' report may not have seemed accurate and may have failed to include all the relevant facts. The information Ms. Préfontaine relied on to reach her conclusions was what she had received from Ms. Ouellet. Mr. Di Pietro's "complaint" was never referred to Ms. Jacqueline Marriott, the Hospital's Ombudsman, to be dealt with in conformity with the Hospital's policies in this regard. Ms. Préfontaine added that she had asked Ms. Paris whether a complaint filed with the Order of Nurses of the Province of Quebec would have an impact on Mr. Ling's grievance against the termination of his employment and that she would not file the complaint if Mr. Ling withdrew his grievance. Ms. Préfontaine added that she did not tell Ms. Paris to offer to the grievor the proposition that she would not file the complaint with the Order of Nurses of the Province of Quebec in exchange for the withdrawal of his grievance. What Ms. Préfontaine asked Ms. Paris was to make Mr. Ling aware of her intention to file the complaint so as to offer him the opportunity "to act differently from the manner he had been doing up to then".

Ms. Préfontaine conceded that on January 18 and February 22, 1995, the subject concerning the Professional Institute of the Public Service of Canada's difficulty in obtaining relevant documents pertaining to disciplinary actions imposed against its members had been discussed (Exhibits 54, 55 and 56). (According to the bargaining agent, the Hospital refused to submit documents to the grievor and his representative, forcing them to obtain these through the Access to Information

process.) Ms. Préfontaine could not explain why, in Mr. Ling's case, the employer refused to provide the documents relied on by the employer in support of its allegations against him and he had to resort to the Access to Information process.

Ste. Anne's Hospital established a Committee of Nurses (Exhibit 57) and issued a number of rules. One of these rules was that the nurses on the day shift were responsible for taking the monthly blood pressure of each patient (page 6 of Exhibit 57). Ms. Préfontaine explained that was the basic rule but the Head Nurse could change it according to the workload. Ms. Préfontaine recognized the compilation of the incident/accident reports from September 19, 1995 to August 20, 1996 (Exhibit 58). Ms. Préfontaine had never inquired and was not interested in the number of doses of drugs administered by the nurses every day. She did not check Mr. Ling's workload compared to that of the other nurses. Ms. Préfontaine did not consider transferring Mr. Ling to the day shift to offer him closer supervision because he had the required knowledge to perform his duties. Ms. Préfontaine testified that "even though Ms. Nelly Bordès never lied to her, she did not believe her". (Ms. Bordès had been involved on two different occasions in altercations with two different nurses. She was not believed with respect to one of these two incidents.) Ms. Préfontaine declared that she would not accept to be cared for by Mr. Ling; she does not trust him.

Ms. Johanne Martel has been a nurse on the day shift in Unit 9A, four days a week, since November 1994. She has been employed at the Hospital for 12 years. She witnessed when Mr. Faubert signed the declaration in March 1996 (Exhibit 5(k)). She declared that Mr. Faubert was competent and administered his money. She also witnessed the signature of Mr. Brisson who, in her view, was competent on March 28, 1996 (Exhibit 5(n)). Ms. Martel testified that during her day shift on February 16, 1996, she noticed that she took the last Vasotec pill for patient S.C. Thus, she requested that the prescription for Vasotec be re-filled. Later on, in the afternoon, she received a form from the pharmacy informing her that it had filled a bottle with 28 pills to cover 28 days. However, she was requesting a re-fill after 14 days. Ms. Martel informed her immediate supervisor that day, Ms. Francine Joannette, of this situation. (Ms. Ouellet, who was normally her immediate supervisor, was absent.) Ms. Joannette completed a report indicating that Vasotec had probably been

administered twice a day to the patient (S.C.) when the prescription had required only once a day.

Ms. Martel added that, on February 23, 1996, she completed an incident/accident report concerning patient C.A. who had only received the Colace medication once at 08:00 hours, during 10 days, when it should have been administered twice a day. Ms. Élène Lanciault had noticed this omission. The Head Nurse (Ms. Martel could not remember the name) advised Ms. Martel to be more careful. Ms. Martel added "17 hrs" on the patient's (C.A.) medication sheet for the Colace, on or about February 23, 1996 (Exhibit 5(q)). Ms. Martel recognized that since Ms. Lanciault did not work on February 23, she could have completed the incident/accident report at a later date.

Ms. Jacqueline Marriott had been employed at Ste. Anne's Hospital from September 1986 to April 1989. She returned in September 1991 and, since April 1997, she has been the Co-ordinator for the Restructuring of the Voluntary Bureau. From January to April 1995, and from August 1995 to March 1997, Ms. Marriott was the Acting Ombudsman (she was replaced by Ms. Monique Jetté).

Ms. Marriott had also been the Evening Co-ordinator for floors 7 to 14 (the medical floors) from January 6, 1992 to the end of January 1995. Ms. Marriott testified that she had worked with Mr. Ling "from 1988 to February 1992, and from January 1995 to March 19, 1996". Ms. Marriott indicated that she had not observed Mr. Ling in the performance of his duties. She invariably saw him at his desk.

Ms. Marriott testified that on one occasion (no date was provided), when she arrived on the 9th floor, B side, via the stairs, she saw Mr. Ling going into the kitchen (which is located to the left of the stairs). Mr. Ling asked to have a word with her. He told her that "if she ever had anything to say about him, he would like her to say it to him". She asked him "What in particular?", to which he replied that he understood that she had reported to the Head Nurse (Mr. Anibal Osman) that whenever she came to the floor, "he was always at his desk". She asked Mr. Ling whether this was not so. Mr. Ling explained that "it was because he was organized; he arrived early, around 15:00 hours, and prepared his medications". She asked whether he prepared all the medications and he replied "yes". Ms. Marriott declared that this explanation was in itself an "infringement to the rules". The "regulation is that medications should be

prepared immediately prior to distribution". Ms. Marriott testified that "as it happened, she had not spoken to Mr. Osman". In fact, what she had done was to write him a memorandum in early February 1992 asking him to indicate his objectives for the evening staff, in particular the evening nurse (Mr. Ling). Ms. Marriott did not receive a reply because Mr. Osman left the floor shortly thereafter. Ms. Marriott explained that it is normal to have objectives for the nurses but, moreover, in this case "it was alleged that Mr. Ling was not doing the dressings for the patients". Thus, Ms. Marriott asked Mr. Ling, some time in 1992 (no specific date was provided), to call her when he would do Mr. Frosst's next dressing. He responded that the prescription had been changed to only once a day and it was the day staff's responsibility to do the dressing. Ms. Marriott described that she saw Mr. Ling on two occasions seated at his desk reading and there was "pleasant music going". She never saw Mr. Ling use his computer; however, he did show it to her once; he had it in the medication room.

Ms. Marriott indicated that Ms. Élène Lanciault was rarely seated during her shift unless she was working with the charts or preparing her medications for the next round. She always seemed to have things to do and she would spend time with the patients. In Ms. Marriott's view, "the patients have a very close association with Ms. Lanciault because of the way she is; she provides personal attention". Ms. Marriott added, however, that she did not see Mr. Ling interact with the patients when she was doing her tour of Unit 9A. Ms. Marriott explained that she did the tour of floors 7 to 14 at no particular time; however, she would do it after the staff's supper time.

Ms. Marriott described that there had been only one complaint about Mr. Ling. She recounted that the complaint came from Mrs. (no first name was given) Chatterjee (no date was provided). Mrs. Chatterjee told her that she felt insecure when Mr. Ling was on duty. Mrs. Chatterjee thought that he was sadistic and vulgar.

Ms. Marriott could not remember the year this "complaint" was expressed to her. All she remembered was that this conversation with Mrs. Chatterjee occurred "one evening" when she was making her rounds. Mrs. Chatterjee was visiting her husband and when Ms. Marriott was about to leave the unit, Mrs. Chatterjee said that she wanted to have a word with her so they both went to the "conveyor room". Ms. Marriott added that Mrs. Chatterjee told her that she did not think Mr. Ling was providing the kind of care her husband deserved. She mentioned her displeasure

about "some remarks with sexual overtones". Ms. Marriott could not recall what Mrs. Chatterjee had referred to or described. Mrs. Chatterjee told her that she was highly offended and that she was very hesitant to complain. She was afraid of repercussions to Mr. Chatterjee, but she did not explain further.

As they emerged from this "conveyor room", Mr. Ling said to Ms. Marriott that he had noticed that she and Mrs. Chatterjee had been in the room for a while and asked if they were talking about him. Ms. Marriott replied by asking whether they should have been. Ms. Marriott asked Mrs. Chatterjee to leave and turned to Mr. Ling. He inquired again as to whether they were talking about him; Ms. Marriott responded that, in fact, they were and that Mrs. Chatterjee had expressed her anxiety for her husband's well-being under his care.

Ms. Marriott explained that, during the two years that she was the Ombudsman, she handled about 100 complaints filed by patients or their families; some were frivolous. The subjects of the complaints were difficult to separate. (Ms. Marriott made no reference to any specific complaint filed with the Ombudsman against Mr. Ling.) She talked in general about the role of the Ombudsman.

Ms. Clarisse Castonguay worked as an orderly at Ste. Anne's Hospital from June 18, 1979 to December 29, 1994, first on Unit 8A and then on Unit 9A from 1981 to 1994. She worked with Mr. Ling during three of these years. She found it easy to work with him. However, she felt that some duties were left unaccomplished. She mentioned the irrigation and the tube feeding of Mr. L. that would take about one-half hour to do. Mr. Ling would only do one at 18:00 hours. According to Ms. Castonguay, there should have been two provided: one at 16:00 hours and the other at 21:00 hours. Ms. Castonguay did not discuss her concerns with Mr. Ling. She related that since all the nurses (except Mr. Ling) did an irrigation once an evening for Mr. L., she asked Mr. Ling about this. He replied that the irrigation was done at the request of the doctor and it was not required on all evenings; this was not a regular treatment. Then, one evening (no date was provided), Mr. Ling showed Ms. Castonguay that he was going to do the irrigation for Mr. L.

Only one tube feeding was ordered for Mr. W. Ms. Castonguay had observed that Mr. W. was agitated and showed with his finger that he wanted to eat.

Ms. Castonguay recalled that, once every month, the blood pressure and temperature of all patients on Unit 9A were taken. The equipment used was the one provided by the Hospital. They used the big and noisy sphygmomanometer and the stethoscope that hung from it. Ms. Castonguay could hear this machine being rolled on the terrazzo floor. Ms. Lanciault took care of this duty quite often because Mr. Ling did not have the time.

Ms. Castonguay recounted an event concerning Mr. K. (no date was provided) that required the taking of his blood pressure when the patient ingested some medication at 16:00 hours. Ms. Castonguay described that, one evening, she looked on Mr. K's chart and found the handwriting so tiny that she had trouble reading the numbers. She had not noticed the use of the Hospital's large and noisy sphygmomanometer. Ms. Castonguay did not discuss this matter with Mr. Ling except that she did mention to him that the handwriting was so small that "they" would not be able to read anything. He gave her a "certain look" (that she interpreted as "this is not your business") and said nothing.

Ms. Castonguay testified that she decided to retire on December 29, 1994, because she did not want to work with Mr. Ling. She added that she would not like to be nursed by him if she was required to be tube-fed. Ms. Gosselin asked Ms. Castonguay whether she remembered which patients were in various beds and she could not recall, but she could remember Mr. K. in bed 15.

Ms. Marie-Hélène Rivard has been employed for 17 years at the Hospital. She has been a nurse on the day shift in Unit 9A. According to Ms. Rivard, Mr. Frosst had a good memory; however, he could be manipulative; he could say yes to something and not respect his promise; he was independent and did not like to be told what to do. Ms. Rivard added that, had Mr. Frosst drank alcohol during the day, she would have noticed it in his eyes and speech. Mr. Frosst liked whiskey, vodka and scotch. In cross-examination by Ms. Gosselin, Ms. Rivard herself could not recall, on December 5, 1997, whether she had been on duty on April 1, 1996, March 25, 1996, March 28, 1996 and the period between March 13 and April 1, 1996. Ms. Rivard testified that, in March-April 1996, Ms. Ouellet did verify with her certain matters concerning the patients of Unit 9A. Moreover, Ms. Ouellet asked about the mental competence of Mr. Brisson. Ms. Rivard was aware that patients had provided signed

declarations to Ms. Ouellet. Ms. Kelly was not responsible or the care nurse for patients Frosst, Brisson, Chappell and Faubert. Ms. Rivard did not know why Ms. Kelly had been asked to witness their signatures. In addition, even concerning November 26, 1997, Ms. Rivard could not recall which of the night nurses gave her the briefing and report on the patients when she arrived at work. Moreover, she could not recall if she ate her lunch alone or if she sat with anyone in the lunchroom.

At the time of her testimony (December 5, 1997), the taking of the patients' monthly vital signs for Unit 9A was the responsibility of the day nurses; Ms. Rivard is responsible for the taking of the monthly vital signs of nine patients. Ms. Rivard added that in 1995 and 1996, it was possible that patients had access to alcohol. Mr. Frosst could consume alcohol during the day when he was away from the unit.

Ms. Norma Hughes Longtin has been a day nurse in Unit 9A, at Ste. Anne's Hospital, since 1968. In February 1996, Ms. Longtin worked the day shift. Ms. Longtin explained nurses' notes concerning Mr. Arthur Di Pietro (Exhibit 6). She described in detail Mr. Di Pietro's behaviour. She emphasized that Mr. Di Pietro had always been a difficult patient. She pointed out how, on November 27, 1995, Mr. Di Pietro had refused to go to the dining room. He was a depressive patient. Up to that date, Mr. Di Pietro had always dined in the downstairs patients' cafeteria. Ms. Longtin spoke to the dietician concerning Mr. Di Pietro's refusal and it was decided that he would have, from then on, his three meals in the ward. It was an ongoing process to get him to eat. He refused to eat and it got to the point where the health care staff would help him eat. Ms. Longtin explained that it was dangerous for Mr. Di Pietro not to eat; his haemoglobin had always been low; he was anaemic so it was important for him to eat. In addition, there were problems feeding Mr. Di Pietro; it all depended on his mood. If he did not want to eat, he would angrily push the tray away. In that case, Ms. Longtin would leave him alone to return later and try again to make him eat. The nurses would try to force him to eat.

As a primary nurse on the day shift, Ms. Longtin had to give a report to the evening nurse (or replacement nurse) concerning Mr. Di Pietro's situation. Ms. Longtin discussed Mr. Di Pietro with Mr. Ling. Ms. Longtin added that, during her day shift, the nurses would feed Mr. Di Pietro like a child. The nurses would assist him with his meals. However, Mr. Di Pietro has been a difficult patient, aggressive

verbally and physically. Mr. Di Pietro had been told many times not to transfer himself from the bed to the wheelchair and vice-versa. However, on February 1, 1996, he unfastened the safety belt and transferred himself from the wheelchair to his bed (Exhibit 6). Ms. Longtin described how, when Mr. Di Pietro could not get what he wanted and when things did not go exactly his way, he could be very malicious.

Ms. Longtin gave the example of an incident she had with him on July 24, 1997, when he told her that he wanted to go back to bed. Mr. Di Pietro never wanted to get out of bed. Ms. Longtin explained to him that she was alone and she would go and ask for assistance from an orderly to help her transfer him. When she returned to his room, Mr. Di Pietro was on the floor. He was a very stubborn patient. Another time, Mr. Di Pietro refused to get out of bed. Ms. Longtin explained to him why he had to. However, Mr. Di Pietro telephoned his son François and daughter Marie-Claude to complain. Ms. Longtin spoke to his son and daughter separately. The family could not understand why Mr. Di Pietro could not spend all day in bed; Ms. Longtin explained that he could develop bed sores because of his poor blood circulation. Marie-Claude Di Pietro told Ms. Longtin that Mr. Di Pietro had been a brick-layer and had spent all his winters in bed.

Mr. Di Pietro continuously ignored the Hospital's rules in this regard. He continued transferring himself and complained to his family when he was reproached by the nurses for his careless attitude. Thus, on February 20, 1996, Ms. Longtin met with Mrs. Simone Di Pietro and Ms. Marie-Claude Di Pietro to explain the routine of the Hospital with respect to Mr. Di Pietro's care. Ms. Di Pietro related to Ms. Longtin that Mr. Di Pietro had been an abusive father; ever since she was a young girl, he has put her down. She ended up in a strip-joint. Ms. Di Pietro explained that, because they are an Italian family, they are devoted to Mr. Di Pietro. Ms. Longtin explained the reason why Mr. Di Pietro could not be left in bed all the time and they finally understood and agreed with that decision.

Ms. Longtin declared that, on November 27, 1995, Mr. Di Pietro received a blood transfusion and, on January 31, 1996, he received two blood transfusions in one day. Moreover, when, on February 20, 1996, Ms. Longtin met with Mr. Di Pietro's wife and daughter Marie-Claude, they did not mention bruises on Mr. Di Pietro's arms. The family and Mr. Di Pietro himself never complained to Ms. Longtin about Mr. Ling.

Furthermore, throughout the nursing notes for Mr. Di Pietro covering the period November 27, 1995 to March 1, 1996, there is not a single mention of bruising or bruises on Mr. Di Pietro's arms (Exhibit 6). To Ms. Longtin's knowledge, Mr. Di Pietro had no bruises during the period January to March 1996. Had Mr. Di Pietro suffered any bruising, it would have been mentioned in the nursing notes. Unless Mr. Di Pietro complained, Marie-Claude Di Pietro would not call Ms. Longtin. Ms. Longtin explained that Marie-Claude Di Pietro visited her father regularly until Christmas 1996 or January 1997 when she stopped the visits for four months because of something Mr. Di Pietro had told her. Ms. Marie-Claude Di Pietro would return to the Hospital only on special occasions.

Ms. Longtin described how Mr. Di Pietro, who had a safety belt on when seated in his wheelchair, had freed himself. On May 30, 1996, Mr. Pink had cut Mr. Di Pietro's safety belt and when questioned about this they both denied having cut it off. That day, Mr. Di Pietro had warned Ms. Longtin, when she put the safety belt on him, that he would cut it off. Mr. Pink had been in his bed, next to Mr. Di Pietro. Then, Ms. Longtin and the orderly left the room and when they returned, they found that the belt had been cut off with Mr. Pink's scissors. Ms. Longtin asked Mr. Di Pietro who had cut his belt and he replied that he had not done it and he did not know who had. All the while, Mr. Pink was lying in his bed. Then, Ms. Longtin turned to Mr. Pink and asked him whether he had cut the belt off. Mr. Pink denied it. The room was searched because patients were not allowed sharp objects. Mr. Pink is quite mobile in his electric wheelchair and the scissors were found in his possession. Once he saw that the scissors had been found, Mr. Pink admitted his deed. Ms. Longtin concluded that Mr. Pink can lie.

Ms. Longtin described Mr. Pink as "a bit of a loner". He has an aggressive personality and can be verbally abusive. She gave an example of his rudeness when he could not have his whirlpool bath first thing in the morning. Mr. Pink liked to be the first patient to have a whirlpool bath after his breakfast and if this was not possible, he became very upset; he became extremely rude to the orderlies. He used very bad (rude) language (curse words). In Ms. Longtin's opinion, Mr. Pink was special and difficult to deal with. All staff have experienced problems with Mr. Pink. He was not credible and reliable. Mr. Pink was more respectful with the nurses than with the orderlies, and more with women than with men. Mr. Pink has a personality problem;

he is very aggressive and is an unhappy man. Mr. Pink never complained or talked about Mr. Ling to Ms. Longtin. In Ms. Longtin's view, the most difficult patients in that unit were Messrs. Pink and Di Pietro.

Ms. Longtin testified that Mr. Ling would arrive regularly at 15:00 hours. The nurses appreciated the fact that he arrived early, before his shift. Mr. Ling showed interest when the day nurses made their report to him. He would write down if he had to look at something that evening. He went through the nursing notes. Ms. Longtin saw a good follow-up from the day shift to the evening shift.

On April 10, 1997, Ms. Longtin had a discussion with Ms. Ouellet concerning her testimony about Mr. Di Pietro. Ms. Longtin advised Ms. Ouellet that, in her opinion, the employer could not succeed in this adjudication with Mr. Di Pietro's allegation. Ms. Longtin based this opinion on Mr. Di Pietro's aggressive behaviour, his physical and mental health, in addition to the difficulties she had had as a nurse dealing with this particular patient. Ms. Longtin added that all the staff had had problems with Mr. Di Pietro. In her presence, Mr. Di Pietro had accused a cleaner of taking his cigarettes that were later found in Mr. Di Pietro's locker. Ms. Longtin explained that Mr. Di Pietro has had extensive brain damage. He has had quite a few cerebro-vascular accidents (mini strokes) that have left him with mental problems.

Ms. Longtin testified further that every time Mr. Di Pietro complained to his family, his son, François, and/or daughter, Marie-Claude, would telephone the unit. The staff would explain the Hospital's rules and protocol (the need to be out of bed because of bed sores and the need to eat). The family would always say that they knew that Mr. Di Pietro was difficult. They understood but were trying to please Mr. Di Pietro. The Hospital considers that the family is very important when it wants to be involved in the care of the patient. Ms. Longtin explained that, in January and February 1996, Mr. François Di Pietro telephoned her about ten times and all the calls had to do with how many times Mr. Di Pietro had telephoned him. Ms. Longtin explained that Mr. Di Pietro was alert and he fully understood his actions. Mr. Di Pietro had a history of falls and the safety belt was a safety precaution; however, he had the right to choose not to have a restraint. Mr. Di Pietro did not want to eat and Ms. Longtin recalled when he threatened to hurt himself if the orderly did

not do something he wanted the orderly to do. Mr. Di Pietro is stubborn and impatient.

Ms. Longtin described how she had to convince Mr. Di Pietro to eat his meals. He usually liked breakfast, which was his best meal. Mr. Di Pietro was capable of feeding himself but he would accept help at times. If he did not want to eat, the staff would take the fork or spoon and put it in his mouth. However, you could not force him to eat if he refused. Mr. Di Pietro did get enough nourishment to maintain his weight. Ms. Longtin concluded that a patient could be alert and have problems with short-term memory.

Ms. Longtin declared that Mr. Frosst had been a chronic alcoholic who had never stopped drinking. She recalled how and when Mr. Frosst had practically blown his face off some three and a half years before. Mr. Frosst was oxygen dependent. She recalled how one evening she saw him in the canteen with a bottle of whiskey in the back of his wheelchair. Mr. G. was also an alcoholic.

Dr. Luis Briones practices geriatric psychiatry and Mr. Di Pietro has been one of his patients. In 1995, Dr. Briones was asked by Dr. Hyman Batalion to treat Mr. Di Pietro who has a number of ailments:

- anaemia of the minor thalassemia type which is transmitted genetically and must be treated with periodical blood transfusions because of low red cells and a low haemoglobin;
- chronic obstructive pulmonary disease;
- generalized arteriosclerosis which affected his brain. Mr. Di Pietro has had a history of various cerebro-vascular accidents (ACV);
- diverticulosis: that is an abnormal growth in the interior of the intestinal walls. It is painful and can result in bleeding and could get cancerous;
- polyps, that are also growths in the interior of the intestines. In 1994, Mr. Di Pietro was operated to remove these polyps;
- angiodysplasia secum: abnormal cells in the last part of the intestines;

- major depression affecting his moods. He has been very sad and could not consider his future in an adequate manner. He has been desperate, irritable and verbally abusive;
- personality troubles.

Dr. Briones testified that Mr. Di Pietro's major health problems affect his brain and intellectual capacity because of the death of the nervous cells in his brain caused by the obstruction of a blood vessel (arteriosclerosis and ACV). Thus, when Mr. Di Pietro is subject to an ACV, the affected zone of the brain dies. Dr. Briones described Mr. Di Pietro as a difficult patient who does not co-operate; he does not contribute to his well-being; he is verbally aggressive. According to the family, Mr. Di Pietro has always been negative, irritable, and manipulative; he plays the victim in order to obtain compassion, sympathy, love, and attention. He tried to control his family and blame the people who placed him at the Hospital; he wanted to make them feel guilty. Mr. Di Pietro had concentration problems because of his depressive state. He lost interest in life and had suicidal thoughts because, in his opinion, life no longer made sense. Mr. Di Pietro had an aggressive behaviour and an attitude of provocation. In Dr. Briones' opinion, this provocation could translate by his refusal to eat and the need to be taken care of.

Dr. Briones frequently discussed with Ms. Norma Longtin and with the other nurses Mr. Di Pietro's case. Dr. Briones had not met Mr. Ling. Ms. Longtin informed Dr. Briones that she could care for Mr. Di Pietro even though he was a very difficult patient. The nurses informed him of Mr. Di Pietro's verbal abuse and his refusal to do what he was told. In early February 1996, Mr. Di Pietro was prescribed two anti-depressants that were changed on February 15, 1996, but it still did not help his depression. Finally, in March-April 1996, Dr. Briones prescribed a stimulant, "Ritalin", and another anti-depressant, "Maverix". Mr. Di Pietro receives various drugs for his numerous ailments. Mr. Di Pietro can be, at the same time, passive-aggressive; he has a tendency to play the victim. In February 1996, he did not have suicidal tendencies and he was too weak to hurt himself (to explain the alleged contusions on his arms). Moreover, Dr. Briones did not recall seeing these contusions as alleged. Dr. Briones explained that Mr. Di Pietro was conscious and aware of what he said and of his actions. He needed a lot of attention when he played the victim; that was his style; he

knew what he did. It takes a nurse a lot of patience to care for Mr. Di Pietro. It was important that Mr. Di Pietro eat properly because of his anaemia. His diet was important because of his lack of blood cells and low iron.

In Dr. Briones' opinion, and on the basis of his ten years of experience having treated similar patients to the ones in Unit 9A, the majority of such patients could not remember who and/or when someone took their blood pressure. It is difficult for such a patient to remember when there are different nurses on three shifts every day, in addition to the replacement nurses who are not regular nurses on the unit and shift. Had Dr. Briones been consulted concerning the status of these patients' memory, he would have advised that their memory was not to be trusted. Even for a patient without this kind of diagnosis, such an event (who and when the blood pressure was taken) is difficult to recall.

Concerning Mr. Frosst, Dr. Briones declared that he had not been consulted. However, if this was a case of a person who had been a chronic alcoholic for a long time, then he could have had cognitive problems and the alcoholism could have affected the brain. Dr. Briones added that in a case where five days a week the patients had only one male nurse doing a certain routine task, they could remember if this nurse cared for them. Dr. Briones explained that ageing veterans have particular worries. They could suffer from post-traumatic stress syndrome that could taint a lot of things. This stress also contributes to alcoholism. In general, old people are insecure and there could be an impact if they are cared for by someone they do not like, even though the health professional has done nothing to deserve the dislike. The older the patient, the more vulnerable he would feel.

Dr. Hyman Batalion has been a physician at Ste. Anne's Hospital since 1979. He testified concerning the general mental competence of Messrs. Frosst, Pink, Brisson and Faubert. Dr. Batalion identified some documents concerning the diagnostics and death summary of Mr. Frosst (Exhibit 92). Dr. Batalion explained that Exhibit 92 is a report concerning a multi-disciplinary meeting on the assessment of Mr. Frosst. Dr. Batalion signed this report on April 24, 1996. Amongst the several diagnoses, Mr. Frosst suffered from alcoholic history and character disorder. Mr. Frosst had been admitted to Ste. Anne's Hospital on April 10, 1991. This was his third admission to this Hospital. He was, at the end, in a state of severe chronic obstructive pulmonary

disease (COPD). The major medical diagnosis was COPD and alcoholism. Mr. Frosst died on July 15, 1996. On April 24, 1996, Mr. Frosst was confirmed to have severe COPD and alcoholism. He was a severely debilitated patient (Exhibit 92).

Dr. Batalion explained that Mr. Frosst had a history of alcoholism and, at times, he committed acts that were irregular or of indecent behaviour. Dr. Batalion declared that neither the employer nor anyone else consulted him in March or April 1996 concerning Messrs. Frosst, Pink, Faubert, Brisson or any patient of Unit 9A with respect to their memory status. With respect to Mr. Frosst's memory, Dr. Batalion explained that his memory was intact but he was periodically intoxicated. In Dr. Batalion's medical experience, patients who drink (alcoholics) will do so at night and on weekends when no one is around. Furthermore, it was possible that Mr. Frosst drank during the day when he was away from the unit.

Concerning Mr. Pink (Exhibit 93), his mind is intact because he is not demented, confused or bizarre. He is of average intelligence but Dr. Batalion could not vouch for his memory. Moreover, in view of the Hospital environment that entails a constant change of staff and people, Dr. Batalion could not answer as to whether Mr. Pink could recall when and who took his monthly vital signs and whether such an event took place every month. This is a gray zone. On January 11, 1996, Mr. Pink was diagnosed with severe COPD, emphysema, narcotic addiction, hypertension and Paget disease. He was found to be mentally, fully, alert and communicated well (this was demonstrated by his testimony on April 15, 1997). Dr. Batalion distinguished also between dementia and mental competence. Some patients can remember some details that are important to them but forget others.

With respect to Mr. Di Pietro, Dr. Batalion testified that he examined him in January, February and March 1996, when he was present in Unit 9A five days a week, and at no time did he notice any bruises. Moreover, Dr. Batalion did not recall that anyone brought to his attention or noticed bruises on Mr. Di Pietro's arms. Furthermore, at no time did Mr. Di Pietro complain about Mr. Ling or that he had been badly treated by Mr. Ling.

With respect to the Vasotec incident, according to Dr. Batalion, if he prescribes one dose a day and the patient receives two instead, the consequences could go from none to a heart attack or stroke. This medication is used for blood pressure or heart failure. In the case of S.C. (Exhibit 5(e)), the Vasotec was prescribed for his blood pressure. Dr. Batalion could not recall whether, in February 1996, he was informed of the medication error in the case of Vasotec for S.C. (when it had been administered twice a day instead of once from February 1 to 15, 1996). However, he did remember that the patient had not suffered serious consequences because there were no serious health events at that time concerning that patient.

Dr. Batalion had never received any complaint concerning Mr. Ling from anyone (patient; family; nurse). However, he had had numerous complaints about the orderlies. Dr. Batalion explained that, in general, the nurses spend more time than the physicians with the patients.

Dr. Bernard Groulx has been with Ste. Anne's Hospital for 16 years. Since 1987, he has been the Chief of the Psychiatry Department. Dr. Briones is one of the member doctors of his department. Dr. Groulx declared that Dr. Briones is one of his best psychiatrists. Dr. Groulx confirmed the health problems of Mr. Di Pietro and that he has had numerous cerebro-vascular accidents. He suffers from severe depression; he has insomnia; loss of interest in life; has guilt feelings and low self-esteem; loss of appetite; reduction in his psycho-motor; and he has suicidal thoughts that he may or may not act on. Dr. Groulx explained that a lie has no relation whatsoever with the person's mental incapacity or mental disorder. If depressed, a person in distress may express himself in his own way. The key to Mr. Di Pietro's case is his behaviour; he is a difficult patient who talks loudly and who is aggressive. What is important to note is how he described the incident with Mr. Ling; how he expressed himself. Has he had a history of lies? Is the incident similar to other ones complained about? Dr. Groulx explained that cerebro-vascular accidents do not cause a person to lie. However, it may affect the person's memory. A particularity of the patients of Unit 9A is that they are in the first years of Alzheimer disease and it affects their memory. Alzheimer prevents the creation of new memories. Dr. Groulx commented that, in general, people have a tendency to remember something unusual, depending on when it occurred.

Ms. Chantal De Léseleuc has been a Social Worker at Ste. Anne's Hospital since January 1980. In January 1996, she was responsible for the patients in Units 9A, 9B, 5A and 5B. She participates in multi-disciplinary meetings as a psycho-social advisor. On November 28, 1995, she attended a meeting with Dr. Hyman Batalion to discuss Mr. Di Pietro. She declared that Mr. Di Pietro was first admitted on May 4, 1994. He left in August 1995 and was re-admitted on September 26, 1995. The nurse (usually Ms. Norma Longtin), the dietician, the physiotherapist, the ergo-therapist and the pharmacist were also in attendance at these meetings. Ms. De Léseleuc related that Mr. Di Pietro had had cerebro-vascular accidents with brain atrophy, anaemia, cardiac problems and depression. He needed the intervention of a psychiatrist and was referred to Dr. Luis Briones. Moreover, he had dietetic problems; the dietician reported that the situation was serious because Mr. Di Pietro did not have dietary habits and if he had any, they were bad. Mr. Di Pietro was not happy to be at the Hospital. There was a history of attempted suicides that could be qualified as "dramatic acts" (« mises en scène ») to manipulate the people around him.

On February 6, 1996, Mr. François Di Pietro contacted Ms. De Léseleuc to inform her that his father had complained that he had been manhandled by a male nurse. Ms. De Léseleuc could not recall if he mentioned any bruises. Ms. De Léseleuc referred him to the Head Nurse and, if necessary, to contact the Co-ordinator and the Ombudsman. On June 12, 1996, Ms. De Léseleuc closed Mr. Di Pietro's file; the file had been dormant on the psycho-social level.

Ms. De Léseleuc declared that, in February 1996, Ms. Hélène Ouellet confided to her that her mandate was to shake-up ("clean-up") (« faire le ménage ») the unit. Ms. De Léseleuc interpreted this remark to refer to the administration of the personnel.

Ms. De Léseleuc reviewed the files of various patients in question in this adjudication. Mr. Julian Chappell had been a patient of Unit 9A since October 2, 1985. He died on April 9, 1996 at age 80. He had had a number of cerebro-vascular accidents that had left him partially paralysed on his left side; he was in a wheelchair. He also had cardiac problems and suffered from hypertension. He had been an alcoholic. He refused to collaborate with treatments and criticized everything.

He was found to be a high risk patient for the nurses with respect to work accidents. He needed to be encouraged and stimulated.

Mr. Pierre Brisson was admitted to the Hospital on June 7, 1995 and, in February 1996, he was 83 years old. He also had had cerebro-vascular accidents, arterial hypertension, he was paralysed on his left side, and he had vision problems. He also was in a wheelchair. He was very demanding and needed a lot of attention. He was alert and had a sense of humour.

In February 1996, Mr. Chatterjee was 72 years old. He was admitted to the Hospital on February 4, 1993. In February 1996, he had had cerebro-vascular accidents, suffered from diabetes, had vision problems (left eye), needed assistance in his everyday life and routine, and he was a heavy health care case. In 1997, Mr. Chatterjee left the Hospital following requests for a transfer to Ottawa that had been initiated in April 1994 and March 1996 by his spouse. The first request, in 1994, was abandoned and, then, in March 1996, Mrs. Chatterjee reformulated a second request that she discussed with Ms. De Léseleuc. Mr. Chatterjee trusted his wife and if she moved to Ottawa, he would follow her.

Mr. Frosst was 73 years old when he died in July 1996. He was manipulative and had behavioural problems. He had an anti-social behaviour; he was an alcoholic and drank on the unit. At 23:00 hours on October 26, 1994, Mr. Frosst had burned his face when he smoked and drank alcohol while he had an oxygen tank attached to the back of his wheelchair. He did not co-operate well; he was marginal because of his alcoholism. He did not accept authority well. However, he understood well his actions. He was relatively alert and lucid enough to understand the consequence of his actions. He showed enormous negligence in following treatment and in his finances. He would not pay his stay at the Hospital. He did not want to cover the expenses. He neglected his affairs but, when supervised, he did meet his obligations. He did as he well pleased and drank in secret and behind the staff's backs. In February 1996, Mr. Frosst was terminally ill with a pulmonary disease and was oxygen dependent. Because of the October 26, 1994 incident, Mr. Frosst was closely supervised in the evening. He could leave the unit at 08:30 hours and return by 19:30 hours. The staff suspected that he continued drinking alcohol all along, which he somehow obtained from somewhere.

In 1996, Mr. Faubert was 89 years old. He was admitted to the Hospital on October 17, 1991. He had cardiac problems, diabetes and leukaemia. He was in a wheelchair. He was alert, well oriented in the three spheres (space, time and people). He had neuropathy (a weakness in his legs). The staff noted a problem in his judgement. In Ms. De Léseleuc's experience, a person can be oriented in the three spheres and have memory problems. He may seem coherent and alert, but his memory could be questioned.

In February 1996, Mr. Pink was 82 years old. He was admitted to the Hospital on January 20, 1993. He has serious pulmonary problems and is oxygen dependent. He suffers from Paget disease (a bone disease). He is in a lot of pain and takes an analgesic, "Darvon". He has a motorized wheelchair. He never has enough pain killers to dull his pain; thus, he has become pain-killer dependent. When he does not get enough pain killers or Darvon, he suffers from withdrawal symptoms and becomes a behavioural problem. He is a difficult patient. Ms. De Léseleuc observed this first-hand when she had to deal with him. He would make a mountain out of nothing. She recounted how, on May 3, 1996, he came to see her. He was very unhappy, in an agitated state, very mad and upset. It took quite a long time to calm him down. Ms. De Léseleuc did not know the reason why he was in such a state. He was talking of various subjects and things at the same time that made no sense. Finally, she learned that he alleged that his bank account was missing \$20 and, at the same time, he wanted to be transferred to Ontario. He talked about his health problems and of his life in general, and then complained again about the missing \$20. Ms. De Léseleuc found it difficult to have him concentrate and tell her what was the issue at the centre of his complaint. Ms. De Léseleuc declared that it was always difficult with Mr. Pink to understand what he wanted, because he always arrived in an agitated state. Every time she met him, he was in a terrible state and once the issue was defined, it turned out that it was not serious. He has a tendency to flare-up inappropriately. In her opinion, Mr. Pink needs a lot of attention and patience. He insults people in general and uses vulgar language. Ms. De Léseleuc discovered that he had not received the \$20 because no one had made a request for it. He tended to accuse others for his mistakes. He accused the bank and the Hospital of taking the \$20 when, in reality, he should have completed a request for it. More recently, Mr. Pink had accused the dentist of failing to do his work. Mr. Pink does not manage his finances and it was when Ms. De Léseleuc spoke to his bank that she learned that

he was entitled to a pension that he had not applied for. Thus, she communicated with his stepdaughter to complete the request for the Guaranteed Income Supplement. For Mr. Pink, this issue was a catastrophe even though he was nevertheless fed and had a place to live. He could have called his family for their assistance. For him, it was dramatic.

Dr. Pierre Paquette has been the Director of Professional Services since April 1987. He has been responsible for the Risk Management Program that started on May 1, 1991. Management asked that in all cases of incidents or accidents, a form be completed (Exhibit 40). The failure of a nurse to initial the medication form to indicate that the medication has been administered was not considered an error in medication. The nurse might have simply forgotten to initial the appropriate square on the chart and actually administered the medication to the patient.

Ms. Isabel Barbas has been a nurse (NU-HOS-2) at Ste. Anne's Hospital since 1980. She testified that the taking of the monthly vital signs was the responsibility of the day nurses. Ms. Barbas was very surprised when she learnt that, in Unit 9A, the evening nurse had that task. She found this situation irregular because Unit 9A had a very heavy workload and, in the evenings, the nurse was alone. Moreover, the sphygmomanometer in the unit was extremely noisy and would disturb the patients who would be trying to sleep. Ms. Barbas related that some of these instruments were in bad working order. She confirmed that a patient that is oriented in the three spheres (time, place and recognition or knowledge of people) may have memory problems. Ms. Barbas declared that, notwithstanding the Hospital's directive forbidding the delegation of nursing tasks to the orderlies (Exhibit 5(j)), such a delegation was in existence. Orderlies did accomplish certain nursing tasks, i.e. the application of certain creams and small bandages. She explained that the nurse would appose his/her initials on the chart while the orderly would apply the cream or do the small bandage. Personally, Ms. Barbas has never asked an orderly to perform a nursing task that was prohibited to delegate. Ms. Barbas added that when the nurse wrote his/her initials, it meant that the treatment was administered. Ms. Barbas declared that she would initial for another member of the staff because she trusted the orderlies.

Mr. Louis Bastien testified on August 26, 1997. Mr. Bastien has been the Chief of the Pharmacy Services at Ste. Anne's Hospital since 1993. He has been a pharmacist since April 21, 1981. Mr. Bastien could not specify the exact number of doses administered to the patients at this Hospital. He estimated that the nurses administered 8,000 to 10,000 doses of medication each day. This number included all drugs including aspirin, etc. Concerning Unit 9A and for 31 patients in 1997, he found 200 doses with respect to the regular medication, and for the drugs administered as needed, he calculated 188 doses. These numbers would be about the same for 1996. During this questioning, Ms. Pierrette Gosselin explained that this was the best evidence that she could obtain because the Hospital had refused her access to charts that could provide her with the relevant data for 1996, at which point, Ms. Lévesque responded that she would provide the information for January and February 1996.

Mr. Bastien indicated that, at the Royal Victoria Hospital, the margin of error in the administration of drugs is about five percent. The Royal Victoria Hospital has 900 patients and 40 pharmacists. At Ste. Anne's Hospital, the margin of error is lower because there is less turnover of prescriptions and patients (prescriptions remain fairly constant). Mr. Bastien explained that the completion of incident/accident reports is voluntary; thus the compilation of such reports (Exhibit 58) is not complete. The purpose of the compilation is to minimize risks and improve the system. However, not everyone reports errors in medication. For example, this compilation does not report the omission of nurses' initials on the charts (« carrés non-initialés ») because these are not considered relevant since they are simple oversights.

Concerning the Vasotec incident (Exhibit 5(e)) of patient S.C., Mr. Bastien explained that the prescription had required the administration of Vasotec once a day. The pharmacy had dispensed enough 5 mg pills for 28 days. On January 5, 1996, Dr. Hyman Batalion had prescribed 5 mg of Vasotec twice a day. Thus, the pharmacy had dispensed 56 pills to cover 37 days (even though this prescription was for 35 days). The practice was to dispense a couple of extra pills. Then, the prescription was renewed for a further 28 days. According to Mr. Bastien, the pharmacy dispensed exactly 28 pills. Then, on February 16, 1996, the nurses had run out of pills and the pharmacy had to dispense another 14 pills. Mr. Bastien concluded that, between February 1 and 15, the nurses administered the pills twice. One pill on February 1 in

the evening, and one on February 15 in the morning, in addition to twice a day between February 2 and 14. Thus, on February 15, the last pill was administered and this is why the nurse had to request further doses of Vasotec to comply with this prescription for S.C.. Mr. Bastien added that this was one hypothesis to explain the shortage of Vasotec but there could be other explanations, such as pills may have had to be discarded because of contamination or pills could have fallen to the floor. Mr. Bastien explained that some hospitals have a dispensing machine that dispenses individually-wrapped doses; this method reduces the margin of error and time spent preparing medication. This machine costs about \$300,000. This method could reduce the margin of error but it does not eliminate it. The purpose of this system is economic because it only dispenses as needed and would eliminate the need to throw out unused doses left in a bottle. Mr. Bastien proposed that Ste. Anne's Hospital adopt this system and purchase the dispensing machine; it was being considered.

Ms. Annick Hébert has been a pharmacist since 1987 and the President of the Risk Management Committee since 1995. This Committee met every two months. The members of this Committee, in addition to Ms. Hébert, were Dr. Dominique Joly, Ms. Jeanette Dionne (Clinical Nurse) and Ms. Joanne Grondin (Nurse).

Ms. Hébert was responsible for the compilation of the incident/accident reports from September 19, 1995 to August 20, 1996 (Exhibits 58 and 60). Ms. Hébert was the President of the Incident/Accident Committee. She forwarded her report to Ms. Préfontaine, Mr. Bastien, Dr. Bernard Groulx, Chief of Psychiatry, Dr. Pierre Paquette, Chief of Professional Services, and Dr. Chavik Gabriel, Chief of Medical Services. Ms. Hébert prepared her compilation on the basis of 240 forms she had received. This report concerns solely the pharmacy and incidents with respect to medication. She could compile only the data she received.

Ms. Hébert explained that 240 errors in medication is a low number and not all errors are reported. When the reporting system of errors in medication was instituted in 1993, Dr. Paquette held meetings to explain the purpose of these reports. The staff was told that these reports were not going to be used for disciplinary measures but to improve the situation. Ms. Hébert conceded that these reports would not be completed and forwarded to management if staff were concerned that they would be used to discipline.

Ms. Hébert received the request to dispense a further 5 mg of Vasotec for patient S.C. on February 16, 1996 (Exhibit 36). On February 1, 1996, the prescription was filled for 28 days. She confirmed the practice to add two pills when the prescription covered more than three months and if it was for less than three months, then the pharmacy dispensed the exact amount as prescribed. S.C. had been prescribed Vasotec since February 1993. According to Ms. Hébert, on February 1, 1996, 28 pills were dispensed. Thus, when, on February 16, 1996, a further request came from Ms. Rivard, Ms. Hébert completed the "Pharmaceutical Notes" (Exhibit 36). Ms. Hébert completed about ten such reports a year. She explained that the shortage could be explained in that someone dropped the bottle or there was an error in the dispensation of the pills.

Ms. Patricia Lefebvre has been employed as the Acting Chief of Pharmacy at the Montreal General Hospital. In addition, she is a guest professor at Montreal and Laval universities in the Masters Program to discuss risk management in the Departments of Pharmacy. Prior to this acting appointment, Ms. Lefebvre was the Co-ordinator of the Administration of Projects where the major project was to review the distribution of drugs with a view to preventing errors in medication.

Ms. Lefebvre reviewed two articles written by Mr. Neil M. Davis published in the "Revue Hospital Pharmacy" of June 1996 concerning medication errors (Exhibit 71). Mr. Davis argued for the elimination of the punitive system for those who make medication errors. The health professionals have adopted the principle that errors must be reported to bring corrective measures to the medication system. Medication errors are looked at from the point of view of the system; the goal is to prevent and reduce medication errors. Since April 1996, the Montreal General Hospital has adopted the unit dose. Ms. Lefebvre described in detail the process from the time the prescription is issued to the administration of the medication to the patient and pointed out all the possible errors that could be committed throughout this process. At the pharmacy, errors could result because of an improper calculation of the dose, an error in the labelling, the quantity of medication, etc. The Montreal General Hospital adopted the distribution of individual doses, by unit, 24 hours a day. This avoids the accumulation of medication. Doses are distributed on the basis of a 24-hour period only. Moreover, only generic names are used to avoid further confusion. Each unit dose is individually packaged and indicates the strength of the

medication, the generic name, the lot number and the expiration date. The pharmacy double-checks with the ward the reason why the doctor prescribed the medication in question and its necessity. This allows the verification of the dosage and whether it was properly administered. Furthermore, the medication is sent directly to the patient.

In her experience, the most frequent medication error at the administration stage is at transcription in the system. One of the stages to avoid such an error is not to have to transcribe it in a nursing chart or Kardex. It is much preferred that the computer-generated pharmacy system produce the nursing Kardex. At the Montreal General Hospital, the label generated by the pharmacy is used by the nurses to compare the pharmacy's information with the notes on the nursing Kardex. Nurses should also verify that the name of the patient on the medication bottle corresponds with the patient's bracelet. Moreover, they should address the patient by name to confirm that they have the right patient and corresponding medication. Nurses are not allowed to leave medication on the counter and they must initial that the medication was administered. Ms. Lefebvre added that the Canadian Society of Pharmacists recognized this system of unit dosage as the most effective, safe and economic system. With this system, the prescription is filled in the computer.

In her view, medication errors should be reported to enable the administration to train the people involved and improve the situation. One must find out where the error was committed and correct the problem. It is important to identify the weaknesses in the system and process. The goal is to find out what is safer for the patient. The purpose of such a reporting system is to encourage the reporting of medication errors to correct the system. The purpose is educational and is to identify the weaknesses of the system; what is important is that the process be safe. Ms. Lefebvre explained that the acceptable rate of error is one percent but the goal is zero tolerance. Exhibit 71 also refers to the guidelines issued by the American Society for Health System Pharmacists.

Ms. Lefebvre reviewed Ste. Anne's Hospital's compilation of incident reports (Exhibits 58 and 60) and was surprised with the number of errors (44) for non-prescription medication and that errors on prescription drugs did not appear on

this compilation (Exhibit 58). Moreover, there is no mention of corrective measures to prevent such errors and no explanation for the "omissions".

Mr. Richard Ling testified that his first immediate supervisor on the evening shift was Mr. Anibal Osman (from May 2, 1988 to February 18, 1992), who had always assessed his performance as "fully satisfactory". Mr. Ling had a congenial and very good relationship with Mr. Osman. Mr. Osman seemed to care for his employees; Mr. Ling respected him. Mr. Osman communicated his concerns and offered suggestions. Mr. Osman was very calm and deliberate in his approach. Mr. Ling stated that the main difference between Mr. Osman and Ms. Sauvé was that the former worked with and supported his staff, whereas the latter controlled her staff. Mr. Ling added that, between 1988 and 1992, he had no problems with the orderlies although "the orderlies always felt that the nurses should help out more". Mr. Ling had good interpersonal relationships with the staff. There was no indication of bad feelings towards him. However, this situation was different in Unit 6B, where Mr. Jacques Parent caused him a lot of grief throughout the period Mr. Ling worked for Ms. Sauvé (May 1992 to February 13, 1995). Mr. Ling had the impression that Mr. Parent disliked him intensely. Mr. Ling had no problem with any of the other staff members. The situation with Mr. Parent became so serious that, on September 28, 1993, Mr. Ling wrote a letter of complaint to Ms. Donna Davis, the then Assistant Director of Nursing. Mr. Ling complained that Mr. Parent abused patients (Exhibit 59). Mr. Ling explained that he wrote directly to Ms. Davis, with a copy to Ms. Sauvé, because he felt that this complaint against Mr. Parent was a very serious one. Some time later, Mr. Ling was called to attend a meeting with Ms. Davis and Ms. Sauvé and Mr. Jean Lajeunesse, Human Resources Advisor, to discuss the complaint in detail. Thus, Mr. Ling complained a second time about Mr. Parent. He reported to them that Mr. Parent had tried to run him over. One evening, when Mr. Ling was walking to catch the bus home and he was about to cross St-Pierre Boulevard, Mr. Parent drove his car at high speed, honked his horn two or three times at Mr. Ling but never slowed down. Mr. Ling had to jump off the road to avoid the car. Mr. Parent barely missed him. Mr. Ling had not been able to see the driver. However, the next morning, Mr. Ling confronted Mr. Parent about this incident, to which Mr. Parent replied that he thought that the whole affair was hilariously funny. Mr. Ling had told Ms. Sauvé, Ms. Paris and Mr. Lajeunesse that he was afraid of

Mr. Parent and, from then on, he was going to be very careful of him. Mr. Parent was not present at this meeting or at the next one when Mr. Ling met with Ms. Davis alone. As a follow-up, Ms. Davis met with Mr. Ling and the matter was discussed again. As a result, Mr. Parent was transferred elsewhere for a period of two months and Mr. Ling took one week of leave to get away. Mr. Ling never received information as to what action the employer took against Mr. Parent. Mr. Ling was scolded quite severely by Ms. Davis for reporting the abuse and "not developing a strong case". Ms. Davis indicated that Mr. Parent could have sued for libel and defamation. Mr. Ling felt that he was wronged for presenting the complaint. He declared that, since his working relationship with Ms. Sauvé was not working out, he asked Ms. Davis for a transfer out of Unit 6B. Ms. Davis replied: "You will die in 6B before we transfer you to another floor." Ms. Davis added some time later that she did not want to label him a "problem employee".

Mr. Ling explained that he did not address his concerns about Mr. Parent directly to Ms. Sauvé because of the accumulation of events. He wanted to transfer out of Unit 6B. It became obvious to him that his relationship with Ms. Sauvé and Mr. Parent would not improve. Ms. Davis indicated clearly to Mr. Ling that she wanted him to stay in Unit 6B because he had already made a transfer from Unit 9A. Ms. Sauvé told Mr. Ling repeatedly: "Who is the boss on the evening shift? Take care of your problems." On another occasion, sometime in March 1995, after Mr. Ling had written to her several memoranda raising concerns, she called him into her office. She then proceeded to shout at him. She did not discuss the subject of the memoranda. He had a communication problem with Ms. Sauvé and this was the reason he had put his concerns in writing. Ms. Sauvé berated him; she was very angry. She did not want a paper trail concerning the poor work environment. When she began screaming, Mr. Ling told her that there was no reason to continue the discussion and left the office. He contacted his union on this matter. Mr. Ling described how Mr. Parent would not recognize his authority as his supervisor. Mr. Parent would lose his temper and become aggressive. He had a negative attitude and refused to discuss matters. As a result, Mr. Ling did not discuss Mr. Parent's behaviour and performance with him. Mr. Ling testified that he took measures to improve the work environment amongst his staff.

Mr. Parent told Mr. Ling, in reply to his comment that "it seemed that their relationship was improving", that "yes, but if he [Mr. Ling] said the wrong things, he would kill him". Mr. Ling took this threat seriously because that same night, Mr. Parent tried to run him down on St-Pierre Boulevard. The next day, Mr. Parent admitted to Mr. Ling that he had been driving the car described by Mr. Ling. Mr. Ling told Mr. Parent that he had almost been run down by a car (and he described it) to which Mr. Parent replied that it had been him. Mr. Parent thought this incident funny. Then, at the performance evaluation time in March 1995, Mr. Parent threw the performance evaluation form completed by Mr. Ling directly into the latter's face. It hit Mr. Ling in the face.

This serious incident with Mr. Parent occurred within the first six months of his transfer to Unit 6B. The orderlies were aware of Mr. Ling's complaint and "everyone" knew that there was a "problem". However, Mr. Ling did not discuss this issue with anyone. In Mr. Ling's view, the issue with Mr. Parent was never settled. Mr. Ling explained that he has always tried to get along with his staff and had treated Mr. Parent properly and in a courteous manner. Mr. Ling's feedback from Ms. Sauvé was that it was up to him to solve his "problems" on his shift. She would not deal with the situation and she did not intervene. As a result of his difficult relationship with Ms. Sauvé and Mr. Parent, Mr. Ling requested a transfer and he returned to Unit 9A in 1995. Mr. Ling wrote Mr. Parent's last performance evaluation report which Mr. Parent did not like and threw directly in Mr. Ling's face.

Mr. Ling returned to Unit 9A and, on December 6, 1995, Mr. Osman raised with him an incident concerning a medication error. Mr. Osman told Mr. Ling that this was not acceptable and Mr. Ling reassured him that he would not repeat the error. Then, on January 4, 1996, Mr. Osman issued a written reprimand (Exhibit 7) because of an incident that had occurred on December 28, 1995 when Mr. Ling failed to give Lopresor to a patient as prescribed by the physician. Mr. Osman called Mr. Ling into his office and gave him this written reprimand. Mr. Osman told Mr. Ling that he had missed giving the Lopresor and that this was not the proper procedure. Mr. Osman added that he was sorry but he had to give him a written reprimand. Mr. Ling was not pleased and opined that the written reprimand was too harsh a step. He expected a couple of warnings before receiving a letter. Mr. Ling was angry and upset, and he tore the letter in half. Mr. Ling did not present a grievance to contest the written

reprimand because, in his opinion, it was not worth the trouble. He expected it to disappear from his file in time.

Mr. Ling testified that, during the period November 1995 to April 1996, he had been under a lot of stress. He was in constant contact with his family. His 14-year old niece, Brenda, had developed an extremely lethal form of bone cancer and the prognosis was dismal. The doctors did not expect her to survive and she died on April 4, 1997. Mr. Ling, who lives in Montreal, was in contact with his brother, Brenda's father, and family who live in Barrie. Mr. Ling was very occupied supporting his family. He paid their telephone bills. Mr. Ling explained that, in his family, there are three siblings: Brenda's father is seven years younger than Mr. Ling and there is a sister who is seven years younger than Mr. Ling's brother. His brother had two daughters. Mr. Ling and his brother are very close. Mr. Ling's brother turned to him frequently for support and information. Mr. Ling provided all this in addition to counselling because he was a nurse. Moreover, at the same time, Mr. Ling's brother was also going through a divorce and he was emotionally distraught. Mr. Ling has no children; thus, he saw his nieces as his own. He loved them dearly. Mr. Ling added that he may have mentioned his family and his niece's situation to Mr. Osman. At any rate, this situation was common knowledge at the Hospital. The people (nurses, orderlies and other staff) asked him about his niece; "The people knew." Mr. Ling explained that he learnt about his niece's ill health around November 10 to 12, 1995, when she had been admitted to the hospital and diagnosed with cancer. Mr. Ling did not mention this extenuating factor at the two disciplinary meetings of March 1996. He did not think to do so and neither Ms. Ouellet nor Ms. Paris asked him if he had had any personal problems during the past six months. Mr. Ling declared that no one made reproaches to him about his work during the period January 4 to February 5, 1996.

Mr. Ling could not recall discussing the Di Pietro incident at any great length with Ms. Ouellet before March 13, 1996. He did not remember giving Ms. Ouellet his version on February 6, 1996. They had several short encounters when he asked her about the investigation and she replied that it was still ongoing. Mr. Ling recalled discussing briefly, for about one minute, Mr. Di Pietro's eating habits with Ms. Longtin. Mr. Ling did not tell Ms. Giroux that Mr. Di Pietro had knocked the spoon out of his hand because this fact came to him only after the disciplinary hearings.

Mr. Ling gave his version of the Di Pietro incident. On February 5, 1996, he came to work as usual. The suppers were served between 16:30 and 16:45 hours. Mr. Di Pietro was in his room, set up in his wheelchair, with a small side table. Mr. Di Pietro does not like to get out of bed but the orderly had succeeded in getting him out of bed for his supper. Mr. Di Pietro is not motivated. Mr. Ling confirmed that Mr. Di Pietro was very difficult to deal with, was manipulative, extremely stubborn, unmotivated, and apathetic towards his own well-being. He is a very angry person who is not happy to be in the hospital. He wanted to be at home to control his regime and his family did not want him. Mr. Ling knew this from conversations he had had with Mr. Di Pietro's son and daughter. Mr. Ling discussed Mr. Di Pietro's situation with Ms. Norma Longtin. On one occasion, when Mr. Ling discussed with Ms. Longtin the fact that Mr. Di Pietro did not want to eat, Ms. Longtin replied that she found that sometimes when one offered to feed him, he would eat better. Thus, when, on February 5, 1996, Mr. Di Pietro did not touch his supper, Mr. Ling tried to convince him to eat. Mr. Di Pietro sat in his wheelchair; the tray was on a small mobile table. At the time, Mr. Ling was the only one distributing the trays in that area. Mr. Di Pietro was in a four-patient room. He shared the room (Room 18) with Messrs. Frosst, Pink and Levey. The orderlies were distributing meals in the big room. At the time, only one of the patients was in the room with Mr. Di Pietro. Mr. Di Pietro told Mr. Ling that he did not want to eat, he did not like the food. Mr. Ling declared that Mr. Di Pietro did not like any of the food served in the Hospital. Mr. Di Pietro sat with his hands on his lap and refused to eat. Mr. Ling told him: "Mr. Di Pietro, you have to eat. It is necessary to eat. It is a perfectly good meal." Mr. Di Pietro said and did nothing, so Mr. Ling decided to try what Ms. Longtin had suggested. He picked up the spoon with a bit of food on it and offered to feed Mr. Di Pietro. He brought the spoon closer but not too close to Mr. Di Pietro's mouth. Mr. Di Pietro knocked the spoon out of his hand. Mr. Ling added that he put the spoon down and said: "If you do not want to eat your supper, I will remove it".

On the evening of February 5, 1996, he did not think to order an alternate meal for Mr. Di Pietro when the latter refused to eat his supper. He did not know why he did not order other food. Mr. Di Pietro's hospital supper was palatable. He saw it as his duty to help Mr. Di Pietro eat and he tried to feed him. At the time, Mr. Di Pietro was sitting at the end of his bed, facing the bed, installed at a table. Mr. Ling brought him his tray from the cart and placed it on the table. He prepared his meal, opened

the coffee, took the cover off the plate, cut his meat, put milk in his coffee, etc., and left him to eat his meal and continued delivering meals. He was responsible for beds 17 to 34. Later on, he returned to Mr. Di Pietro's room and found Mr. Di Pietro sitting in the same position he had left him in. Mr. Ling encouraged him to eat but to no avail. Mr. Ling could not remember how many times he left and returned to Mr. Di Pietro's room. He finally removed the tray and told him "if later he was hungry, not to go to the fruit basket because it was not a good diet". If Mr. Di Pietro was left on his own, he would eat poorly and just eat fruit. When Ms. Giroux questioned Mr. Ling about this incident, he left a number of facts out because he only replied to her questions. Thus, he never told her about this exchange and that Mr. Di Pietro had told him that he was not hungry.

Mr. Ling said to Mr. Di Pietro: "If you don't eat your meal, if you don't get proper nutrition, I will have to report this to the doctor." Mr. Di Pietro did not reply. Mr. Ling placed the tray on the trolley cart and left the room. Mr. Di Pietro had been right at the foot of his own bed but, during Mr. Ling's absence, he had placed himself out of his room in the corridor. Mr. Di Pietro needed his two hands to turn the wheels of his wheelchair. When Mr. Ling came back, he found him at the entrance of the room, partially obstructing the corridor. Mr. Ling felt that Mr. Di Pietro was obstructing the corridor that is eight feet wide. Messrs. Chappell and Mr. Brisson, who were both eating their suppers, were seated in their respective wheelchairs at either side of the entrance to Mr. Di Pietro's room. All three were seated in their wheelchairs. Mr. Ling felt that Mr. Di Pietro was hindering movement to and from rooms and the corridor; he was blocking access.

Mr. Ling stated that Mr. Di Pietro had been in the doorway of Room 18 facing the nursing station; the doorway is three and one-half feet wide. Mr. Ling asked him a few times to move because he was blocking the entrance. Mr. Di Pietro did not reply and sat with his eyes downcast. Mr. Ling insisted that he move because of the safety and convenience factors. Mr. Pink is not polite and is a very volatile man and Mr. Ling wanted to avoid a nasty argument with him. When Mr. Di Pietro did not move, Mr. Ling placed the former's hands on the wheels of the wheelchair and told him to wheel himself down the corridor. Mr. Ling was adamant that he never mentioned the words "rough; brisk; rapid" to Ms. Giroux when he described to her what had happened; he never made a rough movement. Mr. Ling wanted Mr. Di Pietro to go

down the corridor, out of the door and away from the bed because Mr. Di Pietro had a tendency to get out of his wheelchair and crawl back into bed. Mr. Ling explained that his duty was to protect the patients from harm. Not eating and blocking the passageway are harmful. Mr. Di Pietro had chronic anemia and had he been left to do what he wanted, he would just lie in bed and not eat, wasting away. Mr. Ling described Mr. Di Pietro as a very angry and stubborn man. Mr. Di Pietro did not like the staff, orderlies or nurses; he liked nobody.

When he saw Mr. Di Pietro there, Mr. Ling asked him if he could move his wheelchair out of the way. The opening of the door to his room was behind Mr. Di Pietro, who was facing down the corridor at an angle. Mr. Ling adjusted his position so that he was straight. Mr. Ling was standing behind Mr. Di Pietro. He leaned down. Mr. Di Pietro had his hands on his lap. Mr. Ling said to him that since he was blocking the corridor, he could go to the television room for a cigarette. Mr. Di Pietro was a smoker. However, Mr. Di Pietro did not react. Mr. Ling encouraged him again to move. He added: "Please, Mr. Di Pietro, I suggest you move yourself out of this area. I will not do it for you." Then, Mr. Ling took Mr. Di Pietro's arms and placed his hands on the two wheels and said: "Please, Mr. Di Pietro. These are your wheels, please move yourself, you are capable." But Mr. Di Pietro placed his hands back in his lap. Mr. Ling repeated the same request and took Mr. Di Pietro's hands and placed them again on the wheels of the wheelchair. Mr. Ling testified that he held Mr. Di Pietro's hands just above his wrists and placed his hands on the wheels. Mr. Ling did this twice but to no avail. Mr. Ling then moved in front of Mr. Di Pietro, knelt in front of him, took Mr. Di Pietro's hands that were in his lap and placed them again on the wheels. At the same time, Mr. Ling said to Mr. Di Pietro: "Please, Mr. Di Pietro, move out of the way". Mr. Di Pietro put his hands back in his lap and Mr. Ling virtually gave up and said: "Mr. Di Pietro, how can I help you if you can't help yourself."

At the end of the conversation, Mr. Ling said: "What do you want? How can I help you?" Mr. Ling was kneeling in front of Mr. Di Pietro when he said this. Mr. Di Pietro's head had been down up to this point. Then, he looked right up to Mr. Ling, directly into his eyes, and replied: "What if I just report you?" Mr. Di Pietro's facial expression was very straight, stern, and angry. Mr. Ling responded: "Mr. Di Pietro, if you want to report me for doing my job, I will be happy to call the

Co-ordinator for you." So, Mr. Ling placed a call to Ms. Giroux. Ms. Giroux came to the floor and spoke to Mr. Ling briefly. Mr. Ling told her that a patient wanted to make a report. Ms. Giroux did not ask why and Mr. Ling did not volunteer the reason so as not to influence her impression of Mr. Di Pietro without talking to Mr. Di Pietro first. Mr. Ling directed Ms. Giroux to Mr. Di Pietro and went for supper. Later, Ms. Giroux spoke to Mr. Ling and asked for his version. Mr. Ling answered all her questions. He added that he had taken the "non-violence course" that trains and teaches staff on how to deflate and subdue a hostile, aggressive, patient without harm. This course had no application to this incident with Mr. Di Pietro because the patient had not been aggressive. To the contrary, the patient had not spoken to Mr. Ling. Mr. Ling spoke to Mr. Di Pietro after Ms. Giroux left and told him that he was sorry that he had been firm with him and hoped that there were no bad feelings. In reply, Mr. Di Pietro smiled and shook his head. Mr. Ling declared that, at the time, Mr. Di Pietro had been aware of his surroundings and was competent.

Between February 5 and March 13, 1996, nobody asked Mr. Ling any questions concerning this incident or any other matter that was the subject of this proceeding. Once or twice, in passing, Ms. Ouellet would say, in answer to his questions, that the inquiry on this incident was ongoing. Mr. Ling testified that, during the investigation, he was not given an opportunity to provide his version of the incident until this adjudication hearing.

Between February 5 and March 13, 1996, no one brought to his attention any of the incidents or facts contained in Ms. Ouellet's report (Exhibit 5(a)) that were the subject of her investigation. The only specific incident mentioned to him was Mr. Di Pietro's complaint and Ms. Ouellet was the only one who mentioned that the investigation was still ongoing and that she was looking into other problems on the floor. Ms. Ouellet made at least one reference to the "day shift" but none that indicated that these problems were connected with him in any way. Then, on March 13, Ms. Ouellet telephoned him at home and told him not to come in to work. Mr. Ling first learnt about Ms. Giroux' report (Exhibit 5(b)) when he received, in July 1996, the package of documents through the Access to Information route.

Mr. Ling declared that he had talked to Marie-Claude and to François Di Pietro when he was at the nursing station and when they had come to visit their father together and separately. Mr. Ling was friendly with the patients' families; he chatted with family members. He always liked to meet family members to find out how they felt about the care, the Hospital, the patient, etc. Mr. Ling had been told by the staff that Mr. Di Pietro was an extremely difficult patient with behavioural problems. The Di Pietro family had expressed strong opinions about their father. Mr. Di Pietro had been physically abusive and aggressive.

Mr. Ling recalled that there had been times when Mr. Di Pietro had had bruises on his arms; these are common occurrences among the elderly. Mr. Ling did not know the cause of these bruises. Patients bumped into walls; they bruised easily when lifted in and out of wheelchairs and beds; they had altercations with other patients. These bruises were not reported unless they were "open bruises". Mr. Di Pietro would get into bed alone quite often and sometimes he would fall. Patients could easily bruise when lifted because an orderly's hands put pressure on them. However, Mr. Ling was adamant that he never touched Mr. Di Pietro as alleged. When Mr. Di Pietro was put into bed, he would be held under his arms. Generally, the orderlies assisted the patients to and from their beds. Mr. Ling had done it once or twice a week, when it was not dangerous and he had the time. Mr. Ling knew that Mr. Di Pietro hated him and he also knew the reason. Mr. Di Pietro was a very stubborn man who insisted on getting his own way. The nurses' role is to maintain control. Mr. Di Pietro refused to accept the Hospital's routine and the control of his behaviour. Mr. Di Pietro felt that Mr. Ling was rough with him when he tried to keep control. Mr. Di Pietro hated him for that. Mr. Ling provided examples of this: Mr. Di Pietro tried to get into bed and Mr. Ling had to intervene and tell him it was not yet his bedtime; Mr. Di Pietro had the tendency to smoke wherever he wanted and Mr. Ling had to redirect him to the television room/solarium where smoking was permitted; on occasion, Mr. Di Pietro got into arguments with other patients and Mr. Ling had to intervene to inform him that aggressiveness and hostility were not acceptable behaviour. Mr. Di Pietro was careless and inattentive in the way he wheeled himself; he collided with walls and other patients. Mr. Di Pietro resented rather strongly all types of control and interventions that did not allow him to do as he wanted.

On February 5, 1996, Mr. Ling did not really have an argument with him. Mr. Di Pietro was argumentative. Mr. Ling added that Mr. Di Pietro also hated Ms. Norma Longtin and used the word "bitch" in reference to her. Mr. Di Pietro hated to wear the green safety belt which was placed low in the back of the wheelchair so that he could not undo it. Mr. Di Pietro often undid his safety belt and got himself into bed even though he had been reminded numerous times of how dangerous this was and that the belt had been ordered by the doctor. Mr. Di Pietro stated emphatically that he hated it, that he did not need it, and that he did not want it. This attitude and behaviour made Mr. Ling doubt Mr. Di Pietro's judgement. Mr. Di Pietro constantly placed himself in dangerous situations.

Mr. Ling reviewed each of the incidents reproached and provided the following remarks. In the case of the "Vasotec" incident (Exhibit 5(e)), Ms. Ouellet was not present when the incident was raised with Mr. Ling. Ms. Ouellet was on vacation and it was Ms. Joannette who spoke to Mr. Ling about it. On February 16, 1996, Mr. Ling came to work at his usual time: 15:10 hours. When Mr. Ling arrived at the nursing area, Ms. Joannette came out of the nurses' office and met him. She had with her the incident report (Exhibit 5(e)) and the medication. Ms. Joannette informed Mr. Ling that "they" had discovered the incident earlier in the day when the pharmacy indicated that too many pills had been used and she implicated him in this incident. Mr. Ling was "pretty stunned" to have made an error of such a magnitude; it bothered him considerably. Mr. Ling was at a loss for words. Ms. Joannette said very little except to be careful with his medication. Mr. Ling replied "Yes, indeed". He agreed readily with Ms. Joannette to call the duty physician to have him see the patient. However, since the error had been discovered during the day shift, Mr. Ling was curious as to why they had not called the doctor themselves. The report and all the paperwork had been done before 15:10 hours, the start of his shift. Mr. Ling declared that the prescription was for the period February 1 to 29, according to the label. In his experience, the pharmacy filled the exact number of days and sometimes it even added extra pills or vials that were returned to the pharmacy if not used. Mr. Ling told Ms. Joannette that he could not comprehend how he could have made the error. Mr. Ling had neglected to see the new prescription that was on another medication page. The new prescription was on the back of a sheet so it was not difficult to overlook. Mr. Ling admitted that he should have looked more closely. It becomes increasingly easy to miss something on these medication sheets; there are numerous

changes and some pages can have eight to ten medications. To prevent errors, the Hospital instituted a new method, as of the end of February 1996, that changes in prescriptions be highlighted. Had this been in effect at the time, it might have helped. Between February 23 and March 13, Ms. Ouellet did not mention this incident to him.

Mr. Ling estimated that during each evening shift he administered 240 doses of medication and it took about one minute to verify each medication sheet and initial and prepare each medication dose. This process is fairly time-consuming and the preparation time varies because of changes in prescriptions, treatments, etc. Mr. Ling explained the first round of medication was administered at 16:00 hours and went on until 16:45 hours. Then, between 19:45 and 20:00 hours, the whole process started again and finished around 21:00 hours. Mr. Ling was familiar with this medication task. He remarked that when the medications are being given to the patients, it is a busy time for the staff. Orderlies would come to see Mr. Ling with questions, patients would interrupt, the telephone could ring, a family member could ask to speak to him, etc. Thus, in such circumstances, Mr. Ling could forget to write his initials in the appropriate square because of some distraction or interruption.

Concerning Exhibits 5(h) and (i), Mr. Ling recalled that Ms. Giroux had come to the unit to spot-check. She reviewed the medication sheets and found these errors. When she did her spot-check, she did not want Mr. Ling present; however, he did stay in the nurses' office while she was looking through the books. Ms. Giroux pointed out the errors to Mr. Ling. On February 29, 1996, Mr. Ling told her that the patient had received his medication and Mr. Ling would initial the square. On March 6, 1996, the patient had left the unit and had not returned to the ward yet. Mr. Ling intended to write the proper notation in the nurses' notes when the patient received the medication upon his return. He knew the procedure was to write an "X" in the square and place a note when the medication was administered at a different time than prescribed. Mr. Ling left for supper that evening and, on his return at 18:00 hours, he administered the medication to this patient (Exhibit 4, paragraph 8.5). He noted the hour of administration of the medication. Mr. Ling explained that he could not have given the medication earlier than 18:00 hours because the patient was off the floor and he had not received the medication yet. Ms. Giroux told Mr. Ling that it had not been a good idea to prepare the medication prior to administering it because, had he left his shift and been replaced by another nurse, that nurse could not have given the

medication prepared by Mr. Ling. Mr. Ling concurred with Ms. Giroux on this matter. Mr. Ling had observed nurses preparing medication at the start of the shift and locking it up until it was time to administer it. When Ms. Giroux came to the floor to do her spot-check, her face was severe and she was almost brusque with Mr. Ling. When Ms. Giroux and Mr. Ling discussed these two incidents (February 29 and March 6), Mr. Ling admitted that he had made mistakes and that certainly he "did not want to make them; we try not to make mistakes but we are human and we do make some mistakes". When Mr. Ling spoke to her, Ms. Giroux turned and was walking away from him. Mr. Ling added: "What do you want from us?" She kept walking away and replied: "It has to be perfect." Mr. Ling testified that she put emphasis on the word "perfect". Mr. Ling responded: "M^{me} Giroux, I will never not make mistakes and probably will stop when I retire". Mr. Ling did not say this to indicate that he intentionally was going to make mistakes.

Mr. Ling declared that he did take all the monthly vital signs as required and as written in the black book (Exhibit 5(r)). He did take those readings; he took them with his personal stethoscope and blood pressure cuff. He used his personal stethoscope because it is of better quality than the one provided by the Hospital; he could hear better with it. Mr. Ling did not use the sphygmomanometer to take the monthly vital signs. He used his cuff. He has had these two tools since 1979-80 when he worked as a paramedic. He paid between \$75 to \$80 for the stethoscope, and \$150 to \$175 for the blood pressure cuff. He pointed out that there are no directives from the Hospital that prohibit the use of personal equipment or oblige the nurses to use the Hospital's sphygmomanometer. Mr. Ling added that he did not use the Hospital's sphygmomanometer because it is heavy, clumsy, noisy, and often defective. He did, however, use it for occasional cases but not to take the blood pressure of five to six patients. Mr. Ling explained that he did not provide this explanation earlier, at the two disciplinary interviews, because no questions were asked about the sphygmomanometer. It is only when the witnesses at the adjudication testified that it was noisy and they would have heard Mr. Ling use it, that he remembered that he was using his own cuff. Thus, of course, the orderlies could not hear the noise that the wheels made when this equipment was wheeled around. Mr. Ling left his stethoscope at the Hospital but he took the cuff home. As a matter of fact, the stethoscope that had been left at the Hospital was retained by the employer; it was returned to him by the Hospital during this adjudication hearing.

Mr. Ling was adamant during his testimony that he did take the monthly vital signs as required. He commented that Mr. Brisson (Exhibit 5(n)) might have been asleep or may not have remembered when he took his vital signs in March 1996. Mr. Brisson had memory problems. He would forget a name or whom he had talked to; he would wander off and forget where he was. Mr. Chappell also had memory and judgment problems. Mr. Chappell would be in bed at night and ring his bell thinking it was already morning and time to get up. He would be confused and not know what time it was. When Mr. Brisson was under Mr. Ling's care, he was no longer functioning as an intellectual. He had lost a lot of his capacities. He had long-term memory. He called Mr. Ling "Ricardo". Mr. Frosst (Exhibit 5(o)) admitted to Mr. Ling that his memory was not as good as it used to be. Mr. Ling commented that, if he had not taken Mr. Frosst's blood pressure, who would have, since he was the nurse in charge. Moreover, Exhibit 5(r) had Mr. Ling's writing. Mr. Ling added that since he was the usual nurse on duty five days a week, the patients would not necessarily remember something done routinely.

Mr. Pink's (bed 19) declaration (Exhibit 5(q)) is not accurate; he misquoted Mr. Ling. He has a very strong personality; he insisted on manipulating and controlling his environment; he wanted to give orders; he exhibited poor judgment. Mr. L. (bed 2) liked to joke; he was very sociable and liked people. He wanted the staff to call him Paul. He was aware of his surroundings. Patient C.A. (bed 3) (the Colace incident - Exhibit 5(g)) had a poor memory; no great awareness of where he was or what was happening around him. Patient W. (bed 4) was aware of his surroundings but could not speak. Patient D. (bed 5) was aware but most of the time he was very confused. Patient R. (bed 6) was awake and would only respond to physical stimulant. Patient R.G. (bed 7) showed poor judgment and often seemed confused. Patient C. (bed 9) could show poor judgment more often than not. Patients G., D. and A. (beds 10, 11 and 12) were awake and aware of their surroundings. Patients L., C., H. and V. (beds 13 to 16) were very confused. Patients S. (bed 34), B. (Exhibit 5(h) - bed 17), D.F. (Exhibit 5(h) - re pressure point) and Faubert (bed 29) did not interact much with Mr. Ling. Mr. Chappell (bed 23) was coherent but very forgetful and lost track of whether it was day or night. Mr. Brisson (bed 22) (Exhibit 5(n)) liked to drink and would return from the Legion quite tipsy. He had memory problems and would cope with this problem by writing little notes to remember things. He also had poor judgment. He used the phone addictively and unreasonably. Mr. Frosst had judgment

problems and he was an alcoholic. Patient M. (bed 20) seemed competent. Patient L. (bed 21) was not confused. Patient F. (bed 24) had poor judgment and could explode for no reason. Patient B. (bed 26) had a strong personality. He was very coherent and had no memory problems. He drank on occasion. Patient G. (bed 27) was a very heavy drinker and when he was sober, he did not appear confused. He had no memory problems. Patient L. (bed 28) had mood swings. He had no ongoing memory problems. Patient R. (bed 30) was awake and aware of his surroundings. Patient C. (bed 31) also had an alcohol problem. Patients L., M. and C. (beds 32 to 34) were confused and demented. Mr. Ling considered that Mr. Chatterjee (bed 17) (Exhibit 5(q)) was alert most of the time, although he seemed forgetful sometimes.

Mr. Ling reviewed Exhibit 5(r) and declared that he did not take Mr. Frosst's monthly vital signs in September, October, November or December 1995 and January and March 1996. All the numbers on the document are not in his handwriting. However, he did take his monthly vital signs in February 1996 and August 1995. Moreover, none of the blood pressures on August 7, 8, etc., of Exhibit 90 correspond to Exhibit 5(r). For Messrs. Brisson and Chappell, some of the figures between Exhibits 5(r) and 90 seem to correspond.

Mr. Ling remarked that Mr. Faubert's treatment concerned the disinfection of his penis with Hibidil, which is not a prescribed drug. To him, Hibidil is a simple cleaning substance and, thus, was a simple cleaning task an orderly could perform. Mr. Ling asked Mr. Ménard to use a clean washcloth to clean the discharge; there was no wound and no bandage was required. It was just a case of cleaning the discharge from the penis.

Mr. Faubert did not have an open wound; no dressing was required. He had a problem of discharge around the caterer that needed to be drained because it accumulated under the foreskin of his penis. The medical order was to keep this area clean. Mr. Ling explained that, in his opinion, there is no difference between disinfecting, cleaning, and washing; all three are synonymous. When Mr. Ling asked Mr. Ménard to disinfect Mr. Faubert's penis, he did not refuse. Mr. Ling used alcohol to disinfect. He could have used Hibidil, a peroxide solution or even soap and water. Hibidil was left on the cart and on the floor on an ongoing basis. Mr. Ling explained that he used the scissors to cut the packing. These scissors were left soaking in

rubbing alcohol; sterile scissors were not always available. The scissors on the cart were left to soak in alcohol for 15 to 20 minutes. Mr. Ling commented that the orderlies had seen him doing dressings and none had mentioned that Ms. Lanciault did them differently.

Mr. R.'s dressing was required because he had a necrotic, rotting and infected tissue in the area of the sacrum (lower back). Mr. Ling demonstrated how he applied a dressing using forceps and gloved fingers to do this procedure. Mr. Ling explained that he used his gloved pinkie finger instead of the forceps because he could feel where he was going in the wound. He felt more comfortable doing the dressing that way. He admitted using the scissors he kept soaked in alcohol in a metal container to disinfect them. Mr. Ling added that he disinfected the scissors in fresh alcohol for 15 minutes and then dumped the alcohol. No one had ever reproached or criticized his method of doing dressings before. Moreover, no one, including Ms. Ouellet, had ever asked him to show them how he did his dressings. The only staff who saw him do the dressings were the orderlies and none had ever commented or compared his technique to Ms. Lanciault's. No one had ever told him how Ms. Lanciault did her dressings.

Mr. Ling reviewed in detail each of the employer's allegations and evidence and insisted that he had not been rough with Mr. Di Pietro. He did not raise his voice, he said please, and he always addressed him as "Mr. Di Pietro". Mr. Ling was adamant in his denial that he had not shaken Mr. Di Pietro. Concerning the Chatterjee complaint, Mr. Ling declared as follows. When he came to work that day in question, some time in January or February 1996, or the fall of 1995, he had been told that Mr. Chatterjee had had a rectal examination. Later on, when Mr. Chatterjee was lying on his right side in his bed, Mr. Ling decided to joke with him. Mr. Chatterjee was facing Mr. Ling. Mr. Ling took a small condom catheter used for incontinent patients and said: "Peter, you had an examination earlier today." He replied: "Yes". Mr. Ling added: "How did it go?" He replied: "OK". Mr. Ling held the condom up and said: "Well, Peter, aren't you glad that the doctor didn't use one of these instead of a regular finger protection when he examined you", to which Mr. Chatterjee just laughed "in kind of spasms". At the time, Mrs. Chatterjee was beside his bed on the other side when Mr. Ling first approached. But when Mr. Ling stood next to Mr. Chatterjee, she had moved 10 to 12 feet away. Mr. Ling did not speak very loudly because he was close to Mr. Chatterjee

and speaking directly to him. Mrs. Chatterjee said to Mr. Ling that no one would be that sadistic. Mr. Ling interpreted this to mean that, of course the doctor would not use such a thing or do that. Mr. Ling insisted that he had said this as a joke and that he often joked with patients; "They were guys, and they had social exchanges". In retrospect, and since Mrs. Chatterjee took it the wrong way, he would not joke again.

Mr. Ling disagreed strongly with Mrs. Chatterjee's declaration and version of the incident. He declared that he never used the word "ass" because it is not a word he uses. In addition, Mr. Ling was just showing his naked finger; he did not cover it with the condom. Her declaration seems somewhat exaggerated and it does not show his intent that he meant it as a joke. The comment to Mr. Chatterjee was meant to be a joke and he had never been told by anyone not to make jokes with the patients and their family. Mr. Ling recalled that Mr. Chatterjee had laughed when he made the comment. At the time, Mr. Ling was standing at his right shoulder, leaning close to Mr. Chatterjee who was facing him. Mrs. Chatterjee had moved away close to the other bed, 10 to 12 feet from where Mr. Ling was standing. Mr. Ling does not think that Mrs. Chatterjee saw her husband's head move when he laughed. Mr. Chatterjee did not make a noise when he laughed; he just lifted his head about an inch. Furthermore, the first time that Mr. Ling was made aware of Mrs. Chatterjee's complaint was during the disciplinary interviews. Ms. Ouellet and Ms. Paris questioned Mr. Ling as to whether this incident had occurred, but they never showed him Mrs. Chatterjee's declaration. Mr. Ling could not recall if they mentioned Mrs. Chatterjee's name. At the time of the disciplinary interviews and questions, Mr. Ling could not recall the incident very well because of the high pressure and stressful atmosphere of the interviews. Moreover, at the time of this exchange with Mr. Chatterjee, the event had been innocuous and had passed from his memory. The first time Mr. Ling saw Mrs. Chatterjee's declaration was when he received it with the package from the Access to Information Office in July 1996. However, the document was not signed by Mrs. Chatterjee and her name did not appear on it; the only signature on the document was the witness', Ms. Kelly. It is only after the two March disciplinary interviews that Mr. Ling remembered what Ms. Ouellet and Ms. Paris were talking about and he made the connection with Mr. Chatterjee. During the disciplinary interviews, Ms. Ouellet and Ms. Paris did not say that they had Mrs. Chatterjee's declaration (Exhibit 5(q)); they said, instead, that they could get declarations from some people but they did not mention any names.

With respect to Mr. Faubert's declaration (Exhibit 5(k)), Mr. Ling commented that he had also received this one in July 1996; it was with the package from the Access to Information Office. The name was again blocked off. However, when Mr. Ling read this declaration, he deduced (even though he was not sure) that it was from Mr. Faubert. He arrived at this assumption although it referred to a "dressing" when in reality Mr. Faubert had had a "cleaning". Mr. Ling emphasized that, what is in question here is that it was the cleaning of the head of Mr. Faubert's penis and not a dressing. Moreover, Mr. Ling remembered well having done this disinfection at least three or four times. Furthermore, he was present when Mr. Ménard did this procedure. There is no real technique involved in this disinfection. Mr. Ménard did use gloves when he did it. Mr. Ling recognized that he had asked Mr. Ménard to do this every evening. He told Mr. Ménard to do it because, in Mr. Ling's mind, it was a "cleaning" and the orderlies' job is to wash patients. There was nothing to insert. Hibidil is a stock commodity on the floor as is rubbing alcohol. Mr. Ling saw no danger in using this liquid; it was perfectly reasonable for Mr. Ménard to do this task.

Mr. Ling insisted that, during the disciplinary hearings, Ms. Ouellet and Ms. Paris did not mention the patients' names; he did not know the names of the patients they were referring to. The first time Mr. Ling saw the various declarations (e.g. Exhibits 5(m), 5(n)) was through Access to Information in July 1996 and the names had been deleted.

Mr. Ling added that he also saw for the first time in July 1996, Mr. Chappell's declaration (Exhibit 5(m)). It was one of the documents in the package sent to him from the Access to Information Office. The name and signature had been removed from the document. Mr. Ling had no way of knowing who made this declaration. During the interviews, Ms. Ouellet and Ms. Paris did not name the patient; they did not mention any of the patients by name. They simply said: "We have people who say that you did not take the monthly vital signs and we can get declarations on that". Mr. Ling replied that they should go ahead and obtain their declarations. He thought that they were bluffing and that it was a ploy, a trick, to make him admit the allegations. Mr. Ling did not feel that he was being treated fairly and with dignity.

Mr. Brisson's declaration (Exhibit 5(n)) was received in July 1996 again with no signature and name. Mr. Ling guessed it was from Mr. Brisson because of the complaint about the telephone. At the request of his family, Mr. Brisson had no access to a telephone after he went to bed. Mr. Brisson knew very well that he was not supposed to use the telephone. He had memory and judgement problems. He had a preoccupation with his diaper and he would call multiple times in the evening to have it changed when it was dry. When he was set up in his wheelchair before his supper, he would simply wander away. He constantly forgot his supper. He would often get in his wheelchair and call out to the staff over and over to get attention; the staff would have to remind him not to do this.

Mr. Chappell also had memory and judgement problems. At supper time, he would always be by the elevators in his wheelchair. The supper trays would go by him; he would see them; the staff would ask him to come; that supper had arrived but it would not register. Mr. Chappell would not move. Only after two or three reminders would he finally come for supper. Mr. Chappell would then ask: "Are the suppers there?" or, "Did I see the suppers go by?" Mr. Chappell would not look where he was going and would bump into corners, walls, other wheelchairs, etc. At times, Mr. Chappell was like Mr. Brisson; he would ring his bell after he was in bed and suddenly say that he wanted to get up, that it was time to get up. The staff would have to re-orient him and get him back to sleep. Mr. Chappell administered his money, but he had a tendency to lose his wallet; he would forget where he left it.

The Frosst document (Exhibit 5(o)), was received by Mr. Ling at the same time and manner as the other declarations. There was no way that Mr. Ling could identify the patient who had signed this declaration. His name had not been mentioned at the interview. Mr. Ling declared that he was the one who took his blood pressure (vital signs). It happens that patients forget the nurse's name or call them by a different name. Mr. Di Pietro used to call Mr. Ling "Mike"; Mr. Ling did not know why. Mr. Brisson called him "Ricardo".

Again, Mr. Ling described that he received the Pink declaration (Exhibit 5(p)) with the package from the Access to Information Office in July 1996. However, the content of this declaration did inform Mr. Ling who the patient was. Mr. Ling admitted to the incident with Ms. Lacombe as described by her. He offered to

massage her shoulders to relax her. Mr. Pink himself liked it when Mr. Ling massaged his feet. However, Mr. Ling was adamant in his denial that he had uttered the words "as good as a piece of tail". He does not use such words; it is not part of his vocabulary to use the expression "a piece of tail". He declared that he said to her "as good as sex". Ms. Lacombe did not react to his words; she did not exhibit any anger and she was not offended. Moreover, she never said anything to Mr. Ling about this incident. Mr. Pink himself did not seem angry at the time. However, he did seem to want to get out of bed and Ms. Lacombe motioned for him to get back down. Mr. Pink never said anything to Mr. Ling in this regard. Then, some time after (a week later), Mr. Ling was at his desk talking to Mr. Pink when the latter suddenly exploded at Mr. Ling. Mr. Pink started to call him names; he was very angry and hostile. Mr. Ling asked him what was wrong and he replied: "You know what it is, you know why." Mr. Ling responded: "I am sorry, Mr. Pink, I don't know what you are talking about." (Mr. Ling did not make the connection with the "massage incident".) Mr. Pink never told Mr. Ling why he was angry. A few days later, Mr. Ling told Ms. Lacombe that Mr. Pink was angry and offended. Mr. Ling asked her whether he had offended her and whether he had been improper. Ms. Lacombe replied "no" she was not offended, there was nothing wrong, that was just the way Mr. Pink was and not to worry about it. Mr. Ling asked her whether she was sure. Ms. Lacombe insisted that there was no problem and not to worry about it.

Mr. Ling explained that Mr. Pink's family situation was convoluted: three wives; a number of daughters; a stepdaughter; granddaughters; etc. Mr. Ling did not recognize the name of Joan Lagrois. The first time he heard this name was when Mr. Pink testified at this adjudication. Mr. Ling knew Ms. Lacombe as Mr. Pink's daughter. It is worthy of note that Mr. Ling testified concerning Mr. Pink's alleged incident on August 22, 1997, thus, before Ms. Lacombe was called to testify on August 25, 1997.

Mr. Ling recalled that, during the disciplinary interview, Ms. Ouellet made reference to the Pink incident. He remembered that "someone" had asked him if he had used the sentence "as good as a piece of tail" without naming Mr. Pink as the source of this complaint. Mr. Ling identified his handwriting on Exhibit 5(r), the record of the monthly vital signs for the months of August, September, October, November and December 1995, and January, February and March 1996. Mr. Ling

testified that he did do August, October, December, February and March. He did not do them in November and January. Ms. Ouellet had, in front of her, pages of the black book; Mr. Ling did not know how many of them. Ms. Ouellet handed these pages to Mr. Ling to look at and asked him to identify his signature. These documents did not contain the patients' names. Mr. Ling recalled this fact because he tried to associate the vital signs to the patients. Mr. Ling answered to the best of his ability. He felt that he was being attacked; he found the atmosphere of these interviews very stressful. Mr. Ling also remembered that Ms. Sylvie Poupart, his union steward, asked for copies of documents and Ms. Ouellet and Ms. Paris refused to comply. At the adjudication hearing, Mr. Ling reviewed the page concerning the vital signs for the month of March 1996 and pointed out that he had inscribed these for beds 1 to maybe 24 and 25, but it certainly was not his handwriting from beds 26 to 34. He added that most patients had memory and judgement problems. For the month of February 1996, he recognized his handwriting for beds 1 to 25. He did not do January. For December, he wrote for beds 1 to 22; for November, beds 1 to 18. Mr. Ling explained that he had been told to take the vital signs and he had no knowledge of any Hospital policy in this regard. Mr. Ling had planned to take the vital signs the first weekend of each month, because it was a quieter period. He wrote the vital signs on a piece of paper and would transcribe this data later in the black book. He did not take the black book with him when he took the vital signs of each patient because it was too bulky. He transcribed the data the same day he took the vital signs. He tried to do this task early in the evening when the orderlies were busy with their own tasks. Mr. Ling added that he used his own instruments fairly early on when he transferred from Unit 6B to Unit 9A. Mr. Ling was not aware of any Hospital policy prohibiting such a practice. On Unit 6B, there was a small portable electronic machine and the staff was encouraged to use it. Mr. Ling was not aware of any other nurse using his/her own instruments.

Mr. Ling insisted that, between February 5 and March 13, 1996, Ms. Ouellet never once mentioned any specific incident to him. Mr. Ling knew, however, that the Di Pietro investigation was in progress. He saw Ms. Ouellet talk to the staff and Mr. Ling connected the two. However, he did not know that she was investigating other incidents. Ms. Ouellet had told him that "the whole floor had problems" and she mentioned also the day shift, but she never talked about anything specific concerning him. Ms. Ouellet told Mr. Ling that she had been asked (during the day shift) to come

to the floor (Unit 9A) to rectify problems and, in particular, problems on the day shift. When they spoke, they did so in English. Ms. Ouellet spoke in a "general sense". This conversation took place after February 5, 1996, and Mr. Ling thought that this conversation may have taken place on March 1, 1996. On March 1, 1996, Mr. Ling became ill; he started feeling ill on his way to work, at around 15:10 hours. He went to Health Services because he was having chest pains and, from there, he met Ms. Ouellet. He told her that he was concerned and afraid that he might be suspended. He asked her why the investigation was taking so long. Ms. Ouellet replied that as long as he had a clear conscience, he had nothing to fear. Mr. Ling responded that, in that case, he had nothing to be afraid of. Then he went home and from there he went to the Royal Victoria Hospital to check his chest pains. Mr. Ling was having severe pains, and he was afraid that it might be serious. Mr. Ling had been having these pains on and off for a month or more. He was afraid that he might have suffered a heart attack. He was relieved to learn that this had not been the case and that the chest pains were related to stress. Mr. Ling recognized that he had been stressed during this period of time. Mr. Ling kept the stress to himself. On March 2, 1996, Mr. Ling was back at work. Then, only on March 13, 1996, at 13:00 hours, did Ms. Ouellet mention the investigation when she telephoned him at home on his day off. He was told not to come to work and that he was being replaced for the day. Mr. Ling asked her why and if it was a suspension. She replied yes. Mr. Ling asked the reason for this. She responded that he knew the reason. Mr. Ling replied that he did not know why and he would like to know the reason. Ms. Ouellet, again, said: "You know why. You stay away from work until further notice." Mr. Ling got hold of Ms. Poupart and related to her what had transpired.

Then, Ms. Ouellet telephoned him a second time and told him that she wanted to see him on March 14, 1996. The next day, Mr. Ling arrived at the Hospital, at 12:30 hours, and met with Ms. Poupart to discuss his case. He told her the little that he knew. During the disciplinary meeting with Ms. Ouellet and Ms. Paris, Ms. Poupart asked for an adjournment of a few minutes to privately confer with Mr. Ling. Mr. Ling declared that he had not consulted Ms. Poupart when Mr. Osman had handed him the written reprimand because he had been informed that it was not worth presenting a grievance unless the matter was adjudicable.

With respect to the reproach concerning the missing initials for D.F.'s point of pressure, Mr. Ling explained that this was not a medical order. In November 1995 or early 1996, the day nurses informed him of their concern that the point of D.F.'s foot was pressing on the metal part of the foot support of his wheelchair. This situation had been treated with a dressing once a day and the day nurses asked Mr. Ling to verify that the patient's foot was not pressing on anything. Ms. Norma Longtin spoke with Mr. Ling about it and it had been noted in the "book" as a reminder; this was not a treatment. Mr. Ling had asked the day nurse specifically if a treatment was needed and the reply was no, to just check if the foot was in a good position. Mr. Ling testified that he had followed these instructions and that he did check the patient's foot as a routine. This was not a nursing or medical order; it was not a big deal to do this; it just required verifying the position of the patient's foot.

Mr. Ling also commented about the employer's accusation that he used vulgar language. Mr. Ménard and Ms. Bordès testified concerning Mr. Ling's inappropriate behaviour and jokes towards Mr. L. Mr. Ling testified that he knew Mr. L. very well. Mr. "L. was bright and friendly and he enjoyed telling Mr. Ling about his younger years. He would tell him about his experiences in construction work. Mr. L. enjoyed chatting with Mr. Ling. At one point, Mr. Ling joked with him that he was no longer chasing after girls. Mr. L. replied no, and besides "it was not good for anyone anymore". Mr. L. pointed to his genitals and he was laughing; he thought that it was funny. Mr. Ling responded: "Paul, if it is not of any use to you, what will you do?" Mr. L. replied: "Oh, I guess we just will have to cut it off." Mr. Ling described that this was the type of conversation he had sometimes with the patients. The patients told dirty jokes; there was a certain amount of "male talk". The patients also used vulgar language; they swore. They were quite comfortable with colourful language. Mr. Ling admitted that, at times, he would take his pen and touch Mr. L.'s penis and jokingly ask: "Paul, is it time to cut it off?" Mr. L. would laugh in response. Mr. Ling explained that he did this once in a while but not routinely. Ms. Bordès had been in the area on several occasions when Mr. Ling had joked with Mr. L. and she never said anything about it or expressed disapproval. Even at the time of this adjudication, Mr. Ling still thought that these jokes were rather innocent. However, since it seemed that these jokes got Mr. Ling into so much trouble, he declared that from now on he would be careful on how he joked with the patients. Mr. Ling never talked to Mr. L. about his own sexuality; he kept his private life to himself. Mr. Ling recalled that the

reproached incident with the scissors and Mr. L. occurred early on in the spring of 1995. For Mr. Ling, these exchanges were innocent jokes following Mr. L.'s own remarks. When Ms. Ouellet made reference to "these remarks" at the disciplinary hearing, she did not mention Mr. L.'s name.

Mr. Ling also commented on the reproached Chatterjee complaint. He recalled that when Mr. Chatterjee's daughter came to visit her father, Mr. Chatterjee was quiet and more apathetic than usual. She came to see Mr. Ling and asked about this. Thus, Mr. Ling went to see the patient, observed him and remarked to Ms. Chatterjee that he had seen her father in this state before. Mr. Ling told her that Mr. Chatterjee may have been quieter than usual, or he might have experienced "a small incident like a stroke". Ms. Chatterjee was concerned. Mr. Ling explained to her that this was caused by a restriction of the blood flow through the arteries of the neck leading to the neck. It is a temporary condition and nothing can be done except to observe the patient. This condition is called "Transient Ischemic Attack" (TIA). Mr. Ling went on to reassure Ms. Chatterjee that the Hospital would keep an eye on her father, but Ms. Chatterjee was still concerned. Mr. Ling declared that he tried to explain to her her father's condition the best he could. Ms. Chatterjee left and when she returned to see him, she told him that "Ms. Kelly was on the telephone and she wanted to speak to him". Mr. Ling relayed to Ms. Kelly what he had explained to Ms. Chatterjee. He added that there was no emergency. Ms. Kelly replied "okay" and asked to speak again to Ms. Chatterjee. Mr. Ling heard for the first time of this complaint when Ms. Lillian and Mrs. Evelyn Chatterjee testified at this adjudication.

Mr. Ling conceded that he has had a personal computer for at least four or five years. He brought his laptop to work every day, in his bag, and he was never advised that he had no right to do so. Moreover, when Mr. Ling worked with Ms. Sauvé in Unit 6B, he used it during his work hours to do the orderly sheets, work assignments, etc. Mr. Ling also did the project for Ms. Sauvé. Most of the time, the computer stayed in his bag and, once in a while at the end of his shift, Mr. Ling would take it out to de-fragment the hard disk and to optimize his files. This is an automatic process. Mr. Ling would simply set up the computer and leave it alone to run this program. It takes about one to one and a half minutes to do. Mr. Ling never discussed the matter of his computer with Ms. Ouellet. On the other hand, Ms. Giroux had seen Mr. Ling with it. They had even discussed the Internet and Mr. Ling showed Ms. Giroux how to

visit the different sites. Ms. Giroux seemed interested; however, she said to be careful that it not interfere with his work. Mr. Ling assured her that it would not happen. Mr. Ling testified that he did not do personal things during his shift. He would type E-mails to his friends during his breaks at the lounge or cafeteria, and send them when he got home. He added that only on two occasions did he check his E-mail at work, and that took one to two minutes. He plugged his computer in the second telephone jack. The orderlies did not question this and they themselves were reading a newspaper. Mr. Ling also conceded that he had a cellular telephone and he used it on occasion. He did receive two or three calls, but he usually made his calls during his breaks. He used his cellular because he did not want to use the Hospital line for personal calls. No one ever raised the cellular telephone issue with him. At the March 14 and 28 meetings, Ms. Ouellet raised the allegation concerning the computer and the cellular telephone.

The March 14 meeting lasted one and one-half hours, and the March 28 meeting, one hour, at which time Ms. Ouellet and Ms. Paris told him that they wanted to clear up matters and ask questions. However, they were aggressive and hostile. Ms. Paris told him that they already had the facts when Mr. Ling remarked that he was trying to give them the facts. When Ms. Ouellet questioned him about the Chatterjee incident, she appeared angry; she spoke in such a way that she practically spat at Mr. Ling. Mr. Ling felt that he was being treated in a very unprofessional manner and without any concern for his welfare. He felt that they had already judged him; the decision had already been made. They went after him. This was the first time that any employer had treated him like that.

When Mr. Osman pointed out to Mr. Ling his errors, he replied that he would make every effort to correct his errors and to be more diligent. Mr. Ling testified that he had never been aggressive towards Mr. Osman. He never threw the letter of reprimand of January 1996 (Exhibit 7) to his face. He showed no anger towards Mr. Osman; he just tore the letter up and left Mr. Osman's office.

Mr. Ling commented that he had not realized until much later, after the two March disciplinary hearings, how much his niece's (Brenda) illness had affected him. That is the reason why he never raised it at the two March disciplinary hearings and with Ms. Poupart. He made no connection that his niece's illness had affected him so

much. He only came to realize this when his partner, Dr. John Zacharias, asked him whether his niece's situation could have affected him throughout late 1995 and early 1996.

Mr. Ling described in detail how he proceeded to prepare Mr. R.'s dressing. He used the scissors in the cart left in the alcohol and the blue tweezers of the kit (Exhibit 16). He wore gloves and changed them to avoid contamination. Mr. Ling declared that he would never use his bare hands to handle a necrotic cavity because he has to protect himself. He used the blue forceps to pull out as much as required of the piece of packing and cut it with the scissors on the cart. When he cut the packing, he did not have gloves on. He then put the gloves on and cleaned around the wound. He moistened the 4 x 4 gauze, wrapped it, and cleaned around the wound, starting at the edge of the cavity. The 4 x 4 gauze was dropped in the garbage. Then he used his pinkies to work the packing into the wound. He liked to feel what he was doing and if he had used the tweezers, he might have hurt the patient. He wanted to feel the edges of the wound. He then placed the covering over the packing.

Concerning his use, in March 1996, of the Hospital's sphygmomanometer, Mr. Ling commented that he used it because "he might have possibly forgotten his blood pressure cuff at home". He brought the blood pressure cuff to work only when he needed it to take the monthly vital signs. Otherwise, it was left at home. Mr. Ling reviewed the competency and mental state of all the patients under his care from November 1995 to March 1996.

Mr. Ling declared that his errors could be explained; when a new prescription was on the back of the sheet, it could be easily overlooked. He indicated that if he were to be reinstated, he would be very careful with the medication and all the nursing procedures. He would no longer just scan the medication sheets but "review one pill at a time".

The "saline compress incident" occurred when he returned from vacation. Usually, Mr. Ling would finish the medication first. Concerning his comment to Ms. Giroux of February 29, 1996 (missing initials), he probably said to her that he had been distracted. Mr. Ling considered Ms. Giroux's spot-checks as harassment. Mr. Ling felt uncomfortable about Ms. Giroux's spot-checks and considered complaining to his bargaining agent. When Ms. Giroux told him that everything must

be perfect, his reply meant: “We are human beings. We try to avoid mistakes, but mistakes may happen.”

Mr. Ling felt that the March disciplinary hearings had been conducted like an inquisition. Questions were fired at him in anger and in a very aggressive manner. Ms. Paris asked him why they should believe him, which, to him, meant that, whatever he said, it would not be believed. When Mr. Ling said that he was just trying to give them the facts, they replied that they already had the facts. Following these interviews, Mr. Ling did not want to meet or talk to Ms. Ouellet without his bargaining agent representative present.

Mr. Ling was “pretty stunned” when the Vasotec incident was brought to his attention. He was surprised to have made an error of such a magnitude. When he was asked about it, he was told that he had made the error. No other scenario was put to him, such as missing pills, etc. He admitted the error based on what had been presented to him by the employer even though there was no proof that the pharmacy had sent the correct number of pills or that another patient might have received the pills or they might have been dropped on the floor. Mr. Ling declared that he had been aware of errors made by the Hospital’s pharmacy. He noticed that there had been incidents when not enough pills had been dispensed and Mr. Ling had to call the Coordinator in charge of the pharmacy on nights to obtain the missing pills.

Mr. Ling testified that he erroneously completed, on January 19, 1988, the “Employee Questionnaire” (Exhibit 74). Mr. Ling completed this form when Ste. Anne’s Hospital hired him in 1988. On this form, Mr. Ling indicated that he had been employed at the Montreal Neurological Institute/Hospital from 1982 to 1985 as a “floor nurse charge evenings” and the reason for leaving was “change of milieu/experience”. Mr. Ling conceded that the dates reported were in error; he had been attending a nursing program between 1982 and 1985. Mr. Ling commented that it is obvious that he was in school from 1982 to 1985 and the dates were easy to check. He questioned whether, at the time, the employer had checked the information on the “Employee Questionnaire” form. He explained that he simply made a mistake concerning the dates. Mr. Ling added that the decision of the Disciplinary Committee is dated March 8, 1989 (Exhibit 79) and he had never seen a copy of this decision until the hearing of this adjudication. He did not tell Ste. Anne’s Hospital about the 1987

allegations against him because, when he paid the fine, he had been told that the matter had been settled and it was finished.

Mr. Ling explained that the employer remunerated him until March 11, 1996 (March 12 was his day off). His bi-weekly net pay was \$1,025 to \$1,050 and since the termination of his employment, he has suffered serious financial losses. Ste. Anne's Hospital was grossly negligent in not providing him with a timely separation pink slip to allow him to apply for employment insurance benefits. Although he made numerous calls, he finally had to write a letter demanding the separation form; it took the Hospital six months to provide him with the required form. When the document was finally provided to him, the information was erroneous. The employer had added \$8,000 in severance pay, which was wrong. Such moneys had never been paid out to him. A new form had to be issued. When Mr. Ling presented his claim to the Employment Insurance Commission, it was denied due to this delay. Mr. Ling testified that the Employment Insurance Commission advised him that "they were sorry; these were the rules and it made no sense to appeal this ruling". Mr. Ling was told that he had only six weeks of insurable benefits (because of the employer's lateness in providing the required form) and for this reason his claim was denied. Mr. Ling testified that he applied to the Employment Insurance Commission soon after October 28, 1996 (Exhibit 73). When counsel for the employer asked Mr. Ling to provide a more exact date, the grievor replied that he presented his claim in November 1996.

Mr. Ling added that during this period (March to November 1996), the money in his bank account ran out. Thus, in the spring of 1996, he was forced to use \$17,000 he had in his RRSP and term deposits; he lost the interest and the investment. He was forced to ask for income security (welfare) benefits and he received \$386 a month for six months that he will have to refund.

Mr. Ling explained that he tried to obtain other employment without success. He applied to Omega Cohort (to counsel AIDS patients), coffee shops (Café Dépôt), etc. Finally, he basically just gave up. He did not try the provincial hospitals because there was a freeze on hiring full-time employees and there were provincial lay-offs and buy-outs at the time. Mr. Ling added that he had not applied for nursing positions because provincial nurses had been laid-off and he did not want to commit

himself as a provincial nurse as long as these proceedings had not terminated. The Omega position was part-time work with no specific duration. He applied to Omega because it suited him until his grievances were resolved. Mr. Ling made inquiries at various coffee shops without success. He contacted Café Dépôt at the Complexe Desjardins and he made inquiries with people he knew but without presenting any formal applications (except at Omega).

In September 1997, Mr. Ling started a full-time psychology course at Concordia University. He receives no income and is living on student loans and bursaries. He decided to further his education because he felt that he was unemployable. He is a full-time student and expects to obtain his degree in three years (the year 2000). However, Mr. Ling was adamant that he wants to return to his position at Ste. Anne's Hospital and he would require a leave of absence to obtain his degree. However, if the employer decided to refuse his request for leave to pursue his studies, he would want part-time work.

Concerning his claim for employment insurance benefits, Mr. Ling declared that he made the application on or about October 28, 1996, when he received the corrected pink slip. He went to the Employment Insurance Office at Human Resources Development Canada, filled out a form and explained that he would not have a pink slip until October 28. In his opinion, he complied with all employment insurance requirements. He did not file his claim earlier because he did not have a proper pink slip and he was in contact with the employer's payroll clerk. Mr. Ling testified that he did not know that there was a "rush" to apply for employment insurance benefits. Mr. Ling recalled sending a letter to his employer demanding the pink slip by registered mail. Then, when he received the erroneous form, his counsel, Ms. Gosselin, requested a replacement slip. When the Employment Insurance Commission informed Mr. Ling, in writing, that he was not entitled to benefits, he spoke to them and was told that this decision was final. Mr. Ling collected welfare benefits from May to October 1997, when his own funds were depleted. He asked for welfare to tie him over until his grievances were resolved and his student loans settled. Mr. Ling is also claiming reimbursement for his dentist bills and his student loans (\$3,260 for 1997). He registered for courses at Concordia University on May 14, 1997. He is also asking to be compensated for the interest and cash-out of two RRSPs. Mr. Ling requires 90 credits to obtain a bachelor's degree in psychology.

Each full-time course is worth three credits and each full-time term is five courses. He hoped to find a part-time job during the summer months. Mr. Ling has been a member of the Order of Nurses of the Province of Quebec since 1985.

Mr. Ling testified that he has been affected psychologically by the employer's decision to terminate his employment. This termination was unexpected, sudden, and harsh. Mr. Ling had to look at possibilities for the future and he had no good professional references from Ste. Anne's Hospital. This caused a great deal of uncertainty and despair. Sometimes, he has been fairly depressed. He does not sleep well and he has become rather preoccupied with his case (grievances) and how he could begin to repair the damage caused by the employer's decision. He started taking courses. He finds that the representatives of this employer have destroyed his career and ruined his future. He had worked as an ambulance technician before returning to school (at age 30) to study nursing. Before that, he had held a number of different jobs (as a clerk; messenger for a dental supply firm; in warehouses; as a waiter; etc.). He decided to return to school to study nursing after having worked three years as an ambulance technician. He wanted to work in the health care field and wanted to take care of people. He went to school five days a week and worked two days as an orderly. It took three years of major commitment to obtain his nursing degree. He was 33 or 34 years old when he finished the nursing program. The loss of this nursing job is very important to Mr. Ling; he is losing what he wants to do the most in his life.

In addition, his home life has been affected because of the depression caused by the termination. Mr. Ling feels that his employer has betrayed him. He has become suspicious of people around him; he does not trust anyone and he has been pretty irritable and difficult. Mr. Ling has been in a relationship with Dr. John Zacharias for almost 26 years. As a consequence, Dr. Zacharias has suffered a lot of his stress and emotions. The relationship has been affected. Mr. Ling's social life has also been affected; he has been "so grouchy" that he has lost some of his friends.

Mr. Ling declared that he has no social life and no money. He does not go out very much. His budget for a day is \$10 to \$15 for all his expenses, including food. When his employment was terminated, he did not have a large bank account; he was

saving for his retirement. He was able to travel and buy what he needed; his lifestyle was very comfortable. The termination has also affected his confidence and self-esteem. Without the support of his partner, his bargaining agent (PIPSC) and some of his friends, he could have taken his own life. He did not seek professional help in this regard. He did contemplate suicide three to five times since March 1996. He had never before had suicidal thoughts. The most disturbing aspects of the termination were the initial notification, the two March interviews, and the evidence presented at this hearing. Mr. Ling finds the employer's attitude malicious and nasty. They became personal in their actions towards him; they were harsh and punitive and did not act as an employer is expected to do. The employer failed Mr. Ling as an individual and as an employee. When Mr. Ling refused to withdraw his grievances, the employer presented a complaint to the Order of Nurses of the Province of Quebec. Mr. Ling is of the opinion that this was unethical and immoral. The employer had made up its mind to terminate his employment and nothing that he said or any evidence presented would change this decision.

Mr. Ling said that the most significant asset he has is his patience. "He treated the patients as people." He spent eight hours a day with the patients and had bonded with them; he thought of them as an extended family. He developed some important relationships with many of them. He recalled Mr. Paul Thibaudeau with whom he became friends.

Mr. Ling does not know what he is going to do in the future and where he is going. Mr. Ling was 47 years old in 1998 and for him it is pretty scary to find himself in this situation at his age. He started to study psychology to avoid a nervous breakdown and to be able to find gainful employment in the future. Mr. Ling recognized that the allegations against him are very serious and they could form a reasonable basis for termination. However, Mr. Ling is adamant that his termination is not warranted. In his opinion, the employer wanted to get rid of him and the problems started with Ms. Sauvé. "Someone in Administration" decided he had to go. He sees Ms. Ouellet as that "someone"

Mr. Yves Turgeon is a lawyer associated with the Casgrain law firm, 1 Place Ville-Marie, in Montreal, since August 1991. Prior to that date, between September 1988 and August 1991, he was associated with the Lamarre, Charbonneau, Fortier law

firm. Mr. Ling was one of his clients in 1988 and 1989. He represented Mr. Ling in the disciplinary matter concerning the Order of Nurses of the Province of Quebec with respect to allegations made against him by the Neurological Institute of Montreal in 1988. Mr. Ling instructed Mr. Turgeon to settle this matter because he could not afford to pursue his defence in this case. The case was expected to last various days and this would have been a financial burden for Mr. Ling. Thus, a deal was struck where Mr. Ling pleaded guilty to the allegations (Exhibits 83, 84, 85, 86, 87 and 88). Mr. Turgeon wrote to counsel of the Trustee that this settlement did not constitute and should not be interpreted as an admission to the allegations.

On February 23, 1989, the hearing took place on this matter and Mr. Ling was not required to be present; the hearing lasted five minutes. No witnesses were called and both counsel simply informed the Disciplinary Committee of their settlement. The decision followed and a fine was added. Mr. Turgeon insisted that, at no time was evidence adduced concerning the allegations against Mr. Ling in this matter of 1988. The Disciplinary Committee finally imposed a reprimand and a fine of \$500 (in addition to costs). To Mr. Turgeon, Mr. Ling denied all allegations with proper explanations. Mr. Turgeon explained that this was the only way to settle this case. In his view, to plead guilty in these circumstances was not an admission of guilt of the facts, but of the law. He just wanted to settle the matter. Mr. Ling never recognized or conceded the allegations against him.

Ms. Sylvie Poupart has been the Head Nurse of Unit 14B since 1987. She has also been a union steward for the Professional Institute of the Public Service of Canada since 1981, and in charge of grievances since 1985. In addition, she is the Secretary of Ste. Anne's Hospital's Committee of Nurses. This Committee was created in 1994. Due to the "Côté Reform Project", that resulted in the proclamation of the Quebec Provincial Statute 120, four elected nurses of the Hospital are members of the Executive of this Committee. Ms. Francine Gagnon (a nurse in Unit 8A) is the President, and Ms. Ginette Dionne, Ms. Ginette Lalonde and Ms. Poupart are members. Ms. Poupart is also a member of the Cognitive Deficit Committee. In 1997, psychologists asked the nurses to subject the patients to a test to determine their cognitive ability and mental capacity. In June 1997, 60 percent of the patients at Ste. Anne's Hospital had cognitive deficits.

Ms. Poupart testified that, on March 13, 1996, Mr. Ling asked her to intervene on his behalf. He telephoned her and told her that he required the assistance of his bargaining agent. Ms. Poupart wrote down her conversation with Mr. Ling (Exhibit 62). Mr. Ling did not understand the employer's reason for his suspension and the summons to attend a meeting the next day. He was nervous and told her about the Vasotec and the Di Pietro incidents. Following this conversation, Ms. Poupart telephoned Ms. Ouellet to inquire about the grounds for the suspension and summons to attend a disciplinary hearing. Ms. Ouellet refused to answer and simply informed her, more than once, that Mr. Ling was aware of the grounds. Ms. Poupart then telephoned Ms. Paris with the same questions. Ms. Paris was a little more forthcoming; she informed Ms. Poupart that there had been various incidents: medication administered during 12 days without a proper prescription and other unprofessional behaviour. Ms. Paris explained that Ms. Ouellet was not comfortable with Mr. Ling continuing his work in the unit. Ms. Poupart called Mr. Ling back to inform him of the reason for the meeting scheduled for March 14, 1996. Mr. Ling remarked to her that Ms. Giroux had informed him, on February 29, 1996, that "it (his work) had to be perfect" and that Ms. Giroux had done a spot-check and discovered that he had missed writing his initials in a case of Vasotec. Mr. Ling informed Ms. Poupart that, from then on, he would prepare the patient's medication at his bedside.

As scheduled, Ms. Poupart and Mr. Ling attended the meeting with Ms. Ouellet and Ms. Paris at 14:00 hours on March 14, 1996. Mr. Ling asked the reason for his suspension and Ms. Paris responded. According to Ms. Poupart, Ms. Ouellet started the meeting with the Di Pietro incident. Ms. Poupart was not made aware of Ms. Giroux' report on this incident until April 1997, when Ms. Gosselin mentioned it to her. Ms. Ouellet mentioned also the Vasotec incident, which Mr. Ling was unaware of. It was the first time that Mr. Ling was made aware of various incidents. Ms. Ouellet referred to notes or reports and asked questions of Mr. Ling. None of the documents were given to Ms. Poupart or to Mr. Ling. Ms. Poupart asked Ms. Paris for copies of these documents to no avail. Ms. Poupart added that, during this meeting of March 14, 1996, they discussed various treatments and there was mention of the Diabeta incident. Ms. Ouellet did raise the allegation that some treatments had not been performed or had been delegated to orderlies. Ms. Ouellet questioned Mr. Ling about his method of doing a dressing and the performance of his duties. She

indicated that there had been reports from orderlies, and named Mr. Ménard. Ms. Poupart requested a copy of this report and Ms. Paris replied that it was impossible to provide the information to her at this stage of the investigation.

Ms. Poupart had the impression that Ms. Ouellet and Ms. Paris were trying to corner Mr. Ling. They had prepared questions and the way they went about asking them indicated a pattern that she had experienced before when she represented nurses in similar situations. The employer would build a file from various incidents to conclude with a termination of employment. Moreover, there was the employer's representatives' reluctance to disclose the facts on which they based their allegations. Ms. Poupart found that, in the case of Mr. Ling, the Di Pietro incident was an exaggeration and Ms. Ouellet was using that incident to build a case against Mr. Ling and was relying on the orderlies' statements concerning Mr. Ling's performance of his duties as a nurse. Ms. Poupart recounted how the bargaining agent had had many problems dealing with the employer when trying to obtain documents. This issue was discussed at at least two labour-management consultation meetings (the meetings of January and February 1995, Exhibits 54, 55 and 65).

Having had already that experience, Ms. Poupart insisted, on March 14, 1996, in requesting the disclosure of documents concerning the allegations against Mr. Ling. Ms. Poupart found that Mr. Ling could not properly and adequately defend the allegations against him when he was unaware of the events and documents giving rise to such allegations. Mr. Ling had requested that Ms. Ouellet and Ms. Paris present specific questions to him; he did not want to answer ambiguous and vague questions.

On March 28, 1996, Ms. Ouellet and Ms. Paris held a second disciplinary meeting with Mr. Ling and with Ms. Poupart (Exhibit 66). Ms. Ouellet raised the same allegations and insisted on the matter of the patients' monthly vital signs. Ms. Poupart recalled that during one of these two meetings, she and Mr. Ling left the meeting room for a few minutes to allow Mr. Ling to relax and compose himself. In Ms. Poupart's view, the inquiry and these two meetings constituted harassment because Ms. Ouellet and Ms. Paris did not give Mr. Ling any time to think about his answers. Ms. Poupart opined that Ms. Ouellet and Ms. Paris had already decided on Mr. Ling's guilt even before affording him an opportunity to explain. Ms. Ouellet's and Ms. Paris' tone of voice was fast and dry; the rhythm of the questions was fast,

the tone serious, belligerent, and hostile. Ms. Poupart's sentiments concerning these meetings were that she (and the grievor) felt pushed and rushed. Her impression was that they wanted to trap him at any cost; they were after him. According to Ms. Poupart, Mr. Ling never answered "No comment" to any of their questions. She noted answers from Mr. Ling to every question asked at these two meetings.

When Ms. Poupart and Mr. Ling left the meeting for a few minutes to take a breather, Mr. Ling told her that he had taken the patients' monthly vital signs and registered them in a book. In her ten years of experience as a bargaining agent representative, Ms. Poupart had represented over 50 grievors or employees. She believed him when he provided the explanations in response to Ms. Ouellet's allegations. She confirmed that the application of Hibidil was not always reserved to the nurses. Even after 1994, orderlies continued to perform certain tasks that were no longer delegated. In her view, the disinfection treatment on Mr. Faubert's penis had been properly applied. At no time during these two interviews was Ms. Giroux' written report mentioned to Mr. Ling and to Ms. Poupart.

Ms. Poupart explained that, on December 12, 1996, Ms. Préfontaine told her that the errors concerning the missing initials in the proper square of the patient's chart were not included in the general compilation of incidents/accidents during the period September 19, 1995 to August 20, 1996 (Exhibit 58). Such an "error" was not considered an error in medication but an omission of signature. Ms. Préfontaine told Ms. Poupart that these omissions were not included in the compilation because they were too numerous. Ms. Poupart explained that the taking of the monthly vital signs was the responsibility of the day nurses and not all units required taking these monthly vital signs (i.e. Unit 8A). Ms. Poupart declared that Mr. Ling told Ms. Ouellet and Ms. Paris that there were so many pages and amendments to patients' prescriptions that "it was a dog's lunch".

On April 2, 1996, Ms. Lucie Baillairgé, counsel for the Professional Institute of the Public Service of Canada, and Ms. Poupart met again with Ms. Paris to request the relevant documents used in support of the allegations against Mr. Ling. Ms. Paris replied that, first, the names of the patients had to be erased before she could provide them with copies of any documents. Furthermore, Mr. Ling and his representatives had to request these documents through the Access to Information process and the

employer would only then consider such a request. Ms. Baillairgé followed this discussion with a formal written request, to no avail. In response, Ms. Paris told Ms. Poupart, by telephone, that Mr. Ling had to make his request through Access to Information. Ms. Poupart was upset with the employer's attitude. Throughout this investigation, she and the bargaining agent had to represent Mr. Ling without any access to these documents. It was difficult to represent him without the proper and relevant information. In view of the fact that Mr. Di Pietro's version was different from Mr. Ling's, it was difficult, during the disciplinary meetings, to answer the allegations when Ms. Poupart and Mr. Ling did not have all the elements on which the employer based its case. Ms. Poupart's impression of the disciplinary meetings was that Ms. Ouellet and Ms. Paris were trying to prove bad faith on the part of Mr. Ling. However, it was Mr. Ling himself who called the Coordinator to report Mr. Di Pietro's complaint. Ms. Poupart requested formally and orally a copy of all written documents (such as reports, medication sheets, declarations of alleged witnesses, etc.).

The two interviews concerning Mr. Ling fit a pattern experienced by Ms. Poupart. Orderlies would make accusations against nurses and then the employer would conclude that the nurse in question was guilty before any meeting was held to hear the employee's (nurse's) version. The employer would closely supervise the nurse they wanted "to trap". In one case, a nurse had already received a disciplinary measure. Four days before the expiration of the two-year sunset clause protection (after two years of a clean disciplinary file, the previous discipline is removed from the file), the employer raised an error in medication and the nurse was suspended because of the previous discipline. The nurse had been so closely watched that it was inevitable that she would err. Ms. Poupart related a number of cases where nurses were so closely watched and disciplined. In three cases, Ms. Poupart was greatly bothered by the employer's actions because, from a simple error, a case was built against the nurses. The nurses in question were closely followed; that made it extremely difficult for them to do their work. Ms. Poupart explained that the employer went as far as affecting their reputation as nurses. Such an attitude brings the nurses to hide their errors and omissions. It is punitive and not corrective; the work situation is difficult. It is further aggravated by the transfer of the Hospital to the provincial authorities in the near future. Moreover, Ms. Paris misled them because, on April 2, 1996, she told Ms. Poupart and Ms. Baillairgé that they had no declarations from patients. However, at the meeting of March 28, 1996, she had

stated that patients were ready to sign declarations and on April 2, 1996, she said that she did not ask the patients to provide declarations. (The evidence disclosed that Ms. Ouellet had obtained four written declarations between March 25 and 28, 1996. Messrs. Brisson and Ménard signed theirs in April 1996; Ms. Bordès signed hers on April 2, and Ms. Giroux's report is dated February 5, 1996.)

At the October 16, 1996 labour-management consultation meeting, Ms. Poupart, on behalf of the Professional Institute of the Public Service of Canada, complained to the employer (Ms. Préfontaine) that orderlies were falsely accusing nurses of wrongdoing or rudeness. The Professional Institute of the Public Service of Canada raised the issue of verbal violence and aggression towards nurses by the orderlies (Exhibit 68). This problem was further discussed at the labour-management committee meeting of December 19, 1996. Ms. Poupart testified with respect to various situations where orderlies had made threats. One of the incidents concerned aggressions by Ms. Bordès against two nurses. Then, in January 1997, Ms. Poupart again raised this issue of verbal abuse by orderlies towards nurses at a meeting of Head Nurses.

Ms. Poupart confirmed that a patient could be alert and, at the same time, have short-term memory problems. Ms. Poupart did not ask Mr. Ling whether he had any personal problems. She did not think to ask him such a question and she had no knowledge about this subject. Mr. Ling did not raise this subject with her.

Concerning the disinfection treatment on Mr. Faubert, this was a simple procedure to clean the area of the penis; there was no open wound and no bandage was required. Mr. Ling described to her how he used a washcloth soaked in Hibidil and she saw no problems with it. If no bandage is required, then a sterile saline pack is not necessary. The requirement, in the case of Mr. Faubert, was to keep the area of the penis clean. There was no wound. Ms. Poupart added that orderlies continued to do certain tasks that were no longer in their domain. In theory, there was a directive (Exhibit 5(j)) discontinuing the exercise of certain nursing duties by orderlies but, in reality, the practice continued in certain cases. Ms. Poupart gave the example of the application of Calestin cream by orderlies. When Calestin was applied by the orderly, the nurse simply noted "Code Z" on the chart. Personally, Ms. Poupart did not ask the orderly to apply the Calestin cream or to do other nursing responsibilities.

Ms. Poupart recognized that nurses have been disciplined for omitting to put their initials in the appropriate square on the patient's chart. In the last two years, there have been 10 cases of discipline for such omissions. Ms. Poupart commented that the fact that an evening nurse forgot to initial the square for a medication such as Colace (a laxative), did not mean that the medication had not been given to the patient. Moreover, the evening nurses have 150 squares to initial. Thus, this has to be considered in conjunction with the type of medication in question; some cases are more serious than others and some medications are more important than others. Colace is a laxative commonly given to patients throughout the Hospital.

Ms. Poupart and Ms. Norma Longtin examined the medication sheets for Unit 9A for the period February 9 to 15, 1996 (one week) and compared their findings with the number of doses of medication administered during other periods. Ms. Poupart explained that they chose that week because it covers the Vasotec incident that was reproached to Mr. Ling. Ms. Poupart declared that the number of doses of medication for the period February 9 to 15, 1996 fit the pattern at the Hospital. Ms. Poupart testified that they found that the day nurses administered 1,669 doses which gave an average of 287 per day nurse (there are three nurses on the day shift), whereas the evening nurse alone administered 596 doses (Exhibit 70). The nurse on the night shift administered 211 doses. Ms. Poupart concluded that the evening nurse administered 35.7 percent of the medication, whereas each day nurse administered 17.2 percent. Thus, the risk of committing an error is much higher for the evening nurse. Moreover, Ms. Poupart noticed that the pharmacy had also erred in the preparation of the medication. Ms. Poupart gave the example when, in November 1997, the pharmacy provided to Unit 14B only half the prescribed dosage. The nurses had to request a renewal of the prescription and Ms. Poupart had the responsibility of explaining to Ms. Annick Hébert the reason for the renewal. She told Ms. Hébert to look at the sticker on the bottle where two pills per day had been prescribed. Then, in mid-November 1997, the pharmacy sent 0.5 mg pills of "Rivotril" when the doctor had prescribed 1.5 mg pills. Ms. Poupart herself returned the bottle of Rivotril to the pharmacy. In another case, the pharmacy had mixed up the name of the medication. The pharmacy noted "Lasix" on the "Lanoxin" bottle and vice-versa; the pharmacist had reversed the labels. Moreover, these two liquid medications had different dosages.

Ms. Lucie Baillairgé, counsel, has been employed as a bargaining agent representative at the Quebec Regional Office of the Professional Institute of the Public Service of Canada, since May 19, 1995. Prior to this, she was with the Appeals Section of the Public Service Commission of Canada for six and one-half years, and before that, Ms. Baillairgé was employed at the Quebec Human Rights Commission. Moreover, Ms. Baillairgé also worked as a Human Resources Advisor at Canada Post from 1976 to 1980, and at Ste. Anne's Hospital from 1980 to 1983. She then joined a law firm as a lawyer specialized in labour law. Ms. Baillairgé declared that she has extensive experience in the representation of clients concerning grievance matters.

Ms. Baillairgé, became involved in Mr. Ling's case when, in March 1996, Ms. Poupart contacted her to inform her that he had been suspended. Ms. Poupart and Ms. Baillairgé attended a meeting in Ms. Paris' office on April 2, 1996. Ms. Baillairgé intended to obtain Ms. Paris' co-operation with respect to Mr. Ling's situation at work. During the meeting, Ms. Paris informed her that a report had been sent to the Deputy Minister recommending the termination of Mr. Ling's employment. Ms. Baillairgé demanded that she be provided with a copy of the report in question and all documents attached thereto; she required these documents to properly represent Mr. Ling. At that time, the bargaining agent's file on Mr. Ling was empty. Ms. Paris replied that she would take her request under consideration. However, Ms. Paris failed to do so because she never communicated again with Ms. Baillairgé with respect to her request.

On April 19, 1996, Ms. Baillairgé wrote to Ms. Rachel Corneille Gravel repeating her request to be provided the documents in question (Exhibit 35). Ms. Baillairgé required these documents to make her own enquiries on this case. She needed the names of the persons questioned by Ms. Ouellet and Ms. Paris and the written documents in support of the allegations. On May 10, 1996, Ms. Corneille Gravel replied that, in view of the confidential nature of the documents in question requested by Mr. Ling (on April 17, 1996), they should address their request to the Access to Information Office (Exhibit 35). On April 17, 1996, Mr. Ling had made the same request as Ms. Poupart (who had made it to Ms. Paris orally at the meetings of March 14 and 28, 1996) and Ms. Baillairgé (orally on April 2, and in writing on April 16, 1996). Ms. Baillairgé's and Mr. Ling's requests had crossed. On April 24, 1996, Ms. Paris advised Mr. Ling to make his request to the Access to

Information Office (Exhibit 35). Finally, Mr. Ling requested the documents as instructed, and, on July 3, 1996, the Access to Information and Privacy Co-ordinator's Office responded by providing 184 pages of information, where names and portions of several pages had been deleted because they referred to persons other than Mr. Ling (Exhibit 35).

Ms. Baillairgé explained that she had experience in human resources and she was aware that written reports of this nature always had attachments to support the recommendations. On April 2, 1996, Ms. Paris informed Ms. Baillairgé that the report in question had no attachments. During this meeting, Ms. Baillairgé had the impression that the employer did not want to co-operate with the bargaining agent. She felt a lot of condescension on the part of Ms. Paris concerning her request on behalf of the bargaining agent (and Mr. Ling). Ms. Baillairgé had already experienced this kind of attitude in the past on the part of Ms. Paris. This was not the first time that she was being patronizing and uncooperative. Ms. Paris made no reference to a directive or policy that prohibited all communications, during the investigation, with the grievor and the bargaining agent. When Ms. Baillairgé had worked as a Human Resources Advisor at Ste. Anne's Hospital and at Canada Post, the employers' policy was to provide the required information to the bargaining agent to enable it to prepare a case.

Ms. Baillairgé was upset by Ms. Paris' condescending attitude and reluctance to disclose. She felt diminished because, in her view, she was unable to adequately represent Mr. Ling. His representation was very important in light of the fact that he had received the capital punishment in labour relations. Mr. Ling had the same rights as a criminal to properly defend the charges against him. In her opinion, her investigation had to be timely; she had to do it then and not in six months' time. Ms. Baillairgé felt that the employer had to do its job properly and this caused her frustration. In her opinion, the employer violated Article 1 and clause 35.02 of the collective agreement where it provides that the parties should try to settle disputes before presenting and referring them to adjudication (Exhibit 98).

Ms. Carole Paris has been employed as the Human Resources Advisor at Ste. Anne's Hospital since May 1992. She was present on March 14 and 28, 1996, when Ms. Ouellet interviewed Mr. Ling who was represented by his union steward,

Ms. Sylvie Poupart. Ms. Paris testified further that at the meeting of March 14, 1996, she explained to Mr. Ling that they had questions to ask him concerning various events. She told him that it was important for them (she and Ms. Ouellet) to obtain his version of the facts and a decision would eventually be taken. However, if he chose not to answer their questions, they would render a decision based on the facts they already had. Ms. Poupart and Mr. Ling did not complain about the process at these two interviews.

The second meeting of March 28, 1996 was held because Ms. Ouellet and Ms. Paris had checked out Mr. Ling's version and Ms. Giroux and Mr. Ménard denied Mr. Ling's version of the events. Ms. Giroux said that Mr. Ling never told her that he had been distracted and Mr. Ménard denied having expressed an interest in doing the disinfection treatment on Mr. Faubert penis. Furthermore, at this second meeting, Ms. Paris provided Mr. Ling with a copy of Mr. Osman's reprimand (Exhibit 7), of which, on March 14, 1997, the former had denied its existence. Mr. Ling explained that since the meeting of March 14, 1996, he had taken notice of it. At this second meeting, Mr. Ling was given the name of the four patients who alleged that he had not taken their monthly vital signs.

Ms. Paris declared that she had been advised that she could not provide Mr. Ling and Ms. Poupart with copies of documents where the names of patients appeared, that this was confidential material.

Ms. Paris testified that, at these meetings, Ms. Poupart requested the medication charts on which Ms. Ouellet based her allegations. However, Ms. Paris' recollection was that Ms. Poupart did not ask for a copy of Ms. Ouellet's report (Exhibit 5). The employer refused to provide Ms. Poupart and Mr. Ling with copies of the supporting documents to the report (Exhibit 5(a)). She confirmed that, on April 17, 1996, Mr. Ling wrote to Ms. Paris demanding copies of all documents and notes relative to the investigation against him (Exhibit 34). Then, Ms. Lucie Baillairgé, counsel, Montreal Regional Office, Professional Institute of the Public Service of Canada, wrote to Ms. Rachel Corneille Gravel, Director General, on April 19, 1996, formally requesting the documents in question. On May 10, 1996, Ms. Paris drafted the reply to this request informing her to ask for these documents via the Access to Information route (Exhibit 35). Finally, on July 3, 1996, 184 pages of information

were sent from the Access to Information and Privacy Co-ordinator's office to Mr. Ling. However, patients' names and portions of several pages had been deleted (Exhibit 35).

When Ms. Baillairgé and Ms. Poupart came to see her on April 2, 1996, Ms. Paris did not know the reason for their visit. Ms. Baillairgé asked Ms. Paris for an update on Mr. Ling's case. Ms. Paris replied that they had decided to recommend his dismissal and she gave them the reasons for this decision. Ms. Paris informed Ms. Baillairgé that she had written a report on Mr. Ling that she would forward to the Deputy Minister. Ms. Paris added that the employer could no longer trust Mr. Ling considering his position as a nurse on the evening shift where he worked alone, that he was responsible for the unit, and was supervising two orderlies. Ms. Baillairgé asked for a copy of the report in question. Ms. Paris replied that she make a written request and she would then consider it. According to Ms. Paris, Ms. Baillairgé did not ask her for copies of the witnesses' declarations. Ms. Paris concluded that, even after having heard Ms. Poupart's, Ms. Baillairgé's and Mr. Ling's testimonies, she would not have acted any differently at these two disciplinary meetings.

On May 5, 1998, Ms. Paris testified concerning a telephone conversation she had had with Ms. Pierrette Gosselin, Mr. Ling's counsel, on May 13, 1997 to discuss the filing of a complaint by the employer with the Order of Nurses of the Province of Quebec. On May 20, 1997, Ms. Gosselin wrote to Ms. Corneille Gravel indicating her displeasure with Ms. Paris' telephone call. In this letter, Ms. Gosselin complained that Ms. Paris informed her that the Hospital had not yet filed the complaint with the Order of Nurses of the Province of Quebec but it would do it soon unless Mr. Ling withdrew his grievance from adjudication (Exhibit 97). Ms. Gosselin saw this intervention as intimidation and blackmail. A copy of this letter was also sent to Mr. Dennis Wallace, the Assistant Deputy Minister. On June 17, 1997, Ms. Corneille Gravel replied to Ms. Gosselin indicating that the purpose of Ms. Paris' telephone call was to keep an honest communication with Ms. Gosselin; "She simply wanted to inform Mr. Ling and his counsel of what would follow." Ms. Paris wanted to provide this information in case Mr. Ling and his counsel were thinking of a possible settlement. Thus, in the employer's view, the intention was not to blackmail but "to exchange information to facilitate a solution in the best interest of the parties"

(Exhibit 97). Ms. Paris declared that she drafted this reply of June 17, 1997 for Ms. Corneille Gravel's signature.

Ms. Paris explained that she had two telephone conversations with Ms. Gosselin (on May 13 and 15, 1997) with respect to the same subject. The first one, on May 13, 1997, was to inform Ms. Gosselin of Ms. Préfontaine's decision to present a complaint to the Order of Nurses of the Province of Quebec against Mr. Ling. She wanted to let the Professional Institute of the Public Service of Canada know of this decision because the bargaining agent had complained in the past when the employer had filed complaints with the Order of Nurses. Ms. Gosselin was surprised by this telephone call. According to Ms. Paris, once the complaint to the Order of Nurses of the Province of Quebec is filed, the employer can no longer withdraw it. Thus, she wanted Ms. Gosselin to be aware that Ms. Préfontaine would be filing it and "to act in accordance". She told Ms. Gosselin that once filed, the complaint could not be withdrawn as part of a settlement. It was important for Ms. Paris to maintain good labour relations with the bargaining agent. She did not want Ms. Gosselin to reproach her for not having advised her of such a route before filing the complaint. However, Ms. Gosselin did not seem to understand why Ms. Paris was providing her with this information. Ms. Paris told Ms. Gosselin further that this information might be useful to her and her client. Ms. Gosselin replied that she still did not understand why she was being told about this. Ms. Paris added that, when she spoke of intention, she wanted to say that Ms. Gosselin might have already discussed the possibility of a settlement and this was an element she should consider if that was the case.

Ms. Paris explained further to Ms. Gosselin that Ms. Agnès Lévesque (counsel for the employer) had told her not to make this telephone call because it could be perceived as a threat and blackmail. However, she personally decided to call her against Ms. Lévesque's legal advice not to, because she did not feel that it was proper on the employer's part not to let Mr. Ling and his counsel know of Ms. Préfontaine's intentions. Ms. Paris ended her telephone conversation by stating to Ms. Gosselin that she wanted her to think about it, that she was not obliged to do anything now, and that there was no problem in continuing with the process. Ms. Gosselin replied that "Mr. Ling was not interested".

Two days later, on May 15, 1997, Ms. Gosselin called Ms. Paris back and asked her to explain again the reason why she had provided this information. Ms. Paris repeated what she had told her on May 13. Ms. Gosselin asked her whether the employer was making an offer. Mr. Paris replied that no, that it was simply information given in case she and Mr. Ling wanted to use it and had already discussed the possibility of settling this case. Ms. Gosselin then made her an offer with a view to settle, but it was not acceptable to the employer. Ms. Gosselin added that it would not stay like that. She had every intention of complaining because this amounted to intimidation, threats, and blackmail. In Ms. Paris' view, Ms. Gosselin was "aggressive" (upset).

In retrospect, Ms. Paris, who has been a Staff Relations Officer since 1989, recognized that she should not have communicated directly with Ms. Gosselin as counsel for Mr. Ling. Ms. Paris decided that, in the future, she will provide such information to the union stewards instead. Ms. Paris explained that, when she called Ms. Gosselin, she had no intention to try to settle Mr. Ling's case. She declared that Mr. Jean Lajeunesse, a Human Resources Advisor to Ms. Corneille Gravel, advised her to telephone Ms. Gosselin with this information because the bargaining agent had complained in the past to Ms. Corneille Gravel when this kind of information had not been provided. Prior to placing the call to Ms. Gosselin, Ms. Paris had consulted Ms. Lévesque and Mr. Lajeunesse. Ms. Lévesque advised her not to call Ms. Gosselin but Mr. Lajeunesse advised her to the contrary. Ms. Paris explained to Ms. Lévesque that she was of the opinion that it was important to provide the bargaining agent with this information because, in her role as the Human Resources Advisor, she had to maintain good labour relations between the Hospital and the bargaining agent. Mr. Lajeunesse reported directly to Ms. Corneille Gravel whereas Ms. Paris' immediate supervisor was Mr. Dennis Wallace.

Ms. Sylvie Boucher has been employed with Human Resources Development Canada. In April 1996, Ms. Boucher was an Employment Agent providing assistance to the public requesting employment insurance benefits. Ms. Boucher did not deal directly with Mr. Ling's case. Mr. Ling's request for benefits was refused by another agent in charge of his case who was not called to testify. According to the Employment Insurance Canada file, Mr. Ling filed his request for employment insurance benefits on January 4, 1997. He indicated on the form that he had been

dismissed and that his last day at work had been March 11, 1996. The agent noted that this request had been filed 10 months after the date of his termination of employment. Thus, a second form was provided to Mr. Ling so he could explain this 10-month delay and to request that the benefits be granted to him retroactively to March 11, 1996. This form was also completed on January 4, 1997. Mr. Ling wrote that the reason for the delay was that his "case had been in grievance since that time (March 11, 1996) and will soon go to arbitration tribunal, in March 1997. [He] had been waiting for a settlement and that is why [he has] not made [his] claim sooner". On a questionnaire, also bearing the same date, Mr. Ling wrote that he had been accused of misconduct and summarily dismissed; "situation presently under grievance and is going to arbitration tribunal". He added that he had been verbally (January 1996) and orally (November-December 1995) advised to correct his behaviour. Moreover, he had "attempted to address the content of the letter" (written reprimand). Ms. Boucher explained that this request for retroactive benefits was also refused because a grievance did not constitute a valid reason for the delay in filing his request.

Ms. Boucher added that Mr. Ling should have informed himself of his rights and obligations. On January 30, 1997, the agent responsible for Mr. Ling's file wrote to him stating that he had no rights and that he had 30 days to appeal this decision (Exhibit 96). The letter adds that "...you did not show us that, between March 10, 1996 and January 4, 1997, you had good cause in applying late for benefits..." On April 24, 1997, Mr. Ling came to see Ms. Boucher and requested a photocopy of his Record of Employment statement. He did not request other documents on his file.

Ms. Boucher explained that a contributor can receive benefits without providing a Record of Employment statement. The Employment Insurance Commission would calculate the probable benefits pending the filing of the accurate information. It is the employer's legal obligation to provide to an employee the Record of Employment within five days of the termination of employment (Regulation 19/1). Ms. Boucher declared that the file did not indicate the name of the agent who refused Mr. Ling's application. Human Resources Development Canada (HRDC) requires the employer to justify the grounds for dismissal. Thus, the agent requests all information from the employer in this regard and, then, an investigation ensues. However, this did not happen in Mr. Ling's case because he was not eligible for benefits. Thus, there was no

investigation into the reasons for termination. According to Ms. Boucher, Mr. Ling did not inform HRDC of the employer's delay in providing him with the Record of Employment statement. Had Mr. Ling filed his claim for benefits on time, HRDC would have held an investigation in his case. In general, employers respect the five-day delay to provide the Record of Employment and, usually, HRDC will grant the employee's claim when the delay is not too long (five to six weeks) and the employer is at fault.

Ms. Agnès Morin Fecteau (NU-4), has been a nurse in epidemiology at Ste. Anne's Hospital since 1982. Her responsibility is the prevention of infection and to provide statistics in this regard. Every year, she attends a seminar on the prevention of infections. Ms. Fecteau commented on Mr. Ling's testimony with respect to the procedure he was alleged to have followed in Mr. R.'s treatment. Ms. Fecteau found two breaches in his technique: the pack (or wick) he had to insert in the wound had to be cut with sterilized scissors; the scissors he used were well disinfected, but not sterile. Thus, the danger in this was that the wick became contaminated by the scissors. Both the rest of the pack and the piece placed in the wound ended up contaminated. Normally, sterilized scissors are packed individually. The second breach concerned his use of his two pinkie fingers to place the pack in the wound. A wet compress carries bacterial matter from the wound to the gloves. Thus, the gloves were no longer sterilized. However, Mr. Ling could have replaced his gloves by a new sterilized pair. In Ms. Fecteau's opinion, the ideal procedure would have been for Mr. Ling to use the tweezers to push the pack into the wound. Moreover, his fingers could have hurt the skin tissues in the process of healing. Also, the tweezers allow deeper penetration to allow a good packing.

These two breaches were breaches to the aseptic technique that Mr. Ling should have known and must have known about in order to obtain his diploma as a nurse. The aseptic directives remain the same through the years and are issued by the Centre for Disease Control. The aseptic in the hospital environment must always be respected. Furthermore, a product called "CIDEX" should be used to disinfect but, in the case of Mr. R., sterilization was required; alcohol does not disinfect at a high level. (CIDEX is the product to use.) CIDEX is used for instruments that cannot go in the autoclave and instruments with fiber-optic material. Furthermore, scissors can be sterilized in the autoclave. The Centre for Disease Control, located in Atlanta, issues

directives with respect to the proper disinfection and sterilization and the Laboratory Centre for Disease Control (LCDC) in Canada has adopted these directives. One of Ms. Fecteau's responsibilities is to ensure that Ste. Anne's Hospital directives conform to the directives issued by the LCDC. Mr. Ling's technique did not respect these directives. These are basic rules taught to nurses throughout Canada. Ms. Fecteau was concerned that a nurse (NU-3) had committed these two breaches.

Ms. Fecteau does training at the Hospital and she was not aware if Mr. Ling had attended an orientation session on the general principles for the prevention of infections. The technique for bandages is not reviewed at these sessions because nurses are expected to already possess this basic knowledge. No one asked Ms. Fecteau to intervene in Mr. Ling's case. Normally, Ms. Fecteau will inform the Head Nurse when a breach in the proper nursing technique occurs.

It is only in December 1997, January 1998 and on April 29, 1998, that Ms. Fecteau was made aware of Mr. Ling's technique. Ms. Agnès Lévesque and Mr. Michel LeFrançois, counsel for the employer, informed her in this regard. Ms. Fecteau added that each unit of the Hospital has a copy of the manual on the techniques to be followed. In her view, the usage of the pinkies is not recommended because the finger is larger than the opening of the wound and cannot go as deeply as the tweezers. The nurse should not enlarge the wound. The finger is not an option that a nurse would normally choose, even though it is not prohibited. In this hospital manual, no reference is made that sterilized scissors should be used for bandages and it is not written that scissors disinfected in alcohol should not be used for bandages. However, Ms. Fecteau explained that the basic technique requires that "it always be sterile"; it is implied in this manual that the technique be sterilization. This manual is not exhaustive; it is understood that the nurses know the basic principles. Moreover, the use of the fingers is not a technique Ms. Fecteau had seen other nurses use.

Arguments

As already stated at the beginning of this decision, Mr. Ling presented two grievances which he duly referred to adjudication. The first grievance concerns Mr. Ling's termination of employment; the second grievance, dated April 30, 1997,

contests the production of a number of documents that the employer introduced in evidence at the adjudication hearing in mid-April 1997.

Pleadings Concerning Board File 166-2-27975

The arguments with respect to the interpretation of clause 38.03 of the collective agreement (Exhibit 98) were heard on September 2, 1998. Ms. Pierrette Gosselin, counsel for Mr. Ling, submitted that the documents in question, namely, the written declarations of Nicole Giroux, Nelly Bordès, Aurèle Ménard, Donat Legault, Émile Faubert, Alexander Pink, Evelyn Chatterjee, Messrs. Frosst, Chappell and Brisson (the latter three did not testify) (Exhibits 63 and 66), in addition to a hand-written document (Exhibit 5(r)) noting the vital signs of 34 patients were not admissible in evidence at this adjudication to support the termination of employment. Ms. Gosselin cited clause 38.03:

38.03 The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document concerning the conduct or performance of an employee the existence of which the employee was not aware at the time of filing or within a reasonable time thereafter.

Ms. Gosselin pointed out that the employer did not have the right to submit these documents in evidence at this adjudication. The employer violated clause 38.03 that provides a legal protection to Mr. Ling. The documents in question had not been presented to Mr. Ling in their entirety prior to this adjudication hearing. Moreover, Mr. Ling was not aware of the full content of these documents until mid-April 1997. These documents had not been provided to Mr. Ling prior to and/or during the two disciplinary hearings. Even when, in July 1996, Mr. Ling obtained “these documents” via the Access to Information route, two months after the May 28, 1996 presentation of his grievance, they were incomplete. The names of all patients and signatures had been deleted. This caused Mr. Ling great prejudice. It was impossible for the grievor, his representatives and counsel to prepare a proper defence to this case of termination of employment. It was impossible to respond to the allegations against Mr. Ling. The delay was unacceptable and the fact that they were incomplete constitutes a clear violation of clause 38.03 of the collective agreement. Ms. Gosselin submitted that clause 38.03 imposes a clear obligation on the employer to submit

documents to the grievor if the employer intends to rely on them as evidence and in support of discipline at a disciplinary hearing.

Ms. Gosselin pointed out that Mr. Ling did not receive even the incomplete documents from the employer, but rather from the Access to Information and Privacy Co-ordinator's Office (Exhibit 35). The employer failed to respect clause 38.03 and is, thus, precluded from introducing these documents in evidence at Mr. Ling's adjudication on the termination of his employment. In support of her arguments, Ms. Gosselin cited *Re SKF Manufacturing & The International Association of Machinists, Local 901*, (1975) 9 L.A.C. (2d) 139.

Mr. LeFrançois replied that clause 38.03 provides for the ideal situation, namely, that the employee be in possession of all relevant documents. However, in reality, this is not possible. Mr. LeFrançois conceded that Mr. Ling received the documents in question (albeit with deletions) in July 1996. This delay is a reasonable one. Mr. Ling was in possession of the documents prior to the hearing of the adjudication contesting the termination of his employment. He received them even before the hearing of his grievance at the third level of the grievance procedure. Moreover, on March 13 and 28, 1996, the employer informed Mr. Ling of the allegations against him. Mr. LeFrançois submitted that Mr. Ling was made aware of the documents in question. The Access to Information and Privacy Co-ordinator is the employer. Thus, the employer respected the obligation under clause 38.03. Mr. LeFrançois pointed out that the parties to the relevant collective agreement are the Treasury Board and The Professional Institute of the Public Service of Canada. The employer had no choice but to delete the names and signatures on these documents. The employer is subject to the *Privacy Act*.

In conclusion, the employer provided Mr. Ling with adequate information to present his case. Clause 38.03 must be interpreted taking into consideration its purpose; the purpose of this clause is to ensure that the employee is aware of the allegations against him and the employer satisfied this obligation. Furthermore, the *Privacy Act* takes precedence over the provisions of the collective agreement.

Ms. Gosselin responded that clause 38.03 cannot be ignored and cannot be made subject to the *Privacy Act* because we are dealing with two different issues. Clause 38.03 is compatible with the provisions of the *Privacy Act*. There is simply no

problem in reading them together. There is nothing in the *Privacy Act* that prohibits the employer from providing the documents in question as requested. Clause 38.03 provides a provision of protection to Mr. Ling. Mr. Ling was entitled to full disclosure of all allegations against him and to all documents the employer intended to use in support of the allegations. The purpose of clause 38.03 is to ensure that the employer does not use and rely on evidence at a hearing that have been kept secret and hushed up from the grievor.

Pleadings Concerning Board File 166-2-27472

Mr. LeFrançois, counsel for the employer, presented his arguments concerning the termination of employment, on May 11, 12 and 13, 1998. He divided them into four sections. Counsel for Mr. Ling, Ms. Gosselin, replied on August 31, 1998 and September 1 to 3, 1998, and Mr. LeFrançois responded on September 3 and 4, 1998.

Mr. LeFrançois reviewed in detail the evidence presented in support of the employer's allegations as stated in the letter of termination of April 1996 (Exhibit 1) and described by Ms. Ouellet in her testimony and Exhibit 5. Mr. LeFrançois argued that the employer demonstrated that in the case of the Vasotec incident, it had been administered in error twice a day from February 1 to 16. The prescription required only one administration at 08:00 hours from February 1 to 29, 1996. By February 16, all 28 pills had been administered. According to the employer, when confronted with this incident, on March 14, 1996, Mr. Ling answered that Mr. Osman had warned him about missing initials only. Mr. LeFrançois referred to Mr. Osman's letter of reprimand of January 4, 1996 (Exhibit 7) where he urged Mr. Ling to follow the medication policies and procedures. Mr. LeFrançois pointed out also that Mr. Ling tore this letter of reprimand in front of Mr. Osman.

The 17:00 hours Colace and the 21:00 hours Lactulose incidents of February 2, 1996 concern the non-initialling of the administration of these medications. (No initials in the appropriate squares. - Exhibit 5(f)) Mr. Ling contended, on March 14, 1996, that, even though he did not initial the appropriate squares, he nevertheless had administered these medications as required. The third reproach refers to the missing initials for the 17:00 hours Colace during the period February 10 to 19, 1996 when, on seven occasions, no initials appear for the 17:00 hours administration. The prescription had been changed and the 17:00 hours

(new) dose per day had been added to the 08:00 hours one. Mr. LeFrançois recognized that Mr. Ling was not the only nurse who made such an error. However, he considers Mr. Ling the “instigator” of the error because he did not notice the error. He had seven occasions to notice such an error. Mr. Ling should have verified the prescription every time. Exhibit 5(g) (Incident Report signed by Ms. J. Martel) proves that Mr. Ling was only responsible in part for the error; three other nurses failed to notice the change in the prescription. Mr. LeFrançois submitted that what is surprising about this incident is that, at the March 14, 1996 interview, Mr. Ling could not remember the details of this incident and could not confirm or deny the reproach. However, at the second interview, Mr. Ling pretended that the Colace had been administered and that the employer should believe him. Concerning the incident of patient R.G.’s saline compress of February 27, 1996 (Exhibit 5(d)), Mr. Ménard, an orderly, had to remind Mr. Ling that he had to do that treatment. In addition, the incident of the dressing or bandage of Mr. R. illustrates that Mr. Ling did not perform his nursing duties.

Ms. Shirley Kelly, the day nurse, testified on August 19, 1997 that she had noticed that there were too many dressing tray kits on the cart, if they were being used on the evening shift. Thus, one day she placed a bandage in a certain manner and she found that the next day the bandage was as she had left it. She decided from then on to change Mr. R.’s dressing twice during her shift to facilitate the healing of his wound. Ms. Kelly declared that she spoke to Mr. Osman about this. She reported also that Ms. Castonguay and Mr. Ménard (both orderlies) had asked her why she changed the dressing and not Mr. Ling. Mr. LeFrançois added that Ms. Kelly’s testimony was quite revealing in that she indicated that she would not accept to be treated by Mr. Ling. Ms. Bordès declared that Mr. Ling was not conscientious and professional in the performance of his duties. With respect to the Lasix, Maltlevol and Diabeta incidents of Mr. P.B., and points of pressure for Mr. D.F. of March 6, 1996, (Exhibit 5(h)), the employer reproached Mr. Ling because Ms. Giroux had to remind him to administer the medications.

Mr. Ling explained that the patient (P.B.) had not been on the unit at the time Ms. Giroux came to check (at 18:45 hours) and, consequently, he could not administer the medication in question. On March 14, 1996, Mr. Ling told Ms. Ouellet that he had been distracted, and had mentioned this to Ms. Giroux, which caused him to have

missed writing his initials. Ms. Giroux denied that Mr. Ling had told her this. In addition, Mr. Ling tried to minimize his statement to Ms. Giroux that he would stop making mistakes only when he retired. Furthermore, Mr. Ling should have noted in the patient's file that the patient had been absent from the unit at the time the medication (Furosemide) ought to have been administered (Exhibit 5(i)).

Mr. Ling had been assigned the duty of the patients' monthly vital signs. Mr. LeFrançois pointed out that the evidence concerning this incident was quite extensive. Mr. Ménard and Ms. Bordès both testified that they never saw (except in March 1996) Mr. Ling with the Hospital's sphygmomanometer. The evidence was to the effect that the monthly vital signs had to be taken from each patient at the beginning of each month and that it took two or three minutes per patient. Mr. LeFrançois submitted that Mr. Ménard was a credible witness because he retired in October 1996. He worked at Ste. Anne's Hospital as an orderly for 19 years and there was no reason for him to want to cause any prejudice to Mr. Ling. Mr. Ménard had nothing to gain by accusing Mr. Ling. Ms. Bordès' evidence should also be preferred to Mr. Ling's. She found it strange that Mr. Ling made a comment to her, in March 1996, when he took out the Hospital's sphygmomanometer. At the time, Mr. Ling was aware that the employer was investigating the February 5, 1996 Di Pietro incident. The employer also produced declarations from patients Pink, Chappell, Frosst and Brisson. Mr. LeFrançois urged the adjudicator to consider them and to consider the evidence concerning the patients' mental faculties. Mr. Ling pretended all along that he took the monthly vital signs and finally, on December 3, 1997, he testified that he finally understood why the patients and orderlies had not seen him take them. He explained that he was using his own blood pressure cuff. Mr. LeFrançois argued that this explanation is an invention. When questioned as to why he was seen in March 1996 with the Hospital's sphygmomanometer, he answered that he must have forgotten to bring his own. Moreover, if, as he pretended, the Hospital's sphygmomanometer was so defective that he preferred using his own blood pressure cuff, then why did he use it in March 1996 and on other occasions than for the monthly vital signs?

Mr. LeFrançois submitted that Mr. Ling's explanation was a last minute invention provided one and a half years later, and after having heard the employer's evidence. Ms. Bordès declared that she never saw Mr. Ling's blood pressure cuff. Mr. LeFrançois argued that surely she would have seen it had Mr. Ling really been

using it. It is a fairly large instrument which is difficult to hide in one's hands or clothing. The taking of blood pressure also requires a stethoscope. Ms. Bordès and Mr. Ménard both testified that they did not see Mr. Ling wearing one except once when he had to take the blood pressure of a patient with pneumonia, etc., (Mr. Ménard's declaration) and once early in March 1996 (Ms. Bordès' declaration). Moreover, Ms. Sauvé and Mr. Osman had reproached Mr. Ling for not taking the patients' monthly vital signs. Mr. LeFrançois pointed out that Messrs Ling and Ménard and Ms. Bordès worked closely together. Thus, they could be seen and heard when performing their duties. If one adds the noise that the Hospital's sphygmomanometer made, it is hard to believe that no one heard Mr. Ling perform his duty of the taking of the monthly blood pressure of each patient under his care. The noise of the Hospital's sphygmomanometer cannot be considered routine.

When confronted with this evidence, Mr. Ling testified that the patient was sleeping when he took his monthly blood pressure. Even if we are to believe this explanation, what about Ms. Bordès' and Mr. Ménard's statements that Mr. Ling failed to perform this duty? Mr. LeFrançois conceded that Ms. Bordès could not recall the colour, shape, and material of Mr. Ling's briefcase, where he allegedly kept his blood pressure cuff. However, she did recall its contents and what we must consider is that she never saw Mr. Ling perform this task (except in March 1996) and this evidence is confirmed by Mr. Ménard. Furthermore, Mr. Ménard was not questioned (nor cross-examined) concerning Mr. Ling's personal blood pressure cuff. In this regard, Mr. LeFrançois referred to *Re Sunbeam Residential Development Centre and London and District Service Workers' Union, Local 220*, 54 L.A.C. (4th) 54. Mr. LeFrançois submitted that, if Ms. Gosselin intended to call evidence contradicting the testimony of Mr. Ménard and Ms. Bordès, she had an obligation to cross-examine both of them concerning the blood pressure cuff.

With respect to the allegation that Mr. Ling improperly delegated his nursing responsibilities, Mr. LeFrançois presented the following submissions (Exhibit 5(k) - the disinfection with Hibidil performed by Mr. Ménard). The employer argued that Mr. Ling should have done this treatment himself. Mr. Faubert testified that Mr. Ling did this treatment only once and that Mr. Ménard was the one who did it regularly. Moreover, Mr. Ménard performed this task in the absence of Mr. Ling. Mr. Ménard declared that he performed this task on Mr. Faubert once on February 5, 1996

(Exhibit 5(d)). Mr. Ling told Ms. Ouellet and Ms. Paris that Mr. Ménard had expressed interest to do this disinfection but Mr. Ménard denied having said this. Ms. Bordès confirmed Mr. Ménard's declaration that the orderly performed this task and that it entailed washing Mr. Faubert's genital area with a washcloth soaked in Hibidil. Mr. Ling pretended that this was not a disinfection but a cleansing or washing procedure and that it was not a prescription. Finally, Mr. Ling did recognize that it was not a task that could be delegated to an orderly.

Mr. LeFrançois referred also to Mr. Ling's non-conformity to proper nursing and medical procedures. Mr. LeFrançois pointed out Ms. Fecteau's comments concerning Mr. Ling's description of how he did bandages and dressings. Ms. Fecteau criticized also Mr. Ling's dressing of Mr. R. Ms. Fecteau did not approve of Mr. Ling's use of non-sterilized scissors to cut the gauze or pack. She found that leaving the scissors in rubbing alcohol would not sterilize them, and Mr. Ling should not have used these contaminated scissors. By cutting the gauze or pack with these scissors, Mr. Ling contaminated the piece he inserted into the patient's wound and the remaining gauze or wick left in the jar. Moreover, Mr. Ling used the same contaminated gloves and his pinkies to feel the wound. Ms. Fecteau found that Mr. Ling wore the same gloves that he had used to remove the wick from the wound to feel the wound and then place a fresh piece of wick. Mr. Ling ought to have known that these gloves and his pinkies were no longer sterile. Every nurse knows that and Mr. Ling was expected to follow the basic procedures to avoid contamination. This is a basic nursing rule and this is the reason why it is not found in any of the Ste. Anne's Hospital's directives.

In addition, Ms. Castonguay testified that, when she worked with Mr. Ling from May 2, 1988 to February 18, 1992 in Unit 9A, Mr. Ling did not do Messrs. L.'s and W.'s treatments nor had she ever seen him take the monthly vital signs. Mr. LeFrançois pointed out that Mr. Ling testified that he started using his personal blood pressure cuff only as of February 1995. Thus, this meant that he did not use it when he worked with Ms. Castonguay. He would have had to use the Hospital's sphygmomanometer and Ms. Castonguay never saw him use it. Mr. LeFrançois added that Ms. Castonguay did not want Mr. Ling as her nurse.

Concerning the Di Pietro incident of February 5, 1996, Mr. LeFrançois reviewed in detail the evidence of Mr. Ménard, Ms. Bordès, Mrs. Simone Di Pietro, Ms. Marie-Claude Di Pietro, Ms. Giroux and Ms. Lanciault. Mr. LeFrançois conceded that Mr. Di Pietro had been a very difficult patient. He pointed out that Mrs. Di Pietro and Ms. Di Pietro testified that “Mr. Di Pietro had a lot of faults but he could not lie”. Mrs. Di Pietro added that Mr. Di Pietro hated Mr. Ling. Mr. LeFrançois argued that the evidence has demonstrated that Mr. Ling failed in his duty towards Mr. Di Pietro. Mr. LeFrançois explained that he failed in his duty to report Mr. Di Pietro’s refusal to eat and when he pulled Mr. Di Pietro’s arms to force him to wheel himself out of the corridor.

Concerning the allegation of inappropriate jokes and comments, Mr. LeFrançois referred to Mr. Ling’s treatment of Mr. L. and his inappropriate jokes. Mr. LeFrançois recounted the testimonies of Mr. Ménard and Ms. Bordès in this regard. Both orderlies declared that they would not like to be treated by Mr. Ling. Ms. Bordès found that Mr. Ling did not perform his nursing duties like the other nurses. Mr. Ling admitted that he had joked with Mr. L. Mr. LeFrançois reviewed also the evidence of Ms. Lillian Chatterjee and Mrs. Evelyn Chatterjee concerning Mr. Ling’s comments that Mr. Chatterjee had had a minor stroke and his joke about an earlier examination, and the comments to Ms. Lacombe and Mr. Pink. Mr. Pink was upset by the comments Mr. Ling made to his “daughter”. Mr. Pink was glad that Mr. Ling was no longer there. Mr. LeFrançois submitted that Mr. Ling lacked respect towards patients and their families. Mr. Ling’s behaviour was unprofessional. Mrs. Chatterjee found Mr. Ling vulgar and she indicated that she had not complained due to fear of reprisals towards her spouse.

At the March 14, 1996 interview, Mr. Ling did not recall making the comment about the “condom” to Mr. or Mrs. Chatterjee. However, at adjudication, Mr. Ling recalled the incident and the only point he disagreed with concerning Mrs. Chatterjee’s version, was on the use of the word “ass”. He explained that his comment was meant to be a joke. Mr. LeFrançois submitted that it was unprofessional and unacceptable for a nurse to do so. At Ste. Anne’s Hospital, the patients do not choose their nurses. Moreover, patients do not choose to be residents of the Hospital; they are there because of their personal and health situations. On the other hand, Mr. Ling worked

there by choice. Mr. Ling undertook to respect the Professional Code and Ste. Anne's Hospital Charter of Patient's Rights and Responsibilities (Exhibit 2).

Mr. LeFrançois referred in detail to Ste. Anne's Hospital's Charter. Ste. Anne's Hospital is a veterans' hospital requiring that the obligation of their nurses to respect this Charter be more onerous than nurses working at provincial hospitals. Veterans are older individuals and thus are very vulnerable. Veterans are owed such an obligation because of the sacrifice they made; they placed their lives in danger for Canada. This is the main reason why the employer finds Mr. Ling's misdemeanours so serious. Ste. Anne's Hospital cannot tolerate Mr. Ling's misbehaviour and lack of respect towards the patients. What is important here is his obligation to respect the dignity of veterans. Mr. LeFrançois questioned how Mr. Ling could have thought that his behaviour was acceptable and correct in these circumstances. It is not important that the families or the patients (except for Mr. Di Pietro) did not complain in this regard. Mr. Ling's behaviour warranted termination of his employment. Mr. LeFrançois submitted that Mr. Ling had a disciplinary record (Exhibit 7). Moreover, Mr. Ling was the sole nurse on the evening shift directly responsible for these vulnerable and older patients. The allegations against Mr. Ling are very serious and, as a whole, these misdemeanours are intolerable. Thus, it is not surprising that the employer has lost all trust in Mr. Ling.

Mr. LeFrançois reviewed Mr. Osman's letter of January 4, 1996 (Exhibit 7) and pointed out that this letter referred also to an oral reprimand imposed on December 6, 1995. Mr. Ling had been warned repeatedly, by letter and appraisals, of his shortcomings and misbehaviour. The incidents reproached in Exhibit 5 of February and March 1996 are not isolated incidents. Mr. Ling knew that the employer did not tolerate medication errors, the non-conformity to nursing procedures and the Hospital's directives, inappropriate comments towards patients and their families, etc. Mr. Ling did not present a grievance contesting Mr. Osman's letter of reprimand or with respect to any of the performance evaluation reports. Moreover, the letter of reprimand of January 4, 1996 is a clear warning that if Mr. Ling persisted in his practice of negligence regarding the medication, and their policies and procedures, he could be subject to more severe disciplinary action (Exhibit 7). Mr. LeFrançois pointed out that Ms. Sauvé and Mr. Osman raised the same issues concerning Mr. Ling's performance. Both reproached the fact that he did not take the patients' monthly vital

signs and errors in the administration of medication (missing initials, errors in medication, etc.). Mr. LeFrançois submitted that Mr. Ling ignored all these repeated warnings and even tore up the January 4, 1996 reprimand in front of Mr. Osman. Mr. Ling simply continued performing his duties negligently, repeating the same errors. Furthermore, he even went as far as falsifying the monthly vital signs. Thus, what Mr. Ling learned was to hide his lack of performance and his obligation as a nurse to provide care in a professional manner.

Mr. LeFrançois referred to the 1989 decision from the Disciplinary Committee of the Order of Nurses of the Province of Quebec (Exhibits 79 to 83). Mr. LeFrançois noted that the Disciplinary Committee had no knowledge of the agreement between counsel in that case and imposed a reprimand and a fine. The legal effect is that Mr. Ling pleaded guilty and was found guilty of the 1987 alleged infractions. Mr. Ling lied in his application to Ste. Anne's Hospital (Exhibit 74). Mr. LeFrançois submitted that the infractions for which Mr. Ling was found guilty of in 1989 are similar to the ones reproached in 1996. The 1989 decision should have been a clear warning to Mr. Ling of what the Disciplinary Committee found intolerable and that it could result in serious consequences to his licence and employment. Mr. Ling testified that he could not recall this decision. However, we have no evidence that he had never received a copy of it.

Mr. LeFrançois reviewed in detail Ms. Sauvé's testimony and Exhibits 8 to 12, inclusive. Mr. LeFrançois concluded that this evidence supports clearly the allegations against Mr. Ling. Mr. Ling had problems getting along with orderlies (Mr. Parent); he made medication errors; he did not do prescribed treatments; he failed to take the vital signs; etc. Ms. Sauvé found Mr. Ling to be lazy. She did not trust him. She declared that if Mr. Ling was reinstated, she would fear for the patients' safety.

Mr. LeFrançois argued that the burden of proof has been met by the employer. Mr. Ling's termination of employment is warranted in the circumstances. Mr. Ling worked as a nurse on the evening shift in a veterans' hospital environment. This work required that he be professional, autonomous, responsible, and a team leader in charge of orderlies. Since he worked evenings, it was very difficult for the employer to be aware of incidents on his shift. However, once Ms. Ouellet started to investigate, incidents involving Mr. Ling came to light. The employer discovered medication

errors, the non-taking of monthly vital signs, and his lack of judgement towards the patients and their families. Thus, it was only when the employer started investigating the Di Pietro incident that a series of other incidents came to light. According to the employer, each of the alleged incidents is very serious and justifies discipline. A number of the incidents are repetitions of similar past incidents that the employer (Ms. Sauvé and Mr. Osman) had already brought to Mr. Ling's attention. The question is, therefore, based on this clear evidence, is the termination justified? Mr. LeFrançois conceded that the purpose of a disciplinary penalty is corrective and not punitive. Nevertheless, in this case, the same reproaches were raised to no avail and two disciplinary penalties had already been imposed without result (the oral reprimand of December 1995 and the written reprimand of January 1996 (Exhibit 7)). Thus, was the discipline imposed, namely, the termination, warranted? Mr. Ling did not take kindly to Ms. Sauvé's remarks and Mr. Osman's letter of reprimand. Mr. LeFrançois concluded that Mr. Ling did not take these criticisms well and seriously. He did not mend his ways and kept repeating the same medication errors and actions (remarks and jokes) or inactions (monthly blood pressure; initials in appropriate squares). Even at the adjudication stage, Mr. Ling did not accept what was reproached of him. He insisted that the errors, omissions and jokes were not his fault. He found Ms. Sauvé too strict and her comments not very constructive. Ms. Giroux, in his view, acted like a school teacher and "Ms. Ouellet wanted to get him". He declared that he should not have been treated like that; he was a professional. Mr. LeFrançois agreed but Mr. Ling had not behaved professionally. Thus, what choice did this employer have? Mr. Ling knew that his misbehaviour was so serious that it could result in the termination of his employment. He could not believe otherwise. His behaviour was inexcusable.

The employer is of the view that Mr. Ling cannot be reinstated. Mr. Ling had been warned about his shortcomings and misconduct not only by this employer but also in 1989 by the Discipline Committee of the Order of Nurses of the Province of Quebec. Mr. Ling did not improve his behaviour despite all the opportunities he had over the years to do so. Furthermore, the breach of trust between the employer and Mr. Ling has been broken and cannot be mended. Mr. Ling lacked credibility in his testimony, lacked frankness, and showed no remorse for his behaviour and breaches. Even when confronted with clear evidence, Mr. Ling refused to recognize the reality and acknowledge the facts. Mr. Ling lacked frankness when he told Ms. Ouellet that Mr. Ménard had shown interest to disinfect Mr. Faubert's genital area. Moreover,

Mr. Ling testified that this was a disinfection and not a prescribed treatment in order to minimize the incident. However, the evidence demonstrated that this was a prescribed treatment and Mr. Ménard denied categorically that he had shown interest in this disinfection. Mr. LeFrançois questioned why Mr. Ménard, who was about to retire, would want to perform such a task. Thus, we should prefer Mr. Ménard's version in this regard and conclude that Mr. Ling was telling a lie. The second lie concerns Ms. Giroux. Mr. Ling told Ms. Ouellet and Ms. Paris that he had told Ms. Giroux that he had been distracted. Ms. Giroux denied that Mr. Ling said this to her. On March 28, 1996, he was asked what had distracted him and Mr. Ling could not reply. Thus, we should prefer Ms. Giroux' version. Another lie concerns Mr. Ling's declaration at adjudication that he had had a conversation with Ms. Marie-Claude Di Pietro when she told him that her father was a difficult man. Ms. Di Pietro denied such a conversation. Mr. Ling invented also his explanation concerning the monthly vital signs issue by referring to his personal blood pressure cuff and stethoscope.

Mr. LeFrançois submitted that Mr. Ling made three declarations that question his credibility in this regard. Mr. Ling declared that he did not use the Hospital's sphygmomanometer because it was defective. However, the other nurses did use it and no one brought to the Hospital's attention that this equipment was defective. Then, Mr. Ling indicated that when the patients were ill, he did use the Hospital's sphygmomanometer. Thirdly, Mr. Ling added that he used his personal blood pressure cuff to take the patients' monthly vital signs. Ms. Bordès and Mr. Ménard declared that they never saw him use the blood pressure cuff and stethoscope. Moreover, when confronted by Ms. Bordès' declaration that she saw him with the Hospital's sphygmomanometer in March 1996, Mr. Ling replied that he "may have forgotten" to bring his own to work that time. Mr. Ling stated that he started using his own blood pressure cuff in March 1995 and he used it to collect the patients' monthly vital signs. Mr. LeFrançois questioned why didn't Mr. Ling say that he forgot his blood pressure cuff in March 1996 instead of using the words that he "may have forgotten" it. Mr. LeFrançois considered this a mental exercise to cover his misconduct. Mr. Ling lied also when he completed the questionnaire on January 19, 1988 (Exhibit 74) informing the Hospital that he had been employed at the Montreal Neurological Institute from 1982 to 1985. When confronted with this fact, Mr. Ling replied that Ste. Anne's Hospital could have checked this matter.

Mr. LeFrançois submitted that Mr. Ling tried to hide the complaints against him from Ste. Anne's Hospital. Mr. Ling knew that his misconduct was unacceptable and he wanted to conceal the complaints from his new employer.

Mr. Ling declared that Ms. Ouellet and Ms. Paris did not mention the names of the patients during the two March disciplinary interviews. However, Ms. Poupart's notes reflect the names of patients (Exhibits 64 and 66) when discussing the vital signs for patients Chappell, Brisson, Frosst and Pink; the irrigation for Mr. L.; the Di Pietro incident; the incident concerning the Colace for patient C.A.; the dressing of Mr. Faubert; and the remarks and jokes with Messrs. Pink, L. and Chatterjee. Furthermore, Ms. Poupart and Mr. Ling did not complain about the process during these two disciplinary interviews. Mr. Ling could answer the questions and he did so.

Moreover, Mr. Ling tried to mislead concerning the date when he applied for employment insurance benefits. The second pink slip provided by the employer is dated October 1996. Mr. Ling testified that shortly after receiving it, he presented his claim. However, this was not so because there is proof that he presented his claim on January 9, 1997. Mr. Ling lacked transparency and frankness in this regard. He wanted to show that the reason he did not qualify for benefits was due to the employer's negligence in its six-month delay to provide an accurate pink slip. However, Mr. Ling did not indicate to the Employment Insurance Commission that the delay was caused by the employer (Exhibit 96). At the adjudication, Mr. Ling referred to the employer's delay but he failed to indicate that he sat on his claim for two months.

Mr. LeFrançois submitted that Mr. Ling's behaviour during the disciplinary meetings should also be taken into account in considering his lack of candour. Mr. LeFrançois pointed out that Mr. Ling told lies to Ms. Ouellet and to Ms. Paris and even tried to minimize certain incidents to excuse his misconduct. Mr. LeFrançois considered that Mr. Ling did not listen to his supervisors. For years, he had been told to perform his duties, not to forget to take the patients' monthly vital signs, to initial the appropriate squares, and not to make medication errors. When, finally, in March 1996 he took the vital signs, it was only in fear of serious consequences and not to mend his ways. According to the employer, Mr. Ling failed to perform competently even to the minimum expected. He failed to administer basic nursing care. In

addition, he lacked credibility. Moreover, his lack of judgement cannot be amended. The employer is adamant that Mr. Ling cannot be reinstated to his position.

In support of his submissions, Mr. LeFrançois cited: *Roger* (Board file 166-2-21117); *Bériaux* (Board file 166-2-22357); *Mulroy* (Board file 166-2-22141); *Re Central Park Lodges Ltd. and S.E.I.U., Locals 204 & 268*, 44 L.A.C. (4th) 171; *Re Cambridge Memorial Hospital and S.E.I.U., Local 204*, 58 L.A.C. (4th) 195; *Re Municipality of Metropolitan Toronto and C.U.P.E., Local 79*, 9 L.A.C. (4th) 178; *R. v. Bernier*, (1997) R.J.Q 2404 to 2411; *Slattery* (Board file 166-2-17850); *Lawrence* (Board file 166-2-21341); *Hébert* (Board files 166-2-21575 and 21666); *Deigan* (Board files 166-2-25992 and 25993 and 161-2-743; Federal Court decision T-1365-95 (unreported)); and *Matthews* (Board file 166-2-27336; Federal Court decision T-623-97 (unreported)).

In response to the adjudicator's request that the parties address the question of compensation in lieu of reinstatement, Mr. LeFrançois replied that it should amount to no more than one month compensation per year of service. Mr. LeFrançois added that no consideration be given to any other of Mr. Ling's requests (e.g. dental fees; loss of RRSP benefits; compensatory (moral) damages; etc.)

Ms. Pierrette Gosselin presented the following arguments. Ms. Gosselin reviewed in detail the evidence presented concerning each allegation against Mr. Ling. The allegation of the Vasotec incident is that Mr. Ling administered a second dose of Vasotec when this medication had been ordered reduced to only one dose a day. The Hospital's policy on medication errors (Exhibit 27) provides that the Head Nurse inform the physician when a medication error occurs. This policy was not followed in this case. Thus, according to Ms. Gosselin, this medication error could not have been serious. Moreover, the same medication error committed by Ms. Élène Lanciault occurred on December 14, 1995 for the same medication and patient (Exhibit 30). Ms. Lanciault noted this error without any consequences and she was not disciplined for this error. This indicates that this error was not serious. However, in the case of Mr. Ling, his employment was terminated. Furthermore, there is no evidence that any action was taken against the other nurses who made the same error in February 1996. Ms. Lanciault had also been one of the nurses working the evening shift for that period in question.

Ms. Gosselin pointed out the unequal and discriminatory treatment of Mr. Ling by his employer. The employer had the responsibility to institute a secure system to avoid such errors and it did not do so. Thus, the employer has a share in the responsibility of this error. Moreover, the nurses on the day shift did not make any notation in the nurses' notes concerning the Vasotec error when nurses have such an obligation in cases of medication errors. In addition, on February 14, 1996, Ms. Hélène Rivard, a day nurse, took the blood pressure of the patient in question and it was normal (160 over 80) (Exhibit 90). Vasotec is prescribed in cases of high blood pressure. The patient suffered no ill-effects because of this error. Furthermore, Ms. Ouellet did not mention this medication error to Mr. Ling until the disciplinary meeting of March 13, 1996. The employer had an obligation to provide information promptly to Mr. Ling of "his error" (if such was the case). He should have been advised of this error within a reasonable period. Exhibit 5(e) is hearsay; the person who wrote and signed it did not testify. Ms. Gosselin emphasized the sentence whereby Ms. Joannette informs that the patient "probably would have continued to receive..." (« aurait probablement continuer [sic] à recevoir... »). Ms. Joannette informed Mr. Ling by accusing him of committing this error. The manner in which Mr. Ling was informed of the error is unacceptable in that he was tricked into admitting it. This caused him severe prejudice and demonstrated the employer's bad faith. He was wrongly accused.

There is simply no evidence that Mr. Ling made this error. At 08:00 hours on February 16, 1996, Ms. Rivard discovered that there were no more Vasotec pills for patient S.C., thus, she promptly proceeded to renew the prescription (Exhibit 36(b)). On this request, we find no mention as to the reason for such a renewal. Ms. Annick Hébert renewed the prescription and offered no reason for it. The label was not kept and could not be submitted in evidence. The evidence demonstrated that no one could ascertain the exact number of Vasotec pills that had been dispensed on or about February 1. Mr. Bastien testified as to 36 pills but there is no evidence that this was so. Even Mr. Bastien was confused when he was questioned on Exhibit 5(e). The physician's prescription was also not submitted in evidence. Thus, we do not know who made the error: was it at the prescription stage; the pharmacy; the nurses may have dropped pills; etc.? Ms. Poupart and Mr. Ling testified that the pharmacy did make dispensation errors. Mr. Ling's spontaneous admission was made

under duress and in reply to an accusation. The employer had an obligation to make a proper inquiry into this error and it failed to do so. Had Mr. Di Pietro not accused Mr. Ling on February 5, 1996, the employer may not have handled the Vasotec situation in this fashion. Ms. Gosselin wondered whether without the Di Pietro story the employer would have treated Mr. Ling in the same way as it did Ms. Lanciault concerning the Vasotec incident of December 14, 1995. Even Ms. Lanciault, a very competent and meticulous nurse, made the same error without noticing it. This shows that it is quite possible that it was the pharmacy that failed to dispense the prescribed number of pills. When the error was discovered on February 16, 1996, it was treated in a routine fashion. However, when the Di Pietro incident occurred, the employer decided to treat Mr. Ling in a discriminatory manner.

Ms. Gosselin argued that, in case I found Mr. Ling to have committed the alleged error, there are a number of mitigating factors to consider. The error was not serious. Even the physician noted, in Exhibit 28, "This is not a big deal." Exhibit 29 indicates that the patient suffered no ill-effects (if he received the two doses a day as alleged). Mr. Ling administered during his shift twice as much medication as the other nurses on days and nights. Exhibit 70 indicates that he administered 596 doses in one week (February 9 to 15, 1996). Ms. Ouellet should have taken this into consideration when, on March 13, 1996, she asked Mr. Ling whether he had administered the second Vasotec dose to patient S.C. between February 1 and 16, 1996. Exhibit 70 shows also that patient S.C. had 18 pages in his medical file. Mr. Ling told Ms. Ouellet that it was "a dog's lunch". The employer ignored this fact. Furthermore, how could such an error be made by three nurses over a period of five days without detection. This act should raise a serious concern to this employer concerning its Risk Management Program. Errors do occur but this employer has demonstrated bad faith and unreasonable attitude. The nurses making such errors feel bad already; there is no need to impose further punishment. Mr. Neil Davis, in his article (*supra*) (Exhibit 71) explains this very well. Mr. Davis concludes that such errors should be reported in a non-punitive fashion otherwise nurses will try to hide them to avoid discipline. Non-reported errors will only lead to a sense of false security. A punitive system is, therefore, unproductive because hospitals want to know about these errors to design a system of zero tolerance. Moreover, there is a difference between actual and potential errors (Exhibit 71). To prevent errors, the institution must have the proper staff working a reasonable load. In Mr. Ling's case,

there was a shortage of staff since he had to assist the orderlies. Moreover, the work environment must be conducive to reporting errors; there must exist a sense of trust between management and staff. In Mr. Ling's case, there was a problem also with lines of authority. He was the nurse in charge on evenings and, at the same time, he provided nursing care.

Ms. Gosselin addressed the allegation concerning the omission of Mr. Ling's initials in the appropriate squares, as follows. The omitted initials for the Colace and Lactulose incident of February 2, 1996 did not constitute any form of medication error or a violation to any of the employer's directives and policies. The employer had the burden of proof and it failed to demonstrate this allegation. Exhibit 4 does not constitute a Code of Discipline; nothing in this document informs a nurse that he/she would be subject to discipline if this policy was not respected. The incident/accident report is only a tool within the scope of the Risk Management Program. For this program to be minimally successful, it cannot be punitive. Furthermore, the omission of initials does not constitute a medication error. Mr. Bastien and Dr. Paquette both testified in this regard. The nursing initials do not necessarily mean that the patient did not get the medication. In addition, the Report on Medication Errors does not envisage the omission of initials. The employer has an obligation to clearly inform its nurses of the policies and rules that must be followed. This document fails to indicate that such an omission could result in discipline. Thus, when does such an omission warrant discipline? According to Ms. Gosselin, this is a question of appreciation of the evidence and judgement. There is no evidence that Exhibit 32 was distributed to the nurses and there is no evidence that Mr. Ling received it. Exhibit 32 is a study. Mr. Bastien and Dr. Paquette testified clearly that these omissions are not medication errors. They testified that the omissions of the nurses' initials are administrative errors. Moreover, Colace and Lactulose are administered to relieve constipation and this must be taken into account in deciding whether termination or even discipline is justified in this case. Furthermore, the omission occurred on February 2, 1996, but was only identified on March 17, 1996, and brought to Mr. Ling's attention on March 28, 1996. Exhibit 5(f) indicates that Ms. Nadine Jadotte noticed the omission on March 17, 1996. Ms. Gosselin submitted that this proves that a systematic revision of all medical charts was undertaken to identify errors that could be attributed to Mr. Ling. This shows a discriminatory attitude towards Mr. Ling. The employer reproached this incident to Mr. Ling only. This allegation

does not warrant discipline and the other nurses who committed the same omission were not subject to discipline. Moreover, there is a difference between the missing initials and whether or not the medication was administered. Ms. Gosselin added that "Part 4" of the Incident/Accident Report, indicating what measures had been taken to correct the omission, was never completed (Exhibit 5(f)), which indicates that the employer uses this form for a different purpose than it was intended, namely to discipline employees. Furthermore, the Disciplinary Report (Exhibit 5(a)) is misleading because it says that this error was discovered during an end-of-the month routine verification. This is not true because it was noticed on March 17, 1996. Moreover, Ms. Jadotte was not called to testify. Ms. Gosselin advanced the thesis that Ms. Jadotte was assigned to find errors that could be attributed to Mr. Ling to improve the disciplinary case against him. On March 28, 1996, and after a delay of almost two months, it was impossible for Mr. Ling to remember this omission and indicate whether or not he had administered these medications. It is worthy of note that, during a period of six weeks, Mr. Ling had administered 3,600 doses (600 doses each week).

Mr. Ling had to answer Ms. Ouellet's and Ms. Paris' questions to the best of his ability. His affirmative reply was reasonable in the circumstances. He did not have access to the medication charts. Ms. Gosselin considered Ms. Ouellet's and Ms. Paris' action in this regard as harassment. Mr. Ling did not commit a medication error and the employer's six-week delay to inform him of the error was unreasonable. Exhibit 5(f) does not prove an error and this incident does not warrant discipline. It is Mr. Ling who placed the label on the chart and Ms. Lanciault did not notice the omission.

Exhibit 5(g) refers to Ms. Martel's error to register the 17:00 hours administration of Colace for patient C.A. As a result, according to the employer, Mr. Ling failed to administer Colace to this patient during 10 days. No one noticed this error for 10 days. The Incident/Accident Report is dated February 23, 1996. The error occurred between February 10 and 19. The day nurse responsible for the notations on the patient's medication chart had the responsibility to indicate the times the medication had to be administered. Ms. Martel failed to inscribe the 17:00 hours dose. Ms. Gosselin submitted that it is nonsense to expect the evening nurse to check the prescription (and compare it to the medication chart) every time

he/she has to administer the medication in question. If that was the case, the evening nurse would not have enough time in his/her shift to perform his/her tasks. Mr. Ling had 34 patients and, on average, each patient had eight pages of medication. Thus, it was unreasonable to expect Mr. Ling to check each prescription every time he administered a medication. The error was Ms. Martel's and the employer took no action against her; it disciplined Mr. Ling instead, and such an action is clearly discriminatory. Furthermore, the error was discovered on February 23, 1996 but it was brought to Mr. Ling's attention only on March 28, 1996. In addition, the medication in question was Colace that resulted in no consequences. Ms. Gosselin submitted that it is important to differentiate between categories of medication. None of Mr. Ling's reproaches concern serious controlled drugs or narcotics. All the allegations concern laxatives or blood pressure medication. Thus, these alleged errors caused no serious consequences at all to the patients. These incidents were not serious and it is a mental aberration to ask an evening nurse to notice an error committed by the day nurse when there are 350 pages of medication. The negligence in this case was the employer's in not informing Mr. Ling, on or about February 23, 1996, of this incident and to confront him about it only on March 28, 1996.

Exhibit 5(h) concerns the omission of initials for Lasix, Maltlevol and Diabeta (patient P.B.), belovent puffer (patient C.C.) and point of pressure (patient D.F.) It is worthy of note that patient D.F.'s point of pressure was prescribed as needed (Exhibit 5(h)). The nurse was required to change the position of his foot to relieve pressure to his heel. Mr. Ling declared that he did it but he had not yet written his initials when Ms. Giroux did her spot-check. Ms. Gosselin submitted that Ms. Giroux's spot-check at 17:00 hours was untimely; 17:00 hours was an extremely busy time; medication was prepared and administered; suppers were distributed; etc. Ms. Giroux did not consider this when she accused Mr. Ling of the missing initials. Therefore, such a spot-check was unreasonable. The practice for nurses was to insert their initials when they had the time. Between 16:00 and 18:00 hours, the workload was intense. Thus, later on in the evening, when the nurse was more free, he/she would take care of the administration (such as completing nurses' notes; inscribing initials; etc.) It was a question of prioritizing the nursing duties. If the employer's priority was the inscription of initials, this should have been conveyed to the nurses. The purpose of

Ms. Giroux's spot-checks of February 29 and March 6 was to specifically target Mr. Ling and find errors to impute to him.

Concerning Mr. Ménard's allegation that he had to remind Mr. Ling to do patient R.G.'s compress pack, Ms. Gosselin pointed out that when this alleged incident occurred, it was Mr. Ling's first day back at work from leave. When Mr. Ling left on leave on February 16, 1996, this saline compress had been discontinued. On February 20, 1996, a new prescription came into effect and Mr. Ling returned to work on February 27, 1996. The day nurse, who must brief the evening nurse, failed to inform Mr. Ling of this change in prescription. When Mr. Ménard asked Mr. Ling whether he had a dressing to do for patient R.G., the latter went to check. So, what is the problem? ("It was no big deal", as stated by the physician.) The evening and day nurses and orderlies work as a team. Moreover, Mr. Ménard and Ms. Bordès alleged that the incident involved a dressing when in fact it concerned the application of a compress or pack. Ms. Gosselin argued that this fact was deliberately exaggerated by Ms. Ouellet when she questioned the orderlies. The employer's purpose was to intentionally build a file with insignificant events and render them more serious than in reality. This proves the lack of collaboration and tolerance towards Mr. Ling. No employee could survive in such a work environment. The employer's attitude in this case was despicable; they spied on Mr. Ling and built a file on nothing in order to prejudice him as a nurse. None of the above justifies a disciplinary penalty. There simply was no wrongdoing committed. Patient R.G. received his compress. The day nurse had the responsibility to inform Mr. Ling of the change. Exhibit 5(s) indicates that on January 28, 1996, the saline compress was discontinued and Mr. Ling noted this. The prescription was reactivated on February 20, 1996 by the day nurse. Moreover, it was prescribed "PRN" (as needed). Thus, the employer had nothing to reproach. The only reproach may go to the day nurse who failed to inform Mr. Ling of the change. Furthermore, this incident was only brought to the attention of Mr. Ling on April 26, 1996 (Exhibit 1). Ms. Poupart's notes of the March 13 and 28, 1996 meetings make no mention of this allegation.

Ms. Gosselin pointed out that there are incidents that were the subject of declarations at this adjudication that were never mentioned at the disciplinary meetings or in the letter of termination (Exhibit 1). Ms. Gosselin referred to Ms. Chatterjee's testimony concerning Mr. Ling's statement that her father had

probably had a “stroke”, and Mr. Ménard’s allegations that he had to tell Mr. Ling about patient R.G.’s saline compress. Ms. Gosselin submitted that Mr. Ménard’s testimony contained lies. Mr. Ménard insisted that the “saline compress incident” did not occur on Mr. Ling’s first day back at work following his vacation. This fact questions Mr. Ménard’s credibility. Ms. Gosselin suggested that Ms. Ouellet pushed the three orderlies (Messrs. Ménard and Legault and Ms. Bordès) to denounce Mr. Ling. The orderlies were intimidated. According to Ms. Gosselin, Mr. Legault testified at this adjudication contrary to what he had declared in writing to Ms. Ouellet (Exhibit 5(l)) and Ms. Bordès was very concerned about her performance evaluation reports. When Ms. Bordès first testified on April 17, 1996, it was the time of her performance evaluation.

Ms. Gosselin addressed in detail the reproach that Mr. Ling failed to inscribe the code “X” in the case of patient P.B. who, at the 17:00 and 18:00 hours medication time, had been absent from the unit. Ms. Gosselin referred to Ste. Anne’s Hospital’s procedure concerning the use of the medication sheet (Exhibit 4). Paragraph 8 provides for the registration of the date, signature and initials in the appropriate register and medication sheet. Subparagraph 8.5 requires the nurse who must leave his/her shift, and has been unable to administer the medication, to write the code “X” so as to inform the nurse on the next shift. Ms. Gosselin questioned what the employer is really alleging. Is the employer alleging that Mr. Ling did not write “X”? However, when Ms. Giroux made this reproach, patient P.B. was absent from the unit and Mr. Ling was still on the unit; he was not leaving his shift. Thus, subparagraph 8.5 has no application in this case. Furthermore, Mr. Ling wrote in the nurses’ observation notes that patient P.B. was absent at that time. Mr. Ling did not violate subparagraph 8.4, 8.5 or 8.6. Mr. Ling did administer the medication in question when the patient returned. Thus, it was unnecessary to write the code “X”. Ms. Giroux’ request was premature and this again shows the employer’s bad faith.

Concerning the code “X” incident, Ms. Giroux came to check Mr. Ling with hostility. On March 6, 1996, Mr. Ling tried to explain to Ms. Giroux that the medication could not be administered to patient P.B. because he was absent from the unit. She simply ignored this fact. The medication was administered to the patient (P.B) at 20:00 hours. However, none of these facts appear on Ms. Giroux’ Incident/Accident Report (Exhibit 5(h)). The nursing notes do attest to these facts but

the Risk Management Program received only the Incident/Accident Report. Ms. Ouellet demonstrated her total contempt of the Risk Management Program because she used these reports solely in support of disciplinary action. This proves also that the employer had prejudged and decided Mr. Ling's fate before ever hearing his side on March 13 and 28, 1996.

None of the alleged incidents required the intervention of a physician. The only time that a doctor was called was for the Vasotec incident and it was just to create a scenario to blame Mr. Ling. Ms. Gosselin emphasized that none of the patients suffered ill-effects because of these omissions of initials or an "X". Ms. Gosselin raised the question of whether the omission of initials was in fact a medication error and could justify discipline. Such an omission is not a procedural breach of the administration of medication since, according to Exhibit 58, these omissions are non-reported "errors".

Concerning the allegation that Mr. Ling falsified the monthly vital signs (Exhibit 5(r)), Ms. Gosselin argued that the taking of the patients' monthly vital signs was not a task normally assigned to the evening nurse. Mr. Ling was the only evening nurse to whom such a task had been assigned. Exhibit 57 (Nursing Rules of Ste. Anne's Hospital's Nurses' Committee, September 1995) provides that the taking of the vital signs of each patient is executed on a monthly basis by the nurses on the day shift (page 6). Exhibit 90 is a copy of the record of vital signs and blood pressure for Messrs. Frosst, Chappell and Brisson for the period from spring 1995 to March 1996. Ms. Gosselin compared Exhibits 90 and 5(r) and concluded that the vital signs of these three patients had been taken by various persons and very often during this period. Ms. Gosselin questioned how Mr. Ling's notations of Exhibit 5(r) were used since he did not indicate the hour when the vital signs were taken. Exhibit 90 does note the hour and day for each taking of the blood pressure. This shows that the day nurse had also taken the blood pressure of these patients. Thus, these documents raise an issue of credibility concerning Messrs. Pink, Faubert, Chappell, Frosst and Brisson's declarations. The evidence is to the effect that a very large number of different nurses were involved in taking the patients' blood pressure and vital signs at various times in a month.

Mr. Chappell signed a declaration that he could not remember Mr. Ling taking his blood pressure (Exhibit 5(m)). Mr. Ling declared that he did it in February and March 1996. Exhibit 90 does note the same numbers as Exhibit 5(r) (138/64) for February but none for March 1996. Concerning Mr. Frosst, Mr. Ling took his blood pressure only in February 1996. Mr. Frosst signed a declaration that Mr. Ling did not take his blood pressure every month (Exhibit 5(o)). This is therefore true. For Mr. Brisson, Mr. Ling declared that he took his blood pressure in February 1996 and this does appear on Exhibit 90 (104/68). Mr. Ling testified that it was quite possible that Mr. Brisson was asleep when he took his blood pressure and the numbers 104/68 do support this declaration. In February and March 1996, Mr. Brisson had his blood pressure taken 13 times. Mr. Pink recalled that Mr. Ling took his blood pressure in March. Ms. Gosselin concluded that the employer has not demonstrated that Mr. Ling registered false data in Exhibit 5(r).

Moreover, Mr. Ling declared that it was normal for orderlies and patients to not hear or remember him using a blood pressure machine. This was routine and nothing out of the ordinary. Ms. Ouellet and Ms. Paris did not confront Mr. Ling to inform him that they suspected him of not taking the patients' monthly vital signs because the orderlies had declared that they had not heard or seen him use the Hospital's sphygmomanometer. It is only when Ms. Bordès testified that this question arose. Hence, in response, Mr. Ling provided his explanation as to why the orderlies had not seen him with the Hospital's sphygmomanometer. Ms. Gosselin referred to the text by Messrs. Stephen Krashinsky and Jeffrey Sack, *Discharge and Discipline*, published by Lancaster House. Had the employer informed Mr. Ling that it relied on these orderlies' declarations, Mr. Ling would have provided his explanation as he did at this adjudication hearing. Ms. Gosselin argued that Mr. Ling did not lie. His explanation is credible and coherent; it is compatible with the facts of this case. Mr. Ling used his own stethoscope which the employer returned to him in April 1997. He also used his own computer and cellular telephone. He utilized his own equipment and material and this was not prohibited. Thus, it follows that he used also his own blood pressure cuff. This is very logic. He used the Hospital's sphygmomanometer only in cases of emergency and when needed. Ms. Barbas and even Mr. Ménard described the Hospital's sphygmomanometer as an antiquity and defective at times. It was very noisy and disturbed the patients when wheeled around.

Ms. Bordès' credibility left a lot to be desired. She declared that she never saw Mr. Ling use or bring the blood pressure cuff. But, she could not even remember Mr. Ling's briefcase; she could not even describe it. Ms. Bordès lied and why should the adjudicator prefer her version when even Ms. Préfontaine had not believed her in an earlier incident. So why believe her this time? The employer was wrong to rely on Ms. Bordès' declaration when it had already experienced her lack of credibility. Ms. Ouellet went so far as to declare that Ms. Bordès came to her because she felt a need to "open up". However, Ms. Bordès testified that she did not voluntarily decide to make declarations to Ms. Ouellet but that she simply answered questions put to her. Ms. Bordès declared also that Mr. Ling did not check Mr. Faubert's "wound". However, that patient did not have a wound. Ms. Ouellet should have inquired further into this misleading statement. The same can be said about Mr. Faubert's dressing when there was no dressing. Ms. Gosselin read the definition of disinfection and dressing as found in the 23rd edition of the *Legarnier Delaware Medical Dictionary* (Exhibit 91). Mr. Legault also talked about Mr. Faubert's dressing (Exhibit 5(l), third paragraph). Ms. Gosselin argued that there is an important distinction between a dressing and a disinfection. The patient himself (Mr. Faubert) used the same terminology. This is not a minor confusion. Ms. Ouellet had an obligation to check this fact and to make sure that there was a dressing as alleged by these four witnesses. Ms. Ouellet was misled and decisions were taken on the basis of erroneous declarations. Furthermore, Exhibit 5(k) shows that on February 8, a nurse failed to disinfect Mr. Faubert's penile area at 14:00 hours. For Ms. Ouellet, Mr. Ling's "wrong" to have delegated the disinfection to Mr. Ménard is as serious as a nurse missing a treatment. Ms. Gosselin concluded that for Ms. Ouellet, the errors committed by the day nurses (or Ms. Lanciault) were not serious but when Mr. Ling erred, it warranted discipline and even a termination of employment. Mr. Ling's errors took on an excessive importance. The employer ignored the same incidents and errors committed by the day nurses but found extreme fault and disciplined Mr. Ling. The employer could not forgive Mr. Ling.

According to Ms. Gosselin, the improper delegation of nursing responsibilities mentioned in the letter of termination (Exhibit 1) refers to the misleading allegation that, on February 5, 1996, Mr. Ling asked Mr. Ménard to do Mr. Faubert's dressing. She pointed out that this alleged wrongdoing happened on the same date as the alleged Di Pietro incident. She emphasized that this treatment with Hibidil was not a

dressings but a disinfection and that the three orderlies and Mr. Faubert lied about it. Ms. Gosselin referred to Exhibit 5(j), Ms. Préfontaine's memorandum of November 3, 1994, enumerating the "care-related tasks that nursing orderlies can perform". The employer relied on this document in support of its allegation that Mr. Ling could not delegate Mr. Faubert's treatment to Mr. Ménard. The employer alleged that Mr. Ménard could not perform a disinfection with Hibidil on Mr. Faubert's penis. Ms. Gosselin pointed out that Exhibit 5(j) does not mention the tasks that could not be performed by the orderlies; it only enumerates six tasks that the orderlies can execute. Ms. Gosselin added that the evidence demonstrated that the orderlies performed numerous tasks (at least 12) not mentioned in Exhibit 5(j). To this effect, Ms. Gosselin referred to the job description of the orderlies (Exhibit 23), where an orderly is required to clean, wash and bathe patients, give certain treatments and skin care, etc. Ms. Gosselin argued that if we apply a strict interpretation to Exhibit 5(j), orderlies cannot perform their normal duties as described in Exhibit 23. Mr. Ling explained that the orderly's job is to clean and wash patients. Thus, the use of Hibidil, which is readily available on the floor and is like rubbing alcohol, is within the competence of the orderly. Mr. Faubert's treatment was similar to washing or putting him to bed. "Reasonableness is presumed", and Mr. Ling's interpretation of these documents is reasonable. Moreover, Exhibit 23 must be read logically and in its wider sense. When it is mentioned that a task must be performed at the nurse's request under his/her supervision and direction, it does not follow that the nurse must remain physically next to the orderly every time this task is executed. Exhibit 91 supports Mr. Ling's interpretation. The Hibidil treatment was a washing and cleansing that was part of the orderly's duties. It is interesting to note that Exhibits 5(j), 23 and 3 (job description and duties of an assistant nurse) do not mention a disinfection.

Moreover, the evidence demonstrated that Exhibit 5(j) was not applied uniformly at Ste. Anne's Hospital, and there is no mention of discipline if this memorandum is not followed. The fact that Mr. Ménard did Mr. Faubert's disinfection had no ill-effect or consequence. Ms. Bordès misled further when she said that the disinfection was done with a washcloth. Even Ms. Kelly conceded that she used washcloths in a diaper. These two treatments are similar and both used washcloths.

Ms. Gosselin addressed Mr. Wallace's statement, in the letter of termination (Exhibit 1), that "it is indicative of a type of behaviour that not only shows total disregard for the well being of patients but can also have serious consequences to their health...." Ms. Gosselin submitted that this statement is without foundation and totally unwarranted. No patients suffered ill effects. To the contrary, Mr. Ling showed great respect towards the patients and performed to the best of his abilities. In support of this, Ms. Gosselin reviewed Mr. Ling's testimony concerning each of the 34 patients.

Concerning the allegation that, on February 5, 1996, Mr. Ling treated Mr. Di Pietro "in a rough manner", Ms. Gosselin advanced the following arguments. Ms. Gosselin considered this alleged incident as the culminating one. Without this alleged incident, there would have been no investigation. It is this "incident" that brought Mr. Ling to the employer's attention and justified a fishing expedition to dig up "errors" to blame him for. The Di Pietro incident was the trigger. According to Ms. Gosselin, the investigation into the Di Pietro incident was done by February 6, 1996. The employer totally ignored the eight years that Mr. Ling had worked at the Hospital during which at no time was his attitude questioned. His behaviour towards patients had been without reproach; the performance evaluation reports attest to this fact (Exhibits 8 to 12). In Exhibits 11 and 12, it is noted that Mr. Ling is polite, courteous, and respectful with patients. Except for Mr. Di Pietro's accusation, there is no evidence that Mr. Ling was ever rough with any of Ste. Anne's Hospital's patients. Ms. Gosselin compared Mr. Ling's politeness with Mr. Parent's aggressive behaviour towards patients. Mr. Parent's employment was not terminated. This demonstrates the employer's discriminatory attitude towards Mr. Ling. Mr. Ling's complaint about Mr. Parent's inappropriate behaviour towards patients turned against him. Mr. Ling was of the opinion that the employer reproached him this complaint and to have denounced Mr. Parent. Mr. Ling asked to be transferred out of Unit 6B and Ms. Davis responded: "You will die in 6B before you are transferred out." This evidence was not contradicted. Dr. Batalion added that in his experience, the complaints of the patients and their families concerned mostly the orderlies. Ms. Barbas and Ms. Poupart testified in this respect. This issue of verbal violence was raised at the Labour-Management Committee Meeting of October 16, 1996 (Exhibit 68). Ms. Gosselin questioned why the employer ignored the complaints against Mr. Parent but built instead a file against Mr. Ling based on so little.

Ms. Gosselin reviewed the evidence. She emphasized how difficult and impossible Mr. Di Pietro was. He was one of the two worst patient (with Mr. Pink) on the unit. He was uncooperative and manipulative. Mr. Di Pietro complained a lot. He was malicious and a liar. In addition, he disliked Mr. Ling. Ms. Ouellet should have realized that Mr. Di Pietro was not a reliable witness and was not credible. She had all the facts and evidence to notice what kind of person Mr. Di Pietro was. It is inconceivable that the employer believed Mr. Di Pietro and preferred his version to Mr. Ling's.

Even Ms. Longtin was not consulted with respect to the Di Pietro incident; she would have shed a lot of light on Mr. Di Pietro's personality and behaviour. She would have provided an honest portrait of this patient. Ms. Ouellet did not know the patients; she had only started working in the unit in January 1996. Her job was to clean-up the unit. But, if that was the purpose of her appointment, she should have first obtained all relevant information. In support of her argument, Ms. Gosselin cited *Discharge and Discipline (supra)* where it is written that "a full investigation should always be conducted prior to imposing discipline". Ms. Gosselin referred to Ms. Longtin's letter of April 10, 1997 concerning Mr. Di Pietro where she clearly describes this patient. In her testimony, she declared that Mr. Di Pietro had already accused another staff member (a cleaner) of stealing his cigarettes when these were actually found in Mr. Di Pietro's locker.

Exhibit 6 (the nurses' notes of November 1995 to March 1996 on Mr. Di Pietro) enlighten us with respect to this patient. Mr. Di Pietro refused to eat. Ms. Longtin testified at length concerning this patient. Ms. Longtin added that, in April 1997, she told Ms. Ouellet that the employer could not win because all the nurses had had problems with Mr. Di Pietro. This patient was regularly aggressive and constantly complained to his family. Mr. François Di Pietro would then speak to Ms. Longtin. The evidence clearly established that the two most difficult patients in this ward were Messrs. Di Pietro and Pink and both disliked Mr. Ling.

Ms. Gosselin found it unbelievable that the employer placed so much importance on this "incident" considering the evidence about Mr. Di Pietro. She concluded that this proved bad faith on the part of the employer. Dr. Briones testified that Mr. Di Pietro was aggressive, manipulative, irritable, and difficult. Mr. Di Pietro's

aggressive attitude could lead people to react. He provoked. Dr. Briones discussed Mr. Di Pietro's attitude and aggressivity with the day nurses, namely, Ms. Longtin. On February 5, 1996, Mr. Di Pietro provoked Mr. Ling. He was obstinate. He refused to eat and intentionally blocked the hallway and entrance to his room. He refused to eat or move when repeatedly asked to do so. Mr. Di Pietro clearly provoked Mr. Ling when he said: "What will happen if I report you?" He said this in response to Mr. Ling's remark that he would report him to the doctor for not eating. Mr. Ling did not react to this provocation; he called Ms. Giroux instead. Mr. Ling immediately called Ms. Giroux. Exhibit 6 (the nurses' notes of February 5, 1996) mentions that Mr. Ling did call Ms. Giroux. He thought that he had nothing to hide or fear. Had he committed a wrongdoing, he would never have called Ms. Giroux. Mr. Ling is adamant in his denial that he was rough with Mr. Di Pietro. Ms. Giroux noted in her memorandum of February 5, 1996 (Exhibit 5(b)), that Mr. Di Pietro had no marks or bruises on his arms. According to Mr. Ling, Mr. Di Pietro was angry. Ms. Gosselin urged this adjudicator to prefer Mr. Ling's version. There is no written record of the conversation between Ms. De Léseleuc or Ms. Ouellet and Mr. François Di Pietro. Ms. Ouellet could not even remember the date when she spoke to Mr. François Di Pietro.

Ms. Gosselin also questioned the credibility of Ms. Marie-Claude Di Pietro and Mrs. Simone Di Pietro. They both declared that Mr. Di Pietro had marks or bruises on his arms. These declarations are contradicted by the nurses' notes and all witnesses. None of the nurses and physicians called to testify in this case noticed such bruises. Furthermore, Mrs. Di Pietro added that Mr. Di Pietro hated Mr. Ling but he had never complained about Mr. Ling except for this February 5, 1996 incident. On February 20, 1996, Ms. Longtin met with Ms. Marie-Claude Di Pietro and the latter never mentioned any bruises. Ms. Gosselin submitted that the evidence does not demonstrate Mr. Di Pietro's accusation. Mr. Ling was falsely accused of a very serious infraction, namely, physical aggression. Ms. Gosselin suggested that Mr. Di Pietro invented this story to seek revenge against Mr. Ling. The employer preferred Mr. Di Pietro's story when, in fact, Mr. Ling had an impeccable file and work history with respect to his attitude and behaviour towards patients. Mr. Ling described the Di Pietro incident in the nurses' notes found in Exhibit 6. It is obvious that Ms. Giroux did not consult these notes. Ms. Gosselin added that Mr. Ling was not liked at the Hospital because he was "different". His homosexuality played a big role

and the staff did talk about it. Ms. Lanciault testified that Ms. Castonguay had reported that Mr. Ling had called women “big cows”. Ms. Gosselin pointed out Mr. Ling’s attitude and behaviour throughout the hearing of this adjudication. He was polite, he acted tactfully, and his behaviour was without reproach. The Di Pietro story does not make sense in light of Mr. Ling’s polite behaviour. Ms. Gosselin argued that Mr. Ling’s employment was terminated because of his homosexuality. Ms. Lacombe stated that his homosexuality had been discussed. She learned about it after his termination. Mrs. Simone Di Pietro declared that Mr. Di Pietro did not want to be touched by Mr. Ling. Mr. Pink’s testimony was to the same effect. It seems that Messrs. Di Pietro and Pink had no problem with being touched by the female nurses. When Mr. Ling placed Mr. Di Pietro’s hands on the wheels of his wheelchair, he had to touch the patient. This may have triggered Mr. Di Pietro’s uncalled reaction to complain. Furthermore, Messrs. Di Pietro and Pink shared the same room and both disliked Mr. Ling. Thus, we can safely conclude that both these patients may have discussed Mr. Ling. Ms. Lacombe found that Mr. Pink had overreacted to Mr. Ling’s remark. She had not been offended by it. Moreover, Mr. Pink’s description of what Mr. Ling had said was untrue. Mr. Ling did not use the expression “piece of tail”. The evidence demonstrated that Mr. Ling did not use this vulgar expression. It was not his style and Ms. Lacombe confirmed this. Mr. Pink was very jealous and possessive of Ms. Lacombe. Ms. Lacombe recognized that Mr. Pink was jealous. This explains Mr. Pink’s accusation against Mr. Ling. Ms. Gosselin described that, in a hospital setting, a familiarity develops between the patients, their families and the nurses. The reproaches must be looked at in this context. Ms. Lacombe testified that Mr. Pink was very angry because he did not like the fact that Mr. Ling touched her shoulders. For Ms. Lacombe, this incident had no importance. She even tried to dissuade Mr. Pink from complaining. Thus, there was nothing to reproach to Mr. Ling. Mr. Pink was even confused about this incident. He remembered that it involved his daughter Joan Lillian Lagrois. Ms. Lacombe told the employer that Mr. Pink was not reliable. According to Ms. Gosselin, the employer knew that Mr. Pink made a false declaration, that he had lied, that he did not like Mr. Ling, that he exaggerated the so-called incident, and that he was unreliable.

Ms. Ouellet manipulated Mr. Pink to justify the termination. According to Ms. Longtin, Mr. Pink never complained about Mr. Ling. Ms. De Léseleuc described an incident involving Mr. Pink when he unnecessarily and unreasonably overreacted. Mr. Pink had a tendency to make mountains out of nothing and to accuse others.

Ms. Gosselin addressed next the Chatterjee complaints. Ms. Lillian Chatterjee related an undated “incident”. She accused Mr. Ling of making a remark that she found upsetting. Ms. Chatterjee could not recall when this incident occurred. What is reproached of Mr. Ling is that he used the word “stroke”. There is simply nothing to reproach. Mr. Ling spoke of the possibility of a stroke. He used the words “it could be”. The employer and Ms. Chatterjee wanted to dramatize this family event. Ms. Gosselin questioned whether Ms. Chatterjee was really made upset by this remark. She gave an exaggerated interpretation to Mr. Ling’s words. Furthermore, the evidence is to the effect that, in January 1996, the employer congratulated Mr. Ling on his attitude towards the patients and their families (Exhibit 12).

Mrs. Evelyn Chatterjee added a second accusation concerning a remark made by Mr. Ling that was meant to be a joke. Mrs. Chatterjee declared that she had “no animosity towards Mr. Ling whatsoever”. According to Mrs. Chatterjee, this event occurred in the fall of 1995 and no specific date was provided. On March 26, 1996, Mrs. Chatterjee signed a written declaration detailing this event (Exhibit 5(q)). The incident report by Mrs. Chatterjee was only brought to Mr. Ling’s attention for the first time at the March disciplinary meeting. Mr. Ling recognized that his remark to Mr. Chatterjee could have offended Mrs. Chatterjee. Mr. Ling replied that he would not make such a remark again and, in particular, in the presence of Mrs. Chatterjee. According to Mr. Ling, Mr. Chatterjee laughed at the remark. This incident was brought to the attention of the employer and there is no mention of it in the January 1996 performance evaluation report (Exhibit 2). Thus, this matter was closed. Moreover, this incident was not very serious.

In Exhibit 5(a), Ms. Ouellet and Ms. Paris refer to Mr. Ling’s inappropriate jokes with Mr. L. Mr. Ménard mentioned it also in his testimony. Ms. Gosselin argued that we cannot take this allegation seriously. No date was provided for this incident. Even Mr. Ménard conceded that he joked with Mr. L. This alleged incident must be considered in the context and familiarity that develops in a hospital setting. Mr. Ling

testified that if this joke was found to be inappropriate, he would not repeat such behaviour. Ms. Gosselin addressed also Ms. Bordès' comments insinuating that the jokes between Mr. Ling and Mr. L. had sexual overtones. This witness is simply not credible. Her declaration in this regard was totally gratuitous and unwarranted and its sole purpose was to cause harm to Mr. Ling. She made light of a very serious accusation with malice and in bad faith to harm Mr. Ling.

Concerning the use of his computer and cellular telephone, Ms. Gosselin submitted that the employer has no directive or policy forbidding the use of these two. The employer failed to prove that Mr. Ling had infringed a directive or policy in this regard. There is no evidence that Mr. Ling spent an inappropriate amount of time on his computer and cellular telephone. To the contrary, the evidence is that Mr. Ling arrived at work one-half hour early. Ms. Longtin testified in this regard and Exhibit 12 supports this fact. Mr. Ling was never informed that he could not bring or use his computer and cellular telephone at the Hospital.

Ms. Gosselin addressed the fact that the performance evaluation process for the year 1995 had never been finished. Mr. Ling's performance was rated fully satisfactory by Mr. Osman. However, the employer insisted in referring only to Ms. Sauvé's appraisals. The evidence demonstrated that Mr. Ling and Ms. Sauvé did not get along. Ms. Gosselin argued that the employer cannot use Ms. Sauvé's appraisals in support of its decision to terminate Mr. Ling's employment two and one-half years later. Furthermore, Ms. Sauvé did rate Mr. Ling's performance as satisfactory or fully satisfactory (Exhibits 8 to 11). The performance evaluation report of January 1996 makes no mention of a problem with respect to the patients' monthly vital signs. Ms. Sauvé never disciplined Mr. Ling for not having done some of his duties (Exhibit 11). Ms. Gosselin argued that the employer condoned these shortcomings and it led Mr. Ling to believe that these were tolerated by his employer. The employer cannot demand perfection from its employees. Mr. Ling did improve his performance. In January 1996, the rating was fully satisfactory.

Ms. Gosselin reviewed Ms. Préfontaine's testimony. Ms. Préfontaine referred to a telephone conversation she had with Mr. Wallace but she was unable to provide a date for it. Mr. Ling was suspended by Ms. Ouellet on March 13, 1996 and the letter of termination makes reference to a letter sent by Ms. Gravelle dated April 3, 1996,

confirming the suspension of March 13, 1996. Ms. Préfontaine testified that she had been aware of Mr. Ling's file prior to Ms. Ouellet's and Ms. Paris' disciplinary report of April 1, 1996 (Exhibit 5(a)). Ms. Gosselin concluded that Mr. Ling was suspended as of March 13, 1996 before he was able to, and before he was offered an opportunity to, provide his version of the facts. Moreover, the decision to terminate his employment had already been taken by Ms. Préfontaine before April 1, 1996. Ms. Préfontaine testified that she decided to terminate Mr. Ling's employment based on Ms. Giroux's remarks that he had said to her that he would stop making errors when he retired. In Ms. Préfontaine's opinion, Mr. Ling did not want to improve and make amends; he had no sincere regrets and no serious intention to improve the situation. Ms. Préfontaine's biased opinion is not founded in fact and not supported by the evidence. At the disciplinary meetings, Mr. Ling accepted responsibility and conceded some of the incidents imputed to him for which he had not been consulted. Mr. Ling did not try to shy away from his responsibilities. The employer ignored his explanation. Ms. Préfontaine did not find it necessary to meet with Mr. Ling and relied solely on Ms. Ouellet's report. Ms. Préfontaine testified that she saw no need to inquire further. According to Ms. Gosselin, "the hearsay she had heard was enough." Thus, Ms. Ouellet was the main author of Mr. Ling's termination of employment. Ms. Préfontaine could not explain why the employer refused to provide to Mr. Ling the documents it relied on in support of the allegations. Management had agreed at labour-management meetings to provide to the employee these documents (Exhibit 55). Ms. Préfontaine declared also that she did not know whether the problem of the squares without proper initials was included in the Hospital's compilation. However, at a labour-management meeting, Ms. Préfontaine indicated that these were not to be compiled because they were too numerous.

Ms. Préfontaine presented the complaint against Mr. Ling to the Order of Nurses of the Province of Quebec in July 1997. She explained the delay referring to a discussion that took place as to who should present this complaint. Ms. Gosselin submitted that this explanation makes no sense. Moreover, Ms. Préfontaine's explanation concerning Ms. Paris' discussion with Ms. Gosselin of May 1997 also lacks credibility. Ms. Préfontaine could not recall whether she told Ms. Paris to tell Ms. Gosselin (or Mr. Ling) that the employer would not present the complaint if Mr. Ling withdrew his grievance. The only reason Ms. Préfontaine presented the complaint was that they (she, Ms. Ouellet and Ms. Paris) realized that the employer's

case was weak and Mr. Ling had refused to withdraw his grievance. Ms. Gosselin submitted that this is clear evidence of bad faith. Had the employer's intention to file a complaint been real and honest, it would have presented it in April 1996. Ms. Paris was asked to communicate the employer's intentions to Mr. Ling but the idea was Ms. Préfontaine's. Ms. Préfontaine testified also that she never thought to compare Mr. Ling's errors to the ones committed by other nurses to determine whether his were more serious and/or numerous. Ms. Préfontaine was also ignorant with respect to the number of doses administered by the nurses.

The employer did not reach its decision in an unbiased and reasonable fashion. Mr. Ling was suspended before having been heard. Ms. Ouellet did not verify the orderlies' ambiguous and untruthful declarations. The employer relied on unreliable and non-credible witnesses: Mr. Di Pietro and his family; Mr. Pink; Mr. Faubert; the three orderlies; and the signed declarations of Messrs. Chappell, Frosst and Brisson. Mr. Ling could not defend himself properly. Two of the patients who had signed declarations against him coincidentally died before they could be called to testify and Messrs. Brisson and Di Pietro were incompetent to testify. In addition, various witnesses were not comfortable in testifying against the employer. Ms. Ouellet and other representatives of the employer made disrespectful remarks and showed improper behaviour towards Mr. Ling during the adjudication hearing of these grievances. They laughed and talked during Mr. Ling's testimony to the point that Mr. Ling had to ask this adjudicator to bring the employer's representatives to order. Ms. Gosselin referred also to the unreasonable delay between the time of discovery of these events and when the employer brought these allegations to the attention of Mr. Ling. Moreover, Mr. Ling was unable to consult the employer's documents on which the allegations were based prior to replying to questions at the two March disciplinary meetings.

Ms. Gosselin accused the employer of lying to Mr. Ling and to his counsel (Ms. Baillairgé) and to his bargaining agent representative (Ms. Poupart) that there were no signed declarations when in fact there were. The employer lied to Mr. Ling when Mr. Wallace communicated to him and to his representatives that a complaint to the Order of Nurses of the Province of Quebec had already been presented when this was not so (Exhibit 97). Then, this complaint was filed in July 1997 in reprisal to the fact that the employer discovered in April 1997 that it had a weak case. The employer

introduced in evidence, in bad faith, the 1989 decision of the Committee of Discipline of the Order of Nurses of the Province of Quebec. Mr. Ling had settled this case which was totally unrelated to this employer. The employer never raised with Mr. Ling this decision during his employment. It submitted it in evidence in response to Mr. Ling's declaration that he had never been reproached for inappropriate jokes. Mr. Ling referred in his testimony to Ste. Anne's Hospital as his employer.

The employer gave an exaggerated importance and credence to the fact that Messrs. Pink and Di Pietro did not like Mr. Ling and relied on their unreliable complaints against him. Moreover, Ms. Ouellet had been assigned the responsibility to clean house. Thus, the employer hounded Mr. Ling, who became their target. The employer ignored the basic principles of good and proper labour-management relations. The employer ignored the purpose of discipline and the fact that it must be imposed progressively. The termination was biased and discriminatory. Mr. Wallace wrote that each of the alleged incidents warranted termination of employment. The employer demonstrated also its bad faith in making it almost impossible and very difficult for Mr. Ling and Ms. Gosselin to obtain documents in support of their position.

Ms. Gosselin cited *Discharge and Discipline (supra)* in support that the employer could not rely on Ms. Sauvé's comments on the performance evaluation reports (Exhibits 8 to 11) as disciplinary warnings. These comments relate to performance and not to discipline. Mr. Ling's employment was terminated on pure disciplinary grounds. Ms. Sauvé made her comments in a non-disciplinary context. Furthermore, the employer could not add disciplinary grounds at the adjudication stage. Ms. Gosselin referred to Ms. Chatterjee's allegations that Mr. Ling said that her father had probably had a stroke, Ms. Castonguay's allegations, and the Vasotec incident. Ms. Joannette had spoken to Mr. Ling with respect to the Vasotec incident and the matter was closed. It should not have been a further matter of discipline. Concerning the Hibidil incident, the employer had an obligation to communicate clearly the directives and policies to the employees. The employer exaggerated the events and blew out of proportion ordinary events. The employer dramatized the Di Pietro incident. The purpose of discipline is corrective and not punitive. Mr. Di Pietro provoked Mr. Ling and if the employer was of the opinion that Mr. Ling did something wrong, it should have so informed Mr. Ling and not terminate his employment

instead. Moreover, the Di Pietro complaint does not fit Mr. Ling's character and personality. Mr. Ling is to be believed when he stated that he had not been rough and rude with Mr. Di Pietro.

Furthermore, in January 1996, when Mr. Osman handed Mr. Ling his letter of reprimand, the grievor was depressed and upset. His niece was seriously ill and his brother was getting a divorce. Mr. Ling was extremely perturbed. Ms. Gosselin submitted that Mr. Ling did not inform Ms. Ouellet and Ms. Paris of this situation because the atmosphere at the two disciplinary meetings was such that it did not lend itself to such confidence and exchange of personal matters. Ms. Ouellet and Ms. Paris showed no compassion. Mr. Ling was led to believe, by Ms. Sauvé's and Mr. Osman's performance evaluation reports, that the employer condoned his errors. The employer created a false sense of security.

Ms. Gosselin pointed out that the Di Pietro nurses' notes (Exhibit 94) show that medication was administered at least 12 times, two or three hours late. Thus, it is very frequent that patients receive their medication various hours later. The employer's directive requires only that the code "X" be written when the nurse leaves his/her shift.

Ms. Gosselin referred to *Canadian Labour Arbitration*, Third Edition, by Messrs. Brown and Beatty, and urged this adjudicator not to rely on the performance evaluation reports prior to 1996. Furthermore, an important distinction exists between the employee's work record and his disciplinary record. Mr. Ling's employment was terminated solely for disciplinary reasons. The remarks found in the performance evaluation reports are not disciplinary. Thus, these cannot be used to justify the termination. Moreover, Ms. Sauvé's remarks were biased. She and Mr. Ling did not get along; there was a conflict of personality between them. Thus, the performance evaluation reports by Ms. Sauvé (Exhibits 8 to 11) were not objective and should not be taken into consideration. An indication of her bias is the fact that she made no mention of Mr. Ling's report to her drafted on his personal computer and on his own time.

Mr. Ling explained that in all those years, his work had not changed; what changed was his supervisor. Ms. Osman related to his employees, he lent his support, whereas Ms. Sauvé controlled her staff. As soon as Mr. Ling returned to work with

Mr. Osman, his performance was rated fully satisfactory. Ms. Gosselin reviewed the jurisprudence cited by counsel for the employer and made the following distinction. Mr. Ling's last performance evaluation report was fully satisfactory and followed the written reprimand.

Mr. Ling had eight years of service and this is not a case of physical violence. Mr. Ling did not slap or hit any of the patients. The allegations against Mr. Ling are not very serious. Mr. Ling did not lie when he told Ms. Ouellet that Mr. Ménard seemed to have displayed an interest to do Mr. Faubert's Hibidil disinfection. Mr. Ménard never complained or objected and, certainly, he did not refuse to perform this task. Concerning the fact of whether Mr. Ling told Ms. Giroux that he had been distracted, Ms. Préfontaine believed that he did say it to Ms. Giroux because she testified that Ms. Giroux told her so. On the other hand, Ms. Ouellet testified that Ms. Giroux denied this fact. So who are we to believe? Ms. Gosselin concluded that we must prefer Mr. Ling's version of the events.

Ms. Gosselin reviewed evidence concerning the Di Pietro incident and emphasized Ms. Marie-Claude Di Pietro's aggressive attitude towards Mr. Ling. Her remarks were uncalled for (e.g. "He looks unpleasant as usual.") (« Il a l'air bête comme d'habitude. ») Ms. Gosselin questioned the reason why Ms. Di Pietro said this. She urged me to prefer Mr. Ling's version that he used his personal blood pressure cuff. There is no valid reason not to believe him. Ms. Gosselin reviewed in detail Mr. Ling's testimony in this regard. The employer alleged that Mr. Ling tried to hide his wrongdoing (Exhibit 74) and, in particular, the complaint to the Order of Nurses of the Province of Quebec pre-dating his employment with Ste. Anne's Hospital. Ms. Gosselin argued that Mr. Ling made an honest error when he wrote the years 1982 to 1985 on the Employee Questionnaire form (Exhibit 74). It was up to the employer to check the information provided by Mr. Ling at the time of hiring. The employer had eight years to check this information. Furthermore, why did the employer remain silent until 1997 and mention it only at the time of Mr. Ling's cross-examination? Ms. Gosselin concluded that, at any rate, this error was not mentioned in Mr. Wallace's letter of termination (Exhibit 1). This event or error is not one of the grounds retained by Mr. Wallace to justify Mr. Ling's termination of employment. Mr. Ling was not disciplined because he falsely represented his prior work record.

Concerning the Employment Insurance question, Ms. Gosselin responded that it took the employer six months to provide Mr. Ling with a correct pink slip. This delay was unreasonable and prejudiced Mr. Ling. As a result, Mr. Ling presented his claim late. Mr. Ling did not lie with respect to when he filed his claim for benefits; he simply could not recall the date. There is no pattern of wrongdoing in this case. The evidence does not support the termination. Mr. Ling has no disciplinary record to warrant such a serious ultimate penalty. The employer had an obligation to inform Mr. Ling within a reasonable period that discipline would be imposed. Otherwise, the employee can reasonably conclude that discipline would not follow. The employee must not be left in the dark. In support of these arguments, Ms. Gosselin cited *Collective Agreement Arbitration in Canada*, Second Edition, by Palmer. Ms. Gosselin pointed out that the employer relied on technical breaches that cannot be subject to discipline. Mr. Ling did not know that he was committing this offence.

The discipline imposed has caused serious economic consequences to Mr. Ling. In 1998, Mr. Ling was 47 years old and he had to start a new career all over. Ms. Gosselin read the text of Claude D'Aoust, Louis Leclerc and Gilles Trudeau: *Les Mesures Disciplinaires: Étude Jurisprudentielle et Doctrinale*, École des relations industrielles, Université de Montréal, Monographie 13. Ms. Gosselin cited the Supreme Court decision in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, in support of her thesis that an adjudicator has the jurisdiction and competence to award damages. Ms. Gosselin added the article commenting this decision by Brian Etherington, Jeffrey Sack, John C. Murray and Sandy Price, found in the *Canadian Labour and Employment Law Journal*, Volume 4, and *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701.

Ms. Gosselin submitted that Mr. Ling is requesting his reinstatement; he was adamant in this regard. This adjudicator requested Ms. Gosselin to address the question of compensation in lieu of reinstatement, in case reinstatement did not prove possible. Ms. Gosselin responded that first Mr. Ling is requesting his reinstatement with full compensation of lost wages and benefits since March 13, 1996. Ms. Gosselin included in this claim the reimbursement of all dental expenses incurred, in addition to the \$16,195.04 cashed RRSPs and interest lost thereof (Mr. Ling cashed two RRSPs: \$5,697.78 and \$10,497.26 = \$16,195.04), all university fees, and the professional fees paid to the Order of Nurses of the Province

of Quebec (these are normally paid by the employer but had to be paid by Mr. Ling to continue his membership in good order). Ms. Gosselin added that Mr. Ling is also requesting \$25,000 in moral damages.

Ms. Gosselin argued that Mr. Ling should be reinstated because his employment is what is most important to him. It allows him to exist. Mr. Ling has little chance to find alternate employment as a nurse. Health care is one of the most saturated sectors. The employer acted in bad faith towards Mr. Ling. It arbitrarily and in bad faith terminated his employment. Mr. Ling has lost all possibilities to have the decent economic existence that he had enjoyed. The employer has deprived Mr. Ling of his social life, has affected his self-esteem, and has hindered his capacity to start to enjoy life again. Ms. Gosselin submitted that the employer-employee relationship has not been permanently broken; it can be mended. Ms. Préfontaine relied on Ms. Ouellet's findings and opinion. Ms. Ouellet was only temporally placed in charge of Unit 9A. She has since left the unit. Moreover, it is very likely that Ste. Anne's Hospital will come under provincial jurisdiction in the near future.

In reply to this adjudicator's request to address the question of compensation in case that reinstatement was not possible, Ms. Gosselin requested 10 months of salary, in addition to \$25,000 in damages and compensation for all lost wages and benefits between March 13, 1996 and the date of this adjudication decision. To this, Ms. Gosselin added dental expenses, university fees, professional fees paid to the Order of Nurses of the Province of Quebec, and the cashed RRSPs. Ms. Gosselin pointed the finger at Ms. Ouellet as the cause of Mr. Ling's hardships. Ms. Ouellet lacked experience and knowledge as a Head Nurse. This lack of experience caused her to make serious errors in the administration of the Hospital's personnel. Mr. Ling should not be the one to pay for her incompetence. She was the author of this frame-up. Ms. Gosselin advanced the thesis that Ms. Ouellet did this to demonstrate that she could be a competent administrator. Ms. Gosselin concluded that, based on the current jurisprudence, this adjudicator has competence to grant the damages requested.

Mr. LeFrançois referred to the jurisprudence he had already cited in support that the performance evaluation reports can be used to justify discipline (*Mulroy, supra*). Mr. LeFrançois conceded that Mr. Ling and his counsel had difficulties in

obtaining the pertinent evidence and documents to prepare and present this case. He added, however, that counsel for the employer had the same difficulty because of the nature of this employer. It is a hospital setting and confidentiality of the patients must be respected. Mr. LeFrançois concluded also that a conflict of personality may have existed between Ms. Sauvé and Mr. Ling. However, Mr. Ling was warned that he had to be alert in the performance his duties. This is evidenced by the performance evaluation reports. Mr. LeFrançois added that the cases he cited are relevant, e.g. a children's nursery is a similar work environment to a hospital. The tolerance level in these two environments is very low.

Mr. LeFrançois submitted that Mr. Ling's credibility is in question. He referred to Mr. Ménard's statement to Ms. Ouellet and the latter's statement and testimony that Mr. Ling did not say to Ms. Giroux that he had been distracted. Ms. Préfontaine had not been present when these statements were made. Ms. Marie-Claude Di Pietro denied that Mr. Ling had had a conversation with her. Concerning the blood pressure cuff issue, according to Mr. LeFrançois, Mr. Ling declared that he started using it when he returned to Unit 9A in 1995. Ms. Castonguay confirmed that she did not see him using it when they worked together in Unit 6B. Mr. LeFrançois questioned how Mr. Ling could have confused the dates in the Employee Questionnaire. The Montreal Neurological Institute was his first employer following his graduation as a nurse in 1985. Mr. LeFrançois added that Mr. Ling finally recognized that he had not been diligent in his claim for employment insurance benefits.

Mr. Ling had the onus to prove damages. He had an obligation to inform what he did with the cashed RRSPs. Mr. Ling did not consult any professionals that could attest these damages. Mr. LeFrançois submitted that Mr. Ling is furthering his education and could find work elsewhere. Moreover, there is no evidence of a frame-up. Mr. Ling alleged that his misfortune was caused by Ms. Ouellet and the system and that it is of no fault of his, but this is not so. Mr. LeFrançois added that the allegations with respect to the Chatterjee stroke incident, the jokes about Mr. L., etc., are embodied in the letter of termination (Exhibit 1). They form part of the reasons for termination. The employer's onus of proof is on the balance of probabilities and, according to the employer, this onus has been met.

Mr. LeFrançois commented that Ms. Bordès' credibility is not in question. Her testimony was corroborated by Ms. Castonguay and Mr. Ménard. Her testimony was clear and unambiguous. Mr. LeFrançois added that Mr. Ling's sexual orientation is irrelevant in this case. He referred to the evidence that Mr. Ling called a nurse a "big cow", and Ms. Lacombe declared that she had been told that Mr. Ling was homosexual. Mr. LeFrançois concluded that these statements proved nothing.

Mr. Ling was afforded a full hearing at this adjudication. Thus, even if the disciplinary investigation could be found to be procedurally violated, Mr. Ling had nonetheless a full hearing at the adjudication level (*Tipple*, (1985) F.C.J. No. 818; Appeal No. A-66-85 (unreported)).

Mr. Ling ought to have known what the employer expected of him. The employer was clear in its direction. The employer submitted the best evidence possible in the circumstances. Thus, some hearsay evidence was introduced because first-hand evidence was not possible. Mr. Ling had the onus to prove the mitigating factors he is now raising, and he failed to do so.

Mr. LeFrançois addressed Ms. Gosselin's concerns about Mr. Wallace's letter of termination. Mr. Wallace did mention various infractions but Mr. Ling was disciplined for all the reproaches taken as a whole. Mr. LeFrançois pointed out that the employer did take measures in the case of Mr. Parent. He was transferred following Mr. Ling's complaint. Mr. LeFrançois explained that the case of Mr. Ling must be looked at from the point of view that he is a professional nurse who must use his judgment appropriately. The employer recognized that he was a professional and assigned him the evening shift where he had to practice his profession alone. The employer could not be paternalistic and treat him like a child. Mr. Ling had to use good judgment and he could not expect the employer to follow him closely. The employer wanted to grant him the respect his professionalism required.

Concerning the argument that the Hospital pharmacy contributed to the Vasotec incident, Mr. LeFrançois commented that Mr. Ling was not the only nurse working evening shifts. Mr. Ling did not follow the Hospital's directives. It was his job to administer medication and to ensure that the proper dose was administered as prescribed. Exhibit 36(a) (a pharmaceutical note from Ms. Annick Hébert, dated February 16, 1996) indicates that she had to dispense a further bottle of 28 pills.

Thus, Mr. Ling cannot blame the error on the pharmacy. Mr. LeFrançois pointed out that Ms. Gosselin argued that the Colace and Lactulose incidents were not medication errors and these errors were not serious. However, the employer required the nurse to write his/her initials so as to have a control of all medication and treatments administered. The employer had a reason for requiring these initials. Mr. Ling knew that and he had been warned about his attitude with respect to writing his initials. Ms. Giroux had talked to him and he had replied that he would stop making errors when he retired. He was reprimanded orally in December 1995 and received a written reprimand in January 1996. The patients had a right to proper care and comfort. These incidents were not as ordinary as depicted by Ms. Gosselin.

The issue here is whether Mr. Ling, who had been warned about these errors, had improved. The Colace incident concerns the fact that Mr. Ling should have checked the prescription when he returned from vacation. What is reproached is that he did not notice the error. The Lasix and Maltlevoil incidents concern the fact that there was an oral direction to write the code "X" when the patient was absent from the unit at the time the medication should have been administered. Ms. Sauvé had informed Mr. Ling about this rule. The incident of patient R.G.'s saline compress demonstrated that an orderly had to insist and remind Mr. Ling of this treatment. Mr. Ling should have verified the patient's file before starting his shift. Mr. Faubert's disinfection was a treatment; all the witnesses were referring to the same treatment. It had been prescribed and Mr. Ling could not delegate this task to Mr. Ménard in view of Exhibits 5(j) and (k). Exhibit 5(j) is an exhaustive list; these are the sole tasks that an orderly can accomplish. Thus, Mr. Ménard could not do Mr. Faubert's treatment. The Hibidil disinfection was a prescribed treatment that could not be delegated. It matters little what name the witnesses gave to this treatment. What is important is the nature of the reproached act.

Mr. Ling was assigned to take the patients' monthly vital signs. The allegation is that he did not do so. This allegation is based on the testimony of Ms. Bordès and Mr. Ménard. Mr. Ling's explanation that the two orderlies did not see him with the Hospital's sphygmomanometer, because he used his personal blood pressure cuff, is not to be believed. Mr. Ménard was not cross-examined on this explanation nor were Ms. Ouellet, Ms. Giroux, Ms. Sauvé and Ms. Préfontaine. Mr. LeFrançois argued that Mr. Ling's explanation is a pure and simple invention. Moreover, if this Hospital

equipment was not reliable, why did he use it in March 1996 and in cases where patients were ill. The Velcro sound could be heard by the orderlies and Ms. Bordès testified that she did not hear it. Mr. LeFrançois questioned the motive for Ms. Bordès and Mr. Ménard to lie in this regard. Mr. Ménard had retired and Ms. Bordès testified in a frank manner. Ms. Bordès' testimony was confirmed. Furthermore, Exhibit 5(r) is an undated document whereas Exhibit 90 is a record on file.

Mr. LeFrançois conceded that Mr. Di Pietro was a difficult patient. However, the only complaint he ever lodged was against Mr. Ling. Mr. Pink was aware of his surroundings and even Mr. Ling recognized this fact. Mr. Ling ought to have known that Mr. Pink would get upset when he massaged Ms. Lacombe's shoulders. Even Ms. Lacombe confirmed that Mr. Ling had been abrupt with Mr. Pink. She added that he lacked patience and had a twisted sense of humour with sexual innuendoes that upset Mr. Pink. Mr. Pink was glad when Mr. Ling stopped working there. Concerning the remark that Mr. Chatterjee may have had a stroke, Mr. LeFrançois indicated that this was not an ordinary event and to make such a pleading showed that Mr. Ling did not understand that he should not have made it. He had no reason to say this, which had a terrible effect on the patient's daughter. The same can be argued concerning the joke with the condom. Mr. LeFrançois added that there is no evidence that this incident was reported to Ms. Marriott. The jokes with Mr. L. were improper. The scissors were not clean; they were the ones from the cart. Mr. Ling ought to have known not to make jokes. He had already a Order of Nurses of the Province of Quebec complaint against him. Concerning the reproach with respect to the use of his computer and cellular telephone, Ms. Giroux told Mr. Ling not to use the computer during working hours. Mr. LeFrançois conceded that there was no policy or directives prohibiting such use. However, there was no need for such a policy or directives because it is a matter of common sense. Ms. Gosselin argued that Mr. Ling had no free time. If that is so, then he had no time to use his computer or cellular telephone during his shift.

Mr. LeFrançois referred to *Palmer (supra)* in support of the argument that the employer could rely on the performance evaluation reports to justify the termination. Otherwise, every time the employer makes a negative remark in the performance evaluation report, it will have to issue a written disciplinary warning or impose

further discipline. The employer warned Mr. Ling about his wrongdoing. Discipline is corrective and the employer followed this principle.

Mr. LeFrançois addressed the mitigating factors raised by Ms. Gosselin in her argument. Mr. Ling did recognize his error in the Vasotec incident; he was the one who administered it in error. His personal problems were never brought to the attention of the employer. Moreover, the employer has the right to demand perfection. Concerning the allegation that the employer acted in bad faith, Mr. LeFrançois submitted that what transpired at the adjudication hearing cannot be qualified as bad faith. Furthermore, the employer held a proper investigation and Ms. Ouellet had to do it. Moreover, there is no evidence that Ms. Ouellet and Ms. Paris refused to produce documents they had in their possession at the time of Mr. Ling's and his representatives' request. At any rate, Mr. Ling received these documents in July 1996. In this regard, Mr. LeFrançois referred to the *Tipple* decision (*supra*) and pointed out that this adjudication erased any procedural vices during the investigation. The issue with respect to the complaint to the Order of Nurses of the Province of Quebec was well explained by Ms. Paris. Ms. Paris wanted to inform Ms. Gosselin because once the complaint was filed, it could not later be withdrawn. Thus, Ms. Paris wanted to explore first if a settlement was possible. Had the employer acted in bad faith as alleged so as to violate Mr. Ling's right to present his grievance and refer it to adjudication, Mr. Ling could have presented a complaint to the Public Service Staff Relations Board. This adjudicator must consider the whole of the incidents. Some incidents may not be as serious as others, but all together they do justify the termination. These incidents demonstrate that Mr. Ling was indifferent and unconcerned for his patients. Furthermore, he lacked frankness.

Mr. LeFrançois addressed the question of what remedy to adopt if Mr. Ling's grievance was to be granted. The employer no longer trusts Mr. Ling, and as an evening nurse, he would work alone as a nurse on this shift. Mr. Ling must nevertheless be evaluated as an employee and his performance left a lot to be desired. In this respect, Mr. LeFrançois referred again to the Vasotec and Colace incidents. Mr. Ling's employment was not terminated in bad faith. The situation here is very different from the one depicted in the *Wallace v. United Gray Growers Ltd.* (*supra*) decision.

Mr. LeFrançois argued that the test of the *Vorvis v. Insurance Corporation of British Columbia* ([1989] 1 S.C.R. 1085) case has not been met here. Moreover, in the *Wallace* decision (*supra*), the Supreme Court of Canada did not grant damages but simply extended the notice period. According to Mr. LeFrançois, an adjudicator does not have the jurisdiction and competence to extend the notice period in compensation for claimed damages. In support of his argument, Mr. LeFrançois relied on the following decisions: *Re Canada Post and Canadian Union of Postal Workers* (1987), 16 L.A.C. (3d) 283; *Re Ontario Hydro and Canadian Union of Public Employees, Local 1000* (1990), 16 L.A.C. (4th) 264; *Re Oil, Chemical and Atomic Workers, Local 9-593* (1971), and *Re Oil, Chemical & Atomic Workers, Local 9-593 and B.P. Oil Ltd.* 24 L.A.C. 34; *Lussier* ((unreported) F.C.A. A-1235-91); *Hester*, 126 F.T.R. 308; *Purley* (Board file 166-2-22284); *Gendron* (Board files 166-2-22152 to 22164) and *Marinos* (Board file 166-2-27446). Mr. Ling provided no evidence concerning his suffering and in support of his claim for damages. Moreover, the issue of the timing of the complaint to the Order of Nurses of the Province of Quebec has no bearing on his grievance. It has nothing to do with his employment relationship.

Reasons for Decision

Reasons Concerning Board File 166-2-27975

I will deal first with the issue relating to the admissibility of some documents adduced in evidence by the employer.

Clause 38.03 of the collective agreement reads:

38.03 The Employer agrees not to introduce as evidence in a hearing relating to disciplinary action any document concerning the conduct or performance of an employee the existence of which the employee was not aware at the time of filing or within a reasonable time thereafter.

The evidence unambiguously disclosed that the employer (Ms. Ouellet and Ms. Paris) refused to provide to Mr. Ling, to Ms. Poupart, to Ms. Baillairgé, and to the Professional Institute of the Public Service of Canada, copies of all documents attached to Ms. Ouellet's report (Exhibit 5(a)) recommending the termination of Mr. Ling's employment.

During the two disciplinary hearings of March 14 and 28, 1996, Ms. Ouellet and Ms. Paris showed Mr. Ling and Ms. Poupart some green sheets and pages from the black book containing data concerning monthly vital signs inscribed by nurses on the evening shift. However, Mr. Ling and Ms. Poupart were told that the employer did not have witnesses' declarations. The same assertion was made to Ms. Baillairgé at a meeting with Ms. Paris held on April 2, 1996. This assertion proved to be incorrect. The documents at issue show that Ms. Giroux' written report to Ms. Ouellet on the Di Pietro complaint is dated February 5, 1996 (Exhibit 5(b)). Patients Faubert and Brisson signed their declarations on March 28, 1996 (Exhibits 5(k) and (n)). Patients Chappell, Frosst and Pink signed theirs on March 25, 1996 (Exhibits 5(m), (o) and (p)). Mrs. Chatterjee signed hers on March 26, 1996 (Exhibit 5(q)) and Exhibit 5(r) concerns the monthly vital signs for the months of August 1995 to March 1996, inclusive.

Messrs. Ménard (Exhibit 5(d)) and Legault (Exhibit 5(l)) signed theirs on April 1 and Ms. Bordès on April 2, 1996 (Exhibit 5(c)). In addition, Exhibit 5(e) (Vasotec incident) is dated February 16, 1996; Exhibit 5(f) (Colace and Lactulose incident) is dated March 17 and 20 1996; Exhibit 5(g) (the missing 17 hours Colace dose for C.A.) is dated February 23, 1996; Exhibit 5(h) (P.B.'s Lasix and Diabeta medication; C.C.'s puffer; and D.F.'s point of pressure) is dated February 29, 1996. Exhibit 5(i) (the absence of P.B. when the Furosemide and Maltlevol were to be administered) is dated March 6, 1996. Exhibit 5(s) (patient R.G.'s saline compress) is dated January 23, 1996.

All documents (except for Exhibits 5(c), (d) and (l); the written declarations of the three orderlies) submitted in evidence by the employer to justify Mr. Ling's dismissal, were in the possession of Ms. Ouellet and Ms. Paris when they met with Mr. Ling and Ms. Poupart on March 28, 1996. It is not contested that the meeting of March 28 was a disciplinary meeting. Ms. Ouellet and Ms. Paris had no valid reason to refuse Mr. Ling and his bargaining agent representative their request for a copy of these documents. These documents fall under clause 38.03. The purpose of clause 38.03 is to protect employees and, in the case of Mr. Ling, the employer violated this provision of the collective agreement. Furthermore, the documents provided by the Access to Information and Privacy Coordinator's Office in July 1996 to Mr. Ling were incomplete. All references and names of patients and family members had been deleted. I also acknowledge the difficulties experienced by Mr. Ling and by

Ms. Gosselin to obtain relevant documents from the employer's files during the hearing of the grievance adjudication contesting his dismissal.

This adjudicator had to insist and order the employer to produce the documents requested by Ms. Gosselin that proved crucial to Mr. Ling's case. The employer's position was that the release of these documents would infringe on the patients' right to confidentiality. The problem was that Mr. Ling had a right to present his best case and required these documents to justify his position. On the other hand, the employer argued it had to protect the patients' confidentiality and the documents in question concerned Ste. Anne's Hospital patients in Unit 9A. Finally, the employer agreed to allow Ms. Gosselin to examine various files concerning the patients referred to in the termination grievance adjudication and to produce the requested relevant documentation (e.g. nurses' notes on Messrs. Di Pietro, Faubert and Pink; medical files and notes of observation on Messrs. Brisson, Chappell, Frosst, S.C. and R.G.).

The employer argued that clause 38.03 did not apply in Mr. Ling's case on the ground that the *Privacy Act* takes precedence over it. In the employer's view, the patients' right to privacy took precedence over Mr. Ling's right to see and obtain the documents in question. This argument has no merit where the employer disciplines and even goes so far as to terminate the employment of an employee, such as in the case of Mr. Ling. The employee has a right to know the case and evidence against him. He has a right to defend himself and know the content of all documents the employer will introduce as evidence in a hearing relating to the discipline in question. Mr. Ling had a right to know his accusers and the particulars of the incidents reproached of him. How else could Mr. Ling answer the allegations against him? The employer imposed the most serious punishment on Mr. Ling. Dismissal or termination of employment has been called capital punishment in labour relations terms.

Moreover, Mr. Ling's reputation is at stake. The incidents alleged against him are very serious. How could Mr. Ling respond properly to Ms. Ouellet's and Ms. Paris' questions without knowing the exact content and the names of the patients and their families accusing him of wrongdoing and the omissions, incidents, treatments, etc., with respect to various patients. Without this disclosure, Mr. Ling could not be found at fault when he did not answer the employer's questions to its satisfaction. How

could he? Clause 38.03 has a very valid purpose. The parties wanted to make it clear and unambiguous that fairness was important to them. Documents could not be introduced in evidence at a hearing relating to disciplinary action without first disclosing them to the employee. In Mr. Ling's case, the employer acted unfairly when Ms. Ouellet and Ms. Paris refused to provide the documents they had in their possession at the two disciplinary hearings.

Although I find that the employer violated clause 38.03 when Ms. Ouellet and Ms. Paris referred in evidence, at the March 28, 1996 disciplinary hearing, the content of the documents in question (and alleging not having them), this procedural defect was later corrected at the adjudication level. Any prejudice or unfairness that this procedural defect may have caused Mr. Ling prior to this adjudication was cured at the adjudication of his grievance (*Tipple (supra)*).

At the adjudication hearing, Ms. Gosselin and Mr. Ling had full opportunity to respond to the employer's allegations. They were afforded all their rights to obtain all relevant documents. This adjudicator granted them all the necessary time to consult and present their case fully. I granted all Ms. Gosselin's requests for adjournment to enable her and Mr. Ling to consult the documents in question, cross-examine witnesses, and present their case. Thus, all procedural unfairness that may have resulted from the violation of clause 38.03 at the disciplinary meetings and grievance hearings has been cured at the adjudication of his grievance. The adjudication process consists of a quasi-judicial hearing *de novo* and remedies all procedural defects that may have occurred during the disciplinary grievance and processes.

For these reasons, Mr. Ling's grievance is hereby dismissed. The documents in question are admissible and the employer was allowed to introduce them and to rely on them at the grievance adjudication contesting the termination of Mr. Ling's employment.

Reasons Concerning Board File 166-2-27472

The employer terminated Mr. Ling's employment, effective March 13, 1996, for misconduct. Mr. Dennis Wallace, Assistant Deputy Minister, terminated Mr. Ling's employment by virtue of his authority under paragraph 11(2)(f) of the *Financial Administration Act* (Exhibit 1). Mr. Wallace referred to specific incidents that he

qualified as serious incidents of misconduct. He added that each of these incidents was serious enough to warrant termination for cause. The incidents in question were: (1) the February 1 to 15 second dose of Vasotec administered to patient S.C. (Exhibit 5(e)); (2) the February 2, 1996 omitted initials for Colace and Lactulose prescribed for patient D.P. (Exhibit 5(f)); (3) the February 10 to 19, 1996 non-administration or omitted initials for the 17:00 hours Colace prescribed for patient C.A. (Exhibit 5(g)); (4) the February 27, 1996 saline compress treatment of patient R.G. (Exhibits 5(d) and (s)); (5) the Lasix, Maltlevol and Diabeta incident of February 29, 1996 (Exhibit 5 (h)); (6) the March 6, 1996 failure to write the code "X" when patient P.B. was absent from Unit 9A at the time of his medication (Exhibit 5(i)); (7) the failure to take monthly vital sign readings (Exhibits 5(c), (d), (m), (n), (o) and (r)); and (8) the improper delegation to Mr. Ménard of the Hibidil disinfection of Mr. Faubert's penis (Exhibits 5(d), (k) and (l)).

Mr. Wallace added: (9) the February 5, 1996 Di Pietro incident (Exhibits 5(b), (c) and (d)); and (10) the use of vulgar language and gestures while treating patients and interacting with their family members: the Evelyn Chatterjee complaint (Exhibit 5(g)); the Pink complaint (Exhibit 5(p)); and the jokes concerning Mr. L. (Exhibits 5(c) and (d) as reported by Ms. Bordès and Mr. Ménard).

These are the incidents mentioned in Mr. Wallace's letter that are the basis for the termination of Mr. Ling's employment. However, during the hearing of this adjudication, Ms. Ouellet, Ms. Kelly, Ms. Marriott, Ms. Castonguay, Ms. Fecteau and Ms. Lillian Chatterjee described further incidents or wrongdoings. Ms. Ouellet added that Mr. Ling read books and used his personal computer and cellular telephone during his evening shift (Exhibits 5(c) and (d)). Ms. Chatterjee mentioned an undated conversation with Mr. Ling when the latter told her that her father had probably had a stroke. Ms. Kelly described how, sometime in 1991, she had angled a dressing on a patient to see if Mr. Ling was doing his dressings. Ms. Marriott spoke of an undated occasion when Mr. Ling had told her that he had prepared his medications early on in his shift. Ms. Marriott mentioned also that she saw, on two occasions, Mr. Ling seated at his desk reading while "pleasant music" was playing. Ms. Marriott referred also to an undated complaint she received from Mrs. Chatterjee (no first name was provided). Ms. Castonguay spoke about an irrigation for a patient and Mr. Ling's handwriting,

and again no dates were provided. Moreover, Ms. Fecteau described Mr. Ling's failure to follow proper aseptic techniques.

I will make a determination on each of these allegations separately.

I note that Ms. Gosselin, counsel for the grievor, argued that Mr. Ling was not liked at the Hospital because he was "different" and his homosexuality played a big role in this case. In her submission, Mr. Ling's employment was terminated because of his homosexuality. Some evidence was adduced in this regard. Mrs. Simone Di Pietro testified that Mr. Di Pietro did not want to be touched by Mr. Ling. Mr. Pink declared also that he did not like to be touched by Mr. Ling and Ms. Lacombe declared that Mr. Ling's homosexuality had been discussed at the Hospital. However, I find that, in the circumstances of this case, I do not need to address this issue. Thus, I make no finding in this regard.

(1) The evidence with respect to the Vasotec incident of February 1 to 15, 1996 (Exhibit 5(e)), disclosed that, on February 16, 1996, Ms. Martel noticed that she took the last pill of Vasotec to be administered to patient S.C. Ms. Martel requested that this prescription be re-filled. The prescription had been changed from twice a day ("BID") to a single dose a day. Mr. Ling and three other nurses committed this error. I find it interesting that four experienced nurses made the same error during 14 days without it being noticed until February 16. The employer emphasized that the other three nurses were on contract from an agency. I do not see the difference. To the contrary, the nurses engaged from the agency would have been doubly careful to review the medication sheet of each patient each time they were contracted to work the evening shift. This seems to indicate that the medication procedure needs to be revisited. Mr. Ling was surprised when Ms. Joannette confronted him with this error. He told Ms. Joannette that he could not comprehend how he could have made this error and, at the same time, he recognized that he could have made this error. However, his counsel pointed out that there is no clear evidence that the pharmacy actually dispensed the number of pills required for the 28 days in question. Ms. Gosselin suggested that pills could have been contaminated, dropped on the floor, and/or the pharmacy did not dispense the Vasotec correctly. There was no way of knowing whether 28 pills or more were in the bottle when the Vasotec arrived at Unit 9A. It is also worthy of note that the original prescription and label for the

28 days starting February 1 were not in evidence. There is simply no evidence to indicate that the pharmacy dispensed at least 28 pills as alleged.

I find that, on the balance of probabilities, the employer has not shown that Mr. Ling did administer the Vasotec during his evening shift. However, Mr. Ling readily admitted that he neglected to see the new prescription. This is the only wrongdoing that can be reproached to him. However, this error does not justify the termination of Mr. Ling's employment. It was an oversight on his part and he did not hide his error. He readily admitted it to Ms. Joannette and to Ms. Ouellet. Moreover, Mr. Ling showed remorse concerning this incident.

(2) With respect to the February 2, 1996 omitted initials for the Colace and Lactulose for patient D.P. (Exhibit 5(f)), Mr. Ling explained that he could have forgotten to write his initials in the appropriate square because of some distraction or interruption. Therefore, I find that Mr. Ling did omit to write his initials. However, this incident again does not justify the termination of his employment. The medication was administered and the evidence disclosed that the omission of initials is not considered a medication error. I appreciate the fact that the initials are important to alert the medical staff that the medication has been administered as prescribed; however, in this case, such an omission does not warrant dismissal. Discipline must be progressive.

(3) Concerning the Colace incident discovered on February 23, 1996 (Exhibit 5(g)), the evidence is to the effect that Ms. Martel erred and forgot to write on the medication sheet the 17:00 hours administration for patient C.A. Because of Ms. Martel's omission, Mr. Ling failed to administer the 17:00 hours dose of Colace during the period February 10 to 19, 1996 (Exhibit 5(g)). Mr. Ling failed to check the prescription. The employer reproached him his failure to read the label on the green medication sheet where he would have seen the "BID" prescription. As a result, the patient failed to receive the 17:00 hours dose of Colace for a period of 10 days. Three other nurses committed the same error (February 13, 17, 18 and 19, 1996). I find that Mr. Ling did commit this error (albeit with the other three nurses on the evening shift). The employer reproached him his negligence in not personally reading the label and prescription. His failure is to have relied on the information provided by Ms. Martel, the day nurse. However, because of Ms. Martel's contribution to Mr. Ling's

error, I find that the employer was not justified in terminating Mr. Ling's employment in this regard. He alone could not be faulted for this incident.

(4) Concerning the February 27, 1996 reminder to apply a saline compress on patient R.G. (Exhibits 5(d) and (s)), the employer alleged that it was not up to Mr. Ménard to remind Mr. Ling of this treatment. I find that the nurses and orderlies worked together as a team. I do not see what harm there was for the orderly to ask the nurse if the patient (R.G.) required a treatment. Mr. Ling should have checked the prescription but this alleged incident certainly does not warrant discipline. The saline compress was administered. The most that the employer should have done in this case was to remind Mr. Ling to check the patient's prescription and, again, not rely solely on the briefing by the day nurse or his own routine. In this case, Mr. Ling was on his first day back at work following his vacation. Moreover, this alleged incident was never fully disclosed to Mr. Ling before the termination of his employment. The first time this allegation was clearly mentioned was in the letter of termination of April 26, 1996 (Exhibit 1). Ms. Poupart's notes attest to this fact (Exhibits 63, 64 and 66). In Exhibit 66, we find that Ms. Ouellet questioned Mr. Ling once that an orderly had to remind him to do a "dressing" and no particulars were provided. In view of Ms. Ouellet's and Ms. Paris' reluctance to fully disclose the patient's name and correct nursing procedure, the employer cannot, at this late stage, reproach Mr. Ling for his vagueness in addressing this incident. Mr. Ling replied to this one question that he remembered vaguely and, immediately after, Ms. Ouellet continued her questions about the Hibidil incident. How could Mr. Ling answer such questions considering that the nursing procedure for R.G. concerned a saline compress and not a dressing and no patient was clearly identified? Furthermore, questions before and after the question of whether "an orderly (no name provided) by chance asked him to verify if he had a dressing to do", solely concerned the Hibidil incident (Exhibit 66). Mr. Ling was at a serious disadvantage in replying to such questions. Ms. Ouellet intended to address two different events but her approach led to confusion and unfairness. Mr. Ling was not afforded an opportunity to offer his version or explanation to Mr. Ménard's accusations. In addition, Ms. Ouellet had an obligation to ensure that Mr. Ménard was not misleading the employer when he provided no dates and talked about a dressing (« pansement ») (Exhibit 5(d)). Exhibit 5(s) demonstrates also that this saline compress was prescribed "as needed" (PRN).

(5) The Lasix, Maltlevol and Diabeta for patient P.B. and the point of pressure of patient D.F., and the omitted initials of February 29, 1996 (Exhibit 5(h)) were noticed by Ms. Giroux during her evening spot-check. Mr. Ling commented only that the checking of D.F.'s point of pressure was not a prescription. Moreover, Mr. Ling declared that he had administered the medication to P.B. and would have initialed the square but Ms. Giroux arrived on the unit before he could do so. I find that this alleged incident does not warrant the discipline imposed. Mr. Ling did administer the medication.

Mr. Ménard declared that Ms. Lanciault would write in her files during her spare time (or breaks). This gives credence to Ms. Gosselin's argument that nurses would complete their notes and write in their initials when they had the time. If this was the practice amongst the nurses, Ms. Giroux had overreacted and her reproach was premature. The employer, once again, failed to give clear instructions. If it wanted the nurses to insert their initials at the time of administration, it should have ordered so and ensured that the present practice stop. Otherwise, it may lead to confusion and to the belief that it condones this practice.

(6) I also find that the failure to write the code "X" because patient P.B. had been absent from Unit 9A, is not an incident justifying discipline (Exhibit 5(i)). Exhibit 4, the procedure regarding the use of medication and treatment sheets, indicates, at subparagraph 8.5, that when the medication could not be administered at the scheduled time and the nurse left his/her shift, the appropriate code and the nurse's initials are to be inserted in the square. Thus, this subparagraph 8.5 has no application here. Mr. Ling was not leaving his shift and patient P.B. would be returning to the unit before the end of Mr. Ling's shift. The employer has failed to demonstrate that Mr. Ling committed an offense. Mr. Ling did administer the medication on the patient's return. Thus, Ms. Giroux's request that Mr. Ling write the code "X" was premature. Moreover, even if Exhibit 4 provided that Mr. Ling write the code "X" as alleged in this case, such an omission did not warrant a termination of employment.

(7) Mr. Ling was adamant that he took the monthly vital signs. The employer relied on the declarations of Ms. Bordès, Messrs. Ménard and Legault and patients Frosst, Chappell and Brisson to justify this allegation. Messrs. Chappell, Frosst and

Brisson could not be cross-examined. Mr. Chappell declared (Exhibit 5(m)) that Mr. Ling did not take his blood pressure two weeks before March 25. Mr. Brisson never saw Mr. Ling with “his machine”, and Mr. Ling did not take his blood pressure in March 1996 or in previous months (Exhibits 5(n)). Mr. Frosst signed his declaration on March 25, 1996 to the effect that Mr. Ling did not take his blood pressure every month. The evidence disclosed that Mr. Frosst was correct in his declaration. Mr. Ling did not take his blood pressure every month between November 1995 and March 1996. Moreover, Mr. Chappell may have also supported Mr. Ling when he declared that Mr. Ling did not take his blood pressure two weeks prior to March 25 because his blood pressure was taken early in the month and Mr. Ling was no longer at work as of March 13, 1996. I find the wording of Mr. Brisson’s declaration intriguing. He indicated that he never saw Mr. Ling with “his apparatus”. Mr. Ling testified that he used his own blood pressure cuff. The employer’s position is that the orderlies (namely Ms. Bordès) never saw Mr. Ling with his blood pressure cuff. Thus, how interesting that Mr. Brisson used the word “his” instead of “the Hospital’s” or just “the” apparatus. This written declaration lends credence to Mr. Ling’s testimony that he used his personal blood pressure cuff and I could safely assume that Mr. Brisson did see him use it. Mr. Brisson demonstrated in his written declaration, that he was upset with Mr. Ling because the latter had refused to let him use the telephone. This again placed a shadow and a doubt on Mr. Brisson’s credibility that Mr. Ling did not take his blood pressure. The evidence did demonstrate that Mr. Ling did not take the blood pressure of every patient every month. Mr. Ling testified that he took Mr. Brisson’s monthly blood pressure in August, September, and December 1995 and February and March 1996. Mr. Ling did take Mr. Chappell’s in August 1995 and February and March 1996. Mr. Legault’s written and oral declarations (Exhibit 5(l)) make no mention of the monthly vital signs. Mr. Ménard makes no mention of the blood pressure cuff although he did testify that he did not see Mr. Ling use the Hospital’s sphygmomanometer every month. It is worthy of note that Mr. Ménard used the sentence “I did not see”. This does not mean that Mr. Ling did not use it. It only means that Mr. Ménard did not see him use it. On the other hand, Ms. Bordès was adamant that she did not see Mr. Ling with the sphygmomanometer except for March 1996. (This of course contradicts the declarations of Messrs. Frosst and Chappell.) Ms. Bordès declared further that she never saw Mr. Ling’s personal blood pressure cuff and stethoscope. Here again, Ms. Bordès was careful in her wording.

She testified that if she did not pay attention, she could not hear the sphygmomanometer and she never heard the sound of the Velcro of the blood pressure cuff. Ms. Bordès could not recall the color, size, shape and material of Mr. Ling's briefcase. Obviously, she paid little attention to Mr. Ling's personal belongings. This would explain the fact that she could not recall his blood pressure cuff and stethoscope. I don't give much weight to Ms. Bordès' recollection in this regard. She herself admitted that she would not hear things unless she paid attention. She certainly did not pay attention to Mr. Ling's briefcase.

(8) The Hibidil disinfection of Mr. Faubert's penis was done once by Mr. Ménard. The employer alleged that this treatment was improperly delegated. Mr. Ling replied that it was not a dressing or bandage, as alleged by the orderlies and Mr. Faubert, but a disinfection or cleaning of the patient's penis. The evidence demonstrated that it was not a dressing or bandage. The question is, where does this disinfection fall? Is it a duty exclusive to a nurse, or is it one that can be performed by an orderly? The employer alleges that it cannot be delegated by virtue of Exhibit 5(j). Exhibit 5(j) enumerates only six tasks that can be performed by an orderly. However, Exhibit 23 indicates at least 39 other tasks. Duty 2 of Exhibit 23 indicates that an orderly may give treatment to patients as requested by the nurse. Subparagraph 2.3 reads:

Give skin care to patients wearing disposable briefs, either the incontinent or bedridden by; washing and drying the skin, massaging, applying lotions etc. to prevent bed sores and other skin lesions.

Mr. Ling explained that the cleaning of Mr. Faubert's penile area with a washcloth soaked in Hibidil amounted to cleaning the area. Thus, it is not clear whether such a duty could or could not be delegated to Mr. Ménard. In light of the confusion and the ambiguity of the situation in this case, discipline was not warranted. The employer has a duty to give clear and proper instructions, rules and orders. This was not the case here. Ms. Ouellet was misled by the orderlies when they accused Mr. Ling of delegating to Mr. Ménard a dressing. Ms. Ouellet failed to check the accuracy of this statement and discipline was imposed without regard to the veracity of the allegation. It is also worthy of note that Mr. Ménard declared that Mr. Ling asked him once, on February 5, 1996, to do this disinfection, whereas

Mr. Faubert declared that Mr. Ménard did it twice (Exhibit 5(k)). I find that discipline was not warranted for this confused and ambiguous event.

I give no weight to Ms. Kelly's testimony that Mr. Ling had failed to do R.G.'s bandage. No dates and particulars were provided. Moreover, this event was not mentioned in Mr. Wallace's letter (Exhibit 1). I make the same determination with respect to Ms. Marriott's and Ms. Castonguay's declarations. Ms. Castonguay worked as an orderly from 1981 to 1994. She could provide no specific dates. She found Mr. Ling's handwriting very small and she felt that Mr. Ling left some duties unaccomplished. Mr. Ling's handwriting was not an issue and no particulars were provided as to dates and which duties Mr. Ling had not performed.

Mr. LeFrançois referred to Ms. Fecteau's testimony in support of the employer's grounds for dismissal. Mr. Wallace does not refer to Mr. Ling's method of doing bandages and dressings. Mr. Ling should have been made aware that the employer did not agree with his method of doing bandages and dressings prior to the disciplinary meetings and the hearing of this adjudication. This issue should have been brought to his attention prior to his dismissal to afford him an opportunity to correct the alleged problem. It is trite to mention that the purpose of discipline is corrective and not punitive. Mr. Ling was not dismissed on grounds of incompetence but for disciplinary grounds. Therefore, the employer had an obligation to bring to Mr. Ling's attention this alleged problem and allow him an opportunity to correct his methods. The employer cannot, at this stage, accuse him of misbehaviour in disregarding the employer's rules and procedures. Mr. Ling was entitled to a warning to correct or improve this reproach. Ms. Marriott testified that Mr. Ling has prepared his medication early. No dates or particulars were provided. She did write to Mr. Osman about this but received no reply. There is no evidence that Mr. Ling was spoken to in this regard. Furthermore, no evidence was adduced that it was against the rules to read on the unit. To the contrary, Mr. Ménard declared that Ms. Lanciault would spend her spare time talking to the orderlies. Thus, these allegations have no merit.

(9) The Di Pietro incident was the key incident that prompted Ms. Ouellet to start an investigation into Mr. Ling's conduct and attitude. Ms. Marie-Claude Di Pietro and Mrs. Simone Di Pietro accused Mr. Ling of mishandling Mr. Di Pietro. They went

as far as to allege that they saw bruises on Mr. Di Pietro's arms during a period of five or six months. It is very interesting to note that none of the Hospital's staff noticed such bruises. This leads me to conclude that Ms. and Mrs. Di Pietro exaggerated the alleged incident. Mr. Di Pietro did not testify and the employer's evidence is mere hearsay. Mr. Ling strongly denies the incident as described by the employer. Having heard the evidence concerning Mr. Di Pietro's psychological description, I find that the employer's evidence is not credible. Mr. Di Pietro was an abusive, manipulative, and unhappy man. He had abused his family and the Hospital staff. Ms. Longtin, a very credible witness, described in detail Mr. Di Pietro. Dr. Batalion and Dr. Briones confirmed this description. Mr. Di Pietro had his own agenda on February 5, 1996. He refused to eat and to move his wheelchair; he manipulated the situation that evening. As a result, he wanted to get Mr. Ling into trouble. This is illustrated by his comment to Mr. Ling: "What if I just report you?" Mrs. and Ms. Di Pietro both testified that Mr. Di Pietro did not like Mr. Ling. No reason was provided for this dislike.

On the basis of the evidence, I prefer Mr. Ling's version of the Di Pietro events. I find that Mr. Ling committed no wrongdoing. He was simply doing his job. Unfortunately, he had to deal with an extremely difficult patient who decided to manipulate the system. The evidence is that Mr. Di Pietro wanted to do as he pleased. He wanted to be left alone, eat what and when he wanted, and to stay in bed all day. Such wishes could not be safely met and no conscientious nurse would have allowed Mr. Di Pietro to refuse nourishment and end up with bedsores. Ms. Longtin described how she had to find a way to make Mr. Di Pietro eat his meals. She went so far as to spoon feed him. On February 5, 1996, Mr. Ling tried to persuade Mr. Di Pietro to take his evening meal without success. Mr. Ling then tried to persuade him to move his wheelchair out of the hallway to no avail. The alleged roughness is not to be believed in light of Mr. Di Pietro's psychological history and character. Mr. Ménard and Ms. Bordès were not present during the alleged incident and were not witnesses to it. All they did was repeat what Mr. Di Pietro had told them. Therefore, the employer failed to prove that Mr. Ling did commit a wrongdoing concerning the Di Pietro incident and discipline was not justified.

(10) The Pink incident is to the same effect. Ms. Lacombe contradicted Mr. Pink. Ms. Lacombe was not offended by Mr. Ling's remarks and behaviour. Mr. Pink accused Mr. Ling of vulgar language and of touching Ms. Lacombe's breasts. These two allegations proved untrue. Ms. Longtin and Ms. De Léseleuc described Mr. Pink as a very difficult and volatile man. I prefer Ms. Lacombe's and Mr. Ling's version of this event. On the basis of this evidence, I find that this event does not warrant termination of employment. If the Hospital had decided that nurses should no longer demonstrate familiarity with the patients and their families, this should have been made clear to the staff. Mr. Ling was praised (even by Ms. Sauvé) for his behaviour, tact, and politeness. Ms. Sauvé wrote, in Exhibit 11, that Mr. Ling was always polite with patients, staff, and superiors. Moreover, Mr. Ling demonstrated his politeness and tact throughout the 37 days of hearing. He never once raised his voice, he remained calm throughout a difficult cross-examination and when confronted with serious accusations against him. At no time during his tenure with this employer has his behaviour and remarks to patients and their families ever been at issue. The employer referred to the 1989 decision of the Disciplinary Committee of the Order of Nurses of the Province of Quebec (Exhibit 79) to support its allegation that Mr. Ling lacked tact and judgment. I give no weight to the allegations described in that decision (Exhibit 79). Mr. Turgeon explained how this decision came about. No evidence was adduced and Mr. Ling agreed not to contest the allegations because of lack of funds. It is also interesting that this employer is now raising this 1989 decision when, as an employer, it should have done due diligence at the time of hiring and inquired with the Order of Nurses of the Province of Quebec and the Montreal Neurological Institute if there were any complaints lodged against Mr. Ling.

Concerning the jokes with Mr. L., Mr. Ling conceded that he did joke and so did Mr. Ménard. Ms. Bordès wanted to insinuate a sexual overtone to these jokes when there was none. (She declared that Mr. Ling touched with his hand Mr. L.'s penis, which was covered by the bed sheet.) These jokes would warrant no more than a warning. There is no evidence that Mr. L. was offended by these jokes. Patients of Ste. Anne's Hospital consider the Hospital their home and the staff their extended family. A cold and sterile environment is not what one would expect in such a situation. A healthy environment would require some familiarity and joviality,

otherwise it would be depressing, insensitive, indifferent, and sterile. This surely is not what these patients expect and what the medical staff recommends.

Ms. Lillian Chatterjee recalled an “incident” when Mr. Ling had remarked that her father had probably had a stroke. I find that such a remark merits no discipline. Mr. Chatterjee had previously suffered strokes and Ms. Chatterjee had found him more unresponsive than usual. Mr. Ling answered her questions. It is obvious that Ms. Lillian and Mrs. Evelyn Chatterjee were concerned and worried about Mr. Chatterjee’s health. Mr. Ling’s reply upset Ms. Chatterjee. However, his reply that Mr. Chatterjee may have been quieter than usual or might have experienced a small incident like a stroke, was appropriate in the circumstances. It was a logical explanation for Mr. Chatterjee’s unresponsiveness.

Mrs. Evelyn Chatterjee’s complaint about Mr. Ling’s remarks to her husband did not surface until March 1996 when Mrs. Chatterjee signed her declaration (Exhibit 5(g)). Mr. Ling was questioned about it during the disciplinary interviews. This alleged incident occurred in the fall of 1995 (Mrs. Chatterjee could not recall the date) but the employer did not bring it to Mr. Ling’s attention until March 14, 1996 and no names were provided. At the time, Mr. Ling had no recollection of the incident (Exhibit 65). Mr. Ling testified that he made the remark to Mr. Chatterjee, who laughed at it, but it allegedly offended Mrs. Chatterjee. However, she did not complain about it to the Hospital. I am troubled by the delay between the commission of the alleged incident and Mrs. Chatterjee’s complaint. This delay amounts to at least five or six months. Moreover, it is interesting to note that Mrs. Chatterjee formally requested, in March 1996, that her husband be transferred to the Ottawa Rideau Veterans’ Hospital and her request was granted. At any rate, if the employer found this remark offensive, it should have first discussed it with Mr. Ling prior to terminating his employment.

Here again, Mr. Ling was entitled to be first warned that such a remark was not acceptable. Although I decided that Mr. Ling did not warrant to be disciplined for his remarks and jokes, I nevertheless find that his remarks to Ms. Lacombe and Mrs. Chatterjee (the “condom joke”) and to Mr. L. may have gone too far. He should not have expressed such familiarity. He was still just a nurse, an employee of the Hospital, taking care of Messrs. Pink, Chatterjee and L. He had to keep a certain

distance. It offended Mrs. Chatterjee. However, Mr. Ling should have been told that his remarks and jokes were not welcome. These did not justify the capital punishment that was imposed.

Mr. Wallace's decision to terminate Mr. Ling's employment was reached on the basis of Ms. Préfontaine's recommendation. In addition, Ms. Préfontaine testified that she decided to recommend the termination of employment on the basis of Exhibit 5, Ms. Ouellet's investigation and report. The grounds for the termination of employment are therefore found in Exhibit 5(a), namely: the Di Pietro incident of February 5, 1996; the Vasotec incident of February 1 to 15, 1996; the non-initialing of Colace and Lactulose of February 2, 1996; the missing 17:00 hours administration of Colace from February 10 to 19, 1996; the missing initials of Maltlevol, Diabeta and D.F.'s point of pressure of February 29, 1996; the missing initials of March 6, 1996 for Furosemide and Maltlevol because of P.B.'s absence; Mr. Faubert's disinfection delegated to Mr. Ménard; the saline compress of patient R.G. that Mr. Ménard had to remind Mr. Ling of; the monthly vital signs; the Chatterjee condom incident (there is no mention of Ms. Lillian Chatterjee's stroke story); the jokes to Mr. L involving scissors; the Pink incident; and the use of a personal computer and cellular telephone.

Concerning the use of the computer and cellular telephone, I conclude that the use of such personal equipment was not prohibited by the employer. No evidence was adduced prohibiting its use except for Ms. Ouellet's ambiguous declaration. There is simply no evidence to show that the employer informed Mr. Ling that he was not to use his computer and cellular telephone. To the contrary, Ms. Sauvé asked him to prepare a document on his computer and Ms. Giroux made no mention that it was against the Hospital's policy and directives when Mr. Ling demonstrated his computer to her. This allegation has no merit.

All other allegations came to light only at the adjudication hearing and I am referring in particular to Ms. Lillian Chatterjee's, Ms. Fecteau's, Ms. Kelly's and Ms. Castonguay's declarations amongst others. Mr. Ménard testified that Mr. Ling did the dressing of patient R. differently than Ms. Lanciault did. Ms. Fecteau commented on Mr. Ling's method and I dealt with this subject already. It is worthy of note that Mr. Wallace does not mention the dressing of patient R. in his letter of April 26, 1996 (Exhibit 1).

The employer cannot rely on these new allegations that were not the subject of Mr. Wallace's letter. The employer cannot add new grounds for termination at this late stage. The alleged incidents not mentioned in Mr. Wallace's letter are new and different from the ones indicated in Ms. Ouellet's report and Ms. Préfontaine's grounds for recommending Mr. Ling's dismissal. However, even if these incidents were to be considered embodied in Mr. Wallace's grounds for termination, they do not warrant discipline on the ground that the employer failed to meet the burden of proof. Moreover, Ms. Kelly, Ms. Castonguay and Ms. Chatterjee's allegations simply do not warrant any disciplinary action.

To summarize, I find that Mr. Ling committed the following infractions: not reviewing the patient's file and noticing the new prescription in the case of the Vasotec from February 1 to 15, 1996 (Exhibit 5(e)); he was one of the nurses who did not notice the change in the prescription; the February 2, 1996 omitted initials for the Colace and Lactulose of D.P. (Exhibit 5(f)); the Colace error initiated by Ms. Martel causing Mr. Ling and other nurses to fail to administer the 17:00 hours dose (Exhibit 5(g)) during a period of 10 days (February 10 to 19, 1996); and the missing initials for the Lasix, Maltlevol and Diabeta of P.B.; and D.F.'s point of pressure of February 29, 1996.

The employer was justified to impose some discipline for these incidents. However, each one or all considered together did not warrant a termination of employment. Mr. Ling was not the only one to commit an error for the Vasotec and Colace incidents. These errors could be explained. Moreover, the evidence was not conclusive in the Vasotec case. The employer failed to demonstrate that the pharmacy had dispensed 28 pills or more or that none were administered to someone else or otherwise lost. I have nevertheless found, on the balance of probabilities, that Mr. Ling failed to notice the change of prescription for the Vasotec as did the other three nurses. The Colace incident is similar in that Ms. Martel made the error and Mr. Ling failed to verify the prescription. Discipline was also warranted in the case of missing initials. However, none of these incidents individually or together warrant a termination of employment in this case. I arrive at the same conclusion even when I add the remarks to Ms. Lacombe, to Mr. Chatterjee, and the jokes to Mr. L.

The case of the code “X” incident and the Hibidil disinfection are ambiguous. The employer did not provide evidence of a clear breach to an unambiguous directive or policy. For all the remaining allegations, I find that Mr. Ling committed no infraction. The allegation concerning the use of a personal computer and cellular telephone has no merit. The employer had an obligation to issue clear instructions. This applies also to how this employer expected its staff to interact with the patients and their families. If no joking and familiarity were allowed, this should have been clearly spelled out.

Furthermore, Mr. Wallace alleged that Mr. Ménard prompted Mr. Ling to do R.G.’s saline compress. The evidence disclosed only that Mr. Ménard asked Mr. Ling whether the patient required a saline compress. In my opinion, this event seems to indicate a normal interaction between a nurse and an orderly; they worked as a team. This reproach merits no discipline. Mr. Ling did check R.G.’s file and performed the task.

I have also considered the mitigating factors presented by Ms. Gosselin. Mr. Ling is 48 years old in 1999; he wants to remain in the nursing profession; to work as a nurse is very important to him; he had eight years of service with this employer; and his chances of obtaining another nursing position are slim. I take judicial notice of the fact that, at the present time, the situation is difficult for nurses due to hospital cuts and mergers.

Moreover, Mr. Ling’s infractions occurred during a difficult time in his life. His niece was seriously ill and his brother (the niece’s father) was getting a divorce. Mr. Ling had only two nieces. He should have brought his personal situation to the attention of his employer. He did not raise it until the adjudication. However, this could be explained in light of Ms. Ouellet’s and Ms. Paris’ conduct during the disciplinary meetings. Ms. Poupart’s testimony and her notes, as well as Mr. Ling’s testimony, indicate that the disciplinary interviews consisted of fast and direct questions about specific incidents. There was no room for dialogue. The meetings were conducted in an inquisitorial manner. This could explain Mr. Ling’s failure to express his concerns and divulge personal problems. Moreover, Mr. Ling himself did not realize that his concern for his niece’s ill health may have affected his performance at work.

In conclusion, I find that all the incidents which Mr. Ling was found to have committed warrant no more than a three-day suspension.

Mr. Ling was adamant that he wanted to be reinstated and requested, in addition, monetary compensation. I have carefully reviewed the evidence and I agree with Mr. LeFrançois, without condoning it, that the employer no longer trusts Mr. Ling. It is unfortunate but, in all good conscience, I cannot order the reinstatement of Mr. Ling in the circumstances of this case. To reinstate him is unrealistic. The employer does not trust him; the employer-employee relationship has been seriously and permanently broken by the employer. I do not believe that it can be mended. Mr. Ling is the only nurse of this unit on the evening shift and the employer must rely on him. Without the necessary trust, this situation is not viable. The employer strongly believes that Mr. Ling committed the alleged infractions. Ms. Sauvé went so far as to say that she feared for the patients' safety if Mr. Ling was to be reinstated. Thus, a reinstatement is not advisable in these circumstances.

Ms. Gosselin raised the issues of compensatory damages and the employer's bad faith. The evidence of Ms. Préfontaine and Ms. Paris with respect to the complaint to the Order of Nurses of the Province of Quebec is disturbing. Ms. Paris had no business calling Ms. Gosselin, in May 1997, to let her know that a complaint would be filed "unless Mr. Ling was prepared to withdraw his grievance" (Exhibit 97). This telephone conversation could easily and reasonably be interpreted as a threat. The evidence was ambiguous as to what exactly was the purpose of this telephone conversation initiated by Ms. Paris. Furthermore, Ms. Préfontaine's explanation as to the reason why the complaint was only filed on July 9, 1997 was not believable. The same report and documents prepared by Ms. Ouellet on April 1, 1996 were presented to the Order of Nurses of the Province of Quebec. So why the delay of 15 months? The only obvious explanation is that, in April 1997, the employer had already presented its main and key witnesses: Ms. Ouellet, Mr. Faubert, Mr. Pink, Ms. and Mrs. Chatterjee, the three orderlies, and Ms. Paris. Furthermore, Ms. Ouellet had already met and discussed their future testimony with Ms. Lacombe and with Ms. Longtin. Thus, in light of my conclusions with respect to some of the allegations raised by those witnesses, the employer may have come to the realization that its case may not have been as strong as it first believed. This explains the employer's actions in this case. The difficulty in providing documents to Mr. Ling, to his bargaining

representatives and to Ms. Gosselin and the telephone call of May 1997 are also troublesome. I find it also very strange that Ms. Préfontaine and Mr. Wallace chose not to meet with Mr. Ling prior to reaching their decision to terminate his employment. The employer did not act fairly towards Mr. Ling.

In light of these conclusions, the grievance presented by Mr. Ling is granted in part. However, Mr. Ling's request for reinstatement to his position with this employer is hereby dismissed. In view that I decided that Mr. Ling's reinstatement to his position is not advisable and reasonable in the circumstances of this case, I grant him instead a 48-month pay in lieu of reinstatement. His request for compensatory damages in the amount of \$25,000; dental expenses; recovery of RRSP losses of \$16,195.04; reimbursement of his university tuition fees; and professional fees paid to the Order of Nurses of the Province of Quebec is also dismissed.

Muriel Korngold Wexler
Deputy Chairperson

OTTAWA, May 13, 1999.