

**NOVA SCOTIA HUMAN RIGHTS
BOARD OF INQUIRY**

IN THE MATTER OF:

A complaint under the *Human Rights Act*, R.S.N.S.,
1989, c. 214, as amended, by

Lydia Martin

Complainant

- and -

Ven-Rez Products Limited and Wayne Williams

Respondents

**DECISION OF PETER M. ROGERS,
BOARD OF INQUIRY,**

Heard at Shelburne, Nova Scotia, April 5, 6, 7 and 8, 2004.

Appearances:

Lydia Martin, Complainant, on her own behalf

**Michael J. Wood, Q.C. for the Nova Scotia
Human Rights Commission**

Michael E. Dunphy, Q.C. for the Respondents

Date of Decision:

April 30, 2004

The Complaint and Its History

1. The Board of Inquiry was convened to deal with Lydia Martin's complaint that the Respondents engaged in sex discrimination in regards her employment and sexual harassment in the workplace contrary to ss. 5(1)(d)(m) and/or s. 5(2) of the *Human Rights Act*. The complaint is that during the course of her employment, Ms. Martin was subjected to three episodes during which the Respondent, Wayne Williams, rubbed his body against hers, and various occasions when Mr. Williams and other Ven-Rez employees made offensive remarks to the Complainant, including negative remarks about her size and appearance. The Respondents deny that these incidents occurred.
2. The complaint is vague as to when the alleged events took place: it makes reference to the discrimination and harassment having occurred between the early 1980's and the Complainant's departure from the workplace in June, 1999.
3. Lydia Martin's first complaint to Ven-Rez management was in a written note which was apparently received by management sometime in April, 1999. This note contained allegations by Ms. Martin that 9 employees of Ven-Rez, including 3 of her superiors, were making derogatory comments about Ms. Martin smelling. Ms. Martin wrote that some employees had used an aerosol spray can containing a foul smell and then acted as though (and, in some instances, directly stated in her presence) that she was the source of the odor. Ms. Martin described how hurtful this was. She was taking medication affecting her kidneys at the time and initially was convinced by the comments of her co-workers that she was giving off an unusual odor as a result. In her letter, she wondered if the company was trying to "get rid of her". The episodes which were referenced in the April, 1999 letter had apparently very recently occurred. The incidents

described in this letter are not included in the complaint which is before me, but they form an important part of the context that resulted in the Human Rights complaint being brought forward.

4. Ron Wallett, a managerial employee of Ven-Rez, stated that upon receipt of the letter he investigated the allegations by interviewing the employees identified, including Paula Race, Michael Race, Ed Preston, Blaine Lisk, Bev Nickerson and Wayne Williams, all of whom denied the allegations. Several witnesses testified that the then General Manager, Dave Staples (who has since left the company and who did not testify) also interviewed the employees mentioned in the letter. After the contents of the April, 1999 letter were investigated by management, the company's President, Norm Wallett, met with Lydia Martin, Randall Butler (Union Shop Steward), and Dave Staples. Norm Wallett testified that he advised Lydia Martin and Mr. Butler at that meeting that they had talked with everyone mentioned in the letter and that the employees had all denied any knowledge of the incident having occurred and specifically denied their own reported involvement. At this meeting, Mr. Wallett says he told Lydia Martin that the company was not trying to "get rid of her" and very much wanted to keep her.

5. The next time any complaint was brought to Ven-Rez management was by a letter from Lydia Martin received on June 10, 1999. That letter referred to many of the items forming part of the Human Rights complaint concerning verbal harassment, and from the choice of words in the letter it appears as though the items complained of pre-dated, and sometimes long pre-dated, the April complaint. The only reference to any of the incidents involving alleged inappropriate physical contact by the Respondent, Wayne Williams, was an oblique reference:

"So he started talking and laughing to me again. Then one day he came out, I was standing by the strapper and something happened. I overlooked it the first time, but then

it happened the second time. That was when I stopped talking to him or having anything to do with him.”

6. The allegations in the June 10, 1999 letter were also investigated by management according to the testimony of the company witnesses, and were not supported by the employees interviewed during that investigation. Another meeting was held with Ms. Martin and the Shop Steward at which time Ron Wallett, who attended on behalf of management, expressed disbelief in the accusations and urged Ms. Martin to obtain further medical advice.

7. Within two weeks, Ms. Martin had left the active work force at Ven-Rez and she ultimately obtained long-term disability benefits.

8. The Human Rights complaint is dated October 4, 2000. A very detailed response was submitted on behalf of Ven-Rez later that month which included 13 witness statements. The statements were taken by a bookkeeper at Ven-Rez and, according to management, this was done in order to avoid the appearance of undue pressure being exerted by the company. A Human Rights Commission investigator took a further 10 statements in March, 2002. All of these statements deny that the incidents referenced in the Human Rights complaint occurred.

The Parties

(a) Lydia Martin

9. Lydia Martin is a 60 year old woman who lives with her husband in Sable River. She reached approximately Grade 8, before leaving the school system to stay home and care for her grandmother, who had some nervous or other disorder whereby

she could not be left alone. Lydia had been brought up by her grandmother in New Elm, a small community in North Lunenburg County. After meeting her husband, she moved to Sable River, Shelburne County. She took up work as a cashier at the Shelburne Woodworkers Grocery Store in the Town of Shelburne. In 1978 she started to work at Ven-Rez, a furniture manufacturer with a plant located in Sandy Point just outside Shelburne. By this point, her two sons were old enough that they did not need her to be home after school. Ms. Martin worked at Ven-Rez for some 21 years in a unionized position. For roughly 5 of those years, she was working in the sanding/finishing room where table tops were sanded and varnished, and during the remainder of her employment, she worked on the assembly line (sometimes called the “paint line”), primarily doing the “take-off” of product parts from an overhead conveyor system after the product had been spray-painted and dried as it moved along the conveyor.

10. There was disagreement between Ms. Martin and some Ven-Rez witnesses regarding whether she worked initially on the assembly line take-off before being transferred to the sanding/finishing area, or whether she started in the sanding/finishing area. Although the issue does not have great consequence to the outcome, I accept Ms. Martin’s evidence on this point in preference to that of other witnesses, most of whom would have no real reason to remember this detail from the distant past. There was also disagreement, or at least differences in recollection, regarding how it came to pass that Ms. Martin was transferred back to the assembly line take-off area. Lydia Martin states that she asked Norm Wallett to be transferred back to the assembly line. Other witnesses have no memory of that occurring and Norm Wallett in particular thought it was unlikely because at that time he did not concern himself with

the production end of the business and would not have been involved with this type of decision. Assuming that Ms. Martin did initially approach Norm Wallett to seek a transfer back to the assembly line take-off area, I am satisfied that Norm Wallett would never have agreed to such a transfer without consulting with and obtaining the approval of the company's production manager, Wayne Williams. Ms. Martin asserts that it was her "going over Mr. Williams' head" regarding this transfer that provided a motive for Mr. Williams to harass and pick on her. I do not accept this theory because I am satisfied that Mr. Williams expressly or implicitly gave his blessing to the transfer.

11. Lydia Martin is a pleasant person who showed respect for the hearing process and the hearing participants, was eager to please, and testified with grace and dignity for the better part of 2 days, including a lengthy cross-examination at the hands of an experienced, skillful trial lawyer. She did this while suffering from significant mental health problems, the effects of which I will describe in more detail below.

12. It was obvious from her testimony that Ms. Martin took great pride in her work. In spite of the difficult and emotional nature of some of the evidence, the only time she lost control of her emotions in the hearing room was when she was asked about the extent to which she was making mistakes in her job after the onset of her short-term memory problems. Ms. Martin's testimony was that from her perspective "one mistake was too many" and she clearly felt she was making an increasing number of mistakes. Her foreman, co-workers, production manager, and the company's owner all testified that they were thoroughly satisfied with Lydia Martin's work performance until the day she left. In fact, Ms. Martin is likely quite right in thinking that she was beginning to make more mistakes during the last few years of her employment. In light of the

neuropsychological testing of her short-term memory, it is inconceivable that she would not have been making mistakes, at least when packing some of the more complex product orders, such as library shelving. However, because she was a perfectionist in regards her job performance, Ms. Martin likely exaggerated in her own mind the importance of her mistakes. The mistakes were likely less numerous and of less consequence than Ms. Martin perceived them to be. It was because of these mistakes in her work that she first sought medical attention for mental health issues. In any event, I accept that her co-workers and managers were oblivious to her mistakes, whereas she was acutely sensitized to them. She cared more about the quality of her work than anyone else did.

13. With one exception, I believe that Lydia Martin told the truth as she perceived it to be. The exception was when she was asked if her husband believed her on those occasions when she told him that their house had been broken into: during the long pause which followed that question, it was evident that she could not bring herself to portray her husband as being disloyal to her. In reality, no one else in the hearing room would have thought any worse of her husband for disbelieving her on that point, as their house was undoubtedly not broken into. Nevertheless, it was telling that the single obvious deviation from Lydia's affirmation to tell the truth was to avoid portraying her husband in what she thought was an unfavourable light. It should be noted that Mr. Martin attended throughout the hearing to provide moral support to his wife, and it must have been difficult and painful for him to listen to the evidence. The mutual commitment and affection between the Martins was touching.

14. The courage and persistence required by Ms. Martin to see this complaint through 4 long years of unfamiliar process, should not be understated recognizing the

awareness on her part that she suffered from serious mental disability, knowing that the Respondents had a dozen witnesses that would challenge her account of events, knowing that she did not have a single corroborating witness for any of the events which were the subject of the complaint, knowing that she was unable to place events in time, or even in sequence, and knowing that her medical condition was going to be explored in the most intimate detail.

15. I both admired and liked Lydia Martin.

(b) Ven-Rez Products Ltd.

16. The Respondent, Ven-Rez, manufactures and sells school, institutional and library furniture and other specialized furniture products. Several of the company's products are stackable, with legs and frames constructed of metal tubing, such as one might deploy in a school gym or community hall for a Bingo night or other special event. It is a utilitarian product and very plain to look at. Although there was no evidence on this point, I infer from the nature of the product that sales would be price-sensitive and that it is only with considerable vigilance over productivity, that it is possible to maintain the business as a successful going concern. Ven-Rez was employing approximately 29 hourly paid employees in 1999. It is probably a significant contributor to the economy in the Shelburne area, which has been adversely affected during the past 15 years by the decline of the fishery and the closure of the former Nova Scotia School for Boys, a provincially operated residential training center.

17. Mr. Ron Walleth bought Ven-Rez in 1973. He sold the company to his son, Norman, during the mid or late 1980's. Ron Walleth remained the company president, however, until some time in the mid 1990's, when Norman took over that title.

At that point, Ron Walleth became a consultant to the company. It is evident that he has been a leading figure for Ven-Rez in handling and responding to the complaints received by the company from Lydia Martin in 1999 and the Human Rights Commission investigation which occurred after that. He attended almost all of the hearing. Ron Walleth is a salesman for the company, helps trouble-shoot the company's machinery and equipment and performs other tasks as needed to assist management. For example, in 1999 Ven-Rez manufactured a large order of library shelving for a college in Minnesota. It was Ron Walleth who traveled to Minnesota to assemble and install the shelving for a 3 week period and who returned there for a further week when the balance of the order was complete.

18. Ron Walleth is an affable and highly confident man. Even though the hearing would not be an environment that was particularly familiar to him, he was willing to take risks during his cross-examination by Commission counsel, including one notable instance when, on the subject of workplace banter regarding personal characteristics, he referred to counsel's balding head as a "fly skating rink" to illustrate his point. With his aura of supreme confidence, it is understandable why a modest and unassertive employee, such as Ms. Martin, might consider him intimidating.

19. Ron's son, Norman Walleth, had a polished, professional and soft-spoken manner about him. It was Ms. Martin's impression that he made a real effort to show Ven-Rez employees that he cared about them as individuals, even though his interaction with them was usually limited to a few seconds each day. In about 1996, Lydia Martin gave Norman Walleth a small gift that was inscribed "World's Greatest Boss". In spite of all that has occurred since then, it was obvious from her testimony that Ms. Martin

continues to hold Norman Wallett in high regard. Norman Wallett is the President of Ven-Rez, and he owns the company.

(c) Wayne Williams

20. The Respondent, Wayne Williams, started at Ven-Rez very shortly before the Complainant. He is the company's Production Manager or Production Superintendent and has held this position throughout his career at Ven-Rez. He reports to the General Manager who in turn reports to the company President. In a typical day, he would walk past the take-off area of the assembly line, where Lydia Martin worked, about 4-6 times. He reportedly jokes with some employees on subjects of common interest, such as hockey, baseball and NASCAR racing. These are not interests shared by Lydia Martin and it does not appear that she and Mr. Williams chatted or socialized much in the workplace. Wayne Williams' office was located about 60 or 70 feet away from Ms. Martin's ordinary place of work in the take-off area. Mr. Williams described how from time to time he would respond to a yell from Lydia, "I need space", when she was running out of room to stack product which she had taken off the assembly line, by personally moving product around on the plant floor to help her.

21. Ms. Martin alleged that Mr. Williams treated her differently (more unfavourably) than other workers. As noted previously, she attributed this to her having "gone over his head" to request the transfer back to the assembly line, which I do not think is likely. In any event, it seems highly improbable that he would harbour a grudge on a matter such as this for in excess of a decade. My impression of Wayne Williams is that he is busy, efficiency-oriented and somewhat indifferent to the sensitivities of a

quiet, unexpressive employee like Lydia Martin and perhaps unaware of the importance to her that she have her superiors' approval.

22. The Board heard from Mr. Williams, Ms. Martin and a co-worker named Ed Preston, concerning an incident in 1993 that illustrates well the relationship between Ms. Martin and Mr. Williams. Ed Preston described it as having occurred this way: Mr. Williams noticed the product which had been taken off the assembly line had been poorly stacked (which would result in inadequate space to store additional product). Mr. Williams stated, "It's not stacked right." Mr. Preston says that he (Mr. Preston) accepted responsibility for having stacked it that way. He said Mr. Williams said, "I don't care who done it. I don't want it done that way." Mr. Preston said that Lydia Martin became upset, threw her hammer across the floor and left the plant. Ed Preston testified that he later heard rumors that Wayne Williams apologized to Lydia, but he had no personal knowledge of any apology.

23. Ms. Martin's description of the event referred to another worker, Andrew Young (who is now deceased), in place of Ed Preston, but I believe she was mistaken on that point. She said that the co-worker had wasted space by improperly stacking product. Ms. Martin testified that Wayne Williams "flew into her", swore at her and that in consequence she left crying and went home. She says that Norman Walleth called her and asked if she was coming back to work and that she said yes. She said that Ron Walleth made Wayne Williams apologize to her.

24. Mr. Williams kept a note which he had made on the date of the incident. The material portion says:

"Upon approaching the area, I spoke to the unloading person [Lydia] about keeping the piles of desks very close

together to save on space, because of a lot of material coming on [the assembly] line we need space for. I was not upset with unloading person [Lydia Martin] in any way, her response to me was ‘talk to Ed, he put them that way’, in a very sharp, testy voice. My response to her was I was only speaking to her about this and I didn’t expect such a sharp, hot response.”

His note goes on to say that five minutes later, Ms. Martin ran past him, upset and crying, saying she was taking no more foolishness, that he followed her to the punch clock trying to reason with her, but that she started yelling and he saw she was very upset and she then left the plant. Mr. Williams testified that he did not apologize to her following this incident, because “there was nothing to apologize for.”

25. Even from Mr. Williams’ own note and testimony regarding the incident, it is easy to understand why Ms. Martin might view him as an unkindly figure. From Mr. Williams’ perspective, he simply wanted the product stacked properly to avoid a production delay. Presumably he was not anxious to use his time to find out which particular employee had been responsible, and thought that telling the primary person responsible for product take-off should accomplish the task of getting the problem corrected. Essentially, it may have been his way of trying to have Ms. Martin take responsibility for communicating good practices to her helper. To Ms. Martin, the fact that he would direct remarks to her on the subject was taken to be a false accusation against her personal workmanship sufficient to justify leaving the premises for the remainder of the day. I conclude that it would have been preferable if Mr. Williams had acknowledged that Ms. Martin normally stacked the product well, but that he would like her to communicate with her helpers if she sees a problem developing in the take-off area.

26. In most work environments with a significant number of employees, a variety of managerial styles and personalities is used to achieve reasonable productivity. There may be some hard-shell employees who respond better to a firm and somewhat uncompromising manager, such as the manager depicted in the 1993 incident. A more sympathetic managerial personality, such as that of Norman Walleit, might elicit more positive results from other employees, such as Ms. Martin, who take great pride in their work and who would best be motivated to maintain high standards by periodic words of praise and recognition and kindly explanation of additional or new expectations. However, that is not a *Human Rights Act* issue. Even assuming that Wayne Williams and Mr. Ron Walleit were less considerate or sensitive towards Lydia Martin than Norman Walleit, one must not lose sight of the fact that their primary function is ensuring the survival and viability of a small manufacturing enterprise in a competitive environment. It is not for the Board to determine how sensitively management treats its employees, unless there is persuasive evidence that its insensitivity is so pronounced that it has had a discriminatory impact on women or other groups sought to be protected by Human Rights legislation.

The Complainant's Mental Health

27. A considerable portion of the testimony focused on the mental health of the Complainant. Before the hearing, counsel discussed the possibility of the Respondents presenting a preliminary motion to have Ms. Martin's testimony ruled inadmissible on the basis that she was not mentally competent to testify. However, when it appeared that the preliminary motion would require almost as much evidence as the principal hearing, the parties agreed to proceed with the principal hearing, without

prejudice to the right of the Respondents to make argument that the Complainant's evidence should be held to be inadmissible, and rejected, after all the evidence has actually been heard.

28. Counsel referred me to the case of *Day v. Canada (National Defence)* [2003] C.H.R.D. No. 10, a decision of P. Groarke sitting as the Canadian Human Rights Tribunal. The Respondents rely in particular on paragraph 7 in which the Tribunal stated:

“7. The Respondents have submitted that the Complainant cannot meet the criteria set out by Dubin, J.A. in *R. v. Hawke* (1975) 7 O.R. (2d) 145. There seem to be two branches to the test in the jurisprudence. A witness cannot give evidence if the Tribunal is satisfied that either

- 1) her current psychological state, or
- 2) her psychological state at the time of the events in question

prevents her from giving testimony that could be relied upon by a reasonable trier of fact. This is ultimately a legal and not a psychological question. It is the Tribunal that is in the best position to judge the probative quality of the evidence before it. The most significant consideration in a case like the one before me will normally be the conduct of the witness on the stand.”

29. In the *Day* case, the Complainant had given her evidence in chief, and cross-examination had only just begun after one month of hearing time when the motion was made that her evidence should be held to be inadmissible. This was the Tribunal's second ruling on the question of the Complainant's competence: in its first ruling, the Tribunal allowed the Complainant's evidence in chief to be heard, in spite of having misgivings as to the Complainant's ability to testify. The Complainant in the *Day* case was convinced that other people had implanted thoughts and phrases in her mind and had

even implanted subliminal suggestions which she was compelled to obey. The Complainant further believed that God was telling her to make the complaint, that the individual respondent programmed her to hear certain frequencies and play a popular song on the guitar, without having to learn it, and she believed the respondent may have programmed her to harm herself or commit suicide. She had testified that she saw “Helter-Skelter” when she saw a picture of a naked woman in the dockyard and that she said this because someone by the name of Robin had said that she would do so, years before the complaint arose. The same person, whom she referred to as “Rotten Robin”, also told her that she was to turn herself in to a mental institution at some point in time. She was also programmed to say “I have AIDS” when in fact she was HIV negative and to say “oink, oink, get it” in circumstances that could only be described as bizarre. The Tribunal concluded that the Complainant’s testimony in that case failed both branches of the legal test referred to above. The Tribunal also noted the practical nature of the problem in that the Complainant had carriage of the case, without legal counsel, and had difficulty restraining herself when her emotions were engaged and was often disruptive in the hearing room. The Tribunal concluded that the Complainant was incapable of participating in the process or instructing counsel to represent her interests or to make decisions that were required in prosecuting the case. The Tribunal noted, however, in paragraph 32:

“The most important aspect of the matter may be that the complainant completed her evidence in chief, even if that testimony was ultimately rendered inadmissible. Life is imperfect but there is a real sense in which she has had her day in Court.”

30. The circumstances in the present case are very different. Not only does Ms. Martin suffer from mental disabilities with less extreme symptoms, but she has in no way been disruptive of the hearing process, or disrespectful of the opposing parties, the Board, or its process and there were a number of points, albeit not points going to the heart of the factual allegations, upon which I find her evidence to be likely to be more accurate and reliable than other witnesses.

31. It would be particularly unfortunate in the Human Rights context, in which mental disability is a prohibited ground of discrimination, if persons with such disabilities were not given the same opportunities as other parties and witnesses to participate in hearings and have the reliability of their evidence assessed and weighed as part of the ordinary process of weighing the credibility of testimony by the trier of fact. To disenfranchise persons with mental health challenges from bringing complaints to a Board of Inquiry hearing would be unfortunate, irrespective of whether the complaint involved discrimination on the grounds of mental disability (which this one does not) or other matters, except where it would be tantamount to an abuse of process to allow the hearing to proceed, which seems to have been the situation faced by the Tribunal in *Day*.

32. Although I do have serious doubts as to the reliability of significant items of Ms. Martin's testimony, I believe that she also had relevant and reliable testimony to give. I see no abuse of process in the Board assessing the reliability of the individual components of her evidence as it would for any other witness. Accordingly, I find her evidence to be admissible.

33. Nevertheless, I do find that the Complainant's mental health affects the reliability of some very significant portions of her evidence and it is therefore necessary

to consider Ms. Martin's mental condition carefully. At the outset of this discussion, I make the observation that the language of psychiatry as it applies to this case is expressed in harsh words that seem disproportionate to the circumstances. Words such as "dementia", "delusional", "psychotic" and "paranoid" are words which Ms. Martin, and any other person in her shoes, would find very difficult to hear applied to oneself. Because of the lack of alternative language, I will, with considerable regret, use those words in this decision, but I wish to make it clear that I think Lydia Martin's mental abilities greatly exceed her disabilities.

34. I heard oral testimony from Dr. Wouna Chaloner who has been Ms. Martin's family physician only since November of 2002 and who, by her own account, does not have the qualifications to give opinion evidence regarding the psychiatric illnesses, disorders or conditions experienced by Ms. Martin, or to express an opinion on whether delusional thinking is a symptom of certain specific illnesses or disorders. The other medical doctor who testified was Dr. Edwin Rosenberg, a psychiatrist retained on behalf of the Respondents to prepare a report and testify at the hearing, but who never examined Ms. Martin or took a history from her personally. The evidence of both of these witnesses must be viewed with considerable caution.

35. In addition to the testimony of these two doctors, the Board had before it, by consent of the parties, medical reports and other documents pertaining to the mental state of Lydia Martin, most of which was retrieved from Dr. Chaloner's file. This included letters from previous family physicians; neuropsychological assessment reports from 1998 and 2003 from Dr. Fisk; correspondence from Dr. Chris MacKnight (a specialist in geriatric medicine whose training in psychiatry, if any, was not indicated to

the Board); the report of a neurologist, Dr. Bhan; letters or reports from a psychologist, Michael Fowler; a psychotherapist, Dr. Bruce; and from three psychiatrists, Dr. Okyere, Dr. Gordon and Dr. Milliken. According to the medical records, Ms. Martin first presented with complaints of difficulty in concentrating or focusing her attention in July, 1997 saying that she was very concerned about Alzheimer's disease. The medical documents before the Board accordingly span the period between 1997 and 2003.

36. Alzheimer's disease is a dementia. There are other dementia types, including frontal lobe dementia. Pick's disease is apparently a type of Frontal Lobe Dementia. Memory impairment and delusional thinking, including paranoid delusional thinking, are common symptoms of dementia and, according to Dr. Rosenberg, may also result from a major depressive disorder with psychotic features. Delusions are fixed false beliefs that are out of keeping with reality or with the patient's level of knowledge. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (commonly known as *DSM-IV*) in a paragraph on the associated features of dementia states:

“Delusions are common, especially those involving themes of persecution (e.g., that misplaced possessions have been stolen).”

37. Whether Ms. Martin suffers from major depressive disorder with psychotic features, as Dr. Rosenberg asserts, or whether she suffers from frontal lobe dementia with depressive features, as appears to be the current working diagnosis of Ms. Martin's treating physicians, should be of great concern to Ms. Martin from a point of view of correct medical treatment, but matters little to correctly assessing the evidence. What does matter, is whether there is sufficient concern arising from Ms. Martin's

memory problems and from any evidence of delusional thinking to view her testimony as unreliable regarding the incidents of harassment and sex discrimination which form the basis of the complaint. This is a particularly important issue in a case in which there is no corroborating evidence in support of the allegations, and where the allegations have been expressly denied by the alleged perpetrators and other employees said to have been present during some of the incidents.

38. Dr. Chaloner was a witness who testified with gusto. In early 2003, after having taken over as Ms. Martin's family physician for only a few months, she wrote a letter "To Whom It May Concern", knowing that it would be shown to the Human Rights Commission. Her letter stated, amongst other things:

"After careful perusal of her medical records, I have to inform you that Mrs. Martin has a form of dementia. As a patient/complainant she should be dealt with with this in mind.

She has problems with memory and any meeting in which she would be interviewed, would be influenced by her medical condition.

I would advise very carefully against proceeding without extreme caution. ..."

39. In point of fact, at that time, Ms. Martin had not been diagnosed with dementia, as is apparent from the material from Dr. Chaloner's file which pre-dated this letter and which included the following:

(a) Ms. Martin's previous family physician, Dr. Gary Ernest, had written in early 2000 that as a result of three assessments of Ms. Martin by him:

"I feel strongly that Mrs. Martin's memory problems affect her short-term memory only and are secondary to depression. That is, I feel that the memory disorder is a secondary one (i.e., due to depression) as opposed to a

primary memory disorder. ... I note, from examining the opinions present in the documents accompanying this letter, that others had the same impression as mine.”

- (b) Dr. Gordon, a staff psychiatrist at the Shelburne Mental Health Centre, had written in October, 1999:

“Neuropsychological testing reveals abnormalities consistent with a depressed state, but no sign of organic function.

...

I am left with the impression that Mrs. Martin’s symptoms may be a reflection of an adjustment disorder with mixed anxiety and depressive features which exist in response to a chronic stressor in an individual with low self-esteem and a lack of assertiveness.”

- (c) Dr. Bruce, a psychotherapist at the Shelburne Mental Health Centre had written in September, 1999:

“Neuropsych testing indicated cognitive difficulties that might be related to depression. She then saw a psychiatrist who told her she was not depressed and was started on Paxil 20 MG. OD. Lydia later had the neurological tests repeated and frontal lobe disorder was ruled out. A psychiatrist, Dr. Miliken, in Bridgewater stated that she might be mildly depressed.”

- (d) In April, 1999, she had been to see an adult neurologist, Dr.

Virender Bhan. He wrote:

“This lady has non-specific memory problems. I see no evidence to suggest dementia here, and there is no suggestion of any other sinister neurological illness.”

- (e) A neuropsychological assessment report from January, 1998 from Dr.

Fisk did raise the possibility of dementia:

“[After noting that the presence of mild depressive symptoms might contribute to some of her present cognitive difficulties] ... the level of impairment in some of her cognitive abilities raises concerns about the possibility of pathologic process affecting frontal system functioning.

...

For now, however, it is important that the cause/role of her depressive symptoms be resolved. A reassessment in the future is recommended in order to clarify her diagnosis.”

Dr. Fisk’s 1998 report was sent to Dr. MacKnight, geriatric specialist, for his analysis and interpretation. Dr. MacKnight’s initial comment on the neuropsychological testing included the following:

“He found that her general intellectual abilities were adequate although her memory was somewhat decreased. The most impressive findings were in the areas of executive function, precisely planning, problem solving and with some perseveration. These are the sorts of problems that are seen in a frontal lobe dementia but they are also seen in depression and can also actually be side effects of an anti-depressant such as Elavil.

...

I would like to try a different anti-depressant, one which would have less of an effect on concentration. I know that there is little evidence that Mrs. Martin has depression but the cognitive picture is in keeping with this and if we label her as having a dementia when she actually has a reversible disorder this would be somewhat unfortunate. [After making suggestions for a change in medication and undertaking a SPECT scan] this may give us some evidence if there is any frontal lobe dysfunction.”

However, the final word from Dr. MacKnight in 1998 was after some further follow-up, including a SPECT scan and an MMSE, and is found in his April, 1998 report as follows:

“I told her that it appears that her memory complaints are stable, there is no evidence of a serious neurodegenerative process and that we could expect that she is not going to get much worse than she is now from the evidence we currently have.

My impression is that most of her difficulties have to do with a minor component of depression and a problem with self-esteem.”

40. Thus while the specter had been raised of a possible frontal lobe problem or other dementia in Dr. MacKnight’s earliest correspondence, his latest correspondence prior to Dr. Chaloner’s letter is clearly leaning towards depression, and away from dementia as the source of her problems. It can be seen from the above that it was inaccurate or misleading for Dr. Chaloner to suggest that Ms. Martin had been diagnosed with dementia. After receiving Dr. Chaloner’s letter, Human Rights Commission counsel, Michael Wood, wrote to Dr. Chaloner for more information. Dr. Chaloner’s response in April, 2003 included the following reiteration of her concerns:

“I am concerned about Mrs. Martin’s ability to accurately recall and testify about these events. I have reviewed her medical files and she has been diagnosed with a form of dementia. I do not think Mrs. Martin is capable of testifying and to be cross-examined without becoming very agitated. Her short-term memory is indeed short. She should be evaluated by a Court-appointed or psychiatrist of your choice as to her ability to testify. These are just suggestions/concerns.”

41. Dr. Chaloner testified at the hearing that she had been wrong in what she wrote in March and April of 2003, that her correspondence had been motivated by concern arising out of the fact that there had been no clear diagnosis and inadequate follow-up to determine whether the problem was an organic one. She said she had then been concerned the problem could be an organic problem that would have precluded her

from testifying accurately, such as Alzheimer's dementia, and she had noted that her patient was taking medication which included a medication prescribed for an organic disease, not for mood disorder.

42. Dr. Chaloner's opinion at the hearing, which was now favourable to Ms. Martin's testimonial competence, was explained as relating to the fact that in the intervening time between the spring of 2003 and the hearing, her patient had been followed-up through Dr. MacKnight and diagnosed with "frontal lobe dementia, with depressive symptoms" in Dr. MacKnight's letter of October 27, 2003. This diagnosis had followed further neuropsychological testing by Dr. Fisk which indicated, essentially, that there had not been any significant progression of the deficiencies in Ms. Martin's cognitive abilities, which one would have expected with Alzheimer's dementia. The diagnosis of frontal lobe dementia "put a lot of rest" in Dr. Chaloner's mind concerning Ms. Martin's ability to testify. She felt she had had her questions answered: she had known from the moment she saw Ms. Martin that there was something other than depression affecting Ms. Martin and she was now satisfied that it was frontal lobe dementia, not Alzheimer's. On cross-examination, Dr. Chaloner acknowledged that the medical literature indicated that delusions, including those involving persecution, are associated with dementia in general (not just Alzheimer's), but stated that she had not seen any indications that Ms. Martin suffered from delusions. Dr. Chaloner acknowledged that she was unsure whether delusionary thinking was a symptom associated with frontal lobe dementia, and stated that she was not qualified to testify on the symptoms of such a dementia. She nevertheless at one point ventured testimony that Pick's dementia (which she used interchangeably with frontal lobe dementia) affects

short-term and not long-term memory and that the medication prescribed for Ms. Martin, Fluoxetine, following the diagnosis of frontal lobe dementia, should help Ms. Martin's ability to testify.

43. It should also be noted that while Dr. Chaloner seemed to take comfort from the frontal lobe dementia diagnosis based on the October, 2003 report from Dr. MacKnight, a more recent report dated November 21, 2003 expresses the diagnosis in much more tentative language:

“As you know, this 59 year-old woman probably has frontal lobe dementia though it is difficult to tell these apart from other conditions.”

44. Although Dr. Chaloner was clear in stating that Ms. Martin had never discussed with her anything that could be characterized as delusory thinking, her chart contained a note from Ms. Martin that stated, amongst other things:

“[I] think people are coming in my house. If someone looks at me and smiles [I] think they are making fun of me. [I] think people are talking about me. [I] think people are against me.”

Dr. Chaloner acknowledged that the belief that people were coming into her house may or may not represent delusory thought, but she had never discussed it with Ms. Martin and Ms. Martin had never raised it in their regular monthly meetings, which Dr. Chaloner would have expected if it were an important matter.

45. Dr. Chaloner did acknowledge the significant extent of impairment of Lydia's short-term memory. As an example, she pointed out that not only did Ms. Martin forget appointments that had been booked with her, but sometimes she would

forget that she had already attended her monthly appointment and would re-attend as though the appointment had not occurred.

46. It is very important to note that Dr. Chaloner felt her duty within the profession was as a patient advocate and advisor. She said that she felt she owed Ms. Martin at least the obligation to let her say her piece at the hearing. She had assured Ms. Martin that she would support her if that was what Ms. Martin needed.

47. In argument, the Respondents invited me to conclude that Dr. Chaloner's real opinion regarding Ms. Martin's testimonial competence was the opinion expressed in her letters of March and April, 2003. My conclusion is slightly different from this and is based on the fact that Dr. Chaloner is an aggressive advocate for her patient's interest. At a time when she believed it was in her patient's best interest not to testify or proceed with the hearing, she took an exaggerated position, intended to scare off the Human Rights Commission from pursuing the matter to a hearing, even to the point of taking some liberties regarding Ms. Martin being diagnosed with dementia. I believe she later concluded that it was in her patient's interest to have an opportunity to testify, to have the hearing process go forward and thereby to provide closure of some kind for Ms. Martin. In testifying that she saw no evidence of delusionary thinking with persecutory themes, she not only had to overlook the note from her patient, which I have quoted above, but she had to overlook a very important passage in the 1998 neuropsychological assessment report from Dr. Fisk in which Dr. Fisk reports Lydia's husband as stating "that she has had paranoid thoughts about someone coming into their house in relation to misplacing things...", which is the very example of persecutory delusions cited in *DSM-IV*. I believe that Dr. Chaloner has accidentally or deliberately overlooked the evidence of delusionary

thinking which is contained within her own files. Ms. Martin is fortunate to have the energetic support and advocacy of Dr. Chaloner to ensure that she gets the best possible treatment for her medical problems, and I am not at all critical of Dr. Chaloner for doing what she thinks has to be done to improve the well being of her patient. However, I cannot place much weight on Dr. Chaloner's support for Ms. Martin's ability to testify reliably, which support was in any event qualified by her admitted lack of qualifications in psychiatric matters.

48. Dr. Rosenberg has extensive credentials and experience in psychiatry. He began his residency in psychiatry in 1965 and has had his Royal College fellowship since 1970. He has testified in at least seven trials. His testimony was articulate and he admitted several points that were unfavourable to the party that retained him, when a less experienced professional witness would likely have endeavoured to argue the point. I found his general evidence describing mental disorders and their symptoms and treatment to be helpful and have no reason not to rely upon them.

49. However, his evidence specifically dealing with Lydia Martin is another matter. I am not prepared to give weight to his comments on the reliability of Ms. Martin's evidence regarding the complaint, or whether she is subject to delusional thought of a paranoid type, or as to whether major depressive disorder with psychotic features is the correct diagnosis for Ms. Martin. Both Ms. Martin and Dr. Chaloner expressed concern about Dr. Rosenberg reaching conclusions regarding Ms. Martin's diagnosis without ever having met her, examined her, or taken a history from her. I agree entirely with their concerns on this point. Dr. Rosenberg acknowledged that if Dr. Chaloner had sought a second opinion from him regarding her patient's diagnosis, he

would have been obligated by the rules of his profession to personally meet with Ms. Martin, and he acknowledged that it would in any case have been preferable to do so. The Respondents' argued that there is no power under the *Human Rights Act* to compel a complainant to submit to an independent medical examination at the request of a respondent and that this satisfactorily explains the absence of any meeting by Dr. Rosenberg with Ms. Martin. However, no request was made either by Dr. Rosenberg or by Respondents' counsel and I see no basis for thinking that such a request would have been refused.

50. There is a second major problem with Dr. Rosenberg's report. Before writing his report, Dr. Rosenberg reviewed witness statements concerning the complaint, and he commented on the absence of corroboration of Ms. Martin's allegation in the complaint, in terms suggesting that the absence of corroboration proved the allegations were unfounded. In cross-examination by Mr. Wood, Dr. Rosenberg acknowledged that it was an underlying assumption of his opinion that there was no harassment in the workplace, in other words, that the complaint had no merit. Essentially then, in his report and his testimony Dr. Rosenberg is using the assumption (which might more properly be called an inference from the absence of corroboration) as a major building block towards his conclusion that Ms. Martin suffered from delusional thinking of a persecutory nature. It is then proposed that this conclusion, put in the form of an opinion, would be used to support the proposition that the evidence of the Complainant concerning the incidents is prompted by delusional thought and should not be relied upon. The circularity of this reasoning is obvious.

51. In argument, Respondents' counsel pointed out that Dr. Rosenberg did not just base his conclusion on the incidents which are the subject of the complaint. In particular, his report specifically refers to the passage from Dr. Fisk's neuropsychological assessment in 1998, which I have previously quoted, regarding Mr. Martin observing paranoid thoughts on the part of his wife about someone coming into their house, when in fact objects had simply been misplaced. At the time he wrote his report, Dr. Rosenberg also had before him a handwritten note by Ms. Martin on a typed document which she sent to the Human Rights Commission. That note read as follows:

“It bothers me to be around a lot of people. Go out shopping, go home with headache, next day very tired. Think people are laughing at me and talking about me, watching me and following me. Trying to explain things to people my mind will just go blank sometimes. Can't remember, and I think people are against me.”

52. However, it is now not possible for me to determine whether Dr. Rosenberg would have reached the same conclusions regarding Ms. Martin's delusional persecutory thinking if he had not purported to make a finding that the incidents in the complaint did not occur.

53. As a result, in order for me to make a finding as to whether Ms. Martin is subject to delusional thoughts suggesting that her memories of the incidents may be false or unreliable, I must reach my own conclusion based on the evidence.

54. I have concluded that, unfortunately, Ms. Martin is subject to persecutory delusional thinking and I offer the following examples:

- (a) When Ms. Martin cannot find something in her house, she believes that someone has broken into her home and taken it. She has had these beliefs from at least 1998, when they were reported to Dr. Fisk by Mr. Martin in

the passage previously quoted. She also reported these beliefs in the note to Dr. Chaloner which I have also previously quoted. She testified that she still had those beliefs. If the beliefs had a foundation in fact, undoubtedly Mr. Martin would have testified about it, but he was not called to the witness stand and we know from what he told Dr. Fisk that he did not believe there to have been any break-ins at that time. Ms. Martin reported in her testimony that she still believed now, that someone had broken in to her house on the previous occasions when she formed that conclusion. In other words, she herself has not come to accept that her beliefs on this subject were false. Dr. Rosenberg testified that this sort of belief constitutes a persecutory delusion and the *DSM-IV* text uses this very thought as a prototypical example of persecutory delusional thinking associated with dementia.

- (b) Ms. Martin testified that when she sees people that she knows at a public place such as a shopping mall or the grocery store, she believes that if she sees them talking, they are talking about her and if she sees them smiling or laughing, that they are smiling or laughing about her.

Some specific examples of this are recorded in notes which Ms. Martin provided to the Human Rights Commission. One of these notes states:

“Mr. Williams came in the store checking to see if I was in there. A man out front said, ‘You’re checking to see if she is in here, are you? Well, she is down back.’ Then they had words. I couldn’t hear what Mr. Williams said. But the man said, ‘I hear your time is soon coming.’ Williams

said, 'You better be careful, I'll take you with me.' The man said, 'Yeah.'”

Mr. Williams denied that this incident ever occurred and hearsay discussions with the cashier were reported to the effect that Ms. Martin had in fact been asking the cashier what Wayne Williams had been talking about. Ms. Martin testified about this incident at the hearing and maintained her belief in her report of what Mr. Williams said, and that the discussion related to her.

In a second incident involving the Respondent Wayne Williams, Ms. Martin recorded in her notes and testified at the hearing that Mr. Williams was talking to a former employee of Ven-Rez, Shelly Doane, at the shopping mall. She was not sure whether Mr. Williams and Shelly Doane saw her but she thought it likely that they did. She said she heard Mr. Williams say that he had “waited long enough ... he was getting out of that place”, meaning that he was leaving Ven-Rez. She said that Mr. Williams said they “were sorry if they did this to her [Ms. Martin]”. Both Mr. Williams and Shelly Doane testified about their chance encounters at the mall. Their conversations were about family matters and Mr. Williams did not ever indicate to Ms. Doane that he was getting out of Ven-Rez (and of course he continues to work there). Nor did they speak about Lydia Martin at all.

- (c) Ms. Martin believes that she is being followed. In her notes and her testimony, she reported being watched in a parking lot and followed to her

doctor's office by a man. In her evidence she described the man as having two moles beside his eye. The same man showed up in another incident recorded in Ms. Martin's notes and to which she testified. On that occasion, she was doing some photocopying and the man reportedly asked her about the photocopying and watched her for awhile. According to her notes, while she was standing by the copying machine, a former Ven-Rez worker, Jack Bell, was laughing at her.

In another incident concerning being followed, Ms. Martin said that she was at her bank in Liverpool and happened to be watching the background image showing on a video monitoring terminal and noticed Ron Walleth's car going past. She said that she turned around and looked through the window and confirmed that it was Ron Walleth's car. She testified that when she returned home, she saw a large car slow down as it went past her house which could have been Ron Walleth's car. However, her note to the Human Rights Commission was much more specific and less qualified about the second part of this incident:

“Standing in the kitchen, Ron Walleth came by, made almost a complete stop, looked in and saw me, took off (checking to see if I was home).”

- (d) Ms. Martin believes that people, including people associated with Wayne Williams, were doing what she referred to, in her own choice of words, as “mind checks” on her at the grocery store and the shopping mall. She

believes that if a person she recognizes asks about the location of a product in the store, they are checking on her mental state.

One lady, who she says works at the Shine Shop in Shelburne, but who she does not otherwise know, has figured in a couple of these incidents. She has seen Wayne Williams talking to this lady at the end of a grocery store aisle. In one of these incidents, she says that this lady brought in an older lady friend and sent the older lady to where Ms. Martin was in the grocery store. The old lady approached Ms. Martin as if to ask where something was, pointed at a product on the grocery store shelf and made an incomprehensible buzzing noise and made a motion with her fingers as though she were following the flight of a bee or other insect. Ms. Martin says the older lady then returned to speak with the Shine Shop lady who asked if Ms. Martin had known where it was.

Ms. Martin testified that on another occasion the Shine Shop lady, along with a man she took to be her husband, was coming through the check-out line at the grocery store behind Ms. Martin. Ms. Martin bought her husband a Frank Magazine. According to Ms. Martin's note, "The man said to his wife, 'Now we know what kind of magazine she reads. Almost hit you to get it.'"

- (e) Ms. Martin believes that during the last three years of her employment people at Ven-Rez were, under Mr. Williams' direction, speeding up the

assembly line. This allegation is recorded in numerous places in the documents.

The Union Shop Steward looked into this complaint on behalf of Ms. Martin along with the General Manager of Ven-Rez at the time, David Staples. Mr. Butler, the Shop Steward, testified at the hearing that he and Mr. Staples timed the speed of the line to ensure that when it was set for its maximum permitted speed of 7 feet 7 inches per minute, that it was not traveling faster than that.

Dale Slack, the painter at Ven-Rez also worked on the assembly line and would have been affected by anyone's attempt to increase the speed of the assembly line. He recalled Lydia Martin complaining on 3 or 4 occasions about the line going too fast and responding to her that it was not. He recalls 2 or 3 tests being done in response to her complaints, including the test which Randall Butler testified about and another one when Wayne Williams tested it. His recollection was that when tested, the assembly line was actually going at 7 feet 6 inches per minute, just slightly under the intended speed. Mr. Slack reported that he did not notice the line going at excess speed at any point and that Yvonne Hemeon, who also worked on the assembly line, never complained to him about it going too fast either.

It is important to note that while product is on the assembly line, it is spray-painted and then goes through a dryer where the paint is baked on in accordance with the paint manufacturer's directions. The uncontradicted testimony of several Ven-Rez witnesses was that if the assembly line were speeded up beyond 7 feet 7 inches per minute, they would be out of compliance with the paint manufacturer's directions and the paint would not dry or adhere properly to the metal tubing. I cannot accept that Mr. Williams, or the assembly line foreman, Darrell Sutherland, or others, would have been involved in doing that for the purpose of making Lydia Martin's work more difficult. Yet, Ms. Martin testified that she heard Mr. Williams tell Mr. Sutherland that if they sped up the assembly line, it would just be her word against theirs and she reports on another occasion that Darrell Sutherland came up and apologized to Ed Preston for speeding the line up on him, and likewise that Mr. Sutherland told Blaine Lisk that he would turn down the line speed for him.

- (f) Ms. Martin testified about and previously recorded in writing 2 other incidents involving Ron Wallett. In one incident, recorded in her April, 1999 complaint to management, she described Ron Wallett coming in to her work area with two very well dressed people who she took to be customers, apparently giving them a tour of the production facility. She says that Ron Wallett told them he did not want to take them over near Ms. Martin because she smelled. She says that she heard him tell these two guests that Ven-Rez was "trying to get rid of her". Mr. Wallett

vehemently denied this and he and other management witnesses pointed out the obvious fact that this would be counter-productive to any rational view of good customer relations. It is inconceivable to me that Ron Wallett made the statements attributed to him.

The other incident is referred to in the complaint, but was not argued by Commission counsel to constitute an allegation of sex discrimination or sexual harassment. It is dated in Ms. Martin's notes as March 5, 1999 and she indicated that Ron Wallett threatened to lay charges against her for using a cell phone in the plant if she laid charges (e.g., sexual harassment) against Mr. Williams or Darrell Sutherland, her foreman. There are several problems with this account. Firstly, March 5th was one month before she had made any complaint, oral or verbal, to the management of Ven-Rez or anyone else concerning harassment of any kind. Secondly, Mr. Wallett has proven, with documentary evidence, that he left Nova Scotia for Minnesota at 6:30 a.m. on March 4 and did not return until March 24th. Thirdly, numerous witnesses for Ven-Rez confirmed that management was unaware that Ms. Martin possessed a cell phone and the company in any event had no policy against using a cell phone at the plant.

55. I do not accept that the above incidents occurred, or at least that they occurred in a manner resembling the description of them provided by Ms. Martin, with its undertone of conspiracy and persecution. Regrettably, I believe these incidents to

have been developed out of innocuous events and that various elements of what Ms. Martin believed she heard or saw, as well as what she concluded, were false and inaccurate, although she undoubtedly believes them. A common element of many of these examples is that they involve a purported connection with Ven-Rez and/or Wayne Williams. I can only conclude that whatever condition Ms. Martin suffers from, it must be a condition which makes her subject to delusional thinking of a persecutory or paranoid type, and that she is particularly susceptible to such thinking in regards Ven-Rez or Mr. Williams.

56. Quite possibly there was some basis in fact for Lydia Martin believing that she was picked on by co-workers. In particular, I have trouble entirely dismissing her description of the “smell” incident involving Paula Race and others, which was remembered in detail and complained of contemporaneously. If the incident occurred, even in small part, it certainly could have stirred a sense of rejection and persecution in the workplace which fed into and magnified Lydia Martin’s underlying insecurity about body image, and coloured her recollection of the past. In any event, whether her co-workers participated in this cruel joke or not, I am satisfied that there are too many unbelievable recollections to be able to have confidence that Ms. Martin’s account of other incidents is not tainted by delusional thinking.

57. The other aspect of Ms. Martin’s mental health which affects or might affect the reliability of her testimony, is her memory. After Dr. Chaloner’s taking over responsibility as the family physician for Ms. Martin, she arranged for further neuropsychological assessment through Dr. MacKnight, carried out by Dr. Fisk. Both in 1998 and in 2003, neuropsychological testing revealed that Ms. Martin was very

significantly below average for short-term memory in regards auditory and visual information (she was in the 4th to 6th percentile on auditory memory and was 2-3 standard deviations below average in regards visual memory). Ms. Martin herself acknowledged the severity of her memory problem. She had a singular inability in her testimony to give even the broadest estimate of dates for events occurring, including the events which are the subject of the complaint (with the notable exception of the March 5, 1999 date given for the incident involving Ron Wallett which was conclusively established to be incorrect). Generally, Ms. Martin was also unable to sequence events in relation to other milestones in her life or at the workplace. This presented practical difficulties to the Respondents in defending against the complaint.

58. The inability to place events in sequence and even the possibility that there are enormous gaps in her memory regarding significant events, would not necessarily cause me to conclude that the events which she stated she remembered are unreliable. However, while I am not hugely troubled by gaps in what Dr. Rosenberg referred to as the setting down of short-term memories so that the memories are later available for recall, I am concerned about the evidence that Ms. Martin's process of recall is so unusual. For example, she wrote in a letter to the Human Rights

Commission:

“I did not sit down and write this all at one time, it came to me in bits and pieces. When I think of something I would write it down. Even through the night I would get up and make notes, because I know if I didn't I would not remember.”

On cross-examination, she acknowledged that she was unable to sort out now which events she remembered in the middle of the night or in bits and pieces and which events

she has had a continuous memory of. From any common sense perspective, the absence of a continuous memory of an event at least raises concerns as to whether an incident, suddenly remembered in the middle of the night, but of which there was no memory the preceding day, is actually a remembered event or an imagined one.

59. In summary, I am left with grave concerns about the reliability of Ms. Martin's recall as well as the reliability of her perception of events and I cannot disregard these concerns in evaluating her evidence on the incidents which are the subject of the complaint.

The Alleged Harassment and Discrimination

60. The alleged incidents fall into two categories: those involving physical contact and those involving verbal abuse.

61. The physical contact incidents are described as follows in the complaint:

“3. One day Mr. Williams came over to the workplace and rubbed himself against me and purred like a cat. I tried to ignore his inappropriate behaviour but sometime later Mr. Williams did it again. After the second incident, I stopped talking to Wayne Williams.

...

8. In February of 1999, there was another incident during which Mr. Williams rubbed his body against mine when I was standing in front of the office door.”

In her testimony, Lydia Martin described the physical contact in each case as having lasted for a second or two, when she had her back to Mr. Williams, with the only contact being Mr. Williams' stomach touching her back. She testified that she said nothing to Wayne Williams during or immediately following the incidents, and she did not turn around to glare at him or make any other non-verbal response. The Complainant was not

able to give any indication of when these three events occurred and each of them were said to have occurred when no one else would have had a view of what was occurring. The absence of eye-witnesses is not in itself remarkable, since behaviour of this sort would not normally be carried out when there was the possibility of detection by a witness. Because none of the incidents were reported to anyone contemporaneously, no investigation was carried out and Mr. Williams and Ven-Rez are essentially left relying on a simple denial from Mr. Williams that the events occurred at any time. Mr. Williams' evidence denying the incidents was unremarkable, and I could not identify any obvious falsity in his testimony about them.

62. There are a few points worth noting in regards Ms. Martin's account of these physical contact incidents:

- (a) From paragraph 3 of the complaint, one might have the impression that the two incidents involving purring like a cat occurred on the same day. However, in her evidence, Ms. Martin suggests that they did not occur on the same day but indeed were many days apart;
- (b) From her complaint, and during her cross-examination, Ms. Martin suggests that Mr. Williams' stomach made contact with her body in both of the purring incidents, whereas in her direct examination, she indicated that it was only in the second purring incident where bodily contact was made;
- (c) The two incidents involving purring like a cat were alleged to have occurred when Ms. Martin was using the "strapper". This is a machine for fastening plastic straps on boxes of library shelving or other product. The

person working on the strapper stands facing the strapping machine with their back towards the assembly line. The same space, that is, the space between the assembly line and the strapper, is used as a walkway to travel from one area of the plant to another. There is approximately 34 inches of space between product traveling along the assembly line and the closest edge of the strapper. A person working at the strapper would likely use about half that space leaving only about 17 inches for someone to walk past. It is quite possible that someone walking past the strapper might make accidental contact with the person who was strapping product.

- (d) The incident which occurred near the office was alleged to have occurred on a small staircase leading up to the office. An employee named Bub was blocking the way ahead while Ms. Martin was climbing the steps, so she had to pause on the steps. She states that Mr. Williams ascended the staircase a step or two behind her and made contact with his stomach in the area of her waistband (lower back). From the photographs, the stair tread appears very narrow, approximately 10 inches wide, and the Respondents led evidence that it would have been difficult or impossible for Mr. Williams to maintain his balance while making contact in this fashion;
- (e) Ms. Martin testified that following the incident on the staircase, later in the day, the foreman of shipping and receiving, John Bartley, stopped abruptly in the hallway so that Lydia Martin ran into him and stated something to the effect “See Lydia, it can happen”. She took this to mean

that Mr. Williams and Mr. Bartley had discussed Mr. Williams having bumped into her and that Mr. Bartley was doing a demonstration of accidental contact in an attempt to excuse Wayne Williams for the incident. Mr. Bartley testified and denied that any of this occurred;

- (f) Although I believe that Ms. Martin could have identified Wayne Williams by his voice in the two incidents involving purring like a cat, there is no satisfactory explanation for identifying Wayne Williams as the perpetrator in regards the incident near the office. Ms. Martin states that on that occasion she did not see Mr. Williams (she had her back to him) and nor did he say anything or make any sound but that she just “knew it was him”.

63. I conclude that Lydia Martin has not discharged the burden of proof on the physical contact incidents. In light of the other examples of delusional thinking described previously in this decision, I believe it to be likely that Ms. Martin has taken innocent or trivial events and reconstructed them in her perception and memory with details, features or context which are different than the actual events, and which would convert innocuous occurrences into persecution in keeping with her underlying premise that she thinks everyone, and particularly Wayne Williams, is against her.

64. I do not propose to go through in individual detail the verbal abuse incidents alleged by Ms. Martin to have occurred. The offensive remarks were to the effect of comparing her size to that of a “Mac Truck”, that she had a “big rear-end”, that her “stomach is sticking out”, that her jeans were too tight, that her pants were falling down (and by implication) exposing unattractive portions of her body, and that her haircut was unbecoming.

more of the verbal incidents having occurred, apart from Mr. Williams:

Darrell Sutherland;

Paula Race;

Blaine Lisk;

John Bartley;

Ed Preston.

66. All of these individuals testified and denied that the incidents occurred.

Most of these individuals would be at least morally inculpated as co-harassers, and in some cases, legally inculpated, if they admitted to the incidents having occurred and all of them continue to work for Ven-Rez. For this reason, I do not treat their evidence in the same manner as that of a neutral witness. Nevertheless, the unanimity of the evidence against the complaints was impressive, particularly since I could see no sign of collusive behaviour or undue coaching. The witnesses appeared to me to be testifying from their own individual perspectives in their own styles and, as is typical of a group of employees of this nature, some of them seemed more inclined towards openness and candour than others.

67. I note that the employer had a bookkeeper take statements from them to avoid the appearance of undue management pressure, at the time that the employer prepared its response to the complaint in 2000. These witnesses have been subject to interviews by a Nova Scotia Human Rights Commission investigator and to cross-examination by able and experienced counsel for the Commission at the hearing.

Through that process I would have expected to see at least some evidence of improper

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collusion or of a poisoned work environment, if those things existed. I would have expected to see more evidence, from a source other than Lydia Martin, of harassment or discriminatory conduct towards her or towards women in general, if that were tolerated by or participated in by management, or even if it occurred with any frequency in the workplace without the knowledge of management. I acknowledge that Paula Race testified about a single inappropriate gender specific comment towards her in a different part of the plant, and that Michael Race testified that there was some degree of banter in the workplace (albeit again not within the area in which Ms. Martin worked) involving personal characteristics that may have been hurtful to the individual on the receiving end.

However, there is no evidence, apart from that of Ms. Martin, that the management of Ven-Rez, or Mr. Williams in particular, condoned such conduct or even was aware of it.

68. Several of the verbal comments which are the subject of the complaint were made at a considerable distance from Lydia Martin, even according to her own evidence. These distances were in some cases as great as 25 feet or 40 feet. Lydia Martin has tinnitus which significantly affects her hearing. It is described as “bilateral” in a medical report, although Ms. Martin testified that only her right ear is affected. The evidence of Ven-Rez witnesses indicated that the area in which Lydia worked had considerable background noise: 2 or 3 fans, a paint spraying machine, a dryer, a radio and the conveyor system itself. It would have been difficult or impossible for her to have heard what she said she heard in at least some of these incidents and certainly it would have been easy for her to be mistaken about what she heard.

69. Ms. Martin may have seen Wayne Williams and co-workers talking, or laughing, and may have perceived comments to have been made about her which were

not actually made, as I have found also occurred at the Shelburne mall. Certainly, I cannot find that the Commission and Ms. Martin have discharged the burden of proof upon them to establish that the verbal discriminatory conduct or harassment as alleged in the complaint actually occurred. There is no single verbal incident that I can honestly say probably occurred, on the evidence before me.

Conclusion

70. Accordingly, I dismiss the complaint.

71. I agree with Mr. Dunphy that there is real tragedy in these events for all concerned. For Ven-Rez and Mr. Williams and those foremen or co-workers who were indirectly implicated, there has been tremendous anxiety in dealing with this matter over an extended period of time. For Ven-Rez, this matter has been very costly to defend and there is no off-setting revenue, nor will there ever be, to make up for that. For Lydia Martin, there is no vindication beyond my finding that she honestly believed the allegations which she brought forward, and some recognition for her courage and perseverance in pursuing this over 5 long years.

72. I hope Ms. Martin can make good use of the strong support available from her husband and from Dr. Chaloner to make her life as rewarding and fulfilling as it can be in spite of the bad fortune with which she has been afflicted.

DATED at Truro, Nova Scotia, this 30th day of April, 2004.

Peter M. Rogers
Nova Scotia Human Rights
Board of Inquiry