

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**DANIEL T. LYNCH**

Grievor

and

**TREASURY BOARD  
(National Defence)**

Employer

***Before:*** J. Barry Turner, Board Member

***For the Grievor:*** Barry Done, Public Service Alliance of Canada

***For the Employer:*** Michel LeFrançois, Counsel

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Heard at Ottawa, Ontario,  
October 6 and 7, 1997

## DECISION

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Mr. Daniel Lynch, a former labourer, GL-ELE-03 classification level, Canadian Forces Support Unit (CFSU), Security and Military Police (SAMP) section, Department of National Defence, Ottawa, Ontario, is grieving the termination of his employment.

His grievance dated 29 May 1996 reads:

*I am grieving my termination for misconduct from the Public Service which I was made aware of on May 13, 1996, the letter was signed by J.M.R. Lapierre, (A) CFSU Commandant.*

The employer's termination letter (Exhibit E-2) dated 13 May 1996 and signed by Lieutenant Colonel J.M.R. LaPierre, Acting Commandant, CFSU-Ottawa reads:

*Further to my letter of 29 April 1996, this is to advise you that the Assistant Deputy Minister (Finance and Corporate Services) has approved the termination of your employment for cause in accordance with the Financial Administrative (sic) Act. Upon receipt of this letter, Your employment is hereby terminated.*

*If you wish to contest this decision, you may file a grievance at the final level of the grievance procedure.*

The 29 April 1996 letter (Exhibit E-1) signed by Captain (N) Cormier reads:

*DISCIPLINARY DECISION - PENDING  
APPROVAL OF SANCTION FROM HIGHER AUTHORITY*

*As a result of my investigation into your alleged theft of DND property, I have determined, based on the evidence, that you did misconduct yourself. I have decided to refer this decision to higher authority for determination of an appropriate penalty. You will be notified of the outcome in writing as soon as a decision is reached.*

Mr. Lynch is requesting the following corrective action:

*I want to be re-instated to my position.*

*I want all pay and benefits from May 16, 1996.*

*I want all documents relating to this disciplinary charge to be destroyed.*

I am being asked to decide if the employer's action was justified under the circumstances.

A request for the exclusion of witnesses was made and granted. The hearing lasted two days with nine exhibits submitted into evidence. Five witnesses testified.

### Summary of Evidence

The following Agreed Statement of Facts (Exhibit E-3) was submitted:

1. *Daniel Thomas Lynch (the grievor) was a civilian employee in the Classified Waste operations of the Security and Military Police section, National Defence Headquarters in Ottawa, classified as a GL-ELE-03 until his termination on or about May 16, 1996. Before that he served as a Military Policeman in the Canadian Forces for some 25 years, most recently at National Defence Headquarters in Ottawa.*
2. *The grievor was terminated on or about May 16, 1996 for allegedly having removed National Defence property without authorization and for personal use. The grievor claims he was authorized in so doing.*
3. *Annexes D, G, J, L, O, and R, attached hereto, identify National Defence property retrieved from the grievor's home (14 Ida St. S., Arnprior) and from the other municipal addresses indicated. The property identified in the annexes was taken to the addresses indicated by the grievor with the aid of his work colleagues in a National Defence vehicle. The monetary cost allocated to the property represents replacement value of the items.*

An attached series of annexes listing a number of items found to be in the possession of the grievor or elsewhere was also attached to Exhibit E-3.

1. Sergeant Art Fewer was in charge of the Canadian Forces Support Unit (CFSU-Ottawa), Security and Military Police (SAMP) when he was assigned to investigate the grievor for theft after a complaint by Mr. Richard Gélinas early in December 1995. He knew the grievor but had no working relationship with him when Mr. Lynch was a Military Police Officer, or when he was Warrant Officer in charge of the Classified Waste Section (CWS). Sgt. Fewer has been a Military Police (MP) officer for sixteen years.

Sergeant Fewer was aware of the CWS since it came under the SAMP. In December 1995, after the grievor retired from the military, he became a civilian

working in the CWS. The CWS destroys documentation, hard drives, discs, and MP badges, but not items like furniture.

Sgt. Fewer described “scrounging” as the retrieval of materials for use in your unit or section like an exchange or bartering of goods. He added someone cannot scrounge for personal benefit.

The witness interviewed Mr. Richard Gélinas, the grievor’s Supervisor in the CWS, as well as Mr. Lynch’s three working colleagues: Mr. Beaudin, Mr. Faulkner, and Mr. Tessier; received written statements from them, obtained a search warrant for the grievor’s residence in Arnprior and executed it on December 5, 1995. Sgt. Fewer never spoke to the grievor about the investigation. The witness explained the entries of goods seized as listed on the Annexes attached to Exhibit E-3. The cost column was the 1995 replacement cost. With reference to Annex D, items seized on December 5, 1995 at the Prior Sports Bar, Arnprior, Sgt. Fewer said the padlock was brand new and still in its original box, the fan was close to garbage, the arm chair and the white board were in good shape.

Regarding Annex G, items seized at the grievor’s home on December 6, 1995, log (or item) 20, forty-two new padlocks in boxes, were in the grievor’s garage in a drawer at the pre-set factory number 25. Sgt. Fewer said they were “brand new and not garbage”. He identified other items on Annex G, in particular, nylon tape and tracing tape, boxes of cyalume lightsticks or glow sticks, and a functioning electric Olivetti typewriter. A second visit was necessary to the Sports Bar on 8 December 1995 when a moving company was required to remove items listed on Annex J.

Sgt. Fewer testified he interviewed Mr. Faulkner the driver of the CWS van at his home where a briefcase, windshield cleaner, and a functioning typewriter were seized.

The witness added that some items were also seized on December 12, 1995 at a home in Vanier, Ontario owned by a relative of the grievor’s; a glass coffee table top, a bookcase, a computer with monitor, keyboard and mouse, and a useable arm chair were seized.

Sgt. Fewer identified another list of seized goods in Annex O that the grievor actually returned to the National Defence Headquarters loading dock on 15 December

1995 from another relative's home in the Hawkesbury/l'Orignal, Ontario area. Some of this furniture was in very good condition.

The grievor was charged under section 354.(1) of the *Criminal Code of Canada*, and that after an agreement was worked out with the Crown attorney's office whereby Mr. Lynch pleaded guilty to one charge, the other charges were dropped at his trial in October 1996.

Section 354.(1) of the Code reads:

*354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from*

- (a) the commission in Canada of an offence punishable by indictment; or*
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.*

Sergeant Fewer returned to the grievor's home a second time on 20 December 1995 to seize items listed on Annex R after he interviewed Mr. Robert Taylor, A/Supervisor Warehouse, NDHQ. The three filing cabinets seized on 20 December were all in working order.

The witness said that Mr. Gélinas and Mr. Lynch had been involved in "pissing contests" and there was a considerable amount of friction between them. He added the grievor told him that he had gone to someone in his section to get a note for some of the items after the first search warrant was issued. Sgt. Fewer added that all items are the property of the Crown and there is a disposal procedure for all of them. Even though some items seized may have been in bad shape, he said the "good ones out-weighed the bad ones by far". The witness agreed that as an MP, Mr. Lynch should have been aware of what property can be disposed of. The witness eventually found out from Mr. Taylor that loan cards for some items were filled out and back-dated at the request of the grievor after the search warrants were executed. Mr. Taylor could not loan equipment nor give it away since it was all Crown property. Sgt. Fewer concluded that both Mr. Taylor and Mr. Lynch had obstructed justice.

During cross-examination, Sgt. Fewer said when the grievor was a Warrant Officer, he was Mr. G  linas' superior. During an interview, Mr. G  linas told him that he had personally seen the grievor remove items, and, that Mr. G  linas had been told by some of the grievor's colleagues he took items as well. Sgt. Fewer did not know if Mr. G  linas attempted to stop the grievor from removing items, but thought he did speak to a Sgt. Chard about it once but he did not put anything in writing. He agreed that Mr. G  linas had said that the grievor was a "scrounger", but to Sgt. Fewer, scrounging means you get something for your unit or section, not for personal use.

Regarding Annex G, Log 37, thirty-one rolls of nylon tape seized at the grievor's home, Sgt. Fewer testified that when asked by Mr. G  linas to bring some rolls to him before the seizure, Mr. Lynch did this. Sgt. Fewer added that none of the items on all the annexes were ever reported stolen, and that Mr. Lynch could have gotten some of them when he was a soldier before he was honourably discharged.

When asked if Mr. Tessier, Mr. Beaudin or Mr. Faulkner ever stated that they refused to deliver to the Prior Sports Bar or elsewhere with items, Sgt. Fewer responded: "No." He said he believed on December 5, 1995 Mr. Faulkner told him Mr. Taylor gave a safe to Mr. Lynch. When Sgt. Fewer checked this with Mr. Taylor he agreed that he had given a safe to the grievor. Sgt. Fewer categorized the giving away of Crown material by Mr. Taylor as "criminal", and the actions of Mr. Beaudin, Mr. Tessier and Mr. Faulkner as "unacceptable".

Sergeant Fewer could not recall ever saying to Mr. Lynch's lawyer that the grievor was "not a thief but a scrounger". As far as he knew, no items were ever sold by the grievor. Sgt. Fewer had no role in the punishment of Mr. Lynch.

Sergeant Fewer described a discard area around the workplace of the grievor that would receive items to be disposed of that would go to Crown assets disposal. Items marked meant they were surplus, not to be disposed of, but that they were no longer for use in a particular unit or section and could be re-assigned. Some items would be tagged "not serviceable".

Sergeant Fewer never interviewed Mr. Lynch officially, but the grievor did tell him he gave the glow sticks to kids to use on Halloween. He said the grievor also returned some items not listed in the Annexes. Some items were returned to the

grievor that were personal. He said the grievor would have needed a top secret security clearance in his new job at the CWS.

Sergeant Fewer concluded that since his investigation the rules governing Crown property have not changed but are adhered to more strictly.

During re-examination, Sgt. Fewer reiterated that Messrs. Beaudin, Tessier and Faulkner all told him about items taken by the grievor. He also felt that many of the clothing items that normally form part of a soldier's kit were in excess of any extras that a soldier may have; for example, Log or item 135, eight Mukluk inserts and log or item 141, five pairs of mukluks were in excess of what one soldier would need or be issued. These seized items went back to the military.

2. Richard Gélinas, a former MP from 1962-1992 has been the Supervisor of the CWS since 1992. He supervises Mr. Beaudin, Mr. Tessier and the grievor before Mr. Lynch's termination. He added that he and the grievor had in fact switched roles in that Mr. Gélinas worked under Mr. Lynch when the grievor was in charge of the CWS.

Mr. Gélinas said the CWS does not dispose of anything except classified materials. It does not dispose of assets such as furniture. He identified the Standing Operating Procedures (SOP) (Exhibit E-4) dated February 1995 for the removal of equipment from DND premises. He noted that paragraph three of Exhibit E-4 had been in force for years. It reads:

DETAILS

3. *It is strictly forbidden to remove any DND material or equipment from DND premises without previous written approval of the director/CO, DSO or DA holder (classified/designated written material, is exempt from this order as the provisions with respect to this security issue are covered in other regulations). Should personnel have to remove DND equipment from DND premises, they are to approach the aforementioned persons and complete Annex A. Persons exiting DND premises shall be in possession of a copy of this authorization and produce it upon demand.*

Mr. Gélinas said the grievor was a good worker but did some things without consulting him sometimes such as changing the work pick-up schedule. He added

Mr. Tessier and Mr. Faulkner complained to him about the grievor taking things home, and that once in the fall of 1995 he saw the grievor put some chairs in the CWS van. Mr. Gélinas asked him the next day as he took some more chairs if he did not have enough. The witness added Mr. Lynch told him they were for his family. He said Mr. Lynch did not come to him for authority to do this, was sarcastic, and ignored him as if it was not his (Gélinas) business. The witness said he never took the grievor to task for removing items because “Mr. Lynch has many friends up the line and I did not think it would help me. If I complained, it would have done me more harm than good.” He added he spoke to a Sgt. Chard once about a lamp that the grievor had in his possession. Sgt. Chard subsequently spoke to Mr. Lynch. The witness finally complained in December 1995 because Mr. Lynch was challenging him more and more, and because his men were becoming scared to go to the grievor’s home in Arnprior with some items.

He added Mr. Lynch told him some items were given to him by someone. Mr. Gélinas assumed this someone was Mr. Taylor, but Mr. Gélinas knew Mr. Taylor did not have authority to do this.

Mr. Gélinas said that the grievor started an investigation on his own once when Mr. Lynch found some photos of the Somali incident that were sent to CWS for destruction. He took them instead to an MP in NDHQ. Mr. Gélinas emphasized that “nothing is to be taken out of the CWS once it is received for destruction.” Mr. Gélinas later received the same photos again from someone in the National Investigation Security (NIS) and destroyed them.

Mr. Gélinas saw the grievor bring some items including a typewriter, a phone, and cables into the CWS area, but never brought this up with Mr. Lynch. Finally in December 1995 when a new Warrant Officer and Captain arrived, neither of whom were known to Mr. Lynch, Mr. Gélinas knew that he then had a window of opportunity to complain and did so.

During cross-examination, Mr. Gélinas said as an MP, he had been involved in theft allegation investigations but he allowed Mr. Lynch’s actions to go on out of “fear of the grievor’s friends”. He added that his inaction should not be construed as giving



approval to what Mr. Lynch was doing. When Mr. Gélinas resigned from the military he had surplus kit but returned it.

He testified that he looked into the trunk of the grievor's car once, was told not to do that, so he never did it again. He added there was friction between himself and the grievor for about two years. He also said all that the grievor acquired was done during the day, the CWS van used to transport it, and that he never discussed it with Mr. Lynch since he felt everyone knew what was going on so why should he (Mr. Gélinas) do something. He added that the grievor's performance reviews were fully satisfactory but that they "were about work performance not morals." Mr. Gélinas did not know if the grievor ever gave away any items as prizes at social/sport events or if he ever acted as Santa Claus.

3. Robert Taylor is now the A/Supervisor Warehouse, NDHQ, and was acting in this position in 1995. He is responsible for all moves, transportation, and repair to furniture and comes under the CFSU. He said he did not have the authority to decide what furniture should be repaired or destroyed, nor did he have authority to loan items even though he loaned some furniture such as, safes, filing cabinets, sofas, drafting table, lounge chair to Mr. Lynch. He believed Mr. Lynch was using the safes to store firearms and/or ammunition. He reiterated that he should have sent all these items to CFB Uplands for decision as to what would happen to them. He admitted he kept track of the items Mr. Lynch received in his memory and not on loan cards. Loan cards were only made up for some items after the investigation began when Mr. Lynch asked him to do this. Mr. Taylor testified that he agreed to make them "to cover his butt". Sgt. Fewer and Mr. Taylor's lawyer suggested that he cooperate, so he did. He hoped that nothing serious was going to happen to Mr. Lynch, since "he is very likable". He added he believed Mr. Lynch knew he did not have authority to loan or to release any items.

During cross-examination, Mr. Taylor said he had never seen the Annexes with the list of items on them (Exhibit E-3). He said he told Sgt. Fewer he loaned items to Mr. Lynch. He did not know about the disposal policy and had never seen the SOP for removal of items (Exhibit E-4). He added Mr. Lynch told him if requested he would return items in his possession and that they had this understanding. Mr. Taylor felt

after a while, "I'd not get them back or they (items) would not come back". He added: "If I really insisted, I felt I might get them back."

Mr. Taylor received a letter of reprimand for his role in the episode. He added the loan cards that he did fill out for the grievor were not false ones, but were made after the fact. Mr. Taylor could not recall saying no to a request for a safe for the grievor but he did deny one to Mr. Lynch when the grievor asked for one on behalf of Mr. Faulkner, the CWS van driver.

During re-examination, Mr. Taylor confirmed that the dates he and the grievor wrote on the loan cards were added after the investigation began. Regarding the "borrowed furniture", Mr. Taylor believed none of it would come back, especially the safes. He added that he does not often see copies of departmental policies.

4. Ms. Monique Ste-Marie, a Human Resource Consultant to DND at the time of the Lynch investigation, was asked to give advice to the local staff person regarding the investigation. She testified she was involved in drafting Exhibit E-1, Captain (N) Cormier's letter to Mr. Lynch dated 26 April 1996 referring the situation to a higher authority. Ms. Ste-Marie was also involved in the termination letter process (Exhibit E-2). The witness had seen two MP reports when she was asked to sit in on a disciplinary hearing with Captain (N) Cormier, Mr. Lynch and his bargaining agent representative to find out how all the items were obtained by the grievor.

Ms. Ste-Marie testified that when asked during the disciplinary hearing how the forty-two Sergeant and Greenleaf combination padlocks (Annex G, log 20) came into his possession, Mr. Lynch said they were old and had only one number working and not three. A few days later Ms. Ste-Marie saw all the seized items in a storage room. The padlocks were all new in their original boxes. Sgt. Fewer told her they were not faulty and that there was a way to activate them. When Mr. Lynch was asked about some batteries he had, he said they had an expiry date and were no longer useful. Sgt. Fewer told Ms. Ste-Marie the batteries had no expiry date. When asked who he got the glow sticks from, Mr. Lynch did not reveal his source. Ms. Ste-Marie advised the grievor that the consequences of his actions could result in termination.

Ms. Ste-Marie added that many of the items she saw in the storage room were in good working condition and should have been sent to Crown Assets for disposal.

She recommended termination of Mr. Lynch's employment to Captain (N) Cormier based on factors such as: the sheer magnitude of the number of items in Mr. Lynch's possession; he was not forthcoming in the disciplinary hearing as she found out later when she visited the storage area and discovered for herself that most items were not old or no longer usable; the grievor showed no remorse especially regarding items that were in good shape; he removed items over a long period of time; Mr. Lynch had gone to Mr. Taylor and asked him to back date loan cards for various items, especially the safes. She concluded that one would expect a former MP to comply with the law and to do the right thing.

The witness said she believed Mr. Faulkner and Mr. Tessier were not disciplined. Mr. Beaudin received a one day suspension and Mr. Taylor a letter of reprimand.

Ms. Ste-Marie said she did not consider a lesser penalty because Mr. Lynch was not remorseful, did not acknowledge that he took some items he should not have taken, and had broken the bond of trust between himself and his employer.

She added that Mr. Beaudin's one day suspension was for a false claim for a lunch. She recommended this penalty as well, and claimed Mr. Beaudin felt intimidated by the grievor. She described the actions of Mr. Beaudin and Mr. Lynch as being "worlds apart".

On consent, Mr. LeFrançois entered the Surplus Crown Assets Act (Exhibit E-5); an extract from the Queen's Regulations and Orders (Exhibit E-6); an extract from the Canadian Forces Administrative Order (Exhibit E-7); a record of amendments (Exhibit E-8); and an extract for the disposition of Surplus Material (Exhibit E-9).

5. Dan Lynch testified that he joined the Canadian Armed Forces in 1969 as a private and left on May 3, 1993 as a Warrant Officer. He was an MP for twenty five years mostly within the National Capital Region but also served in Cyprus, Egypt, Beirut and Damascus.

He was issued an army military kit that he signed for and was accountable for when he left. He accumulated extra kit over the years during exercises or

rendez-vous. He also bought some military items at flea markets and from departing soldiers.

When he was a Warrant Officer at the CWS, Mr. Gélinas, whom he helped hire initially, reported to him through a sergeant. After the grievor left the military, and was hired as a civilian in the CWS, Mr. Gélinas became his boss and Mr. Lynch became the lowest person on the totem pole. Mr. Lynch denied wanting Mr. Gélinas' position especially since it was a bilingual one for which he was not qualified.

The grievor worked Monday to Friday, 0730 to 1600 hours. A typical day would be to collect classified material in the morning in NDHQ, destroy it in a disintegrator and do field runs for similar material in the afternoon at such places like Leitrim, Tunney's Pasture, other DND buildings, Dwyer Hill, Connaught Ranges, External Affairs. The CWS driver was usually Mr. Faulkner.

Mr. Lynch admitted that he delivered in the CWS van the items on Exhibit E-3 to his home, to relatives homes, to the Prior Sports Bar and the Legion in Arnprior. He started to do this in 1994. He was not alone on these runs and no one ever told him he should not use a government vehicle for these purposes. All runs were combined with government duties. He added that items were also taken to Mr. Faulkner's home, Mr. Beaudin's home, but never to Mr. Tessier's home. He said he initiated many of these personal trips but was not the only one to do so.

Regarding the allegation that he intimidated people, Mr. Lynch said he was the most junior person in CWS and had no aspirations since he planned to retire in a few years.

The grievor said there was a dumpster at a loading dock near the CWS area that had most of the surplus items he removed piled near it. For example, item 10 on Annex D, the erasable white board, had been smeared with the incorrect ink and was discarded. Mr. Lynch retrieved it, tried to clean it and gave it to the Prior Sports Bar. Other items he fixed up as well.

He said: "He never got one penny for any of the items I delivered".

Regarding Mr. Gélinas' contention that the grievor had friends higher-up, Mr. Lynch said he once spoke to a Sgt. Chard about not going to Petawawa for copy paper in exchange for coffee.

Mr. Lynch said he has known Mr. Taylor for a long time, and that items that came from Mr. Taylor's area were on the dock near where they loaded or unloaded the CWS van. He added he would ask Mr. Taylor for some items and told him where they were going.

Mr. Lynch was familiar with loan cards but the practice of using them was not followed. He added however all the items he had were in his mind, on loan, and he would have returned it if asked to do so. He said Mr. Taylor would loan tables and chairs for weddings, retirement parties, etc. and they would always come back.

Regarding the dozens of padlocks at his home, Mr. Lynch said Mr. Gélinas told him he did not want any more scrounged material in Mr. Gélinas' office area, so Mr. Lynch took them home to give away as prizes for various events like a bonspiel. He added they had been written off by the locksmith at NDHQ and that he admitted this to Capt. (N) Cormier.

Mr. Lynch could not recall Mr. Gélinas saying to him regarding the chairs that he had enough of them. Mr. Gélinas never told him not to take anything. Regarding the rolls of tape, he added he got them from the store that was closing at Tunney's Pasture. When Mr. Gélinas asked for some, he brought some in and kept the rest.

At his disciplinary hearing, Mr. Lynch testified that since his lawyer could not attend, he was advised to say nothing. This is why he may have appeared to be not forthcoming and did not divulge the names of anyone to Ms. Ste-Marie.

When asked how he now viewed what he had done, Mr. Lynch said: "It was not acceptable. What I did in the military to make things work was no reason to do as a civilian. I made mistakes but I do not steal. What I did was condoned especially since no one ever said not to do it." He added that as an MP he had investigated theft, but in his case, all that he had done was in his mind not theft. It was misuse. Regarding back-dating loan cards by Mr. Taylor, the grievor said he asked him to do this to cover our butts. Not all the items shown on Exhibit E-3 annexes were put on loan cards.

Mr. Lynch had never been disciplined, had fully satisfactory performance reviews, and was only counselled once by Sgt. Chard.

Regarding the glow sticks, Mr. Lynch testified that a child got some fluid from one of them in his eye once so they were told to get rid of them, so he helped himself to them. He added that all the military stores, clothing, and other military items he had acquired prior to becoming a civilian. He admitted receiving the electric typewriter (log number 251) from Mr. Taylor that was seized at his home from his son's room on December 20.

Mr. Lynch pleaded guilty on October 10, 1996 to possession of stolen property, that consisted of the computer seized at his relative's home in Vanier. He was given a ninety day conditional sentence and has a criminal record.

During cross-examination, Mr. Lynch said that on December 5, 1995, he told Sgt. Fewer all the military clothing and items found in his home were his, but the MP's took them all. He tried to retrieve his military kit through his lawyer. Regarding the five pairs of mukluks (log 141, Annex G), Mr. Lynch said there was no list that said he had them. Similarly, when Mr. G  linas asked for some rolls of tape, he only brought in some since he was not asked to bring them all in. With respect to the chairs incident, Mr. Lynch interpreted Mr. G  linas' comments as sarcasm and condoning or allowing what the grievor had done. When asked if this was absurd, Mr. Lynch replied: "No Sir". Regarding the glow sticks and the danger they posed to children and how illogical it would have been to use them on Halloween, Mr. Lynch said a sergeant gave them to him. He added that he told Mr. Taylor when he got items from him that they were "going to points east or points west". Mr. Lynch added he thought Mr. Taylor had "care and control of all NDHQ material". The grievor spent seven years at NDHQ and said he had never seen the Surplus Crown Assets Act and was not familiar with the disposal procedures even though he knew about the loan cards.

Mr. Lynch admitted regarding a couch he received from Mr. Taylor, that it received water damage while in his home and was cleaned by monies from an insurance policy. He agreed this could be described as a financial advantage, even though Mr. LeFran  ois described financial gain as an elusive concept.

Mr. Lynch agreed providing family and friends with items made him a popular guy, but they were his friends for friend's sake even though those friendships are strained now.

When asked if after leaving the military on a Friday as the boss, and returning the following Monday as a civilian at the bottom of the totem pole, might cause his colleagues to look upon him as a moral superior and may have caused them to feel intimidated by him, Mr. Lynch responded: "No Sir, I was just the junior person."

Mr. Lynch agreed he took a safe to Perth once while doing a van run to the Connaught Ranges even though "Perth was not on the way." He added that he never told Sgt. Fewer about any of his exploits regarding DND items because he never had a chance to talk to the Sergeant. He agreed that as the Warrant Officer, he would have received copies of Standard Operating Procedures like Exhibit E-4 but he noted Exhibit E-4 was dated February 1995. He left the military in 1993.

When asked why he pleaded guilty at his trial, Mr. Lynch said his union representative told him that in all probability he would have been fined. It would have been very expensive to plead not guilty, and since he had family debts, he decided to live with what he had done. In Mr. Lynch's mind he was charged under the Code with possession of a stolen computer that he did not know had been stolen. All the items on the annexes in Exhibit E-3 had nothing to do with the charge he pleaded guilty to. He did agree however that back dating the loan cards by himself and Mr. Taylor was an obstruction of justice.

#### Argument for the Employer

Mr. LeFrançois referred to *King* (Board file 166-2-25956) and reminded me of the principle referred to in the *King* decision (supra) from an earlier Board decision, that he who robs the Crown is not entitled to be employed by the Crown. He asked the question, were the allegations proven, and if so, was the penalty of termination justified.

He argued that the alleged theft and misconduct references in Exhibit E-1 and the letter of termination (Exhibit E-2) should not be read as indictments since the Board is not a court of law. These letters therefore may be worthy of attack, but the

possession of so many items at the grievor's home, and Mr. Lynch's lack of surprise at being approached for theft, is very telling indeed. The fact that Mr. Lynch pleaded guilty under section 354(1) of the Code can of itself seal the issue before me.

He reminded me that in the agreed statement of facts, paragraph 3 is an acknowledgement by the grievor that the items in the annexes were seized from his home and from other municipal addresses. Counsel asked if the grievor could really be believed when he said he thought he had authority to take the items. He reminded me that as a twenty-five year MP, sworn to uphold the laws and policies of DND, Mr. Lynch should have known what he did was wrong especially since Mr. Taylor knew it was wrong.

Mr. LeFrançois referred to elements of Exhibits E-5, E-6, E-7 and E-9 all which clearly show there was a procedural scheme in place to deal with the disposal of government property.

Regarding the reasonableness of the sanction, counsel argued that the grievor could not be less blameworthy because he believed his actions were condoned. He added that Mr. Gélinas waited so long to complain because he wanted his complaint to stick. When new superiors arrived, Mr. Gélinas complained then because he felt the time was right. Mr. LeFrançois reminded me that any sanctions or lack of sanctions against other persons involved in this matter is a moot point since they are not appearing before me. He asked me to accept the testimony of Ms. Ste-Marie that the grievor's conduct was "worlds apart" when compared to others referred to during the hearing. He argued that the grievor planned and executed the removal of many items, and tried to cover his tracks with back-dated loan cards, all from a former MP sworn to uphold the law. He said the grievor showed no remorse, and in fact used a DND vehicle to deliver an overwhelming magnitude of items in terms of volume and value. He argued Mr. Lynch must have made many trips when he began to remove items in 1994.

In conclusion, counsel argued that the *Surplus Crown Assets Act* exists to address the inherent conflict in persons to declare an item unusable and then personally benefit from this declaration. This Act removes the power to dispose of assets at the local level by declaring something garbage and then taking it home. This



Act reduces abuse or mischief and protects the taxpayer. He said all other employees need to know that such activity of acquiring Crown items without the proper authority is not acceptable. Counsel referred me to: *Fauteux* (Board file 166-2-26211).

#### Argument for the Grievor

Mr. Done argued that this is an extraordinary case, and that if I am in doubt based on the balance of probabilities, I must find in favor of the grievor. He argued the allegation is not actually theft because theft is hard to prove and requires a higher burden on the employer. He argued that only the final level grievance response dated 27 March 1997 signed by R.J. Sullivan for the Deputy Minister reads in part: *"I am satisfied that you did steal a considerable amount of government owned material for your own use and for family and friends."*

He argued that the policies at play were never made known to Mr. Lynch, and that even Mr. Taylor said a policy of not giving loan cards is one thing, but the practice of giving them was another.

Mr. Done argued that the employer's hands are not clean in this matter, since Mr. Gélinas, also a long serving MP and Warrant Officer who was not a "babe in the woods", never told the grievor not to take anything even though he saw him do it. Mr. Gélinas gave the impression that the military had a laissez-faire attitude to such practice so why should he bother to interfere. The policy versus the practice were therefore two different things. Mr. Done reminded me that Mr. Taylor gave items to Mr. Lynch, but that did not mean the grievor was going to make them his own. He argued that the practice of giving away items should have been broken before someone "was nailed for it". No one was doing anything about it until suddenly on December 5, 1995 the MP's arrive at the grievor's home. He argued if Mr. Taylor had not given the items to the grievor, or if Mr. Gélinas had said no, the practice would have ended. Instead his behaviour was condoned, and was done during the day in a government van with the help of other employees. He wondered if indeed Mr. Tessier, Mr. Beaudin and Mr. Faulkner were really intimidated by the grievor since this activity went on for so long. He concluded that the employer was not reasonable or fair and did not use common sense in how it handled the involvement of all in this matter.

Mr. Done said Mr. Lynch was a good worker who could go back to work since there appeared to be no bad feelings towards him. He described the grievor not as a thief but as someone who made scrounging into an art form for which he should not have been fired. Unlike the *King* decision (supra), what Mr. Lynch acquired was given to him or loaned to him even though loan cards were not filled out.

Mr. Done concluded that there was no robbing or theft; that no one said stop doing this and bring everything back; that the grievor's demeanor was truthful before me. He asked that I impose a reasonable penalty under all the circumstances but that I reinstate the grievor.

In rebuttal, Mr. LeFrançois reminded me that Mr. Taylor testified he especially felt the safes would not be coming back and that loan cards were written for only a few items. Mr. LeFrançois said it is clear in the employer's mind that what is at issue is not only theft, but more than theft when one looks at the bigger picture of what actually went on in this case.

### Decision

The grievor's representative argued that this is an extraordinary case. Indeed he is right. Even with the exclusion of excess military kit, the grievor agreed he had taken hundreds of items, some in better condition than others, that were seized at three locations. Other items were brought back by the grievor from a fourth location in the Hawkesbury/L'Orignal area. This was uncontested in the agreed statement of facts.

Mr. Done's description that the grievor converted "scrounging" into an art form is an understatement. What may have been scrounging while he was in the military, was turned into an asset disposal operation for personal benefit as a civilian. In short, Mr. Lynch, who claims he was not stealing, in fact removed considerable Crown items from his workplace for personal use. As a former MP of twenty-five years who investigated thefts over these years he should have known better. One does not have to know chapter and verse of the *Surplus Crown Assets Act* (Exhibit E-5) in order to be aware that there is a government procedure for material disposal. In fact, as a former Warrant Officer for the CWS, I find it almost impossible to believe that at some point in his military career, Mr. Lynch would not have ever seen a departmental standing

operating procedure for the removal of equipment from DND premises similar to Exhibit E-4, especially since Mr. G  linas said such procedures in particular paragraph 3 of Exhibit E-4 had been in force for years.

Furthermore it cannot be assumed, nor can it be condoned, that the department's so-called "garbage" could be allowed to become someone else's treasure. In this case, no matter how you cut it, the treasure still belonged to the Crown. Government property was distributed in a government van to "points east" (Hawkesbury) and "points west" (Arnprior), without the authorization or consent of the Crown.

I also find the grievor's argument that what he was doing was condoned for the most part by Mr. G  linas and his working colleagues, to be shallow at best and an attempt to lay the blame elsewhere at worst, even though as Mr. Done said: "the employer's hands are not clean in this matter". Most items were removed during the day in a government van with the knowledge of fellow workers as the grievor admitted. This does not make it right nor can one assume it was condoned. In fact, it makes it more wrong since the grievor's colleagues were accomplices, especially Mr. Taylor who back dated loan cards after the investigation began "to cover his (Lynch's) butt". This action was a conscious request of Mr. Taylor by the grievor to cover-up the grievor's actions that in my opinion is a serious contributing factor to his culpability. Even Mr. Taylor felt, with special regard to the safes, that they would never come back to the department. For the grievor to label his actions as "misuse", when he asked for loan cards to be made for certain items, is a serious act of deception.

Mr. G  linas' inaction until he had the window of opportunity as he put it, except when he made a comment regarding the removal of chairs, may have been interpreted by the grievor as condoning what he was doing. This did not make it right regardless of whatever bad blood may have been between Mr. G  linas and Mr. Lynch. Mr. G  linas' inaction and fear of doing the right thing contributes to a sense that this type of activity may be a widespread practice. As Sgt. Fewer said, the rules are now being adhered to more strictly.

Mr. LeFrançois argued that the grievor planned and executed the removal of an overwhelming magnitude of items over a long period of time and tried to cover his tracks when the investigation began. I agree. I am satisfied that the grievor removed the items as alleged and that he had no intention of returning them. I am also satisfied that he was not only not forthcoming during his disciplinary hearing, but that he was not truthful about the condition of the padlocks and the batteries. Furthermore, he showed no remorse for what he had done and attempted to cover-up his actions by having Mr. Taylor back-date loan cards. On the basis of all of this management concluded that the grievor had broken the bond of trust between himself and his employer. I agree.

As in the *Fauteux* decision (supra) the picture that has emerged in front of me is that of an individual who took items from the employer for his personal use (typewriter, couch, safe, filing cabinets, shelving, batteries), or to benefit third parties (armchair, erasable white board, shelving). Mr. Lynch's efforts to help others, regardless of his intentions, were done with the Crown's property that he did not have a right to. Despite his years of satisfactory work performances, his employer could no longer trust him. I do not believe that this conclusion is manifestly unjust or unreasonable in all of the circumstances, and will therefore not interfere in the penalty of termination.

I do however suggest that some of the grievor's excess military kit that was seized be returned to him.

For all these reasons, the grievance is denied.

**J. Barry Turner,  
Board Member.**

OTTAWA, November 14, 1997.