



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**John W. Taylor**

Grievor

and

**TREASURY BOARD  
(Fisheries and Oceans)**

Employer

*Before:* Donald MacLean, Board Member

*For the Grievor:* Michael Tynes, Public Service Alliance of Canada

*For the Employer:* Judith Begley, counsel

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Heard at St. John's, Newfoundland  
September 10 and 11, 1998

## DECISION

John Taylor began his employment in the Public Service as a clerk with the Department of Fisheries and Oceans in 1978. In 1980 he became a Fisheries Officer, at the GT-03 level. In his job he was assigned as an Offshore Surveillance Officer (OS Officer). He worked out of the St. John's district office of the department.

In January 1998 the department discharged Mr. Taylor. He alleges that his termination was without just cause. The remedy that he wants is to be re-instated to his position, without loss of salary or benefits.

The employer says that his actions during a patrol of offshore fishing operations led to the decision to discharge him.

An OS officer acts as the eyes and ears of the department in the supervision of offshore fishing vessels. His duties included the following (exhibit 4):

*Reporting to the Supervisor, Offshore Surveillance performs the monitoring, control, surveillance and enforcement functions associated with foreign and domestic fishing operations within Canadian Waters to ensure compliance with the Fisheries Act, Coastal Fisheries Protection Act and Regulations, Territorial Sea Protection Regulations, Foreign Vessel Fishing Regulations and international agreements between Canada and other fishing nations. Participants in the Northwest Atlantic Fisheries Organization (NAFO) scheme of joint international enforcement in the NAFO regulatory area as an inspector, supervises the preparation for and the conduct of armed boardings of foreign flag fishing vessels, provides administrative support to other Departmental staff and performs other related duties.*

To perform these duties an OS officer conducts patrols on and over Canadian territorial waters to ensure compliance with the appropriate regulations and agreements. To do his work he assumes tactical control of patrol vessels and aircraft. One witness likened the ship to a taxi. The OS officer controls where the ship goes. He directs the captains to cover the sectors that require surveillance. He uses the vessels and aircraft to monitor compliance and violations of fisheries regulations at sea. The response to such violations could ultimately involve the arrest of foreign or domestic fishing vessels, their masters (captains), and their crews, as well as the seizure of the catch on the vessel. He interacts with personnel on departmental, charter, naval patrol vessels, and patrol aircraft to secure their co-operation and assistance. He uses the vessel or aircraft as a platform to achieve the operational objectives of the offshore program. When necessary, he is the one who is in charge of any boarding party

which goes to take physical control of fishing vessels and their crews. He has to be aware of potentially hostile situations that could require the use of force.

On most inspection patrols the vessels and aircraft are part of the departmental complement. From time to time during the year they use naval vessels under an arrangement with the Department of National Defence.

On January 5, 1998, the employer advised Mr Taylor by letter of his termination for disciplinary reasons. The letter stated in part (exhibit 2):

*The investigation into your actions on September 17, 1997 during your deployment to the HMCS Glace Bay has been completed.*

*I have determined, that on September 17, 1997; 1) You did, while under the influence of alcohol, verbally abuse the Executive Officer and Coxswain on the HMCS Glace Bay by making threatening/harassing/derogatory remarks unbecoming of an Offshore Surveillance Officer of your status. 2) You did obtain a bottle of Suntory Whisky from a foreign fishing vessel during inspection, contrary to departmental policy. Because of these actions you have brought into disrepute the program for which you work, seriously hampered the effective working relationship with DND personnel and diminished the role of a fishery officer in the eyes of fellow professionals deployed to assist with the Offshore Surveillance Program.*

*As a result, and taking into account your recent 20 day suspension, I have no alternative but to proceed with termination of your employment from your GT-3 effective close of business Wednesday, January 7, 1998. This termination from the Public Service is for disciplinary reasons in accordance with the authority contained in Section 11(2) (f) of the Financial Administration Act.*

The pertinent evidence in this case is as follows.

Mr. Taylor began his employment with the department in 1978. In 1980 when he became a Fisheries Officer the department put him into a series of training and orientation sessions to familiarize him with the department's philosophy and regulations regarding his duties on the offshore.

When OS officers undertake their duties on patrol, they work in pairs. They are peace officers with the power to arrest and charge offenders. They remain on board the patrol vessels on the high seas for two weeks at a stretch. While they remain in radio contact with the St. John's office, there is nobody to directly supervise what they do from day to day. The department trusts them to do their job professionally. When they are out on patrol, they conduct visits and boardings of the fishing vessels to inspect the ships' logs and other records

of their catches, the fishing gear, the rigging, mesh sizes, etc. For the most part the boardings and inspections involve routine verification of the figures and checking of the fish species that have been caught by the fishers.

The work becomes more than routine when they have to track, run down, stop and board vessels suspected of operating illegally. When that happens, the OS officers take charge of an armed boarding party to arrest and secure the suspect fishing vessel and to escort it back to port.

When personnel on offshore patrol vessels became fully trained and armed in 1989, the department decided to implement a “dry ship” policy in its offshore surveillance program.

The policy dictated that no spirits or liquor of any kind would be allowed on board the department’s patrol vessels at any time. The policy also provided that officers engaged in offshore surveillance were not to consume or accept alcoholic beverages while they were on the fishing vessels during patrol periods.

Management stressed that, although foreign masters could be somewhat insistent in regards to offering gifts, the OS officer’s reply should be diplomatic, firm and negative. The policy also added that breach of these policies could result in disciplinary action.

Departmental personnel in the OS program received and signed notices regarding liquor on offshore patrol vessels and the prohibition against the acceptance of gifts from the fishing captains. Indeed, in the years previous to the events that lead to his discharge, Mr. Taylor had received and signed a couple of these notices. Two of those notices dated from April 1989, and January 1994. The department required all OS officers to acknowledge receipt of these memos. As recently as May 22, 1997, the department forwarded to its OS officers a memo indicating that management was in the process of developing a new code of conduct. They reminded the OS officers that the department’s policy on “dry ships” and not accepting gifts still applied.

The department also has a set of general guidelines and standards of conduct that is available to employees. Supervisors ensure that the guidelines and standards are brought to the attention of the employees. For example, the OS supervisor discussed them with the OS officers.

As noted earlier in this decision, in the conduct of its surveillance operations the department has access to its own and charter vessels, as well as to naval vessels from National Defence. When OS officers are on board a DND vessel, they are supposed to respect DND regulations. On DND vessels the regulations concerning alcohol are less stringent than on Fisheries vessels.

The CFS Glace Bay is a DND naval vessel. Its home port is Halifax, Nova Scotia. The Glace Bay is a relatively small naval vessel with a length of 55 metres (150 feet). It is one of a number of coastal patrol vessels. The Glace Bay normally carries a crew of 35-40 officers and ranks. There were 42 or 43 personnel on board the Glace Bay in September 1997 when the incidents occurred. In the close quarters on board a smaller vessel such as the Glace Bay, the department could not secure separate cabins for the OS officers. For Mr. Taylor and his fellow OS officer, Donald (Sandy) Hollet, this meant that they had to share a cabin with Seaman Matthews a member of the crew. Messrs. Taylor and Hollet joined the Glace Bay in Halifax. The ship headed for a fisheries patrol on the "nose" and "tail" of the Grand Banks, to the southeast of Newfoundland, just over the edge of the 200-mile territorial limit of Canada.

On the Glace Bay, OS officers are treated as officers. They do not have a commission, but they have the same rights and privileges as the officers on the ship. They abide by the rules of the ship.

The Glace Bay does not have a policy against consumption of alcohol on board. They do limit where it can be consumed on the ship. The fisheries officers would have access to the wardroom, and the officers' mess, to eat their food and to drink either beer or wine. There is no hard liquor allowed on board. It is against navy regulations to have any alcohol in the cabins. Both Mr. Taylor and Mr. Hollet were aware of the limitations regarding alcohol on the Glace Bay.

On board the naval vessels it is standard practice that the Captain, the Executive Officer (First Mate), and Ms. Cakebread as the Coxswain, have access to the keys to all the cabins. No cabins are locked at sea, except for the canteen, personal lockers, and the beer and wine storage. The food and general stores are left open. To enter a cabin a person knocks and waits for an answer. If there is no answer, it is normal to open the door to see if anyone is around.

The Coxswain is a senior NCO on a ship. As Coxswain he or she is charged with keeping up the morale of the ship's personnel. The Coxswain is the chief disciplinarian for the ranks and NCO's on a ship. He or she is seen as a combination sheriff and shop steward between the crew and the officers.

The incidents that gave rise to the discipline for Mr. Taylor occurred on September 17, 1997. They may be summarized as follows.

Around 19:00 in the early evening of September 17, 1997, Petty Officer, First Class Samantha Cakebread, the Coxswain on the Glace Bay, noticed that the chairs in her office were missing. She asked the engineers in next cabin if they had taken her chairs. They replied that they had. They added that it was because Mr. Taylor had earlier taken one of their chairs to his cabin. Ms. Cakebread then went to check in Mr. Taylor's cabin. When she knocked and got no answer, she then opened the door to the cabin. No one was around. She retrieved the chair. At the same time she noticed a bottle of whisky and some empty beer cans in the cabin. The cabin was occupied by Mr. Taylor, Mr. Hollet, and seaman Matthews for that trip.

On seeing the liquor, the Ms. Cakebread shut and locked the door. She then went to find J.A. Offer, the vessel's First Mate and Executive Officer. Both Mr. Offer and Ms. Cakebread returned to the cabin. When he saw the bottle, Mr. Offer instructed Ms. Cakebread to confiscate it and to lock it up.

It was an open bottle of Suntory whisky. It is a Japanese brand that is not available through the mess, or the canteen, nor is it a brand available in Nova Scotia. Yet, that was the story that Mr. Taylor reported later to his supervisor. He said that he had purchased it in Halifax.

In fact the whisky had come from the captain of a Japanese fishing vessel. Mr. Taylor and Mr. Hollet had boarded the (Japanese registered) Shenka Maru earlier in the day. Mr. Taylor returned to the Glace Bay from the Shenka Maru with the whisky. It was a gift from the Maru's captain. Mr. Hollet did not try to stop Mr. Taylor from taking the bottle from the Japanese vessel. He says that he did not want a confrontation with Mr. Taylor while they were on board another vessel. According to Mr. Taylor, accepting gifts of alcohol from foreign captains is a common practice. It is okay as long as the crew of the patrol vessel does not see it. "It's a fact of life" on the patrols, even though it is against the department policies.

Mr. Taylor conceded in his testimony that he had drunk 12-14 ounces of the whisky, before Ms. Cakebread saw the bottle. According to Mr. Hollet, he had 2 to 4 ounces himself, Mr. Matthews had possibly drank an ounce of the whisky, and Mr. Taylor had the rest (around 18 ounces). At the time the Glace Bay was on its way back to port in Saint John's. Messrs. Hollet and Taylor felt that there was very little chance that they would be boarding another vessel on this trip.

After leaving the cabin, Mr. Offer spoke to Mr. Hollet and explained what had happened. He did not have any choice. The whisky was in the cabin. He had no choice but to confiscate it. Mr. Offer was looking for Mr. Hollet's assistance in dealing with Mr. Taylor. Mr. Hollet did not consider that it was a big problem that the whisky was seized. He was concerned, nonetheless, that someone had entered his cabin, though he was not greatly concerned.

A little while later, Mr. Taylor interrupted Mr. Offer while he was talking to the Captain. He referred to Mr. Offer as a "shit". He could fix Mr. Offer. He could make sure that Mr. Offer went nowhere. Mr. Taylor complained that Mr. Offer was having the ship's personnel spy on him. They had no right to enter his cabin. Eventually, Mr. Taylor calmed down enough that Mr. Offer and the Captain could proceed to the evening command briefing.

Mr. Taylor approached Ms. Cakebread at the end of the briefing. He indicated to her that he wanted to speak to her about the events earlier in the evening.

Shortly afterwards, Mr. Taylor entered Mr. Offer's cabin while he was meeting with Ms. Cakebread. Mr. Taylor demanded the return of his whisky. With his voice raised, Mr.

Taylor berated Ms. Cakebread: “You don’t have a fucking right to go into my room! Why did you go there? Who the Fuck do you think you are? You don’t even fucking belong here, dear! I could fucking get you... take you out.”

On hearing these insults Mr. Offer stepped between Mr. Taylor and Ms. Cakebread. She felt threatened by Mr. Taylor. Mr. Offer told Mr. Taylor to calm down, before he got into trouble. Mr. Taylor calmed down somewhat. Yet, he persisted that Ms. Cakebread explain her actions. To this, Mr. Offer replied that Mr. Taylor should go to bed. It would be better to discuss things in the morning.

After Mr. Taylor left Mr. Offer’s office, Ms. Cakebread alerted her “Hospitality suite” seamen to be prepared to give assistance in case Mr. Taylor got more unruly. They were to handcuff him if necessary. Then Mr. Offer and Ms. Cakebread proceeded to the bridge to report the events to the Captain. During that discussion, Mr. Taylor called the bridge and asked Mr. Offer for the return of his liquor. After some discussion between Ms. Cakebread and the Captain, Mr. Offer recommended that the whisky be returned to Mr. Taylor. There were only about 2 ounces left in the bottle.

Mr. Offer testified that his recommendation was in the interest of cooling off the situation. The Captain concurred and Mr. Taylor was allowed to go to the wardroom with the bottle. Mr. Offer also testified that he felt this was best course of action, due to the small amount of alcohol left and the fact that Ms. Cakebread had expressed concerns for her safety. No more was heard from Mr. Taylor that evening. He finished the whisky in the wardroom and ordered up a beer as a nightcap.

The next day, Mr. Taylor apologized to Mr. Offer. He said that he would have handled the situation differently if someone had not gone into his room. He tried to apologize to Ms. Cakebread, but she did not want any part of it.

Ms. Cakebread was offended and threatened by the conduct of Mr. Taylor. She requested that formal disciplinary action be taken against him. She still remains firm on that point. She considered that the verbal threats by Mr. Taylor to be a challenge to her authority in the situation. She had no prior problems with Mr. Taylor.



Ms. Cakebread testified that the rules regarding alcohol are enforced on the Glace Bay. There is supposed to be no hard liquor on the ship while it is at sea. Any beer and wine are to be purchased and consumed in the messes. At times, the Captain can and does allow his crew and passengers to have a drink up on the sweep deck.

According to Ms. Cakebread, if Mr. Taylor had been a naval officer, he would not have gotten away with the incident. He would have been charged under the National Defence Act, jailed and demoted. Mr. Offer surmised that an officer would have been court-martialed, and fined \$ 1,000.00, with a black mark on his record, but no jail time.

Mr. Taylor thought that his room was off limits to others on board the ship, except his cabin mates. He said that he was upset as the result of a personal telephone call that he had tried to make earlier that evening. On returning to his cabin, he became agitated when he learned that someone had entered his room and seized his whisky. He admits that what he said and did was wrong. During the adjudication hearing he apologized for his actions.

Mr. Hollet received a verbal reprimand from his supervisor for drinking the whisky in the cabin and for not telling anyone that Mr. Taylor returned with it from the Japanese vessel.

Wayne Evans, Supervisor of the department's Offshore Detachment in St John's, testified that it is not his or any anyone's job to supervise the OS officers. The OS officers work with little or no supervision, in accordance with their job descriptions. He stressed that communication is an important element of the job. Things have to get done as a team. He added that the incidents with Mr. Taylor could cause distrust among the other employees in offshore surveillance. It makes one wonder what is happening on the ships.

Mr. Evans also testified that the boarding of foreign vessels would generally be done in daylight hours. Normally, the OS officers are on their own time in the evenings. Nevertheless, the officers should be prepared to execute boarding procedures at any time.

In 1993, another OS officer approached Mr. Evans. He complained of a verbal confrontation with Mr. Taylor while the latter was drinking on board one of the department's ships. The OS officer did not want to be scheduled to work with Mr. Taylor in the future. At that time, Mr. Evans confronted Mr. Taylor about the verbal confrontation and his

consumption of alcohol on the “dry ship”. Although drinking on a “dry ship” was against regulations, no action was taken against Mr. Taylor at that time. Mr. Evans also testified that he himself had taken a glass of wine while he was on a “dry ship”. According to Mr. Evans, “the rule was not rigidly enforced.”

Charles Dowden recently retired as a ship’s captain from the department’s patrol vessel the Leonard J. Cowley. He testified that it was not uncommon for the OS officers to consume alcohol on “dry ships”. Nor, was it uncommon for the OS officers to bring back liquor from the fishing vessels that they inspected. The supervisors knew about it. They had all come up through the ropes of the system.

Mr. Offer also testified that this was not the first time that he had seen OS officers abuse their privileges on board naval vessels. Mr. Offer had previously witnessed OS officers bring beer on board. He stated that the captain of the ship would just brush it off. No action would be taken. At the beginning of the voyage in Halifax he had told Messrs. Taylor and Howlet that they could not drink outside the wardroom of the Glace Bay.

Betty McKenna is a social worker in St. John’s. She has been a consultant in the employee assistance program (EAP) since 1990. She has counselled Mr. Taylor since 1996. She testified that Mr. Taylor is a single father of 2 boys. He has a coping problem when he goes out to sea. He finds it easier to deal with the issues when he is ashore.

Mr. Taylor informed Ms. McKenna that his supervisor knew of his problems. Mr. Taylor told her that he did not want to return to sea. He also added that there was not a whole lot of support for him from work.

However, at no time did he raise the issue at work. He did not ask to be assigned ashore. The extra money earned on overtime while at sea (\$15,000 to \$20,000) made it not feasible economically for him to remain ashore.

Ms. McKenna suggests that Mr. Taylor would be much better off if he were able to stay ashore. It would be detrimental for Mr. Taylor to return to sea duty at the present time. He is in a vulnerable position and would be at a high risk, if he returned to sea. She could not

say with any degree of certainty when Mr. Taylor would be ready to return to sea duty in the future.

Ms. McKenna has seen Mr. Taylor on a regular bi-weekly basis for over 2 years. The loss of his job has been hard on him. He has shown considerably progress since her first meetings with him. Since the incident of September 1997, Mr. Taylor has taken it upon himself to attend college and AA meetings on a regular basis.

Mr. Taylor also testified that he has come a long way since his discharge. He had approached both EAP and AA on his own. He testified that his drinking is now contained to a sociable drink. It is nowhere near the extreme that it was before. He agrees with Ms. McKenna that he should not return to sea at the present time. He believes that he could fill another GT-3 position on shore. He is prepared to accept conditions, if he is reinstated.

There was evidence that the department had made allowances for a fisheries officer (Ms. Matheson) to stay on shore between 1990-1992. She was placed into a NAFO area. Ms. Matheson had had problems meeting qualification standards with both the sub-machine gun and the pistol. At that time, there were 20 OS officers. No more than 15 OS officers were deployed on patrol at one time. Ms. Matheson has since transferred to a position in Stephenville. She is no longer an OS officer. She is still employed as a fisheries officer in a GT-3 position.

Mr. Evans testified that there would be logistical problems if Mr. Taylor were reinstated without having to go to sea. The normal rotation of the OS officers is that they split their time on duty between office time, aircraft time and sea time. The other officers would be burdened with extra sea time to compensate for his inability to go to sea.

There is only one prior incident of discipline on Mr. Taylor's file. That previous incident was not directly related to his duties as an OS officer. In that incident Mr. Taylor pled guilty in January 1997 in provincial court to a charge of illegal possession of cannabis resin (Hashish). The incident occurred while Mr. Taylor was off duty. Still, the employer believed that the notoriety of the charge and the guilty plea had a negative impact on the department. As a result, in February 1997, the employer suspended him for 20 days. Mr. Taylor did not grieve the discipline.

There is no evidence of any prior incident or complaint regarding other OS officers accepting liquor from a foreign vessel. Nor was the department informed of previous incidents of consumption of alcohol in the past either on the department's vessels or those of DND.

### **Guidelines on Standards of Conduct** (exhibit 6)

#### Fishery Officers / Inspectors / Guardians

##### 3. Dealing with the Public - Sensitivity and Responsiveness

a) *Inherent in the provision of services to the public is the requirement for employees to treat with courtesy everyone with whom they have official dealings, either in person, by correspondence or telephone.*

b) *Sensitivity to the needs of the public requires that employees conduct themselves in a pleasant, professional, manner, even under difficult conditions and in times of personal stress and in the face of provocation. Employees shall not make abusive, derisive, threatening, obscene or other insulting, offensive or provocative gestures or remarks to or about another person.*

##### 5 Misuse of Authority, Violation of Departmental Acts

c) *Any employee who:*

i) *violates any law or regulation he/she is accountable for enforcing, or*

ii) *for benefit or favour improperly performs or does not perform his/her duties*

*will be subject to consideration for disciplinary action up to and including discharge. In addition to any administrative action taken by the Department, charges may be laid in relation to the contravention of any law or regulation.*

##### 6 Alcohol and Drugs

a) *Employees shall not consume or be under the influence of alcohol or drugs during the performance of their duties. "Under the influence of..." for purpose of this provision means that employees' effectiveness is reasonably considered impaired to a degree which might constitute a hazard to themselves, to others or to property, or the employees are otherwise unable to perform their assigned duties by reason of the use of alcohol or drugs. Employees who are on medication which could affect their behaviour or judgement should notify their supervisor on this regard.*

b) *Employees shall not consume alcoholic beverages in public places or at work while in uniform.*

c) *Employees shall not operate nor permit others to operate any equipment or vehicle, whether owned or leased by the Crown, while under the influence of alcohol.*

### **Summary of the representations on behalf of the Parties**

#### **Argument for the Employer**

Counsel for the employer acknowledged that the employer had a two-fold burden in the instant case. The employer has to prove that there was misconduct and that the disciplinary action is appropriate or reasonable in the circumstances.

Mr. Taylor is an experienced officer with over 19 years in the department. He is not a new kid on the block. He knows what proper conduct is. He breached the rules of conduct by accepting the bottle of alcohol from the fishing vessel and by treating naval individuals with disrespect. Mr. Taylor acknowledges that accepting alcohol was against the department's directives that he had received.

Mr. Taylor tried to conceal the bottle of alcohol. He said that he was not intoxicated even though he had 12 to 14 ounces of liquor within 4 to 5 hours. Yet, he would have to be intoxicated after drinking that much alcohol in such a short time period. Mr. Taylor was also in breach of the navy's regulations.

Mr. Taylor received the bottle from one of the trawlers. He consumed the whisky. He was intoxicated and he conducted himself in an utterly inappropriate manner. The executive officer ordered the seizure of the bottle and Mr. Taylor went over the top. He went as far as to threaten careers and told Ms. Cakebread that "You do not belong here, Dear!".

Mr. Taylor tries to say that he did not say the last remark, but more weight should be given to the naval officers. Their stories are consistent. Their reports on the events are similar. Each enmeshes with the other. Mr. Offer had to intervene between Mr. Taylor and Ms. Cakebread. He told Mr. Taylor to calm down. He had no axe to be grind in recalling his version of the events.

Ms. Cakebread alerted the "hospitality suite" security squad so as to minimize any possible problems with Mr. Taylor. She had concerns for her safety.

When Ms. Cakebread went into Mr. Taylor's cabin she followed her standard practice in doing so. There was no malice intended. She entered Mr. Taylor's cabin to get the chair. The misconduct by Mr. Taylor was the fact that she found the partially consumed bottle of alcohol.

There is no question of an invasion of privacy. Mr. Hollet had restrained himself. Mr. Taylor was not treated any differently than any other officer would have been treated. Ms. Cakebread had found the bottle and she reported it to Mr. Offer. All she did was enforce the ship's regulations. It is clear that Mr. Taylor did not abide by those regulations.

There is no reason not to accept Mr. Hollet's testimony. He has not seen others abuse the drinking privilege; nor did he testify that he saw others accept liquor from foreign trawlers. Mr. Evans testified that Mr. Taylor is the first person he has heard of who accepted a bottle. He acted on that information.

Mr. Taylor did not show any remorse when the bottle was seized. Instead, he wanted the bottle back so that he could finish it. His verbal assault on Ms. Cakebread is not conducive to the best of relations at work. Mr. Taylor showed no concern to putting his best foot forward. His actions are incompatible with the proper conduct of a fisheries officer.

A supervisor, or any other person, could have the perception of the officer's taking the bottle as equivalent to accepting a bribe. Then when an OS officer tees off and loses his cool with the naval officers, it does not help relations with DND very much.

Discipline is needed in this instance. Mr. Taylor's conduct is deserving of termination.

The surveillance program absolutely requires that the employer have trust in its employees. The degree of this trust cannot be overstated. The OS officers are out on the sea alone. They have interactions with the officers and ranks on board their ship, as well as with the people from foreign nations. They represent Canada. In their contacts with other departments, the OS officers act as representatives of the department.

Prior to this incident, Mr. Taylor had a 20-day suspension for the possession of narcotics. That incident reflected badly on Mr. Taylor and the department. We would think that Mr. Taylor would be on his best behaviour. But, it was not the case.

The 20-day suspension did not turn out to be corrective in that instance. Therefore, any disciplinary action short of termination would not be corrective. With the breach of trust in this situation, termination is warranted.

There is no need to mitigate the penalty in this situation. The grievor should not be given a second chance. Mr. Taylor and his counsellor, Ms. McKenna, both agree that he is not fit to go offshore. He abuses alcohol. Yet, there is no evidence that he is an alcoholic.

Mr. Taylor has started attending AA meetings, but that is a post-termination act. This does not impugn the employer's actions. One must look at his situation at the time of his termination.

Because of the severity of the misconduct, the termination of Mr. Taylor is warranted. The only possibility would be to reinstate Mr. Taylor to the position that he left. Yet, Mr. Taylor is not able to fulfill the obligations of his position. There are only 9 other OS officers on staff. To accommodate Mr. Taylor in this instance would be to place a burden on the other OS officers.

Neither Mr. Taylor, nor his counsellor, could say with any certainty if or when Mr. Taylor would be fit to return to sea. Therefore, it would not be viable to return him to sea duty.

Mr. Taylor could not be trusted in the future. The risk associated with boarding foreign vessels is too great in this situation. It is not a viable option to reinstate Mr. Taylor to his duties as an OS officer.

Counsel argues that Mr. Taylor should be terminated for accepting the bottle of alcohol from the trawler and for making the threatening remarks. She noted that the imposition of discipline was not for the consumption of alcohol. Instead, he was discharged for the breach of departmental regulations and not for a breach of DND regulations.

Mr. Evans stated clearly that he had no knowledge of the OS officers accepting alcohol from the trawlers until this instance. The employer has not condoned a widespread practice.

How much warning does a person need? There were three regulations that stated that accepting alcohol from fishing vessels was not permitted. There is no question of a sense of false security.

Ms. Cakebread filed the personal complaint for the possession of the alcohol and the remarks that Mr. Taylor had made to her. Ms. Cakebread does not want an apology from Mr. Taylor. She had an absolute right to file the report. It would be incorrect to suggest that she should not have filed her report.

There is no truth in the suggestion that Ms. Cakebread did not like the OS officers. She did not say that the OS officers were subordinate to her position. She considers them to be officers and she has dealt with them, accordingly. When she found the whisky, she informed Mr. Offer, and it was Mr. Offer who dictated what was to happen.

There was no indication that Ms. Cakebread did not want to work with Mr. Taylor. At best one could say there might have been some personality conflict.

The prior 20-day suspension had no corrective effect. The current instance is similar in that it involves abuse of a substance.

Counsel submits that the cases **Herritt**, *infra*, and **O'Brien**, *infra*, are distinguishable from the instant case. Both grievors in those cases were alcoholics. In **Herritt**, the prospect was that the grievor was able to resume his duties within a couple of months. That is not the circumstance here. There is no indication that Mr. Taylor can return to the full function of his duties.

Counsel emphasizes that she does not concede that Mr. Taylor can be reinstated. If that were the decision, however, the order would have to indicate the severity of Mr. Taylor's actions and would have to contain some very strong conditions to undertake counselling, to allow monitoring, and to include a last chance clause. Mr. Taylor's progress would have to be monitored.

In reality the employer cannot monitor the OS officers. It requires a high level of trust in such a situation that the OS officer will properly conduct himself. Counsel doubts that Mr. Taylor's has the capacity to fulfill the functions of the job.

Counsel cited the following case:

(1) **Robert Gillies and Treasury Board (Transport Canada)** (1994), File No. 166-2-25617 (Simpson), at pages 2,4,10 and 11.

Ms. Begley requests that the grievance be denied.



### **Argument for the Grievor**

Mr. Taylor admits that he violated the departmental code of conduct and policies by accepting alcohol from the Japanese vessel, drinking in his cabin and insulting Ms. Cakebread. Nevertheless, the situation must be looked at in its proper light.

Mr. Taylor is not a new officer. He has 19 years experience. On occasion he has acted as a supervisor. Mr. Taylor has been a good officer in the past and has only a short disciplinary history. However, as a result of the incidents in September 1997 he was terminated.

We have to look at how the situation developed. Yes, there are rules and regulations concerning behaviour, conduct, and alcohol. However, before the department ships went “dry”, alcohol was quite common on board them. When the department instituted the armed boardings, the ships went “dry”, or rather, they were supposed to go “dry”.

The evidence is that alcohol has been brought aboard and consumed on the department’s ships. If the policy rules have changed, those policy changes should be policed. Yet, there is no monitoring of the situation. Captain Dowden testified that alcohol remained a widespread practice, even after the department’s ships went “dry”.

Both Mr. Taylor and Mr. Hollet say that the rules are not always followed. It is axiomatic that when rules are in place but are not enforced, the employees become lulled into a sense of false security. They feel that no repercussions will or should result, if they do not follow the rules.

Captain Dowden says that he never reported an OS officer for bringing alcohol on board his ship. He rationalizes that the supervisors are aware of the situation. If alcohol is brought on board and consumed, it is not treated as a big deal, as long as the job gets done. The fact that no other OS officer has been suspended or terminated for the consumption of alcohol is evidence of the lack of concern that the employer ascribes to the situation.

Mr. Taylor would not have been disciplined simply for bringing back the bottle from the trawler. The incident only came to a head when Mr. Taylor had a verbal confrontation with Ms. Cakebread. Neither the Captain nor Mr. Offer would have filed a report. However,

Ms. Cakebread insisted that she wanted something done about Mr. Taylor for the verbal confrontation. She would not tolerate any abuse by Mr. Taylor.

The Glace Bay was on its first fisheries patrol for the department. There were problems for the two OS officers from the outset, even in Halifax. The cabin accommodations for Mr. Taylor and Mr. Hollet were inadequate. They did not have a cabin to themselves. They had to share their cabin with naval personnel.

Mr. Taylor and Mr. Hollet do not recollect any briefing on the regulations on the Glace Bay. They do recall some comment about the accommodations. If the naval rules and regulations were supposed to apply to the OS officers, the employer had a duty to ensure that they were fully aware of their contents.

The rules are significantly different when you go from the 150-foot Glace Bay to the 250-foot frigates. The larger vessels have larger messes. On the Glace Bay, the mess is very small. In addition, Mr. Taylor and Mr. Hollet were not aware that the cabins were not private cabins.

One must consider past practice and when the incident occurred in the patrol. Both officers had completed the last boarding. They were aware that the Glace Bay was to be in port the next day. There was alcohol in the boarding kit. All that they had left to do was to attend the briefing that evening and do some paper work. They could finish the paper work on the way back to port. Mr. Taylor consumed some of the whisky in his cabin with Mr. Hollet and Mr. Matthews. There had been consumption in the cabin before. There were empty beer cans in the cabin.

Mr. Taylor had left the cabin to make a personal phone call. He could not get through. That upset him. When he came back to his room, someone had been in his cabin and the whisky was gone. This upset Mr. Taylor even more. Mr. Taylor does not deny that he was upset. His intention was to confront the Captain, Mr. Offer, and Ms. Cakebread.

It is obvious that Mr. Taylor said things that he now regrets. It was the result of a combination of events. He had a few drinks. His personal call had upset him. He found that someone had been in his cabin. He noticed that his whisky was gone.

One has to ask two questions, if Mr. Taylor was so intoxicated, why was he given back his liquor, and why was he permitted to buy some beer after that?

Mr. Taylor admits that his behaviour was not appropriate in the circumstances. The morning following the incident, he sought out Mr. Offer and Ms. Cakebread to apologize. He tried to correct the situation. However, Ms. Cakebread did not want any part of the apology. She insisted on discipline and made out the report. In her role as the Coxswain, Ms. Cakebread is the principal disciplinarian on the vessel. She was not going to tolerate any challenge to her authority or abuse from an OS officer.

Ms. Cakebread does not consider the OS officers to be equivalent to military officers. They were not commissioned officers. However, Mr. Offer sees things differently. He considers all officers to be the same. It appears that Ms. Cakebread felt that she had some control over the OS officers.

It is not clear that the military rules apply to the OS officers until it is time to take formal action. It is not reasonable and just to discipline Mr. Taylor in this situation. He has 19 years of service with the department. Besides, any breaches of the rules and regulations have not been enforced by the department for years.

Mr. Taylor's representative questioned how the rules on the naval vessels was to be exercised vis-à-vis the FS officers when they are on board navy ship. It is not clear that those rules and regulations apply to the OS officers in that situation.

There is a parallel that can be drawn with department vessels that are "dry". It is not fair to not apply the department's own rules or regulations until they get to the point where there is no choice but to do so. Mr. Taylor, in this instance, is being used as a scapegoat.

Had the rules and regulations been enforced in the past and the consequences known, this incident would likely not have occurred. It is especially so regarding the acceptance of the bottle of liquor from the trawler. No OS officer would jeopardize his career, if he had known the consequences.

Mr. Taylor admits that, among other things, he has problems with alcohol. Yet, he had the courage to seek help and assistance. He did not wait to see if he was to be terminated to seek this help.

The employer claims that they were unaware of Mr. Taylor's problems, but they were aware that other officers did not want to work with Mr. Taylor. Because the officers are on the seas for long periods of time, the employer should have taken the time to find out why the others would not work with him. If the problems appear to fall within the scope of the EAP, the employer should intercede before more serious incidents could occur. In short, the employer was or should have been aware of Mr. Taylor's problems. Nonetheless, Mr. Taylor had looked for help on his own.

Ms. McKenna says that Mr. Taylor is good in rehabilitation, but he is not able to maintain counselling when he is at sea. She is not able to forecast when, or if, he will be able to return to sea. She believes that Mr. Taylor requires more therapy and counselling to recover from his problems.

The jurisprudence clearly states that any order of reinstatement would have to be to the position Mr. Taylor had at the time of his termination. However, the employer has the ability to work with Mr. Taylor to assist in getting him through this crisis. The employer should give him a chance.

If Mr. Taylor were reinstated and the department did not accommodate him, this could be dealt with on a question of incapacity. Mr. Taylor is not an alcoholic. Nevertheless, he is an abuser of alcohol. It is most frequent and apparent when Mr. Taylor is at sea. In addition, Mr. Taylor has other personal problems in his life that he has to deal with.

Mr. Taylor had a prior 20-day suspension for the possession of Hashish. That was a serious matter, but it was not related to the instant case. Mr. Taylor was off duty at the time of the cannabis incident. He was not on patrol. This single record of discipline should not be a factor. Mr. Taylor has the potential for rehabilitation with the assistance of the EAP follow-up programs.

In situations such as this, where the prospect for rehabilitation is good, Mr. Taylor should be given another chance. This does not mean that Mr. Taylor does not acknowledge that he violated the rules and regulations.

It would be appropriate to reinstate Mr. Taylor to the position he occupied at the time of his termination. There is no authority to reinstate Mr. Taylor to a shore position in order to participate in a rehabilitation program. However, a decision positive to Mr. Taylor could recommend such action.

It is reasonable to substitute a suspension in place of the discharge. However, it is not appropriate to substitute a long-term suspension to the date of the hearing. That would not be just and reasonable. It has been nine months since Mr. Taylor's discharge. Such a suspension would be too severe a penalty. The matter should be dealt with in a more lenient way, given the fact that alcohol was condoned in the past on board the vessels.

Mr. Tynes referred to the following authorities and cases:

- (1) **James Herriot and Treasury Board (National Defence)** December 17, 1996, File No. 166-2-27188 (Simpson), at pages 13, 14 and 15.
- (2) **Vincent O'Brien and Treasury Board (Transport Canada)** April 1, 1992, File No. 166-2-21856 (Turner), at pages 31 and 36.

Mr. Tynes requested that the grievance be allowed.

### **Conclusion and Reasons for the Decision**

Mr. Taylor admits that he violated the employer's rules of conduct. He concedes that his actions deserve some form of discipline. However, he says that a lesser penalty could take into consideration the seriousness of what he did. He says, in effect, that it is not necessary to discharge him in order to show the rest of the employees that such incidents will not be tolerated.

The real issue in this instance is whether his actions were serious enough in the circumstances to warrant discharge. In my opinion they were not.

In reviewing the circumstances of the discharge I recognize that I should consider the concerns of the employer and the risks that might be associated with Mr. Taylor's return to the workplace. In my view those concerns can be accommodated by placing strict conditions on Mr. Taylor's reinstatement.

The board has previously noted that an employer has a responsibility to assist employees in dealing with their illnesses through treatment and rehabilitation programs. Board member Simpson stated in **Herrit**, *supra*, (at page 13):

*Alcoholism and drug addiction are generally considered to be illnesses. As such, the employer bears some responsibility for assisting the employee in dealing with these illnesses through treatment and rehabilitation programs.*

Of course, one such approach is an EAP program. Mr. Taylor was aware of the benefits of the department's EAP program. He has been seeing Ms. McKenna, an EAP consultant for the department, since 1996 when he was arrested for possession of hashish. He continued to see Ms. McKenna on a regular basis up to and after the incident on board the Glace Bay.

While Mr. Taylor knew that such a program existed, he did not approach his employer directly for assistance. If he had been forthright in coming forward earlier to the employer to request help, he might have avoided the situation that got him into hot water.

He told Ms. McKenna that he did not have a whole lot of support from work. Yet, he never even brought up the topic of his personal problems when he talked with Mr. Evans. He did want Mr. Evans to know about them. The employer cannot surmise that an employee has a problem when that employee refrains from mentioning it to the very person from whom he expects assistance. Mr. Taylor would say that the employer ought to have known, or should have inquired more profoundly about his circumstances. In hindsight that might have been an obvious plan of attack. However, when an employee does not initiate a first step by coming forward to throw some light on his situation, he should not criticize the employer who remains in the dark because the employee does not want to reveal that he needs help.

To be fair to Mr. Taylor Mr. Evans did know about the incident in 1993 when he had confronted Mr. Taylor about drinking on a "dry ship" and his verbal encounter with another OS officer. In addition, Mr. Evans did know that the employer had suspended Mr. Taylor for

20 days for his conviction on hashish possession. However, no one told him that Mr. Taylor had personal problems that were impacting his work.

There is no question that Mr. Taylor violated the department policy when he accepted the whisky from the Japanese captain. It is also clear that Mr. Taylor also violated the DND policy by drinking the whisky in his cabin, although violation of the DND policy was not among the reasons why Mr. Taylor was disciplined in this case. Instead, he was disciplined for his verbal attacks on Mr. Offer and Ms. Cakebread.

No one can reasonably suggest that the employer condoned the acceptance of the whisky. Mr. Taylor would say that he and other OS officers did it often in the past. But, no one called them to account.

The evidence of Mr. Taylor and Captain Dowden suggests that it is still common to see OS officers drink on board the department's "dry ships", and they accept bottles of liquor from foreign vessels. Yet, the contrary evidence of Messrs. Evans and Hollet is that they do not consider the alcohol issues to be a widespread practice.

I accept the testimony of Captain Dowden with grains of salt. He says that the practice was widespread. Nevertheless, he was the main person in authority on his ship who was in a position to blow the whistle on the practice. He saw it occur. What did he do? Nothing! Did he have an obligation to come forward? Perhaps, not. However, he is the last person who should come forward and cast stones at the employer when he keeps his own mouth shut about the very same practice.

The decision in **Herritt**, *supra*, (at page 15) says that when the employer has not consistently applied its rules in the past, this lack of enforcement is a factor in favour of the substitution of the discharge of an employee for a period of suspension. That is very similar to the instant case. In **Herritt**, *supra*, there were previous instances of suspensions of other employees for theft, yet no one was terminated for those thefts.

In this case, no other OS officers has been subject to discipline for accepting alcohol from a foreign vessel since the policy was initiated. Furthermore, no OS officer has been formally disciplined for violating the "dry ship" policy on the department's vessels.

It is without question that the naval officers on the DND vessels have overlooked instances of OS officers abusing their alcohol privileges on board those ships. Mr. Offer testified that on the Glace Bay the Captain would brush off the situation. He would take no action. It is also without question that the OS officers have been known to drink on the department's "dry ships" and this has also resulted in no action. They were not reported. Mr. Evans noted in his testimony, he had spoken to Mr. Taylor in the past about a verbal confrontation and alcohol consumption, but no formal action was taken. Mr. Evans himself admitted that he had at least one drink of wine on a "dry ship."

Even Mr. Evans recognized that the rules against drinking on the department ships have not been rigidly enforced. In such a situation it is evident that the employer chose to overlook breaches by OS officers when those breaches were brought to its attention. If the employer intended to invoke discipline for drinking and accepting gifts, they should monitor what is happening. They should be prepared to act on reports of violations of their policies. In saying this I do not intend to excuse Mr. Taylor. He deserves a penalty of the same magnitude as his misconduct.

However, I accept Mr. Taylor's argument that the OS officers have been lulled into a sense of security, that as long as they get their job done, it is okay to accept and consume alcoholic beverages while at sea. I also accept the argument that if these regulations were enforced in the past, the situation might have been different with Mr. Taylor. At the very least, my decision would be different.

Regardless of my opinion on the "alcohol" issue, the most disturbing part of this case was Mr. Taylor's reaction to having had his bottle seized by Ms. Cakebread on the orders of Mr. Offer. His remarks to Mr. Offer and Ms. Cakebread were unprofessional, insulting, abusive and altogether unwarranted in the situation. One could say that his remarks were a direct result of his over-consumption of whisky (12-14 ounces, or more, in less than 5 hours). That may explain the depth of his remarks. It does not, however, excuse them in any way. I repeat that in his verbal attacks Mr. Taylor was unprofessional, insulting, threatening and abusive. His remarks were totally unwarranted for anything that they did or said to him.



Ms. Cakebread had every right to demand formal discipline in that situation. It would be a step backward to think that another employee, or person, in the Public Service could not be protected from such unprofessional conduct in the work place.

Mr. Hollet had participated in drinking the whisky even though he knew where and how Mr. Taylor had acquired the bottle. Yet, Mr. Hollet did not verbally abuse Mr. Offer or Ms. Cakebread. Because he was not the leader in the drinking venture, his superior officer only verbally reprimanded him. Mr. Taylor was the one who decided to keep the whisky. He was the one who verbally confronted the naval personnel.

While I believe that discharge is not the appropriate response to what Mr. Taylor did, I accept the proposition that what he does warrant a long-term suspension. I am not inclined to temper the period of suspension that he has already undergone. In addition, I believe that his reinstatement must be accompanied with strict conditions that he must be prepared to follow.

This brings us to a second problem, under the legislation and the jurisprudence an employee can only be reinstated to the position that he held at the date of his termination. Mr. Taylor and Ms. McKenna agree that putting him at sea is not a reasonable option at this stage. The representative for Mr. Taylor conceded that I could recommend that the employer place Mr. Taylor in a shore-based position. The problem with such a recommendation is that the employer is not obligated to follow it. In other words, it is at the employer's discretion to deny such a recommendation, although I do feel it to be the most viable solution in this situation.

The representative for Mr. Taylor uses **Herritt**, *supra*, to support his argument. In **Herritt**, the decision notes that (at page 14 and 15):

*I believe the grievor has gone through a transformation in his life since the incidents in question. He has followed rehabilitation programs, working on his problems and keeping clean. He has brought his addictions to drug and alcohol under control. In every way, he is leading a healthier life and has learned the skills necessary to avoid future problems. I found the grievor to be credible.*

In **Herritt**, *supra*, the grievor was changing his lifestyle and had already embarked on a straight and narrow path at the time of his hearing. I agree with and adopt the result in that case, (at page 15):

*At the time of the hearing Mr. Herritt had changed his lifestyle and had already embarked on a straight and narrow path. This, in addition to his improved sense of self-respect and his improved acceptance of responsibility for himself and others, enables me to conclude that if Mr. Herritt has continued on that path over the past several months he should now be at a point where he is able to resume his duties.*

*If within 30 days of the issuance of this decision Mr. Herritt is able to produce for his employer a statement from his physician or from some authority in the Department of Health, Drug Dependency Division, Province of Nova Scotia, to the effect that he has been and is following a program of rehabilitation, he is to be reinstated as soon as he is able to produce such evidence. If he is unable to produce this evidence within the time specified, his grievance will be denied.*

*The penalty to be substituted for the discharge is suspension without pay to the date of reinstatement.*

*For a year after his reinstatement the employer may require of him to show that he is continuing to follow a program of rehabilitation.*

The employer refers to the **Gillies** case, *supra*. The decision in that case denied a grievance to reinstate an employee of Transport Canada. In that instance, the grievor had reported to work on several occasions while impaired by alcohol. On the night for which he was disciplined, he was unable to respond to a Coast Guard emergency call to assist in the coordination of search and rescue operations, because he was inebriated. As of the date of the hearing in that case the grievor had only made a limited effort towards rehabilitation after his discharge.

In **Gillies**, *supra*, (at page 10) Board Member Simpson determined that there was no evidence that the grievor suffered from alcoholism, although it was evident that he abused alcohol. She considered that the time period in which the grievor had undertaken counselling (only one month) was too short a period of time to create any confidence in his continued ability to refrain from alcohol. At page 11, of **Gillies**, she added:

*The kind of position Mr. Gillies occupied as a radio operator concerns the lives and safety of many people. There are no guarantees that situations such as the one that occurred on November 25, 1993 could not happen again. As a shift worker he works alone at night on a regular basis. It is not possible to provide to him the kind of safety net he would require to ensure the safe performance of the duties set out in his job description.*

*In consideration of the seriousness of the incident of November 25, 1993, the safety risks involved with reinstatement and the short duration of Mr. Gillies' successful treatment, I find that I cannot order reinstatement. Reinstatement with conditions is also not appropriate or viable.*

**Gillies**, *supra*, is distinguishable from the instant situation. In **Gillies** the grievor had been intoxicated at work. He was unable to perform his duties. He was not reinstated because

he had not been vigilant with his rehabilitation program. He had only gone to four AA meetings after his incident. He had only started serious treatment one month before his final level hearing. That was 6 months after his termination.

In the this case, counsel for the employer reminded me that Mr. Taylor was not terminated because he was intoxicated at work and unable to perform his duties. It was because he verbally abused two naval officers and he accepted a bottle of whisky from the captain of a foreign vessel.

To his credit, however, Mr. Taylor has gone to some length towards self-help by attending AA meetings and participating in EAP sessions (with Ms. McKenna). He had been attending EAP sessions both before his termination and in the nine months since his discharge. The important part is that he recognized before his discharge that he needed help.

Gillies, *supra*, (at page 7) recognizes that when an employee who has undergone treatment for alcohol problems returns to work, it is generally not a good idea to have him work alone in a safety sensitive situation.

In the instant situation the OS officers do not act alone. They work in pairs on ships where other employees have charge of their operations. If the rules on alcohol were enforced more diligently, Mr. Taylor could have the safety net necessary to overcome his problems.

One cannot overlook the fact that Mr. Taylor was on a path of self-destruction. He admits to frequently drinking on board the vessels and to accepting alcohol from the foreign vessels. Both Mr. Taylor and Ms McKenna agree that he is not ready to go back to sea at the present time. However, both agree that Mr. Taylor has made great progress from the time of his first visit. He attends his EAP and AA meetings on a regular basis. He is also improving himself by going to college.

Nevertheless, I cannot overlook the fact that Mr. Taylor verbally assaulted Mr. Offer and Ms. Cakebread and simultaneously stained the working relations between the department and the DND personnel. I cannot stress strongly enough the importance of respect and integrity for fellow officers and working relations between different departments. In short, it is necessary if the offshore surveillance program is to exist. Although Mr. Taylor argues that

there has been an acceptance of alcohol on board the ships, this does not mean that I can condone an officer who has taken it upon himself to become so intoxicated that he becomes verbally abusive for the return of a bottle that he is not suppose to have in the first place. Even if I could characterize the entry into his cabin as an invasion of his cabin space. His tirade was not warranted at all.

He had no right to attack either of them. They discovered that he had been drinking in his cabin. It was contrary to the ship's regulations. He knew that he was not supposed to be drinking in his cabin before he did so. Even if Mr. Offer and Ms. Cakebread were not correct, his intemperate language and threats to them were beyond any justification on his part. The employer was correct to discipline him for his actions.

For this, Mr. Taylor must accept responsibility for his actions. In light of the potential danger and side effects of Mr. Taylor's actions, it appears to me that a lengthy suspension without pay followed by reinstatement on condition represent the best balancing of interests of the employee and the employer. (See **Herritt**, *supra*, at p. 14)

I cannot reinstate Mr. Taylor to an onshore position. According to the evidence, he is not fit to return to work at sea as an OS officer at the present time. Nonetheless, I feel that he should be reinstated because of the inconsistent application of the rules of conduct, I will allow Mr. Taylor 90 days from the issuance of this decision to provide evidence from Ms. McKenna, or another health professional, that he is ready to go back to sea.

If Mr. Taylor cannot produce such evidence within that time period, his grievance will be denied.

If he is able to provide the evidence, his grievance will be allowed subject to the following conditions:

Mr. Taylor must continue his regular attendance at EAP and AA meetings for no less than a year from the date of reinstatement. Furthermore, Mr. Taylor must accept that any relapse of the incidents will be grounds for termination.

I am of the opinion that Mr. Taylor should have the chance to be reinstated. The penalty to be substituted for the discharge is suspension without pay to the date of reinstatement. This may appear harsh. However, I believe that it is just in all of the circumstances and the gravity of the verbal assault and the accepting of liquor from the foreign fishing captain.

I remain seized of jurisdiction in this matter should the parties have any difficulties in implementing this decision.

**Donald MacLean,  
Board Member.**

Moncton, February 22, 1999.