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Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

DAVID FRANCIS LORENZEN

Grievor

and

TREASURY BOARD
(Environment Canada)

Employer

Before: Marguerite-Marie Galipeau, Board Member

For the Grievor: Derek Dagger, Counsel, Public Service Alliance of Canada

For the Employer: Harvey Newman, Counsel

Heard at Ottawa, Ontario,
June 11, 1993

This decision follows the hearing of two grievances referred to adjudication by Mr. David Lorenzen employed at the department of Environment Canada, in Vancouver, B.C. Mr. Lorenzen grieves the employer's refusal to grant him bereavement leave and family related leave. The reasons for the denial are set out in the employer's reply to the grievances at the third level of the grievance procedure. It reads as follows:

> *This is the final level response to your grievances dated October 29 and November 16, 1992 pertaining to Management's refusal to grant you Family Related leave and Bereavement leave.*
>
> " ... "
>
> *As mentioned to you in the second level reply, Article M-2.01(m) of your collective agreement states that, "a common law spouse relationship exists when, for a continuous period of at least one year, an employee has lived with a person of the opposite sex and publicly represented that person to be his/her spouse ..."*
>
> *In light of this, I am satisfied that management applied the definition appropriately in your case. Furthermore, I have found no evidence of discrimination on the part of management in refusing to grant you the leave requested.*
>
> *For these reasons, I have no alternative but to deny your grievance as well as the corrective actions requested.*

The grievances relate to the interpretation and application of the Master Agreement between the Treasury Board and the Public Service Alliance of Canada (Exhibit 2), which took effect effective May 17, 1989, and more particularly articles M-21.02, M-16, M-2 and M-5.

They read as follows:

ARTICLE M-16

NO DISCRIMINATION

> *M-16.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an*

employee by reason of age, race, creed, colour, national origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability or membership or activity in the union.

(For French version see Annex A at the end of this decision)

M-21.02 Bereavement Leave With Pay

For the purpose of this clause, immediate family is defined as father, mother (or alternatively stepfather, stepmother, or foster parent), brother, sister, spouse (including common-law spouse resident with the employee), child (including child of common-law spouse), stepchild or ward of the employee, father-in-law, mother-in-law, and relative permanently residing in the employee's household or with whom the employee permanently resides.

(a) When a member of the employee's immediate family dies, an employee shall be entitled to a bereavement period of four (4) consecutive calendar days which does not extend beyond the day following the day of the funeral. During such period the employee shall be paid for those days which are not regularly scheduled days of rest for the employee. In addition, the employee may be granted up to three (3) days' leave with pay for the purpose of travel related to the death.

(b) In special circumstances and at the request of the employee, the four (4)-day bereavement period may be moved beyond the day following the day of the funeral but must include the day of the funeral.

(c) An employee is entitled to one (1) day's bereavement leave with pay for the purpose related to the death of his or her grand-parent, grandchild, son-in-law, daughter-in-law, brother-in-law or sister-in-law.

(d) If, during a period of compensatory leave, an employee is bereaved in circumstances under which he or she would have been eligible for bereavement leave with pay under paragraph (a), (b) or (c) of this clause, the employee shall be granted bereavement leave with pay and his or her compensatory leave credits shall be restored to the extent of any concurrent bereavement leave with pay granted.

(e) It is recognized by the parties that the circumstances which call for leave in respect of bereavement are based on individual circumstances. On request, the deputy head of

a department may, after considering the particular circumstances involved, grant leave with pay for a period greater than that provided for in sub-clauses M-21.02 (a) and (c).

(For French version see Annex A at the end of this decision).

M-21.09 *Leave With Pay for Family-Related Responsibilities*

(a) For the purpose of this clause, family is defined as spouse (or common-law spouse resident with the employee), dependent children (including children of legal or common-law spouse), parents (including step-parents or foster parents), or any relative permanently residing in the employee's household or with whom the employee permanently resides.

(b) The Employer shall grant leave with pay under the following circumstances:

(i) up to one-half (1/2) day for a medical or dental appointment when the dependent family member is incapable of attending the appointments by himself or herself, or for appointments with appropriate authorities in schools or adoption agencies. An employee is expected to make reasonable efforts to schedule medical or dental appointments for dependent family members to minimize his or her absence from work. An employee requesting leave under this provision must notify his or her supervisor of the appointment as far in advance as possible;

(ii) up to two (2) consecutive days of leave with pay to provide for the temporary care of a sick member of the employee's family;

(iii) one (1) day's leave with pay for needs directly to the birth or to the adoption of the employee's child. This leave may be divided into two (2) periods and granted on separate days.

(c) The total leave with pay which may be granted under sub-clauses (b)(i), (ii) and (iii) shall not exceed five (5) days in a fiscal year.

(For French version see Annex A at the end of this decision).

ARTICLE M-2

INTERPRETATION AND DEFINITIONS

M-2.01 ...

(l) *"spouse" will, when required, be interpreted to include "common-law spouse" except, for the purposes of the Foreign Service Directives, the definition of "spouse" will remain as specified in Directive 2 of the Foreign Service Directive;*

(m) *a "common-law spouse" relationship exists when, for a continuous period of at least one year, an employee has lived with a person of the opposite sex, publicly represented that person to be his/her spouse and continues to live with the person as if that person were his/her spouse;*

(For French version see Annex A at the end of this decision).

ARTICLE M-5

PRECEDENCE OF LEGISLATION AND THE COLLECTIVE AGREEMENT

M-5.01 *In the event that any law passed by Parliament, applying to Public Service employees covered by this Agreement, renders null and void any provision of this Agreement, the remaining provisions of the Agreement shall remain in effect for the term of the Agreement.*

(For French version see Annex A at the end of this decision).

FACTS

The facts are set out in a statement of facts to which both parties have agreed and which is hereby reproduced:

AGREED STATEMENT OF FACTS

1. *The grievor at all material times occupied the indeterminate position and classification of AS-2, Head of Administration Services in the Finance and Administration section of the Conservation and Protection division for the*

Pacific and Yukon region for Environment Canada and as such was and is a member of the Public Service Alliance of Canada and is covered by the collective agreement appended hereto.

2. *The grievor has lived with his partner, Steven Pauls since April of 1990, jointly owning their home and sharing their household since that time. In their relationship, since April 1990 the grievor and Steven Pauls have publicly represented themselves as being in a spousal relationship with each other.*

3. *On October 29, 1992 Steven Pauls (sic) father passed away.*

4. *Under the authority of Article M-21.02 the grievor requested bereavement leave for November 2 to November 6, 1992 including one day of travel.*

5. *On October 3, 1992 the grievor's partner, Steven Pauls tripped and suffered a spiral fracture of his right leg. On October 4, 1992 Mr. Pauls' leg was operated on. Mr. Pauls was released from hospital on the evening of October 5, 1992.*

6. *Under the authority of article M-21.09 the grievor requested family related leave for October 6, 8 and 9, 1992 to care for Mr. Pauls who was immobilized on those days due to the leg injury and subsequent operation.*

7. *The employer denied the requests for bereavement leave and family related leave claiming that the grievor and Steven Pauls did not meet the definition of spouse in the Collective Agreement as they are both of the same sex. If the grievor and Steven Pauls had been of opposite sexes the leave would have been granted.*

ARGUMENTS

Counsel for the grievor argued that the definition of "common law spouse" is in conflict with the no-discrimination clause (M-16), as well as section 3 of the Canadian Humans Rights Act, and that an adjudicator had the authority to make a declaration to that effect and to read out the words "of the opposite sex". Counsel stated that the no-discrimination clause (M-16) contained in the collective agreement, which prohibited discrimination on the basis of sexual orientation, and section 3 of the Canadian Human

Rights Act, also prohibiting discrimination on the basis of sexual orientation since the August 6, 1992 decision in Haig and Birch v. Canada (1992), 9 O.R. (3d) 495 (Ont. C.A.), buttressed each other.

He added that the no-discrimination clause (M-16) should be given a broad meaning just as any human rights legislation is given a broad meaning.

He underlined that the employer recognized that, if it had not been for the fact that the grievor and Mr. Steven Pauls are of the same sex, the grievor would have received the requested leave.

He stated that the case is one of a conjugal relationship of some three years' standing between two gay men and that the denial of leave to the grievor because his partner is of the same sex constituted clear and unequivocal discrimination on the basis of his sexual orientation.

In addition, counsel for the grievor produced three books of authorities and a memorandum of points of argument which is hereby reproduced.

POINTS IN ISSUE

1. *Should the leave in question be granted where the grievor is in a same sex conjugal relationship.*

2. *Did the Employer violate Article M-16 and the Canadian Human Rights Act by denying the leave of the Grievor.*

3. *Should the Public Service Staff Relations Board exercise its powers of collective agreement interpretation in accordance with the Canadian Human Rights Act.*

4. *Does the definition of Common-Law spouse in Article M-2.01(M) of the collective agreement offend the prohibition against discrimination on the basis of sexual orientation as enumerated in Article M-16.*

5. *Does the definition of Common-Law spouse in Article M-2.01(M) of the collective agreement offend the prohibition against discrimination on the basis of sexual*

orientation as enumerated in Section 3 of the Canadian Human Rights Act.

ARTICLE M-16

In construing provisions in a collective agreement, an adjudicator must have regard for the overall intention of the parties as expressed in relevant provisions of the collective agreement. In the present case, the Employer and the Grievor's bargaining agent expressly agreed in Article M-16 that "there shall be no discrimination, interference or restriction... with respect to an employee by reason of... sexual orientation." While Article M-16 may well have direct application to varied employer actions in the workplace, it must, combined with Section 3 of the Canadian Human Rights Act, define the appropriate interpretation of the collective agreement.

To do otherwise would be to write out Article M-16 from the collective agreement.

MacNeill v. Attorney General of Canada (1993), unreported, Court File T-2419-92 (T.D.), Tab 23, Grievor's Book of Authorities

Dekoning v. Treasury Board (1993), unreported, (Burke), PSSRB File 166-2-22971; 149-2-129, Tab 25, Grievor's Book of Authorities at pp 44, 45

Renaud v. Central Okanagan School District No 23 [1992] (S.C.C.), Tab 16, Grievor's Book of Authorities

Impact of Human Rights Legislation

The Supreme Court of Canada has, on several occasions, emphasized the important nature of human rights legislation in Canada. The Court has ruled that human rights legislation is special in its nature and must be given a liberal interpretation to advance its broad purposes. Indeed, the Court has gone so far as to describe this legislation as being "not quite constitutional but certainly more than ordinary".

Insurance Corporation of British Columbia v. Heerspink, [1982], Tab 26, Grievor's Book of Authorities, at 157 to 158.

Robichaud v. The Queen, [1987], Tab 27, Grievor's Book of Authorities, at 89 to 91.

Where an issue before an adjudicator involves human rights legislation the authorities are clear that an adjudicator must construe both the collective agreement and the human rights legislation.

Winnipeg School Division Number 1 v. Craton, [1985] 2 S.C.R. 150, at 156, Tab 28, Grievor's Book of Authorities

Attorney General of Canada v. Druken, [1989] 2 F.C. 24, Tab 29, Grievor's Book of Authorities

The Supreme Court of Canada has ruled that, in determining a grievance under a collective agreement, an arbitrator must construe and apply a statute of general public effect to the terms of the collective agreement. Similarly, in this case, one must have regard for the Canadian Human Rights Act, a statute of general public effect, in addressing the rights of the Grievor under the collective agreement and the Public Service Staff Relations Act, this is particularly so given the quasi-constitutional nature of human rights legislation.

McLeod v. Egan (1974), 46 D.L.R. (3d) 150 (S.C.C.), Tab 30, Grievor's Book of Authorities, at 152

Renaud v. Central Okanagan School District No 23 [1992] (S.C.C.), Tab 16, Grievor's Book of Authorities

It is well accepted in arbitral jurisprudence that, where a collective agreement refers to language which encompasses human rights concerns, an arbitrator must have regard to human rights legislation in order to properly interpret the collective agreement. Given the quasi-constitutional nature of human rights legislation and the decision of the Supreme Court of Canada in McLeod v. Egan, it is submitted that the Board is obligated to interpret Article M-21 in light of both the anti-discrimination provisions in the collective agreement and in the Canadian Human Rights Act.

Canadian Human Rights Act, R.S.C. 1985, c. H-6, Tab 37, Grievor's Book of Authorities

McLeod v. Egan, supra, Tab 30, Grievor's Book of Authorities

Re Stelco Wire Products Co. and United Steelworkers, Local 3561 (1986), 25 L.A.C. (3d) 427, Tab 31, Grievor's Book of Authorities

Re Glengarry Industries/Chromalox Components and United Steelworkers, Local 6976, (1989), 3 L.A.C. (4th) 326, Tab 32, Grievor's Book of Authorities

Re Rothmans, Benson & Hedges Inc. and Bakery, Confectionary & Tobacco Workers' Union, Local 325-T (1990), 10 L.A.C. (4th) 18, Tab 33, Grievor's Book of Authorities

Startford (City) v. CUPE, Local 197 (April 19, 1991), Court File No. 816/90 (Ontario Divisional Court), Tab 35, Grievor's Book of Authorities

Dekoning v. Treasury Board [1993] Tab 25, Grievor's Book of Authorities

In Canadian Human Rights Commission v. Department of Secretary of State ("Mossop"), the Supreme Court of Canada rejected a claim of discrimination on the basis of family status where the complainant was precluded from taking bereavement leave in connection with the death of the father of his same-sex partner. The Court agreed with the Federal Court of Appeal that sexual orientation was the real ground of discrimination since it was so closely connected with the grounds which led to the refusal of the benefit in question.

Canadian Human Rights Commission v. Department of Secretary of State (February 25, 1993) Supreme court of Canada ("Mossop"), Tab 5, Grievor's Book of Authorities

In the present case, it is insufficient to say that the Grievor was in the same position as any other people living together. On the contrary, the defining characteristic of the Grievor's inability to receive the leave is his sexual orientation. The effect of the Employer's interpretation of Article M-21 is to deny the benefit to all same-sex couples who have at least one characteristic in common: sexual orientation. As stated by then Chief Justice Dickson in Brooks, "Under inclusion may be simply a backhanded way of permitting discrimination."

Accordingly, it is respectfully submitted that the Employer's interpretation is discriminatory on the basis of sexual orientation and contrary to Article M-16 of the collective agreement and the Canadian Human Rights Act as interpreted by the Ontario Court of Appeal in Haig v. Canada.

Mossop v. Attorney General of Canada [1993], Tab 5, Grievor's Book of Authorities

Brooks at 336

Haig v. Canada (1992) 9 O.R. (3d) 495 (C.A.), Tab 2, Grievor's Book of Authorities

Knodel v. B.C. (Medical Services Commission), [1991], Tab 6, Grievor's Book of Authorities

The Grievor maintains that the correct interpretation of Article M-21 requires that it be consistent with both Article M-16 and with the Canadian Human Rights Act, each of which has the purpose of the removal of unfair advantages imposed upon individuals or groups in society. This interpretation precludes the application of Article M-21 in a manner which discriminates against the Grievor on the basis of his sexual orientation. Accordingly, the Grievor submits respectfully that he's entitled to the leave benefit.

A review of the grievance replies suggests that the Employer is of the view that the leave was denied not because of the grievor's sexual orientation but because the grievor's conjugal relationship did not fall within the definition of spouse. The employer then takes the circular view that this is not discrimination.

With respect, the Employer's interpretation promotes a discriminatory approach to the Collective Agreement contrary to the Canadian Human Rights Act.

This narrow approach conflicts with the approach of the Supreme Court of Canada.

Action Travail des Femmes v. C.N.R. [1987] Tab 7, Grievor's Book of Authorities at p. 1134

The purpose of M-16 and the Canadian Human Rights Act do not favour one sexual orientation over another but rather are designed to recognize the dignity and rights of heterosexual, lesbian and gay relationships.

Bruce Ryder, "Equality Rights and Sexual Orientation: Confronting Heterosexual Family Privilege [1990] Tab 42, Grievor's Book of Authorities, Ryder p. 39 at 72-73

M-16 of the collective agreement recognizes the Employers (sic) and the Workers (sic) interest in promoting stable supportive independent intimate relationships between a worker and his or her conjugal partners, this has been referred to as the relational interest.

> *David Link, "The Tie that Binds: Recognizing the Privacy and the Family Commitments of Same-Sex Couples [1989] Tab 41, Grievor's Book of Authorities, 1054 at 1073, 1074*

The employer, by virtue of its acceptance of M-16 purports to accept there will be no discrimination on the basis of sexual orientation. Yet the essence of the employer's case perpetuates stereotypes that the lives and worth of gay and lesbian employees have a lesser value to the employer.

> *Leshner v. Ontario (1992), Tab 1, Grievor's Book of Authorities, at 16372*

Haig and Birch rejected a restrictive approach to the Canadian Human Rights Act and followed the lead set down by the Supreme Court of Canada in Mark Andrew v. Law Society of B.C.

> *Haig and Birch v. Canada [1992] Tab 2, Grievor's Book of Authorities*
>
> *Andrews v. Law Society of British Columbia [1989], Tab 8, Grievor's Book of Authorities*

A narrow approach to the application of M-16 and the Canadian Human Rights Act only perpetuates the circular thinking of the past and conflicts with recent Court decisions.

> *The Queen v. Crosthwaite [1867], Tab 12, Grievor's Book of Authorities*
>
> *Chorlton v. Lings [1868], Tab 13, Grievor's Book of Authorities*
>
> *Re Section 24 of the B.N.A. Act, Meaning of the word "persons", sub nom Edwards v. Attorney General of Canada [1928], Tab 14, Grievor's Book of Authorities*

Re Edwards v. Attorney General of Canada [1930], Tab 15, Grievor's Book of Authorities

Brown v. Board of Education [1954], Tab 21, Grievor's Book of Authorities

Richard Delgado and Jean Stefancic [1989], Tab 40, Grievor's Book of Authorities, at p. 222

R. v. Turpin [1989], Tab 11, Grievor's Book of Authorities, at p. 1332

Knodel v. B.C. (Medical Services Commission [1991], Tab 6, Grievor's Book of Authorities

Andrews v. Law Society of British Columbia [1989], Tab 8, Grievor's Book of Authorities

Andrews v. Law Society of B.C. determined that S. 15(1) of the Charter provides protection not only to enunciated grounds but also to grounds that are analogous to them.

Andrews v. Law Society of B.C. [1989], Tab 8

It has been judicially noted that the position of the Attorney General of Canada is that sexual orientation is an analogous ground covered by S.15 of the Charter.

Haig and Birch v. Canada [1992], Tab 2 at 501

Douglas v. Canada [1993], Tab 22

Veysey v. Canada [1990], Tab 9, p. 300 at 304 (C.A.)

S.3(1) of the Canadian Human Rights Act has been held to be unconstitutional in its failure to include sexual orientation as a prohibited grounds of discrimination.

Haig and Birch v. Canada [1992], Tab 2, p. 503

The Ontario Court of Appeal followed the Supreme Court of Canada reasoning in Schachter to read in sexual discrimination as a prohibited ground of discrimination.

Haig and Birch v. Canada [1992], Tab 2, p. 508

It is the position of the Grievor that article M-2.01(m) is in conflict with the Canadian Human Rights Act and M-16. The employer is discriminating on the basis of sexual orientation a prohibited ground under M-16 and Section 3 of the Canadian Human Rights Act.

Order Requested

1) *The definition of common law spouse found at article M-2.01(m) is amended in accordance with article 5 to read out the words "of the opposite sex" in order to have the clause conform with the Canadian Human Rights Act and Article M-16.*

2) *The leave requested is granted.*

In addition, counsel for the grievor stressed the points that follow. The no-discrimination clause (M-16) cannot be construed as simply a general clause that is overruled by a specific clause. The parties to a collective agreement cannot "contract out" of the Canadian Human Rights Act. Two gay men living together in a conjugal relationship are not like two persons simply living together in a practical arrangement and it would be prejudice in the extreme to so declare. Although the employer, by virtue of its acceptance of the no-discrimination clause (M-16), purports to accept the concept that there will be no discrimination because of sexual orientation, the employer treats the rights of gays and lesbians as of lesser value. It would demean the integrity of gay and lesbian relationships to say that they are not different from two friends living together. It is an undeniable fact since the Haig (supra) decision that the Canadian Human Rights Act has been amended to include sexual orientation as a prohibited ground of discrimination. It is clear that clause 2.01(m) of the collective agreement is in conflict with the Canadian Human Rights Act as well as clause M-16.

Counsel for the employer answered with the submissions that follow.

Was the employer in violation of the collective agreement by not extending the requested leave? In answering this question, the undersigned adjudicator is restricted from doing anything else but interpreting clauses M-16, M-21.02 and M-29 of the Master Agreement. The language in the collective agreement as negotiated by the bargaining

agent and the employer does not permit the granting of leave as requested. In order for the grievor to qualify for the leave requested, he would have to be a "common-law" spouse. In reading the collective agreement, the definition of "spouse" and "common-law spouse" must be considered. There is no dispute between the parties that, but for the fact that the grievor says his spouse is a man, the grievor would have been entitled to the leave. Since his spouse is a man, the grievor cannot be found to have a spouse as defined by the collective agreement. The collective agreement simply does not provide for leave in the grievor's circumstances. This does not mean that it would not be socially beneficial or that the lives of gays have lesser value to the employer than heterosexuals. It simply means that, although both parties have recognized in clause M-16 that there should be no discrimination on the basis of sexual orientation, the parties have specifically addressed spousal leave in the collective agreement and decided that it should only be granted to persons of opposite sex. Both parties chose to limit the definition of "spouse". The extension of the definition should await future consideration. In addition, subsection 96(2) of the Public Service Staff Relations Act prohibits the amending collective agreement. An adjudicator must exercise its jurisdiction within the confines of this governing statute.

It is not the first time that the question of the rights of gays to leave has been considered by the Public Service Staff Relations Board. The Hewens v. Treasury Board (Board file: 166-2-22732) case dealt with this issue and the decision should be considered dispositive of the matter. In the Hewens case, marriage leave was sought. Marriage was not defined as excluding people of the same gender, yet the adjudicator found that the marriage of two homosexuals did not entitle the grievor to marriage leave as, in the adjudicator's view, only those persons entering a lawful marriage were entitled to marriage leave. A fortiori the present grievor's case must fail since the words "of the opposite sex" can be found in the definition of "common law spouse".

Counsel for the employer added that he did not wish anything he had said to be interpreted to mean that gays are not entitled to the same rights as heterosexuals. Rather he was of the view that, in a collective agreement, the parties had to specifically provide for their rights.

In reply, counsel for the grievor stated that the parties could not contract out of the Canadian Human Rights Act and that when a party attempts to contract out, such an attempt should be amended accordingly. He emphasized that the Board is not exempt from the Canadian Human Rights Act.

He also stated that the Egan and Nesbit v. Her Majesty the Queen in Right of Canada [1992] 1 C.F. 687 (case) dealt with the interpretation of the Old Age Security Act and with a Charter challenge. He stated that the grievor was not asking for an interpretation of the Old Age Security Act. He asked that the Canadian Human Rights Act and the Haig and Birch decision (supra) which amended this Act be applied to this case. He underlined that the majority of judges in the Egan case did not come to the conclusion that the Haig and Birch (supra) decision was in conflict with their reasoning in Egan.

REASONS FOR DECISION

The grievor had the burden of establishing a violation of the collective agreement and I am satisfied that he has met this burden. These grievances deal with family-related leave and bereavement leave and more particularly to the grievor's entitlement to this leave.

The grievor's partner is a man. The employer denied the requests for family-related leave and bereavement leave on the basis that the grievor and Steven Pauls, his partner, did not meet the definition of spouse in the collective agreement as they are both of the same sex.

It is agreed between the parties that if the grievor and Steven Pauls had been of opposite sexes, the leave would have been granted.

In the following paragraphs, I will elaborate on the reasons for which I think the grievor should have been granted the leave. These reasons will be set out as follows.

Firstly, the word "spouse" will be examined. As will be explained, I am of the view that the grievor was entitled under the collective agreement to claim Steven Pauls as his "spouse" regardless of the fact that they are both of the same sex. It is my conclusion that, in denying the leave, the employer violated the collective agreement and more particularly the definition of "spouse" (M-2.01(l)) as well as articles M-21.02 and M-21.09 which create the entitlement to the leave. The decision to deny the leave also violated article M-16 which prohibits discrimination on the basis of sexual orientation.

Alternatively, I will examine in a second part the expression "common-law spouse". As will be explained, I am of the view that the words "of the opposite sex" have the effect, when applied to circumstances such as those of the grievor, of excluding same sex relationships which, were it not for the fact that both persons are of the same sex, would constitute "common-law spouse" relationships as defined in the collective agreement. It is my conclusion that the words "of the opposite sex", when applied to the grievor's situation, are a criterion which amounts to discrimination on the basis of sexual orientation. The decision to deny the leave on the basis that the grievor and his partner are not of opposite sexes violates article M-16 which prohibits discrimination on the basis of sexual orientation and violates articles M-21.02 and M-21.09 which create the entitlement to the leave.

Thirdly, article M-16 will be examined and a conclusion will be drawn that the employer's decision to deny the leave violated this article.

Finally, I will examine the effect of the Canadian Human Rights Act on the collective agreement at issue.

1. Spouse

As can be read in paragraph 7 of the agreed statement of facts, the grievor would have been granted the leave "if he and Steven Pauls had been of opposite sexes". The employer denied the leave because it was of the view that "the grievor and Steven Pauls

did not meet the definition of spouse in the collective agreement as they are both of the same sex".

I have considered the definition of "spouse" and "common-law spouse" and I note that, although the term "common-law spouse" must conform to specific criteria, the term "spouse" is not defined. All that is known is that which is written in article M-2.01(l): "Spouse" will, when required, be interpreted to include "common-law spouse". Since "spouse" is not defined, I must interpret this term. In so doing, I must seek the intention of the parties.

First, let us consider the term itself. As I have said, the collective agreement does not give an exhaustive definition of "spouse". All that is known is that "spouse" will, "when required", be interpreted "to include" "common-law spouse". Other than this, the term "spouse" remains undefined. It is clear that if "spouse" will, when required, include "common-law spouse", then "spouse" is a broader term. Is that term reserved exclusively for persons of opposite sex who are legally married? I think not.

The term "spouse" is used without further qualification.

Had the parties intended that the term "spouse" be restricted to persons of opposite sex who are legally married, they could have said so. Yet they did not. Therefore, I conclude that the term "spouse" is broader and that, although it includes spouses of opposite sex who are legally married, it can also include other situations. For instance, it could include persons of opposite sex who have become spouses through a religious ceremony but who have not gone through the process of marrying according to the law in the province in which they reside.

In short, in the absence of criteria specifying its meaning, the term "spouse" can bear more than one meaning.

The process through which a "spouse" is acquired (whether legal marriage, religious marriage or otherwise) is not indicated nor have the parties specified of which sex a "spouse" need be. Since the parties have not set out criteria for the term "spouse"

and since they have chosen not to give an exhaustive definition, I conclude that the term "spouse" can bear more than one meaning and is broad enough to encompass both a different-sex spouse and a same-sex spouse.

In determining the meaning of words, adjudicators routinely invoke and apply the rule of construction that words be given their ordinary meaning. I have considered the relevance and applicability of this rule in the instant case and I have concluded that it is of limited help.

Certain dictionaries define "spouse" as "husband or wife", others as "a man or woman joined in wedlock, married person", others as "either one of a betrothed couple" others as "a bride or bridegroom" also adding "the church united in sacred bonds to God or Christ". Thus, although in some of the definitions, the implication is clear that the persons are of opposite sex, it is also clear that the term can mean the church in its relationship to God (in which sex then is an irrelevant consideration). The term "spouse" draws its etymological root from the past participle "sponsus" of the verb "spondere" which means "to promise solemnly, to betroth"; "to make a solemn pledge". The term is also akin to greek "spendein" i.e. "to make a libation, promise" or "spendesthai", "to make a treaty".

It is noteworthy that, in defining "immediate family", the parties could have used the terms "husband and wife" which are more restrictive since these words evoke images of a man and a woman. Instead, they chose the word "spouse" whose underlying etymological concept is not one of gender but more in the nature of a commitment.

The French term used by the parties is "conjoint" and here again I am of the view that this term can support more than one meaning. Some French dictionaries place the emphasis on "persons united to each other by the bonds of marriage", others on "époux", which in turn refers to "compagnon" and "compagne" which means "companion" and thus evokes the concept of "companionship".

In short, the terms "spouse" or "conjoint" can support more than one meaning without offending logic or etymology. However, dictionary definitions and the rule of

construction that words be given their ordinary meaning are of little value in this case. Dictionaries cannot constitute the final word on this matter.

Indeed, until a few months ago, the ordinary meaning of the words "Prime Minister" evoked the image of a man at the head of government. At the moment I write these lines, the Prime Minister is Kim Campbell, a woman. It is clear that if the words "Prime Minister" were in a collective agreement, the interpretation of those words would have to reflect this new reality. Similarly, the "ordinary meaning" of the word "spouse" has evolved. Context is relevant and cannot be ignored.

On the subject of context and in arriving at a definition of "spouse", it is worth remembering that Canadians, including employees covered by the collective agreement at issue, live in a plural environment and that the ordinary meaning of words such as "spouse" is not singular. As Justice L'Heureux-Dubé has pointed out in Mossop (supra) "the unexamined consensus begins to fall apart when one is required to define the concepts which are embedded in the term 'family'". The same holds true, in my opinion, for words such as "spouse".

Other rules of construction must also be considered, such as: the collective agreement must be read as a whole, and: when two meanings are possible, that efficacy be a consideration: Collective Agreement Arbitration in Canada, E.E. Palmer, Butterworths, 3rd edition, p. 121 to 124.

Indeed, if the collective agreement is to be read as a whole, in arriving at a meaning of the term "spouse", article M-16, which prohibits discrimination on the basis of sexual orientation, must also be considered.

The presence of article M-16 at the heart of the collective agreement constitutes a compelling reason to choose a broad and liberal interpretation of the word "spouse" and to endeavour to harmonize the definition of "spouse" with the clearly stated intent of the parties in article M-16 that there be no discrimination on the basis of sexual orientation.

Although the term "spouse" has at times been characterized as a technical and legal term when used in an act or regulation and has received a narrow interpretation, I believe that as an adjudicator interpreting, not an act or a regulation, but rather a contract between two parties, I should interpret that contract with a view to the specific context in which the parties find themselves and that, in this sense, perhaps there is more latitude. It may very well be that the grievor and Steven Pauls could be found not to be "spouses" under various acts and regulations, but under the present collective agreement, where the parties have clearly expressed (article M-16) their intent that the employees work in a context free of discrimination on the basis of sexual orientation, the meaning ascribed to the word "spouse" should reflect this intent and this context.

In arriving at a definition of the word "spouse", notice should be taken that there exists more than one sexual orientation and that persons employed by Treasury Board and represented by the Public Service Alliance of Canada are protected under the collective agreement (article M-16) from discrimination on the basis of their sexual orientation. Hence the meaning given to the word "spouse" should reflect this protection. I am also of the view that the meaning ascribed to the word "spouse" should reflect the protection afforded in the Canadian Human Rights Act (since the Haig decision (supra)) against discrimination on the basis of sexual orientation (I will comment on this further).

For these reasons, I conclude that the word "spouse" can include, when so designated by an employee, a person of the same sex and that the employer should not have denied the leave to the grievor on the basis that the person he designated as his spouse was not of the opposite sex.

Before I turn to the concept of "common-law spouse", I should add that the present case is distinguishable from the Egan (supra) case where the Federal Court had to consider the term "spouse" in the context of the Old Age Security Act and not in the context of a collective agreement as in the instant case. It did not have to consider the definition of "spouse" in light of another provision, as is the case here, prohibiting discrimination on the basis of sexual orientation (as M-16 does in this collective agreement) nor did it have to reconcile two such provisions. In addition, it considered "common-law spouse" only.

2. "Common-Law Spouse" Relationship

Having said this, if I am wrong in concluding that the word "spouse" can encompass the spouse of the grievor even if that person is of the same sex, what then of the term "common-law spouse" as defined in clause M-2.01(m) and as used in M-21.02?

Counsel for the grievor argued that the words "of the opposite sex" found in the definition of "common-law spouse" should be struck from the definition since they violate both section M-16 which prohibits discrimination toward the grievor on the basis of his sexual orientation as well as the Canadian Human Rights Act.

There is no doubt that the definition, as it exists, excludes same sex relationships. In my view, it constitutes discrimination on the basis of sexual orientation both in the wording itself and in the application of this wording to persons who meet all the other criteria of the definition save one, that is, that they are not of opposite sex.

As for the rule of interpretation put forward by counsel for the employer that a specific clause overrides a general clause, it is not of much help in the instant case since this is not a situation where at issue are a specific clause on a given subject matter and a general clause on the same subject matter (see Re Hoover Co. Ltd. and United Electrical, Radio and Machine Workers of America, Local 520, 29 L.A.C. (2d) 162 a case of seniority of shop stewards as opposed to the seniority of employees as a total group; Re United Automobile Workers, Local 397 and Brantford Trailer & Body Ltd. 18 L.A.C., 1967, 357; a special seniority provision for union stewards prevailed over a general provision denying seniority within other classifications or groups to employees in the skilled trades group). In the instant case, the subject matter of both clauses is different: one deals with a definition of "common-law spouse" and the other one deals with the prohibition of discrimination.

In considering the definition of "common-law spouse", I am mindful here again of the presence of article M-16 which protects employees from discrimination on the basis of their sexual orientation.

With this in mind, I am of the view that I am entitled to find that the words "of the opposite sex" are inapplicable to the grievor's case to the extent that they exclude same sex relationships between persons who meet the other criteria of the definition (i.e. to have lived together for at least one year and to have publicly represented the other person as the spouse and to continue to live with the person as if that person were the spouse).

In arriving at a conclusion on the effect of the definition of "common-law spouse", I have asked myself this question: if, in the definition of "common-law spouse", the parties, instead of writing "of the opposite sex", had written "of the same race" or "of the same creed", thus excluding persons of other races and creeds, would I be justified in saying that the no-discrimination article M-16 overrides the words "of the same race" or "of the same creed" and that those words do not apply? The answer is yes. Then, inasmuch as the words "of the opposite sex", when applied, have the effect of excluding the grievor and Mr. Steven Pauls, I see no alternative but to say that the conflict between the definition at article M-2.01(m) and article M-16 has to be resolved in favour of article M-16 and that article M-16 overrides the impugned definition of "common-law spouse" and, consequently, to declare the words "of the opposite sex" inoperative in the grievor's case.

3. ARTICLE M-16

The parties to this collective agreement have agreed that there shall be no discrimination on the basis of sexual orientation. In the instant case, a characteristic of the grievor's sexual orientation is a natural inclination to favouring a spousal relationship with a person of the same sex, just as a heterosexual's natural inclination is to favour a spousal relationship with a person of the opposite sex. The fact that the grievor has chosen as a spouse a person of the same sex cannot be separated from his sexual orientation. Just as a pregnant woman who is discriminated against on the basis of her pregnancy has been found to be discriminated against on the basis of her sex (Brooks v Canada Safeway (1989) 1 S.C.R. 1219), similarly a homosexual who is discriminated against because he has chosen as a spouse a person of the same sex is in my view discriminated against on the basis of his sexual orientation. The choice he has made of

a spouse of the same sex cannot be separated from his sexual orientation, unless he is to be denied his sexual orientation. I am strengthened in this conclusion by the comments of the Chief Justice of the Supreme Court in the Mossop case (supra) (in which Mr. Mossop was also denied bereavement leave under the collective agreement). At page 19, the Chief Justice commented that Mr. Mossop's sexual orientation was closely connected with the grounds which led to the refusal of the leave. He also stated that he believed that Judge Marceau of the Federal Court had "correctly identified the relationship which exists between sexual orientation and the discrimination at issue in this case". Although the question in Mossop centered around the words "family status", this declaration by the Chief Justice is, in my view, an implicit, if not explicit, recognition that Mr. Mossop's sexual orientation was closely connected to the grounds of denial of the bereavement leave.

The grievor has established an intimate relationship with a person of the same sex and it is agreed that, for more than a year, the grievor and his partner have lived together and have publicly represented themselves as being in a spousal relationship.

It is worth remembering that the sole reason for the denial of the leave is that the grievor and Mr. Steven Pauls are not of opposite sex.

The choice the grievor has made according to his sexual orientation of having as a spouse a person of the same sex is the decisive factor in the denial of the leave and, as I stated earlier, the employer acknowledges that, had the grievor's partner been of the opposite sex, the grievor would have been granted the requested leave. It is the sole reason behind the refusal (operational requirements or budgetary considerations have not been argued and rightly so).

Thus, the grievor is in effect being told that, because of his sexual orientation and its accompanying manifestations such as establishing a spousal relationship with a person of the same sex, he is not entitled to the leave at issue. This, in my view, is in violation of article M-16 which prohibits discrimination on the basis of employees' sexual orientation. It is a strange situation indeed. The grievor's terms and conditions of employment are the same on the whole as his heterosexual co-workers. He has the same

rights, entitlements and obligations in matters of pay, hours of work, call back pay, wash-up time, severance pay, designated pay holidays, but in matters of leave entitlements and more particularly bereavement and family leave he is entitled to less than his co-workers if he claims as a spouse a person of the same sex. He is being told, in effect, that, unless he sets aside his sexual orientation, which is part of his identity, and designates as a spouse a person of the opposite sex, he will not be entitled to the same leave as his co-workers who designate as a spouse a person of opposite sex.

If section M-16 is to be given any effective meaning, it must be interpreted in a manner that protects employees in their terms and conditions of employment from distinctions based on such irrelevant factors as their sexual orientation.

As I have said earlier, the intent behind article M-16 is to protect employees from discrimination on the basis of sexual orientation both in the interpretation of the collective agreement and in its application. The interpretation and the application of the various articles of the collective agreement should reflect this intent.

Based on the wording of article M-16, I am assuming that the parties did not intend that the various clauses of the collective agreement be interpreted or applied in such a way as to discriminate against some employees on the basis of their sexual orientation. Short of a clear indication to that effect, I am assuming that the parties did not intend that employees' sexual orientation be a factor in their entitlement to family and bereavement leave and I conclude that the employer's decision to refuse the leave violated article M-16.

4. Bereavement Leave and Steven Pauls' father

As stated at the outset, there are two grievances before the undersigned adjudicator: one of them concerns bereavement leave (the other being in relation to family-related responsibilities leave).

In the bereavement leave grievance, it is the father of the grievor's spouse that has died. Thus in order to be entitled to this leave, the grievor has to establish: 1) that

Mr. Steven Pauls was his spouse and 2) that Mr. Steven Pauls' father was part of the grievor's "immediate family" as defined in article M-21.02.

I do not think it is necessary that I make a pronouncement on whether Mr. Steven Pauls' father was part of the grievor's "immediate family" since the employer has clearly stated, both in the agreed statement of facts and at the hearing, that if the grievor and Mr. Steven Pauls had been of opposite sexes, the leave would have been granted. In view of this statement, I need not address the status of Mr. Steven Pauls' father. I have concluded from the employer's admission that, if the grievor and Mr. Pauls had been of opposite sexes, the leave would have been granted and that the employer recognized that inasmuch as it was found that the grievor could claim as a spouse Mr. Pauls, Mr. Pauls' father was recognized as being part of the grievor's "immediate family" as defined in article M-21.01.

5. The Canadian Human Rights Act

In addition to the collective agreement, the grievor relies on the Canadian Human Rights Act, R.S.C. 1985, c.H-6.

In the decision Haig and Birch v The Queen in right of Canada (1992), 9 O.R. (3d) 495 (Ont. C.A.), the Court of Appeal of Ontario ordered that "the Canadian Human Rights Act be interpreted, applied and administered as though it contained "sexual orientation" as a prohibited ground of discrimination in section 3 of that Act. The Court decided to "read in" the prohibited ground of "sexual orientation". It was of the view that the omission of this ground created the effect of discrimination offending sub-section 15(1) of the Charter. This decision was not appealed to the Supreme Court. It is the latest pronouncement in the context of a Charter challenge.

In the decision Canadian Human Rights Commission v. Treasury Board and Attorney General of Canada and Brian Mossop et al. rendered on February 25, 1993 by the Supreme Court, the Chief Justice emphasized that: 1) The Haig and Birch (supra) decision had not been appealed, 2) that the Court had invited the parties to submit new arguments but that the appellant had chosen not to take this approach, 3) that the

appellant had not challenged the constitutionality of section 3 of the Canadian Human Rights Act on the absence of sexual orientation from the list of prohibited grounds of discrimination and 4) consequently that the Supreme Court had no choice but to decide the Mossop case on the basis of the law as it stood at the time of the events in question. It then proceeded to determine whether there was discrimination on the basis of Mr. Mossop's "family status" (and not "sexual orientation") under the Canadian Human Rights Act "as it stood at the time the events occurred".

The Chief Justice underligned that, had the Haig decision been appealed, "it would have been possible to give a much more complete and lasting solution to the present problem".

Thus, the Supreme Court has not to date made a pronouncement under the Charter on the inclusion or exclusion in the Canadian Human Rights Act of "sexual orientation" as "an analogous ground" of discrimination. The latest word on this issue is the Court of Appeal of Ontario's decision in Haig (supra) which has "read in" sexual orientation as a prohibited ground of discrimination.

The Canadian Human Rights Act is a federal Act. It is binding on federal tribunals. I am a member of such a federal tribunal created by a federal Act and it is as a member of this federal tribunal that I am interpreting a collective agreement between Her Majesty in right of Canada as represented by Treasury Board and the Public Service Alliance of Canada. In addition, it is clearly stated at article 66(1) of the Canadian Human Rights Act that this act is binding on "Her Majesty in right of Canada" which, as I have just stated, is one of the parties to the collective agreement at issue.

Although my jurisdiction consists in interpreting and applying the collective agreement, I do not derive my jurisdiction from an appointment by the parties in the collective agreement but rather from an appointment by Her Majesty in right of Canada on the advice of Privy Council as a member of a federal labour tribunal. Thus, in construing a collective agreement to which Her Majesty in right of Canada is a party, I

cannot ignore legislation (Canadian Human Rights Act) which is applicable to myself as a member of a federal tribunal and to Her Majesty in right of Canada as well (as well as to the bargaining agent).

In view of these facts, I am of the view that I cannot ignore the Haig decision and that I have to defer to the Court's unchallenged decision that "sexual orientation" is a prohibited ground of discrimination in the Canadian Human Rights Act. I am strengthened in this conclusion by the federal Minister of Justice's own decision not to appeal the Haig decision. This being said, I am of the view that the impugned definition in the collective agreement of "common-law spouse relationship", inasmuch as it has the effect of excluding, with the words "of the opposite sex", the relationship between the grievor and Steven Pauls, constitutes discrimination on the basis of sexual orientation which is prohibited by the Canadian Human Rights Act (as "read in" by the Court of Appeal of Ontario in Haig, supra).

I have explained in part 3 of these reasons why I view the denial of the leave on the basis that the grievor and Steven Pauls are not of opposite sex as discrimination on the basis of sexual orientation; therefore, I will not repeat myself except to say that I view the employer's decision (Her Majesty in right of Canada as represented by Treasury Board) to deny the leave on the basis that the grievor and Mr. Steven Pauls are not of opposite sex as a contravention, not only of the collective agreement and more particularly article M-16 (no discrimination), but also of the Canadian Human Rights Act. Having said this, it is not within my jurisdiction to grant a remedy under the Canadian Human Rights Act. However, it is within my jurisdiction to find that the collective agreement has been violated and I do so find.

6. Sub-section 96(2) of the Public Service Staff Relations Act

Counsel for the employer argued that sub-section 96(2) of the Act constituted an obstacle to finding in the grievor's favour. Sub-section 96(2) of the Public Service Staff Relations Act reads as follows:

> *96.(2) No adjudicator shall, in respect of any grievance, render any decision thereon the effect of which would be to require the amendment of a collective agreement or an arbitral award.*

On this point, I have this to say: firstly, I have interpreted the word "spouse" itself, and although it may be viewed by some as a liberal interpretation, nonetheless it does not constitute an amendment to the collective agreement and it remains an interpretation; secondly, I have found separately and distinctly that the no-discrimination article M-16 has been violated and the finding of such a violation does not require an amendment to the collective agreement; thirdly, I have found that the words "of the opposite sex" contained in the definition of "common-law spouse relationship" were inoperative in the grievor's case. Here again, this finding does not require the amending of the collective agreement but is limited to a declaration that the words "of the opposite sex" are of no effect in the grievor's case.

For all of these reasons, the grievances are granted. I find that the decision to deny the requested leave to the grievor violated article M-16 of the collective agreement. I also find that it violated the definition of the term "spouse" contained in article M-2.01(l). If I am wrong in the meaning given to the word "spouse", I find that the application of the definition at article M-2 of "common-law spouse" to the grievor's situation violated article M-16 (as well as the Canadian Human Rights Act) and that the words "of the opposite sex" contained in this definition of the collective agreement are inoperative in the grievor's case.

The bereavement leave and the family-related responsibilities leave are granted.

The employer is ordered to restore to the grievor the vacation leave credits he took in lieu of the denied bereavement and family-related responsibilities leave and is ordered

to treat the leave days requested by and granted to the grievor at the relevant time as bereavement leave and family-related responsibilities leave and to amend the grievor's personnel record accordingly.

Marguerite-Marie Galipeau
Board Member

OTTAWA, September 24, 1993

ANNEX A

ARTICLE M-16

ÉLIMINATION DE LA DISCRIMINATION

M-16.01 Il n'y aura aucune discrimination, ingérence, restriction, coercition, harcèlement, intimidation, ni aucune mesure disciplinaire d'exercée ou d'appliquée à l'égard d'un employé-e du fait de son âge, sa race, ses croyances, sa couleur, son origine ethnique, sa confession religieuse, son sexe, son orientation sexuelle, sa situation familiale, son incapacité mentale et physique ou son adhésion au syndicat ou son activité dans celui-ci.

M-21.02 Congé de décès payé

Aux fins de l'application de la présente clause, la proche famille se définit comme le père, la mère (ou encore le père par remariage, la mère par remariage ou un parent nourricier), le frère, la soeur, le conjoint (y compris le conjoint de fait qui demeure avec l'employé-e), l'enfant propre de l'employé-e (y compris l'enfant du conjoint de fait), l'enfant d'un autre lit ou l'enfant en tutelle de l'employé-e, le beau-père, la belle-mère et un parent demeurant en permanence dans le ménage de l'employé-e ou avec qui l'employé-e demeure en permanence.

a) *Lorsqu'un membre de sa proche famille décède, l'employé-e est admissible à un congé de décès d'une durée maximale de quatre (4) jours civils consécutifs qui ne s'étend pas au-delà du lendemain des funérailles. Pendant cette période, il est rémunéré pour les jours qui ne sont pas des jours de repos normalement prévus à son horaire. En outre, il peut bénéficier d'un maximum de trois (3) jours de congé payé pour le déplacement qu'occasionne le décès.*

b) *Dans des circonstances spéciales et à la demande de l'employé-e, la période de congé de décès de quatre (4) jours peut être reportée au-delà du lendemain des funérailles mais doit comprendre le jour des funérailles.*

c) *L'employé-e a droit à un (1) jour de congé de décès payé pour des raisons liées au décès d'un grand-parent, d'un petit-fils ou d'une petite-fille, d'un gendre, d'une belle-fille, d'un beau-frère ou d'une belle-soeur.*

d) *Si, au cours d'une période de congé compensateur, il survient un décès dans des circonstances qui auraient rendu l'employé-e admissible à un congé de décès en vertu des alinéas a), b) ou c) de la présente clause, celui-ci bénéficie d'un congé de décès payé et ses crédits de congé compensateur sont reconstitués jusqu'à concurrence du nombre de jours de congé de décès qui lui ont été accordés.*

e) *Les parties reconnaissent que les circonstances qui justifient la demande d'un congé de décès ont un caractère individuel. Sur demande, le sous-chef d'un ministère peut, après avoir examiné les circonstances particulières, accorder un congé payé plus long que celui qui est prévu aux sous-clauses M-21.02a) et c).*

M-21.09 *Congé payé pour obligations familiales*

a) *Aux fins de l'application de la présente clause, la famille s'entend du conjoint (ou du conjoint de fait qui demeure avec l'employé-e), des enfants à charge (y compris les enfants du conjoint de droit ou de fait), du père et de la mère (y compris le père et la mère par remariage ou les parents nourriciers), ou de tout autre parent demeurant en permanence au domicile de l'employé-e ou avec qui l'employé-e demeure en permanence.*

b) *L'employeur accorde un congé payé dans les circonstances suivantes:*

(i) *d'une durée maximale d'une demi-journée (1/2) pour le rendez-vous d'un membre de la famille à charge chez le médecin ou le dentiste lorsque la personne à charge est incapable de s'y rendre de son propre chef, ou pour des rendez-vous avec les autorités scolaires ou d'adoption appropriées. L'employé-e doit faire tout effort raisonnable pour fixer les rendez-vous des membres de la famille à charge chez le médecin ou le dentiste de manière à*

réduire au minimum ses absences au travail. L'employé-e qui demande un congé en vertu de cette disposition doit aviser son superviseur du rendez-vous aussi longtemps à l'avance que possible;

(ii) *d'une durée maximale de deux (2) jours consécutifs pour prodiguer des soins temporaires à un membre malade de sa famille;*

(iii) *d'une durée d'une (1) journée pour les besoins directement rattachés à la naissance ou à l'adoption de son enfant. Ce congé peut être divisé en deux (2) périodes et pris à des journées différentes.*

c) *Le nombre total de jours de congés payés qui peuvent être accordés en vertu des sous-alinéas b)(i), (ii) et (iii) ne dépasse pas cinq (5) jours au cours d'une année financière.*

ARTICLE M-2

INTERPRÉTATION ET DÉFINITIONS

M-2.01 ...;

l) *"conjoint" sera interprété, s'il y a lieu, comme comprenant le "conjoint de fait", sauf aux fins des Directives sur le service extérieur, auquel cas la définition du terme "conjoint" sera celle indiquée dans la Directive 2 des Directives sur le service extérieur;*

m) *il existe des liens de "conjoint de fait" lorsque, pendant une période continue d'au moins une année, un employé-e a cohabité avec une personne du sexe opposé et l'a présentée publiquement comme son conjoint et continue à vivre avec cette personne comme si elle était son conjoint.*

ARTICLE M-5

PRIORITÉ DE LA LOI SUR LA CONVENTION COLLECTIVE

***M-5.01** Advenant qu'une loi quelconque du Parlement, s'appliquant aux employé-e-s de la fonction publique assujettis à la présente convention, rende nulle et non avenue une disposition quelconque de la présente convention, les autres dispositions de la convention demeureront en vigueur pendant la durée de la convention.*