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*Parliamentary Employment and
Staff Relations Act*

Before an adjudicator

BETWEEN

MARIE-FRANCE MARLEAU

Grievor

and

LIBRARY OF PARLIAMENT

Employer

Indexed as
Marleau v. Library of Parliament

In the matter of a grievance referred to adjudication

REASONS FOR DECISION

Before: [John A. Mooney, adjudicator](#)

For the Grievor: [Amarkai Laryea, Public Service Alliance of Canada](#)

For the Employer: [Carole Piette, counsel](#)

Heard at Ottawa, Ontario,
July 8, 2008.

I. Grievance referred to adjudication

[1] Marie-France Marleau (“the grievor”) works at the Library of Parliament (“the employer”) in a position at the CGS-06 group and level.

[2] On October 18, 2006, the grievor presented a grievance to the employer grieving the employer’s failure to “abide by the terms of ‘Appendix B’ of the collective agreement.” The grievor asked that the “employer abide by the terms of ‘Appendix B’ and implement the same measures as Treasury Board with respect to ‘leave with pay for spousal union’, being the replacement of article 19.15 with 5 days of leave for all employees.” The grievance was presented up to the final level of the grievance process, but it was not dealt with to the grievor’s satisfaction.

[3] The grievor referred her grievance to adjudication on January 29, 2007 under paragraph 63(1)(a) of the *Parliamentary Employment and Staff Relations Act*, R.S.C. 1985, c. 33 (2nd Supp.) (“the PESRA”).

[4] The grievor is covered by the collective agreement between the Library of Parliament and the Public Service Alliance of Canada (“the PSAC”) for the Administrative and Support Group (expiry date: June 30, 2009), which was signed on November 27, 2006 (Exhibit G-1, Tab 2; “the 2006 collective agreement between the Library of Parliament and the PSAC”). Clause 40.02 of that collective agreement provides that it comes into force on the date of its ratification, which occurred on October 17, 2006.

II. Summary of the evidence

[5] The grievor filed nine exhibits, and the employer filed one exhibit. Lynn Whittaker testified for the grievor.

[6] This grievance relates to the interpretation of a clause in the 2006 collective agreement between the Library of Parliament and the PSAC relating to leave with pay for spousal union. That clause, found in Annex C, reads as follows (Exhibit G-1, Tab 2):

It is agreed that, should the Treasury Board incorporate a provision relating to “Leave with pay for spousal union” into a collective agreement, the Library of Parliament agrees to incorporate this provision in the same manner as that provided for in the Treasury Board collective agreement.

[7] That same collective agreement also provided for marriage leave with pay:

...

19.15 Marriage Leave With Pay

a) After the completion of one (1) year's continuous employment at the Library of Parliament and providing an employee gives the Employer at least five (5) days' notice, he/she shall be granted thirty-five (35) hours' leave with pay for the purpose of getting married.

...

[8] The previous collective agreement between the same parties for that same group (expiry date: June 30, 2006), which was signed on January 6, 2004 (Exhibit G-1, Tab 1; "the 2004 collective agreement between the Library of Parliament and the PSAC"), contained the same clause regarding spousal unions, but it was placed in Annex B instead of in Annex C. That agreement also contained the same marriage leave clause.

[9] Ms. Whittaker testified. She is currently an alternate dispute resolution officer with the PSAC. Before that position, she had been a negotiator with the PSAC.

[10] Ms. Whittaker stated that she was the PSAC's chief negotiator during the negotiation of the 2004 collective agreement between the Library of Parliament and the PSAC. In 2003, the Treasury Board ("the TB") did not know how to deal with same-sex unions. In May 2003, the Canadian Human Rights Tribunal ("the CHRT") ruled in *Boutilier et al. v. Treasury Board et al.*, 2003 CHRT 20, that denying same-sex couples leave for the purpose of participating in public same-sex commitment ceremonies was a discriminatory practice. The CHRT ordered the TB to provide leave to employees who apply for leave for the purpose of participating in public same-sex commitment ceremonies. The leave was to be provided on the same terms as the leave that was available under the collective agreement to heterosexual employees, who could request leave to get married. The CHRT also gave the TB six months from the date of the order to eliminate the discretionary practice in the application of all collective agreements to which the TB was a party.

[11] Ms. Whittaker explained that the Library of Parliament and the PSAC knew that the collective agreement they were negotiating in 2003 could not provide for "marriage" leave. Both parties to the collective agreement decided to put the issue on

hold. They decided to include the “me too” clause cited above in Annex B of the 2004 collective agreement between the Library of Parliament and the PSAC. Ms. Whittaker explained that “me too” clauses are commonly added during collective agreement negotiations. The purpose of that “me too” clause was to incorporate in the 2004 collective agreement between the Library of Parliament and the PSAC a clause that would reflect how the issue of leave for spousal union would be dealt with in the negotiations between the TB and the PSAC for the Program and Administrative Services Group (“the Table 1 negotiations”). The outcome of negotiations regarding spousal unions as part of the Table 1 negotiations would be incorporated in the 2004 collective agreement between the Library of Parliament and the PSAC.

[12] Ms. Whittaker testified that the words “relating to” spousal unions were used in the 2004 collective agreement between the Library of Parliament and the PSAC because the bargaining agent had no indication at that time of how the TB would deal with that issue.

[13] Ms. Whittaker stated that she was also the chief negotiator for the PSAC in its negotiations with the TB for the collective agreement for the Program and Administrative Services Group (expiry date: 20 June 2007) which was signed on the March 14, 2005 (Exhibit G-1, Tab 4; “the 2005 collective agreement between the TB and the PSAC”). Ms. Whittaker described the negotiations that led up to that collective agreement. The previous collective agreement between the TB and the PSAC for that same group, signed on November 19, 2001, (“the 2001 collective agreement between the TB and the PSAC”) contained the following marriage leave clause, which is almost identical to clause 19.15 of the 2004 collective agreement between the Library of Parliament and the PSAC (Exhibit G-1, tab 3):

...

45.01 After the completion of one (1) year's continuous employment in the Public Service, and providing an employee gives the Employer at least five days notice, the employee shall be granted five (5) days' marriage leave with pay for the purpose of getting married.

...

[14] Since the CHRT had found that marriage leave clauses were discriminatory, the PSAC proposed to replace marriage leave by spousal union leave, as indicated in its proposal to the TB during the Table 1 negotiations (Exhibit G-1, tab 6):

...

Re-title Marriage Leave Article "LEAVE WITH PAY FOR SPOUSAL UNION"

*45.01 After the completion of one (1) year's continuous employment in the Public Service, and providing an employee gives the Employer at least five (5) days' notice, the employee shall be granted five (5) days' leave with pay for the purpose of **declaring spousal union with another person in a ceremony. This ceremony may be civil, secular or religious.***

[PSAC - AFPC Treasury Board Negotiations 2003 - Program and Administrative Services (Table 1); (Exhibit G-1, Tab 6)]

...

[Emphasis in the original]

[15] The proposed language also supported heterosexual civil unions.

[16] Ms. Whittaker testified that negotiations with the TB were not fruitful, as indicated in the employer's response found in the document *Employer Proposals for the Program and Administrative Group Collective Agreement*, dated August 2003 (Exhibit G-1, Tab 7). The employer wrote: "Employer wishes to discuss this leave."

[17] To resolve this impasse in the Table 1 negotiations between the TB and the PSAC, the PSAC referred the matter to the Public Service Staff Relations Board Conciliation Board ("the Conciliation Board"). The PSAC proposed to the Conciliation Board that the clauses referring to marriage leave be replaced by the following clauses (Exhibit G-1, Tab 8):

...

45.01 After the completion of one (1) year's continuous employment in the Public Service, and providing an employee gives the Employer at least five days' notice, the employee shall be granted five (5) days' marriage leave with pay for the purposes of getting married.

45.02 . . . Where same-sex marriage is not available and after the completion of one (1) year's continuous employment in the Public Service, and providing an employee gives the Employer at least five (5) days' notice, the employee shall be granted five (5) days' with pay for the purpose of participating in a public commitment ceremony with a person of the same sex.

. . .

[Emphasis in the original]

[18] The TB proposed to the Conciliation Board that the marriage clause from the 2001 collective agreement between the TB and the PSAC be deleted and replaced by the following clause (Exhibit G-1, Tab 9):

The employee shall be credited twenty-two decimal five (22.5) hours of vacation leave with pay on the first day of the month following the anniversary of the employee's second year of service, as defined in clause 34.03(a) occurs [sic].

[19] The TB and the PSAC finally agreed to the following clause in the 2005 collective agreement between the TB and the PSAC (Exhibit G-1, Tab 4):

34.18

(a) *Employees shall be credited a one-time entitlement of thirty-seven decimal five (37.5) hours of vacation leave with pay on the first (1st) day of the month following the employee's second (2nd) anniversary of service, as defined in clause 34.03.*

[20] In Ms. Whittaker's view, the TB substituted the 37.5 hours of vacation leave for the marriage leave. Therefore, there is a direct relationship between vacation leave and spousal union leave.

[21] In cross-examination, the employer's counsel asked Ms. Whittaker to compare the benefits of employees who work at the Library of Parliament to those of employees who work in organizations under the jurisdiction of the TB. Ms. Whittaker explained that Library of Parliament employees work 1820 hours per year, while employees in the TB's organizations work 1950 hours per year. Library of Parliament employees have four weeks of vacation after one year of employment, while TB employees have to

work three years to earn four weeks of vacation. Finally, Library of Parliament employees have one more statutory holiday per year than TB employees.

III. Summary of the arguments

A. Employer's objection

[22] The employer's counsel submitted that since the "me too" clause in the 2004 and the 2006 collective agreements between the Library of Parliament and the PSAC is not ambiguous, I must disregard all extrinsic evidence submitted by the grievor, that is, the evidence regarding the negotiations of the 2004 and 2006 collective agreements between the Library of Parliament and the PSAC and the negotiation of the 2005 collective agreement between the TB and the PSAC.

B. For the grievor

[23] The grievor's representative submitted that extrinsic evidence should be allowed in interpreting the "me too" clause in the 2004 and 2006 collective agreements between the Library of Parliament and the PSAC because the language of that clause is ambiguous. The grievor's representative referred me to Brown and Beatty, *Canadian Labour Arbitration*, 4th Edition, at para 3:4401, where the authors write that "... [w]here an ambiguity is latent, that is where it is not apparent on its face, an arbitrator may rely on extrinsic evidence not only as an aid to resolve the ambiguity once it is established but also to disclose the ambiguity. . . . [footnotes omitted]." The grievor's representative also referred me to *Noranda Metal Industries Ltd., Fergus Division v. International Brotherhood of Electrical Workers Local 2345 et al.*, 84 CLLC 12093, in which the Ontario Court of Appeal held that extrinsic evidence can be relied upon to assist in interpreting the true intention of the parties when a clause of a collective agreement is ambiguous.

[24] The grievor's representative contended that this grievance raises two issues. The first is whether clause 34.18 of the 2005 collective agreement between the TB and the PSAC is related to spousal unions. The second is whether the TB and the PSAC intended to replace marriage leave with a clause that reflected how the TB would resolve the marriage leave issue in the Table 1 negotiations with the PSAC. Both questions should be answered in the affirmative.

[25] The grievor's representative argued that the purpose of the "me too" clause in Annex B of the 2004 collective agreement between the Library of Parliament and the

PSAC was to incorporate in that collective agreement a clause that would reflect how the TB would resolve the marriage leave issue in its Table 1 negotiations with the PSAC for the Program and Administrative Services group of employees. The TB resolved that matter by replacing the marriage leave benefit in the previous collective agreement between the same parties by clause 34.18 of the 2005 collective agreement between the TB and the PSAC, which credited all employees with a one-time vacation leave of 37.5 hours to be used at the employee's discretion. Clause 34.18 is how the TB resolved that matter. Consequently, clause 34.18 of the 2005 collective agreement between the TB and the PSAC should replace clause 19.15 of the 2006 collective agreement between the Library of Parliament and the PSAC.

[26] The grievor's representative argued that clause 34.18 of the 2005 collective agreement between the TB and the PSAC is related to spousal unions. The bargaining history indicates that the TB included that clause because of the controversy surrounding marriage leave at that time. The TB's submission to the Conciliation Board during the Table 1 negotiations between the TB and the PSAC shows that the TB proposed that a vacation leave of 37.5 hours should replace the marriage leave. The TB made the following comments in that submission (Exhibit G-1, Tab 9, pages 139 and 140):

...

The Canadian Human Rights Tribunal issued a consent order instructing the Employer to amend the collective agreement to eliminate the discrimination contained in the Marriage leave provision as it relates to same-sex couples. The renewal of this Article is consequently not an option for the Employer. The Employer does appreciate that it cannot expect the bargaining agent to accept to simply delete the provision for the Collective Agreement. Therefore, the Employer has tabled the above proposal. This proposal would provide to all employees in the bargaining unit who have completed two years of continuous service 22.5 hours of vacation leave.

...

[Footnote omitted]

[27] The grievor's representative stressed that the "me too" clause in Annex C of the 2006 collective agreement between the Library of Parliament and the PSAC, and Annex B of the previous collective agreement between the same parties, does not read

“should the Treasury Board incorporate a provision entitled ‘spousal leave’”. The “me too” clause refers to a provision “relating to” leave with pay for spousal union. What is required is a connection between the new vacation leave clause and spousal union. The grievor’s representative referred me to the *Canadian Oxford Dictionary* (Toronto: Oxford University Press, 1998), which defines “related” in part as “. . . associated or connected . . .”

[28] Ms. Whittaker testified that the quotation marks around the phrase “Leave with pay for spousal union” in Annex B of the 2004 collective agreement between the Library of Parliament and the PSAC indicated that that issue had not been resolved and that there was an ongoing discussion about the spousal leave issue. The grievor’s representative referred me to a PSAC Web page dated February 1, 2005 that indicates the link between the 37.5-hour vacation leave and marriage leave. That Web page contains the following paragraph (Exhibit G-1, Tab 11):

Now that the PSAC membership has voted in favour of the tentative agreements with Treasury Board, the existing marriage leave articles will be deleted from the contracts. They are being replaced by a new clause that provides all employees with a one-time credit of five additional days of vacation leave.

[29] That passage from the PSAC Web page clearly indicates the connection between the new one-time vacation leave and spousal unions.

[30] The grievor’s representative stated that the “me too” clause in the 2004 and 2006 collective agreements between the Library of Parliament and the PSAC is not straightforward. One cannot complete that clause by simply looking for a spousal leave clause in the 2005 collective agreement between the TB and the PSAC. One has to look for a clause “related to” spousal union, rather than a clause that bears the title “spousal union.” The testimony of Ms. Whittaker and the documents related to the bargaining history of the new vacation leave in the 2005 collective agreement between the TB and the PSAC establishes a link between the new vacation leave and the spousal union leave.

[31] The grievor’s representative pointed out is as irrelevant that incorporating the new vacation leave clause in the 2004 and 2006 collective agreements between the Library of Parliament and the PSAC would be costly. The issue before the Public Service Labour Relations Board (“the PSLRB”) is not an issue of costs; the issue is whether the

Library of Parliament and the PSAC intended to follow the TB and the PSAC in how the latter two dealt with spousal union leave.

[32] The grievor's representative asked that the grievance be granted. Clause 19.15 of the 2006 collective agreement between the Library of Parliament and the PSAC should be replaced by clause 34.18 of the 2005 collective agreement between the TB and the PSAC. Consequently, the employer should grant the grievor a one-time vacation leave of 37.5 hours.

C. For the employer

[33] The employer's counsel contended that clause 19.15 of the 2006 collective agreement between the Library of Parliament and the PSAC should not be replaced by clause 34.18 of the 2005 collective agreement between the TB and the PSAC because clause 34.18 does not deal with spousal unions.

[34] The employer's counsel explained that in the last round of negotiations between the Library of Parliament and the PSAC, the Library of Parliament refused to delete the marriage leave provision and replace it with 37.5 hours of vacation leave. The Library of Parliament refused to do so because the TB did not, in its negotiations with the PSAC, adopt a provision on spousal unions. Instead, the TB agreed to delete the marriage leave provision and to offer all employees a one-time vacation leave. That leave is not related to spousal unions.

[35] The conditions attached to the new vacation leave are different from the ones attached to marriage leave. Marriage leave could be taken as often as a person got married. Marriage leave was not subject to operational requirements. The employer had no discretion in that matter; it could not refuse to grant an employee marriage leave. The new vacation leave is different. It is a one-time leave during the employee's employment. An employee can take the leave for any reason. Also, it is subject to the TB's operational requirements.

[36] The employer's counsel contended that the "me too" clause in the 2006 collective agreement between the Library of Parliament and the PSAC never came into force because the TB did not adopt a leave related to spousal unions. Instead, the TB deleted the provision in the collective agreement about marriage leave in exchange for a one-time vacation leave for all employees.

[37] In *Boutilier*, the CHRT gave the TB six months from the date of the order to eliminate the discretionary practice of refusing same-sex couples leave for commitment ceremonies. The TB complied with the CHRT's order by adopting, on June 10, 2003, the directive entitled *Marriage Leave and Same-Sex Couples* (Exhibit E-1, Tab II-2). That directive instructed organizations under the TB's jurisdiction to grant a five-day leave to employees in same-sex relationships who apply for leave for a public commitment ceremony. The TB also requested that marriage clauses be deleted from any new collective agreement. From then on, there was no discrimination against same-sex unions.

[38] The employer's representative pointed out that Ms. Whittaker had testified that the PSAC and the TB took different approaches in the Table 1 negotiations in 2005. The PSAC proposed that the "marriage" clause be replaced by a "spousal union" clause (Exhibit G-1, Tab 6). The TB, on the other hand, was of the view that deleting marriage leave was the proper approach, as indicated in its submissions to the Conciliation Board (Exhibit G-1, Tab 9).

[39] The employer's representative explained that the TB proposed the vacation leave in its negotiations with the PSAC because when you take something away in negotiations, you have to replace it with something else. Offering vacation leave was part of the TB's strategy. Thus, in return for abolishing marriage leave, the TB offered employees the one-time vacation leave. This made sense because in 2004, spousal unions were not recognized in all provinces. Only three provinces had recognized same-sex unions: British Columbia, Ontario and Quebec.

[40] The whole issue of spousal leave became moot when the *Civil Marriage Act*, S.C. 2005, c. 33, was assented to in July 2005. It provides that members of the same sex may get married.

[41] The employer's counsel argued that if I find that the "me too" clause in Appendix C of the 2006 collective agreement between the Library of Parliament and the PSAC is ambiguous and that the grievor can resort to extrinsic evidence, then I must ascertain the intention of the parties in drafting that clause. The better approach is to rely on the rules of legal interpretation developed through jurisprudence. The employer's counsel referred me to Brown and Beatty, at paragraph 4:2100, where the authors write that "... the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it" The

employer's counsel also referred me to the following excerpt where Brown and Beatty set out criteria that guide the choice between two possible interpretations of a clause of a collective agreement (at paragraph 4:2100):

. . .

When faced with a choice between two linguistically permissible interpretations, however, arbitrators have been guided by the purpose of the particular provision. The reasonableness of each possible interpretation, administrative feasibility, and whether one of those possible interpretations would give rise to anomalies. . . .

. . .

[Footnotes omitted]

[42] The employer's counsel applied those principles and criteria to this grievance. She argued that the intent of the parties was that if the TB agreed to incorporate a spousal-union clause in a collective agreement, then that clause would be incorporated in the collective agreement between the Library of Parliament and the PSAC. However, that did not happen. The intent could not have been that should the TB abolish marriage leave, the Library of Parliament would incorporate in the collective agreement with the PSAC whatever the TB offered in exchange for the repeal of marriage leave. What if, instead of offering a vacation leave in exchange for marriage leave, the TB had offered a 1 percent salary increase? Would the Library of Parliament have been obliged to do the same? The bargaining agent's interpretation is not reasonable. The more reasonable interpretation is that the intent of the parties was to incorporate a clause that dealt with spousal unions if the TB adopted such a clause in other collective agreements.

[43] Although cost considerations are not directly relevant to the interpretation of a clause of a collective agreement, they may help in determining which interpretation is more reasonable. Library of Parliament employees already have better benefits than do employees of other organizations of the public service. Library of Parliament employees work 1820 hours per year, while TB employees work 1950 hours per year. Library of Parliament employees are granted four weeks' vacation after one year of employment, while TB employees are granted that amount of vacation after three years of employment. Library of Parliament employees also have one more statutory holiday

per year than TB employees. Given those generous benefits, it could not have been the Library of Parliament's intent to grant its employees another vacation benefit.

[44] The employer's representative filed in evidence 25 recent collective agreements negotiated by the TB with several bargaining agents (Exhibit E-1, Tabs III-1 to 25) and a chart that indicates whether the collective agreement contains a marriage leave clause (Exhibit E-1, Tab III before Tab 1). Nine of those 25 collective agreements still contain a marriage leave clause. Those 25 collective agreements show that the TB does not have a consistent approach to marriage leave.

[45] The employer's counsel argued, in the alternative, that the "me too" clause was not triggered by the 2005 collective agreement between the TB and the PSAC (Exhibit G-1, Tab 4, but by the collective agreement between the TB and the Professional Association of Foreign Service Officers for the Foreign Service Group (expiry Date: June 30, 2007), which was signed on June 7, 2005 (Exhibit E-1, Tab III-6; "the PAFSO collective agreement"). The "me too" clause provides that, should the TB incorporate a provision relating to leave with pay for a spousal union in a collective agreement, the Library of Parliament agrees to incorporate that provision in the collective agreement with the PSAC. The employer's counsel submitted that one needs to look at the collective agreements that the TB negotiated and find a provision relating to spousal unions. The PAFSO collective agreement was the first time that the TB agreed to extend marriage leave to same-sex couples through the TB directive *Marriage Leave and Same-Sex Couples* (Exhibit E-1, Tab II-2).

[46] The employer's counsel argued alternatively that, should I find that a vacation leave is related to spousal union, the amount of vacation entitlement should be a one-time allotment of 22.5 hours. This is because the first time the TB gave a vacation entitlement instead of marriage leave was in the collective agreement between the TB and the Professional Institute of the Public Service of Canada for the Law Group (expiry date: 28 February 2006), which was signed on July 8, 2004 (Exhibit E-1, Tab III-17).

[47] The employer's representative referred to several Public Service Staff Relations Board decisions that dealt with leave for same-sex unions. Those cases show that the TB did not have a consistent approach with respect to leave for same-sex couples. In the arbitral award *International Brotherhood of Electrical Workers, Local 2228 v. Canada (Treasury Board Secretariat)*, PSLRB File No. 185-02-412 (20051006), the

arbitration panel deleted the marriage leave provision from the collective agreement between those parties and replaced it with a one-time five-day vacation leave.

[48] The arbitration panel took a different approach in *Research Council Employees' Assn. v. National Research Council of Canada*, PSLRB File No. 585-09-09 (20070516). In that case, the Research Council Employees' Association had asked that the marriage leave provision be replaced by a one-time five-day vacation leave for all employees of the bargaining unit. The panel did not agree and decided to leave the marriage leave clause unchanged. One should bear in mind that at the time of that decision, there were no issues with marriage leave since same-sex couples could then get married.

[49] In *The Public Service Alliance of Canada v. The Office of the Auditor General of Canada*, PSLRB File No. 585-14-08 (20070217), the arbitration panel decided to delete the marriage leave clause of the collective agreement and replace it with a one-time vacation leave of 37.5 hours.

IV. Reasons

[50] The grievor referred her grievance to adjudication pursuant to paragraph 63(1)(a) of the *PESRA*, which reads as follows:

63.(1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,

[51] This grievance relates to the interpretation of Annex C of the 2006 collective agreement between the Library of Parliament and the PSAC relating to leave with pay for spousal unions, which reads as follows (Exhibit G-1, Tab 2):

It is agreed that, should the Treasury Board incorporate a provision relating to "Leave with pay for spousal union" into a collective agreement, the Library of Parliament agrees to incorporate this provision in the same manner as that provided for in the Treasury Board collective agreement.

[52] The 2004 collective agreement between the Library of Parliament and the PSAC contained a provision that granted employees of the Library of Parliament 35 hours' leave with pay for the purpose of getting married. In 2003, in *Boutilier*, the CHRT found

that to deny leave to employees for the purpose of participating in same-sex commitment ceremonies was a discriminatory practice. The Library of Parliament and the PSAC, dealt with that matter in 2003 by leaving the marriage clause alone in the 2004 collective agreement between the Library of Parliament and the PSAC but including in Annex B of that collective agreement the “me too” clause cited above (Exhibit G-1, Tab 1). The Library of Parliament and the PSAC agreed to include the same clause in Annex C of the 2006 collective agreement between the Library of Parliament and the PSAC (Exhibit G-1, Tab 2).

[53] In 2005, during the Table 1 negotiations, the TB and the PSAC agreed to abolish marriage leave and to grant all employees a one-time vacation leave of 37.5 hours.

[54] The employer objected to the bargaining agent’s submission of extrinsic evidence to interpret the “me too” clause in the 2004 and the 2006 collective agreements between the Library of Parliament and the PSAC because, in its view, that clause is not ambiguous. More specifically, the employer objected to Ms. Whittaker’s testimony regarding the negotiation of the 2004 collective agreement between the Library of Parliament and the PSAC and the documents regarding the negotiation of the 2005 collective agreement between the TB and PSAC. I have decided to admit that evidence since there is some ambiguity in the “me too” clause of the 2006 collective agreement between the Library of Parliament and the PSAC. That clause can lend itself to different interpretations. For example, the “me too” clause does not explain what is meant by a “spousal union.” The context provided by the extrinsic evidence submitted shows that it relates, in part, to same-sex couples. Also, the “me too” clause, by its very nature, calls for extrinsic evidence since it refers to another collective agreement. In fact, that clause cannot be interpreted without reference to another collective agreement. Other collective agreements constitute extrinsic evidence. I also note that the employer submitted extrinsic evidence to support its position. The employer referred to the bargaining history of the 2005 collective agreement between the TB and the PSAC and filed in evidence several other collective agreements.

[55] The grievor contends that clause 34.18 of the 2005 collective agreement between the TB and the PSAC covering Program and Administrative Services, that grants employees a one-time vacation leave, should be incorporated in the 2006 collective agreement between the Library of Parliament and the PSAC because that

clause relates to spousal unions. Clause 34.18 reflects how the TB dealt with the matter of the discriminatory aspect of marriage leave.

[56] The employer, on the other hand, argues that clause 34.18 of the 2005 collective agreement between the TB and the PSAC should not be incorporated in the 2006 collective agreement between the Library of Parliament and the PSAC because clause 34.18 does not deal with spousal unions. The TB and the PSAC agreed during the Table 1 negotiations to abolish marriage leave. In exchange, the employer offered a one-time vacation leave of 37.5 hours. In the employer's view, this leave is not related to spousal union leave. The "me too" clause of the 2004 and 2006 collective agreements between the Library of Parliament and the PSAC therefore never came into effect.

[57] Faced with diverging interpretations, an adjudicator must determine the intention of the parties to the collective agreement. In my view, the employer's interpretation of Annex C of the 2006 collective agreement between the Library of Parliament and the PSAC is the correct one. It is true that abolishing marriage leave and offering in exchange a one-time vacation leave is how the TB dealt with the discriminatory aspect of marriage leave. But the "me too" clause does not provide that the parties will incorporate in the 2006 collective agreement between the Library of Parliament and the PSAC how the TB will deal with the discriminatory aspect of marriage leave. The "me too" clause is more limited and more specific. It refers to "spousal unions." The Library of Parliament and the PSAC agreed to incorporate in their collective agreement a provision relating to leave with pay for "spousal union" should the TB adopt such a clause in a collective agreement. The TB did not adopt, in the 2005 collective agreement between the TB and the PSAC, a provision relating to spousal unions. It abolished marriage leave. In exchange for that lost benefit, it gave all employees a one-time vacation leave of 37.5 hours. Although the one-time vacation leave originated as a result of the CHRT decision and the discriminatory aspect of marriage leave, it is quite different from leave for spousal unions. All employees will enjoy that leave, and they can take it for any reason. In my view, therefore, the one-time vacation leave is not "related" to leave for spousal union and cannot displace clause 19.15 of the 2006 collective agreement between the Library of Parliament and the PSAC, which now includes leave for spousal union because of the *Civil Marriage Act*. Consequently, the Library of Parliament does not have to grant the grievor a one-time 37.5-hour vacation leave.

[58] The bargaining history of the 2005 collective agreement between the TB and the PSAC also illustrates that both the TB and the PSAC considered spousal union leave and one-time vacation leave as different matters. In its submission to the Conciliation Board in the negotiation of the 2005 collective agreement between the TB and the PSAC, the PSAC wanted to replace marriage leave with spousal leave (Exhibit G-1, Tab 6). The TB refused. The TB took an entirely different approach by abolishing marriage leave and offering all employees a one-time vacation leave that could be taken for any reason. Both parties therefore considered both types of leave as different matters.

[59] The chronology of events is also telling in determining the intentions of the parties. When the Library of Parliament and the PSAC signed the 2006 collective agreement between the Library of Parliament and the TB on November 27, 2006, they chose to repeat the “me too” clause in Annex C of that collective agreement (Exhibit G-1, Tab 2). Yet at that time, the TB and the PSAC had already signed a collective agreement that replaced marriage leave by a one-time vacation leave (i.e., the 2005 collective agreement between the TB and the PSAC that was signed on March 14, 2005; Exhibit G-1, Tab 4). Given this precedent, had the TB and the PSAC wanted to replace the marriage leave with a one-time vacation leave, they would have done so. They decided not to do so. Instead, they included in Annex C of the 2006 collective agreement between the Library of Parliament and the PSAC the same “me too” clause that was included in Annex B of the 2004 collective agreement between the TB and the PSAC.

[60] I also accept the employer’s alternative argument that if the “me too” clause was triggered, then it was triggered by the PAFSO collective agreement (Exhibit E-1, Tab III-6). The “me too” clause does not specify to which collective agreement it refers. It provides that “should the Treasury Board incorporate a provision relating to ‘Leave with pay for spousal union’ into a collective agreement” [emphasis added]. The first time that the TB agreed, in a collective agreement, to extend marriage leave to same-sex couples was when it signed the PAFSO collective agreement on June 7, 2005. Clause 28.01 of that collective agreement grants employees a five-day leave for the purpose of getting married, and its Appendix B incorporates into that same collective agreement the TB directive entitled *Marriage Leave and Same-Sex Couples* (Exhibit E-1, Tab II-2), which extends marriage leave to same-sex couples. It is therefore Appendix B of the PAFSO collective agreement and the directive to which it refers that should have

been incorporated into the 2006 collective agreement between the Library of Parliament and the PSAC. That directive does not provide for a one-time vacation leave.

[61] The issue of leave for same-sex couples for commitment ceremonies became moot when the *Civil Marriage Act* was assented to on July 20, 2005. Sections 2 and 4 of that *Act* provide that same-sex couples may get married. Consequently, clause 19.15 of the 2006 collective agreement between the Library of Parliament and the PSAC must be read as granting same-sex couples the right to marriage leave in the same manner as heterosexuals.

[62] Given the above conclusions, there is no need to address the employer's alternative argument.

[63] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[64] The grievance is dismissed.

October 31, 2008.

**John A. Mooney,
adjudicator**