



What's New in HR Law

BC Arbitrator Finds that the National Day of Mourning Was not a “Holiday”

February 6, 2023 | By [Cassandra da Costa](#)

Bottom Line

In [Construction Labour Relations Association of British Columbia v United Association of Plumbers and Pipefitters, Local 170, 2023 CanLII 3049 \(BC LA\)](#) (“CLRA”), an arbitrator concluded that the National Day of Mourning (the “NDM”) to mark the passing of Queen Elizabeth II was not a paid “holiday” under several collective agreements. This decision provides helpful insight for employers who are facing union grievances claiming holiday-related entitlements for the NDM.

For more information on this topic, read our [previous Insight on whether the NDM should be considered a public holiday in Canada](#).

Background Facts

On September 8, 2022, Buckingham Palace announced the passing of Her Majesty Queen Elizabeth II.

Following this announcement, the Prime Minister’s Office announced that “September 19, 2022, [would] be a National Day of Mourning in Canada” and “designated a holiday for the public service of Canada”. The Prime Minister invited “other employers across the country” to recognize the NDM, and indicated that the Government of Canada was consulting with the provincial and territorial governments about this matter.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

On September 13, 2022, the Federal Government filed a [proclamation](#) in the *Canada Gazette*, which requested that the people of Canada “set aside September 19, 2022, as the day on which they honour the memory of Her late Majesty Queen Elizabeth the Second.”

Consistent with the Federal Government’s proclamation, the Premier of British Columbia announced that a “national holiday will be observed Monday, Sept. 19 by federal employees” and advised “provincial public-sector employers to honour this day in recognition of the obligations around federal holidays in the vast majority of provincial collective agreements.” The Premier also encouraged “private-sector employers to find a way to recognize or reflect on the day in a way that is appropriate for their employees”.

As a result of these developments, some members of the Construction Labour Relations Association of British Columbia (the “Employer”) chose not to recognize the NDM as a holiday under their collective agreements. Two unions filed grievances in response to the Employer’s decision.

Although several different collective agreements were at issue, they contained similar language regarding the days that the Employer would recognize as a holiday for employees in the applicable bargaining unit. Four of the collective agreements defined “holiday” as including any day that may be “declared” by the Government of Canada or the Province of British Columbia. The one other collective agreement defined “holiday” as including “any one Federal or Provincial Holiday that may be established.”

The Decision

Arbitrator Noonan concluded that the Employer did not have to recognize the NDM as a holiday under the collective agreements at issue, as neither the Federal Government nor the Government of British Columbia had “declared” or “established” the NDM as a public holiday.

The Arbitrator’s decision was based on the following findings:

- Unlike other public holidays, including the National Day for Truth and Reconciliation, the NDM was not enacted by legislation. No legislation, including the *Canada Labour Code* and British Columbia’s *Employment Standards Act*, had been amended to include the NDM as a listed holiday.
- The Federal Government’s proclamation decidedly avoided declaring the NDM to be a public holiday and, instead, merely designated September 19, 2022, as a holiday for the federal public service and requested others in Canada to set aside the date to honour the Queen’s memory. The Arbitrator compared the proclamation’s wording to the Federal Government’s proclamation following the death of King George VI, which “appoint[ed] and set aside [February 15, 1952] as a Public Holiday to be observed as a Day of General Mourning by all persons throughout Canada.” The Arbitrator concluded that the contrasting wording of the 2022 proclamation was a significant policy difference that indicated the Federal Government’s intention to avoid declaring the NDM as a public holiday.
- The Government of British Columbia had similarly avoided declaring September 19, 2022, as a holiday for private sector employees. Although the Premier’s office had told provincial public-sector employers to honour the NDM, it simply encouraged private sector employers in the province to “find a way to recognize or reflect on the day.”

Check the Box

CLRA is one of the first decisions to rule on whether the NDM should be considered a holiday for unionized employees. The Arbitrator's reasons in *CLRA* shed insight on some of the factors that may be relevant for parties to consider. In particular, *CLRA* reinforces the classic tenets of collective agreement interpretation and encourages a precise assessment of the language used in government enactments and announcements relating to the NDM.

However, differing collective agreement language may lead to different results in other cases. For example, in *Gorge Vale Golf Club and CUPE, Local 50, Re, 2022 CarswellBC 3385 (Love)*, the employer was required to recognize the NDM as a holiday because its collective agreement defined "holiday" as any day "proclaimed by the dominion, provincial or municipal governments" and the Federal Government had made a proclamation about the NDM.

Employers should be mindful that grievances regarding the NDM will highly depend on the unique language of the applicable collective agreement and factual circumstances. Given this potential variability, employers may wish to stay well-informed of any further case law regarding the treatment of the NDM as a holiday under other collective agreements.

Need More Information?

For more information or assistance with collective agreement interpretation or labour arbitration, contact [Cassandra da Costa](mailto:cdacosta@filion.on.ca) at cdacosta@filion.on.ca or your regular lawyer at the firm.

*Filion Wakely Thorup Angeletti LLP thanks **Jemma Lewis** for her assistance in preparing this article.*



Toronto
Bay Adelaide Centre
333 Bay Street
Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London
252 Pall Mall Street, Suite 100
London, Ontario N6A 5P6
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton
1 King Street West
Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca

Kitchener-Waterloo
137 Glasgow Street
Suite 210, Office 175
Kitchener, Ontario N2G 4X8
tel: 519.433.7270
fax: 519.433.4453
kitchener-waterloo@filion.on.ca